

THE WAR ON DISSENT: LEGAL REPRESSION IN THE CIVIL RIGHTS

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SARAH PORTER

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Dr. Julia Erin Wood

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ABSTRACT

The War on Dissent: Legal Repression in the Civil Rights Era

Sarah Catherine Porter
Department of History
Texas A&M University

Research Advisor: Dr. Julia Erin Wood
Department of History
Texas A&M University

Beginning in the 1960s, concerns about rising crime rates, urban rebellions, and political demonstrations across the United States prompted a shift towards “law and order” for many Americans. Federal and state policymakers alike embraced this spirit by enacting new legislation over the following decades that reformed sentencing procedures, distributed billions of dollars in federal funding, and employed new crime control methods that disproportionately targeted urban communities of color. Building upon the work of scholars including Elizabeth Hinton and Michael Flamm, who provide compelling research indicating that programs enacted under Democratic leadership in the 1960s established a foundation for mass incarceration, my work aims to take into account the context in which this legislation originated. Drawing in research from Zoe Colley and Dan Berger pertaining to the links that developed between the Civil Rights Movement and imprisonment, I intend to demonstrate how the surge in collective protest and urban rebellions during the period framed this punitive shift. By analyzing several specific pieces of legislation which exemplified this trend and analyzing the social and political contexts in which they developed, my work seeks to understand the ways in which federal anxieties and attitudes that emerged in an era of social change and activism made lasting impacts on the criminal justice system.

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ABBREVIATIONS

AIM	American Indian Movement
BPP	Black Panther Party
CNAC	Cambridge Nonviolent Action Committee
CORE	Congress of Racial Equality
FBI	Federal Bureau of Investigation
Mobe	National Mobilization Committee to End the War in Vietnam
NAACP	National Association for the Advancement of Colored People
SCLC	Southern Christian Leadership Conference
SDS	Students for a Democratic Society
SNCC	Student Nonviolent Coordinating Committee

INTRODUCTION

The 1960s are often portrayed as a turbulent decade, associated with the counterculture, the Black Power movement, political assassinations, the Vietnam War, and urban rebellions. All of these developments, and many more, were instrumental in shaping new attitudes among Americans and paved the way for sweeping transformations in U.S. society. Liberalism began to decay in the eyes of many citizens, who rejected the perceived permissiveness of the Democratic Party for the “law and order” platform of 1968 Republican presidential candidate Richard Nixon. This resurgence of conservatism in the late 1960s, spearheaded by the predominantly white, middle class Americans that Nixon referred to as the “Silent Majority,” was particularly apparent in the efforts of state and federal policymakers, who implemented new laws designed to criminalize many forms of activism. Placing the blame for the soaring crime rates and urban upheaval of the late 1960s on the efforts of groups including the Southern Christian Leadership Conference (SCLC), the Student Nonviolent Coordinating Committee (SNCC), the Black Panther Party for Self-Defense (BPP), and various anti-war groups, legislators responded with punitive legislation that directly sought to undermine these organizations. This interpretation was articulated clearly by Richard Nixon, who stated in August of 1968: “It is too late for more commissions to study violence. It is time for the government to stop it. We must cease as well the granting of special immunities and moral sanctions to those who deliberately violate public laws—even when those violations are done in the name of peace or civil rights or anti-poverty or academic reform.”¹

¹ As quoted in: John W. Finney, “Nixon and Reagan Ask War on Crime,” *New York Times*, August 1, 1968, 1. Accessed March 17, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/118228241?accountid=7082>.

Even before Nixon's election, efforts to subvert activism were well underway. By analyzing legislation enacted during 1967 and 1968, it is evident that alongside President Johnson's infamous War on Poverty and War on Crime was an equally endorsed War on Dissent. Legislation such as the Mulford Act, the Federal Anti-Riot Act, and the Federal Flag Protection Act, demonstrated the determined efforts of both federal and state policymakers to criminalize certain forms of activism and undermine these attempts to effect change. Each of these laws reveal the manner in which legal repression became a logical step to stifle dissent. Militant or revolutionary rhetoric, peaceful marches, the legal display of weapons, disrespect toward American symbols, and a variety of other political activities could, and often would, be curtailed through legislation. These laws are not exhaustive and represent only a few pieces of a much broader effort to suppress opposition during this period. However, each illustrates the dynamic relationship and underlying tensions between social activism and legislation. By examining their development and implementation alongside the activists and organizations they sought to weaken, it becomes apparent that each of these laws was inextricably linked to the movements for freedom, justice, and peace.

CHAPTER I

“GUNS, BABY, GUNS”: THE MULFORD ACT

Though contemporary debates surrounding gun control often appear partisan in nature and relatively straightforward, the underlying issues are far more complex and do not neatly fit into this simplified narrative. The Republican Party is commonly heralded as the champion of the second amendment’s right to bear arms, but this position has not always been fixed and actually indicates a departure from policies embraced during the 1960s. The support that staunchly conservative politicians, such as Ronald Reagan, lent to bills that placed additional limitations on the use of firearms was framed by the transformations and divisions that emerged within the Civil Rights and Black Power movements during this period. The increasingly militant branch of the movement, composed of groups including the Black Panther Party for Self-Defense (BPP), played an influential role in prompting these attitudes. One piece of legislation that indicated this trend was the Mulford Act, a state level initiative enacted in California during the summer of 1967. Frequently labeled as the “Panther Bill,” this act revealed the determined efforts of legislators to disarm the Black Panther Party and represented one piece of a broader effort to employ legal repression in order to undermine social activism. By criminalizing the Panthers’ mode of protest and self-defense, the Mulford Act weakened the organization and its ability to express dissent. This legislation simultaneously reshaped the vision of the Party in many ways, encouraging the development of a broad anticolonial rhetoric and new revolutionary programs. By evaluating the group’s ideological platform alongside the rising tides of law and order, it is evident that the passage of the Mulford Act was inextricably linked to the development of the Black Panther Party, and this legislation fundamentally altered the course of the organization.

In contrast to the strictly nonviolent philosophy of the Southern Christian Leadership Conference (SCLC) and Martin Luther King, Jr., many other organizations that developed during the black freedom struggle of the 1960s did not champion this approach. Acknowledging that survival was essential to the continuing struggle, groups like the Deacons for Defense and Justice and the Black Panther Party refused to passively accept violence. Like the party's namesake, the BPP only employed violence when absolutely necessary; the Panther did not attack unless provoked, but "if anyone attacks him or backs him into a corner, the panther comes up to wipe that aggressor or that attacker out."² This stance was problematic to the white establishment in many ways, and particularly to members of law enforcement who were accustomed to being the armed party when conflicts arose. While the Panthers were certainly not the first group to embrace self-defense as an ideological platform, and the history of armed resistance had a rich legacy within African American communities, the visibility of the Panthers' activities and the period of their emergence made this group particularly vulnerable to a reactionary legal response. The violence committed against, and generated within, the Black Panther Party by the Federal Bureau of Investigation (FBI) through its Counterintelligence Program (COINTELPRO) has been well documented, but violence was not the only instrument used to disrupt the organization's efforts. Legal repression was an effective tool as well, as the enactment of the Mulford Act indicated. Because the Panthers' programs did not follow traditional methods of protest, this group remained unaffected by certain provisions that targeted activists, but also faced new arenas of repression. The Panthers' emphasis on utilizing legal knowledge and personal liberties to protect communities and preserve the movement made this organization

³ Bobby Seale, *Seize the Time: The Story of the Black Panther Party and Huey P. Newton*, (Baltimore: Black Classic Press, 1991), 65.

particularly susceptible to legal repression, and the Party's bold display and use of weapons promoted gun control as a viable option.

The BPP was founded in 1966 under the leadership of Huey Newton and Bobby Seale and represented an effort to address the daily issues that many African Americans faced, particularly those who resided in Northern cities. Heavily influenced by the ideological platform of Malcolm X, the men strove to foster a sense of self-reliance in black communities and collaborated to construct a program that would address local concerns that stemmed from the international issue of white supremacy. Rather than relying on politicians and government officials to resolve the issues that residents faced, the BPP attempted to effect change directly. In early 1967, for instance, the Panthers appealed to the Oakland City Council, requesting that the city install a traffic light at a busy intersection where many schoolchildren passed through. When legal channels proved insufficient, the Panthers decided to direct traffic at the intersection themselves, and after the group was spotted occupying the street, fully armed, the city immediately began construction to install a light.³ This aim was also evident in the community programs that the Panthers established in the years following the organization's establishment. Beginning in 1968, the Panthers began to offer an array of services including free breakfast for children, medical care, and drug rehabilitation. These community programs served multiple purposes. By providing needed services to city residents, the Panthers were able to recruit members and attract support while simultaneously promoting their philosophy to a larger audience and moderating the group's image in the public eye.⁴

³ Curtis J. Austin, *Up Against the Wall: Violence in the Making and Unmaking of the Black Panther Party* (Fayetteville: University of Arkansas Press, 2006), 63; Seale, *Seize the Time*, 102.

⁴ Joshua Bloom and Waldo E. Martin, Jr., *Black Against Empire: The History and Politics of the Black Panther Party*. (Berkeley: University of California Press, 2013), 210; Ryan J. Kirkby, "'The Revolution Will Not Be Televised': Community Activism and the Black Panther Party, 1966-1971," *Canadian Review of American Studies* 41, no. 1 (2011): 30.

However, one of the Panthers' most widely recognized strategies was monitoring law enforcement through police patrols. The BPP's Ten-Point Platform articulated demands for self-determination, education, and decent housing, and the Panthers also called for "an immediate end to POLICE BRUTALITY and MURDER of Black people."⁵ The Panthers aimed to accomplish this goal through organizing self-defense groups and encouraging black communities to recognize their constitutional right to bear arms. The men decided to use this particular plank as a starting point because the issue of police brutality was widespread, and this bold stance would captivate the attention of the community and elevate the party's image. Citizen groups in Los Angeles had developed methods to monitor police activity through tape recordings and photographs, but these efforts rarely resulted in any action against police misconduct. By monitoring law enforcement while armed, the Panthers hoped that their intimidation would result in a concrete change in behavior. Shortly after the group's formation, the Panthers began monitoring communities and if, or when, an incident of police harassment broke out, members observed from a distance and informed the individual of his or her rights. When an arrest occurred, the Panthers provided bail. Newton revealed that this program often served as a recruiting tool as well. Grateful for the Panthers' assistance and inspired by their resistance, "many citizens came right out of jail and into the party."⁶ Political education was a major facet of the BPP platform, and the group relied on the Declaration of Independence, the Constitution, and the California Legal Code to inform residents of their rights as citizens. These rights included the ability to openly carry arms in public, as guaranteed in the state of California, and the ultimate

⁵ Huey Newton, "Patrolling," in *The Huey P. Newton Reader*, eds. David Hilliard and Donald Weise, (New York: Seven Stories Press, 2002), 56.

⁶ As quoted in: Austin, *Up Against the Wall*, 54.

right to alter or abolish the existing form of government, which had been zealously provided for in the Constitution by the original American revolutionaries.

The Black Panther Party not only championed self-defense as an ideological platform but relied on violent rhetoric and the image of the gun to garner support from African American communities. This platform resonated with many African Americans, particularly those who had not experienced the tangible benefits that civil rights reform had brought.⁷ Through a bold display of black militancy, the Panthers hoped to provide an example of resistance for the surrounding community as a foundation for more ambitious revolutionary programs. However, this provocative image often aroused strong public opinions, with some captivated by the organization's platform and others repulsed. While the BPP's emphasis on armed self-defense contrasted with the official position of the nonviolent branch of the movement, spearheaded by groups like SCLC, the Panthers' ideology represented a continuation of methods used by oppressed groups across the globe. Efforts for liberation in Haiti, Algeria, and Vietnam had not been conducted through tactical and philosophical nonviolence but relied on revolutionary violence directed against oppressors. Newton drew inspiration from figures including Frantz Fanon, Ernesto "Che" Guevara, and Mao Tse Tung, and rejected the integrationist approach of the mainstream Civil Rights Movement. However, the BPP's approach contrasted with these international efforts in its strict adherence to legality in the use of weapons.⁸ Newton's emphasis on meticulously following the law rested on his assumption that the Panther patrols represented one piece of a much larger campaign. Initially, uniformity and order were required in order to

⁷ Huey Newton, "Sacramento and the 'Panther Bill,'" in *The Huey P. Newton Reader*, ed. David Hillard and Donald Weise, (New York: Seven Stories Press, 2002), 67.

⁸ Sean L. Malloy, *Out of Oakland: Black Panther Party Internationalism During the Cold War*, (Ithaca: Cornell University Press, 2017), 62; Seale, *Seize the Time*, 154.

avoid the chaotic and uncoordinated violence of urban rebellions. Through compliance with the law, Newton hoped to assemble the foundation for a legitimate revolutionary force.

However, despite the Panthers' attention to legal conventions, the gun proved to be the most provocative and therefore most recognized symbol of the BPP. As historian Curtis Austin has argued, this contentious image not only contributed to the rise of the Panthers as a widely recognized organization, but ultimately led to the demise of the group by distorting public opinion and eliciting a violent response from law enforcement.⁹ While police violence, counterintelligence operations, and federal action were all instrumental in the downfall of the BPP, these were not the only tactics employed to neutralize the organization. The emphasis on self-defense and the manner in which party members brazenly carried weapons shaped legislative efforts to place restrictions on firearms, and these bills gained wide support from staunchly conservative politicians. Though the Panthers' strategies were instrumental in propelling the organization to national prominence and generating a support base, these strategies simultaneously handicapped the Party by making it particularly susceptible to legal suppression. The use and display of weapons were understandably subject to regulation by both state and federal governments, and as a result, the policymakers could easily curtail the group's activities.

This repression took the form of the Mulford Act. The Panthers first heard of this impending legislation during an appearance on an Oakland radio program during April of 1967. Assemblyman David "Don" Mulford, a conservative Republican from Piedmont, a predominantly white suburb of Oakland, called the radio station and claimed that he was planning to introduce a bill that would effectively disarm the Panthers. The BPP was not widely

⁹ Austin, *Up Against the Wall*, 68.

known at this point, but Oakland police had begun to identify group members and their vehicles. Furthermore, the group had recently engaged in a widely covered confrontation with police while escorting Betty Shabazz, the widow of Malcolm X. In describing the incident, an anonymous writer for the *Black Panther* claimed that “they [police officers] knew there damn well ought to be a law preventing black men who didn’t even wear uniforms from going around armed,” and were “so shocked to find that there wasn’t a law to cover that situation that they allowed the Panthers and Betty Shabazz to leave unmolested.”¹⁰ Accordingly, Mulford first introduced the bill on April 5, merely six weeks after this incident.¹¹ This action was hardly surprising to Newton or Seale, who deemed Mulford’s action “a logical response of the system.”¹² Because the Panthers were willing to employ the law as a form of resistance, hostile legislators could simply alter the law.

The Mulford Act was hardly the first effort to disarm African Americans. In fact, this effort predates the independence of the United States, and can be traced to the French Black Code which, beginning in 1751, authorized white Louisiana colonists to employ force upon “any black carrying any potential weapon, such as a cane.”¹³ These restrictions only intensified following Nat Turner’s armed rebellion in 1831, and the Virginia legislature passed a particularly stringent law that prohibited the bearing of arms for any person of African descent, whether enslaved or free. The possession of even lead shot was deemed sufficient to merit a death

¹⁰ “Truth On Sacramento,” *Black Panther*, May 15, 1967, 8. Accessed March 24, 2018, Black Thought and Culture, <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161768.pdf>.

¹¹ California Legislature, Assembly Daily Journal, 1967 Regular Session, 1336; Yohuru R. Williams, “In the name of the Law: The 1967 Shooting of Huey Newton and Law Enforcement’s Permissive Environment,” *Negro History Bulletin* 61, no. 2 (1998): 10. Accessed March 7, 2018. <http://jstor.org/stable/24767366>; Cleaver, Kathleen, “A Picture is Worth a Thousand Words,” in *Black Panther: The Revolutionary Art of Emory Douglas*, ed. Sam Durant, (New York: Rizzoli International Publications, Inc., 2007), 49.

¹² Newton, “Sacramento and the ‘Panther Bill,’” 68.

¹³ As quoted in: Clayton E. Cramer, “The Racist Roots of Gun Control,” *Kansas Journal of Law & Public Policy* 4, no. 2 (1994-1995): 17.

sentence to some whites, as the extralegal execution of one man demonstrated.¹⁴ The Black Codes enacted following the Civil War indicated a continuation of this attitude; these policies required African Americans to obtain a license in order to carry a gun, while their white counterparts faced no such barriers. Despite the fact that black men and women were the most susceptible to racial violence, these policies often left them defenseless.¹⁵

While the Mulford Act and other gun control legislation passed following the second World War did not blatantly target African Americans in the same way, the implementation of these statutes and the underlying anxieties that inspired their development hardly differed. This legislation was recast as an effort to control urban crime, but the implications of this fell squarely upon black communities, and specifically groups like the Panther, who exercised resistance against the white establishment. In 1967, the Mulford Act easily passed as a legitimate effort to curtail gun violence on California's streets. Because the bill did not explicitly target African Americans or the BPP and technically applied to all citizens, the racist undertones of the legislation remained hidden. However, because the bill's inception was intertwined with a desire to undermine the Panthers, this legislation cannot be interpreted as a genuine attempt to reduce crime and its racial and political implications must be acknowledged. Furthermore, it is apparent that one particular group remained unaffected by the Mulford Act: police officers. While it would undoubtedly be misguided to disarm a city's sworn protectors, the uneasy relationship between the BPP and the nation's police forces should be acknowledged. Huey Newton related that the Panthers never perceived groups like the Ku Klux Klan to be their primary threat, but

¹⁴ Cramer, "The Racist Roots of Gun Control," 18.

¹⁵ Eric Primm, Robert M. Regoli and John D. Hewitt, "Race, Fear and Firearms: The Roles of Demographics and Guilt Assuagement in the Creation of a Political Partition," *Journal of African American Studies* 13, no. 1 (March 2009), 69.

forces of the white establishment such as the National Guard and local police.¹⁶ The BPP's primary opposition was law enforcement, and by disarming the Panthers but leaving their principal opponents and oppressors with weapons, the Mulford Act effectively shifted the balance to favor police officers.

While legislators conceived the Mulford Act in response to the Panthers' use of armed patrols to monitor law enforcement, its ultimate passage similarly hinged upon protest. When the Panthers learned of the pending legislation, which would undoubtedly hamper their activities, the group traveled to Sacramento to voice their opposition. An article in the *San Francisco Chronicle* provided the group with further information about the bill, noting that it would be presented in the Assembly on Tuesday, May 2, and contemplating whether or not the Panthers would make an appearance.¹⁷ The Panthers were not naïve in their plans, and recognized that their appearance would be unlikely to prevent the passage of the Mulford Act. However, Newton realized that the demonstration could serve multiple purposes. With Mulford's bill likely to gain passage regardless of the Panthers' actions, Newton and Seale decided that making an appearance at the capitol would likely attract media exposure for the group and raise public awareness of both the pending legislation and the discrimination that African Americans routinely faced from law enforcement. The family of Denzil Dowell, a young man who was shot and killed by a Contra Costa County officer while unarmed, had approached the Panthers for aid earlier in the month. After pressing for an investigation and exhausting the appropriate legal channels with no success, the BPP decided to use the trip to Sacramento to raise this issue as

¹⁶ Huey Newton, "Sacramento and the 'Panther Bill,'" 68.

¹⁷ Jerry Belcher, "It's All Legal: Oakland's Black Panthers Wear Guns, Talk Revolution," *San Francisco Chronicle*, April 30, 1967. Accessed March 6, 2018, San Francisco Chronicle Digital Historic Archive, <http://infoweb.newsbank.com/resources/doc/nb/image/page/v2:142051F45F422A02@WHNPX-1514193240830393@2439611-1511B39AA673686C@1?p=WORLDNEWS>.

well.¹⁸ By calling attention to the brutality that citizens like Dowell faced from law enforcement, the Panthers were able to buttress their opposition to the Mulford Act, which would effectively strip citizens of the ability to defend themselves from such violence.

In preparation, Newton crafted an Executive Mandate to read to the Legislature, and on May 2, 1967, the Panthers, excluding Newton, made the trip to the capitol. Though most of the members present were armed, the Panthers were careful to “follow the law to the letter,” in the words of Bobby Seale.¹⁹ Upon arrival, the group entered the building and sought out the assembly chambers. After a period of confusion, the Panthers accidentally stumbled onto the assembly floor, which was off limit to the public, and were quickly ejected.²⁰ However, Seale took advantage of the growing swarm of reporters and began to read the Executive Mandate. Declaring that “the time has come for Black people to arm themselves against this terror before it is too late,” Seale proclaimed that “the pending Mulford Act brings the hour of doom one step nearer.”²¹ Within the context of increasingly brutal treatment of African Americans across the United States, Seale’s impassioned declaration represented a willingness to rise up and defend black lives, rather than remain complicit in this oppression. As George Dowell, the brother of Denzil Dowell, later stated in an interview for the *Black Panther*, the BPP was “the first to show the world that black people need protection and we have never had it. That’s why we are arming to protect ourselves. We are just tired of living like this.”²² These statements illustrated the

¹⁸ “The Truth About Sacramento,” *The Black Panther*, May 15, 1967, 5. Accessed March 6, 2018. Black Thought and Culture. <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161768.pdf>.

¹⁹ Bobby Seale, *Seize the Time: The Story of the Black Panther Party and Huey P. Newton*, (Baltimore: Black Classic Press, 1991), 154.

²⁰ Bloom and Martin, *Black Against Empire*, 59.

²¹ Seale, *Seize the Time*, 162; Newton, “Sacramento and the ‘Panther Bill,’” 70.

²² “George Dowell, Rich.,” *The Black Panther*, May 15, 1967, 2. Accessed March 6, 2018. Black Thought and Culture. <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161768.pdf>.

genuine threat that the Mulford Act symbolized to the Black Panthers and the larger African American community.

Though the Sacramento demonstration was entirely legal, as state laws did not prohibit weapons in government buildings, the incident provided law enforcement with the opportunity to arrest several members of the group. Police surrounded the Panthers at a nearby service station, arresting nineteen adults and five juveniles.²³ Even before the passage of the Mulford Act, law enforcement attempted to wield the law as a weapon to undermine the BPP. The officers searched the Panther's vehicles for illegal weapons, measured the length of their shotguns to ensure they were within the legal limits, and eventually arrested the members for violating an obscure fish and game code. Upon departure, the Panthers had failed to remove the ammunition from their firearms before entering their vehicles, and this minor violation provided the grounds for arrest. Even Eldridge Cleaver, who had accompanied the group unarmed in order to cover the event for *Ramparts* magazine, was arrested for his involvement, and the officers leveled charges of conspiring to invade the assembly against the group.

The demonstration in Sacramento propelled the BPP to the national spotlight and offered a bold display of black militancy. Images and news of the Panthers' "invasion" circulated throughout the nation and appeared in widely read newspapers including the *New York Times* and the *Washington Post*.²⁴ The publicity that the BPP garnered from the demonstration contributed to the development of new chapters across the nation and offered a new model of resistance for African Americans. This image proved appealing to individuals like Billy John

²³ Bloom and Martin, *Black Against Empire*, 60.

²⁴ "Armed Negroes Protest Gun Bill," *New York Times*, May 3, 1967, 23. Accessed March 5, 2018, ProQuest Historical Newspapers: The New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/117687413?accountid=7082>; "Only in America," *Washington Post*, May 6, 1967, A12. Accessed March 5, 2018, ProQuest Historical Newspapers: The Washington Post. <https://search.proquest.com.ezproxy.library.tamu.edu/docview/143176381?accountid=7082>.

Carr, a Berkeley resident, who expressed his approval of the Panthers' actions, claiming, "it's beautiful that we finally got an organization that don't walk around singing."²⁵ The Panthers' willingness to assert their rights rather than passively accept violence set the group apart from the southern Civil Rights Movement, and this stance, bolstered by the demonstration at the capitol, attracted a broad audience.

However, the demonstration not only failed to prevent the enactment of the Mulford Act, but inspired legislators to stiffen the bill and accelerate its passage. Mulford claimed that the Panthers' intrusion emphasized the importance of enacting meaningful legislation to promote public safety and used incident to justify amending the bill.²⁶ This revision, which made carrying a loaded weapon in the state capitol a felony, spoke directly to the Panthers' demonstration and highlighted the underlying intent of the bill. Additionally, an article printed in the *San Francisco Chronicle* revealed that the Panthers' "invasion" allowed Mulford to declare his bill an issue of urgency, which meant it could be enacted immediately with Governor Reagan's signature.²⁷ As a result, the bill was signed into law July 28, 1967, and effectively criminalized one of the Panthers' central programs.

The arrests in Sacramento further exacerbated the situation and complicated the group's local efforts. Though Newton had wisely remained in Oakland and was able to bail the group out, this significant expense, compounded by the absence of many key members, frustrated local efforts. An issue of the *Black Panther* from June of 1967 appealed to readers for donations to

²⁵ Sol Stern, "The Call of the Black Panthers," *New York Times*, August 6, 1967, 186. ProQuest Historical Newspapers: The New York Times.

<https://search.proquest.com.ezproxy.library.tamu.edu/docview/117792279?accountid=7082>.

²⁶ David Donald Mulford, Interview for KPIX-TV, May 1967. Accessed March 21, 2018, San Francisco Bay Area Television Archive, <https://diva.sfsu.edu/collections/sfbatv/bundles/206880>.

²⁷ "Reagan Signs Tough Gun Law," *San Francisco Chronicle*, July 29, 1967. Accessed March 18, 2018, San Francisco Chronicle Digital Historic Archive, http://public.maximus.newsbank.com.ezproxy.library.tamu.edu/images/L00000006/cache/pdf/bitonal_tiff_g4/15139665AC268717_1511A01C02A7278B.pdf.

cover the cost of bail, which totaled \$40,000.²⁸ The Panthers were able to provide many of the funds, but this came at the expense of other programs. As Kathleen Cleaver claimed, the Party, “had lost its cohesion, particularly after the Chairman [Bobby Seale] and other key Panthers started serving the six-month jail sentences they received for their Sacramento demonstration. The party had no funds to continue renting its storefront office in Oakland, and no meetings were being held.”²⁹ The manner in which existing legislation was used to weaken the BPP only served to reinforce the threat that the Mulford Act represented. Not only would its enactment deter the use of Panther patrols, but it could also furnish authorities with the ability to arrest members of the group.

The use of community patrols had primarily functioned as a survival program, and following the passage of the Mulford Act, the Panthers turned to new programs to promote self-preservation among African American communities. Beginning in September of 1968, the Oakland chapter began providing free breakfasts for children, and this program was soon replicated in chapters across the nation. Following this success, the organization devised new programs that addressed the widespread needs for medical care, transportation, clothing, and drug rehabilitation. However, Federal Bureau of Investigation Director J. Edgar Hoover and other government officials perceived the Panthers’ community activism to be particularly dangerous. It was these programs that prompted Hoover to label the BPP “the greatest threat to the internal security of the country” in 1969.³⁰ The newfound emphasis on community programs, prompted in part by the passage of the Mulford Act, was particularly alarming to Hoover because

²⁸ “Black Panthers Need Bail Money,” *Black Panther*, June 20, 1967, 4. Accessed March 9, 2018, Black Thought and Culture, <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161769.pdf>.

²⁹ Kathleen Cleaver, “A Picture is Worth a Thousand Words,” in *Black Panther: The Revolutionary Art of Emory Douglas*, ed. Sam Durant, (New York: Rizzoli International Publications, Inc., 2007), 51.

³⁰ As quoted in: David McClintick, “The Black Panthers: Negro Militants Use Free Food, Medical Aid to Promote Revolution,” *Wall Street Journal*, August 29, 1969, 1. Accessed March 17, 2018, ProQuest Historical Newspapers, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/133372807?accountid=7082>.

these efforts drew a broader base of support for the Panthers and were effective in forging relationships with more moderate segments of both black and white communities. In a memo from May of 1969, Hoover emphasized the threat that the BPP's humanitarian programs represented, claiming that a primary concern of the counterintelligence program was "to keep this group isolated from the moderate black and white community which may support it."³¹ Furthermore, Hoover believed that these programs not only involved providing African Americans with important services like pest control, ambulances, and drug rehabilitation, but also disseminating revolutionary ideologies to those who patronized these programs. This fear certainly had some foundation. Newton acknowledged the necessity of securing the loyalty and support of black communities in preparation for a revolutionary struggle. Even community members who were not attracted to the revolutionary platform of the BPP could easily recognize the value of community activism and thus were more receptive to the group's ideas. For instance, Staten Island resident Barbara Reynolds, who regularly relied on BPP services, stated in an interview for the *Wall Street Journal* that "the Black Panthers are doing things for us no one else has done. If they can keep it up, a lot of people are going to cooperate with them."³² However, the revolutionary nature of these programs elicited violent repression from the state. Hoover directly targeted these programs by convincing vendors and donors to sever ties with the organization and sought to undercut the Panthers further by authorizing unwarranted raids, generating discord among members, and resulting to direct violence at times.³³

As evidenced through the Panthers' community activism, the Mulford Act prompted the development of new strategies, and this was accompanied by a shift from armed self-defense to

³¹ Ward Churchill and Jim Vander Wall, *The CONITELPRO Papers: Documents from the FBI's Secret Wars Against Domestic Dissent*, (Boston: South End Press, 1990), 145; Bloom and Martin, *Black Against Empire*, 211.

³² As quoted in: McClintick, "The Black Panthers," 1.

³³ Bloom and Martin, *Black Against Empire*, 211.

armed resistance. From the start, Newton and Seale had envisioned the BPP as the foundation for a truly revolutionary program, but prior to the passage of the Mulford Act, this objective had not taken shape in any tangible way. As the Sacramento demonstration illustrated, the Panthers emphasized adherence to legal codes and relied on firearms primarily for the purposes of self-defense and intimidation rather than actual armed confrontation. The Panthers' respect for state and federal laws was not founded in reverence or moral responsibility but was merely a strategy to construct a streamlined organization and avoid legal complications before the group was able to mount a substantial challenge to the established order. Newton and Seale considered the spontaneous violence that erupted in cities like Watts in 1965 to be ineffective and hoped to channel the unrefined energy of these urban rebellions into a legitimate thrust toward liberation.³⁴ By taking care to "follow the law to the letter," the BPP hoped to prepare the foundation for a methodical and disciplined revolutionary effort.³⁵

However, the passage of the Mulford Act curtailed this program and precipitated a shift in approach by the Panthers. Writing during the summer of 1967, Newton claimed that laws should be "established by men and should serve men," and further stated that "lawmakers ignore the fact that it is the duty of the poor and unrepresented to construct rules and laws that serve their interests better."³⁶ Within the context of the Mulford Act's pending passage, this statement represented an important transformation. As the law became an instrument of repression for the state, Newton's position took on new light. Emphasizing the need for weapons, Newton stated, "When the people move for liberation they must have the basic tool of liberation: the gun."³⁷ In

³⁴ Bobby Seale, "Long Hot Summer," *Black Panther*, June 20, 1967, 7. Accessed March 24, 2018, Black Thought and Culture, <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161769.pdf>.

³⁵ Seale, *Seize the Time*, 154.

³⁶ Newton, "In Defense of Self-Defense I," in *The Huey P. Newton Reader*, 134.

³⁷ Newton, "In Defense of Self-Defense I," in *The Huey P. Newton Reader*, 137.

successive writings, Newton identified the summer's turmoil as what scholars Joshua Bloom and Waldo Martin have termed "protopolitical resistance" to U.S. occupation, and furthered this concept by identifying the BPP as the legitimate representative and vanguard party of black communities.³⁸ This acceleration of Newton's revolutionary agenda was prompted in part by the passage of the Mulford Act. Because the law was no longer compatible with a central component of the Panther platform, both Newton and the BPP experienced a shift from self-defense to resistance.

The Mulford Act was not the first, nor the last, effort to use legislation to repress the BPP. Many Panthers perceived the gun control act signed into law by President Lyndon Johnson in 1968 to be a significant threat to African American communities, and one Panther considered new processes of gun registration to be the first step in an effort to completely disarm the black population.³⁹ Under the Nixon administration, state repression of the group intensified, and Attorney General John Mitchell even considered the possibility of using the Smith Act, which had been used during the 1950s to prosecute Communist sympathizers, against the Panthers for their advocacy of revolutionary violence.⁴⁰ The Mulford Act represented one of many efforts to undermine dissent during the late 1960s, and its enactment highlighted the manner in which even gun control legislation could represent an earnest effort to undercut activism. By criminalizing a central component of the BPP platform, the Mulford Act ultimately crippled the organization while simultaneously propelling monumental shifts within the Black Panther Party and dramatically altering its course.

³⁸ Bloom and Martin, *Black Against Empire*, 69; Newton, "On the Correct Handling of a Revolution," in *The Huey P. Newton Reader*, eds. David Hillard and Donald Weise, (New York: Seven Stories Press, 2002).

³⁹ F.L. Black, "Gun Registration Means Black Man's Extermination," *Black Panther*, October 12, 1968, 5. Accessed March 17, 2018, Black Thought and Culture, <https://bltc.alexanderstreet.com.ezproxy.library.tamu.edu/pdf/1002161775.pdf>.

⁴⁰ Bloom and Martin, *Black Against Empire*, 210.

CHAPTER II

“IF AMERICA DON’T COME AROUND”: THE FEDERAL ANTI-RIOT ACT

On Thursday, April 11, 1968, President Lyndon Baines Johnson addressed his family, members of Congress, and civil rights leaders upon signing the Civil Rights Act of 1968, a bill that he deemed the work of democracy.⁴¹ The days leading up to this event were historic: President Johnson addressed the nation to relay the news of possible peace talks with North Vietnam and withdrew his name from the upcoming presidential race; an assassin’s bullet killed Martin Luther King Jr. while he was visiting Memphis to organize a workers’ march; and, in the aftermath, flames consumed over 120 American cities as they experienced civil disorders of massive proportions. These events framed the passage of the Civil Rights Act and were essential in securing the needed support. Some proclaimed that this bill, which made new strides in civil rights by prohibiting discrimination in housing, was a memorial to King’s efforts to promote social, economic, and racial equality. However, a more obscure piece of this legislation, a federal anti-riot provision, paid tribute to King’s legacy in a less favorable way. This statute criminalized crossing state borders with the intent to incite, or further, a riot. The ill-defined language could potentially undermine social and political activism, and it created the possibility for civil rights leaders, like King had he still been alive, to face prosecution if violence broke out during a demonstration.

⁴¹ “Remarks of the President at the Ceremony for the Signing of the Civil Rights Bill of 1968,” April 11, 1968. Box 66, LE, White House Confidential Files, Lyndon Johnson Library and Museum.

During the final years of the 1960s, many American cities including Cleveland, Detroit, Newark, and Los Angeles witnessed a surge in urban upheaval. These disturbances, which have been classified as riots, urban rebellions, and revolts, among other terms, were distinctly characterized by racial and class divisions, and stemmed from the deplorable conditions that urban inhabitants faced in the midst of deindustrialization, rigid segregation, and the endemic racism that the legislative victories of the Civil Rights Movement had failed to resolve. The proposition for a federal anti-riot provision emerged in the wake of the “long, hot summer” of 1967, and was a reactionary policy that placed the blame for this urban upheaval on outside agitators rather than the social and economic problems that precipitated these events. This bill targeted activists like Stokely Carmichael and H. Rap Brown of the Student Nonviolent Coordinating Committee (SNCC), who were widely known for delivering fiery addresses to volatile crowds. This piece of legislation was one of many measures implemented during the 1960s that indicated a harsher federal stance toward political activism. Policymakers embraced legal repression as an effective strategy to suppress demands for equality and justice, and by targeting movement leaders rather than local citizens, this act placed the blame for the upheaval of the late 1960s on the movement itself.

The anti-riot provision, commonly referred to as the “H. Rap Brown Act” or the “Brown amendment,” received its nickname from SNCC’s militant chairman, who was accused of “inciting a riot” in Cambridge, Maryland during the summer of 1967. This incident is often embraced as the most clearly defined instance of inflammatory rhetoric propelling civil disorder. However, the notion that racial turmoil was the product of “outside agitators” had been the battle cry of adversaries of the civil rights movement throughout the decade, and the white leadership of Cambridge reflected these attitudes.

The idea that outsiders catalyzed the renewed efforts for civil rights in Cambridge was not entirely baseless. During 1962, civil rights groups including the Congress of Racial Equality (CORE) and the Civic Interest Group of Baltimore (CIG) led Freedom Rides along Route 40 following the expulsion of an African diplomat from a Maryland restaurant. While participating in these demonstrations, Cambridge resident, Frederick St. Clair, encouraged his fellow activists to join him in Cambridge and continue efforts there. Two men, William Hansen and Reginald Robinson, accompanied St. Clair, and immediately set to work meeting with city officials and organizing local residents. Though race relations in Cambridge hardly resembled those in the communities of the Deep South, and African Americans had enjoyed the right to vote and even held political offices far earlier than in other cities in Maryland, many issues existed. The rejection of integration and racial equality in Cambridge was veiled by concerns about freedom of association, constitutional rights, and economic growth rather than explicitly racist sentiment, but this technically color-blind rhetoric yielded little difference in actual conditions. Few restaurants served Cambridge's black residents, and African Americans suffered from job discrimination as well. Black police officers could not arrest white residents without permission from white superiors, and while the community had not actively resisted the *Brown v. Board* decision, the schools in Cambridge remained rigidly segregated. In addition, poverty was a major issue in Cambridge and the disparity between black and white residents in housing was significant. These conditions left black residents largely dissatisfied and many viewed the arrival of the Freedom Riders as a way to address this discontent constructively.

Activists immediately set to work planning demonstrations to desegregate local establishments in January of 1962. As expected, white residents reacted with violence, jeering at demonstrators and beating some, and furthermore, the law sided against the activists. Police

officials failed to intervene and arrested activist William Hansen, the target of an angry mob, for disorderly conduct.⁴² Denying any racial strife in their community, white residents accused “outside agitators” of causing the turmoil. Mayor Calvin Mowbray, along with local newspapers including the *Cambridge Daily Banner*, decisively assigned blame to Hansen and Robinson and claimed that these individuals “jeopardized...four decades of biracial progress.” While the presence of these activists certainly aided Cambridge residents in their organizing efforts, the local African American community needed no urging. As local minister, Reverend John Ringold claimed, “It has been reported that ‘until the outsiders came to Cambridge the colored people were satisfied.’ I ask, ‘satisfied’ with what?” He went on to assert that African Americans in Cambridge had “never been satisfied and unrest has been mounting for several years.”⁴³ The presence of new activists did not ignite the quest for civil rights in Cambridge, but merely stoked the fires that had been built by earlier generations.

While the string of sit-ins orchestrated by the Freedom Riders and supported by local students and residents were hardly the first efforts toward racial equality in Cambridge, the Freedom Rides did symbolize a new stage in the movement there; Cambridge residents triumphed nonviolent civil disobedience and direct confrontation as effective tactics that could serve to reinvigorate earlier efforts. Following the Freedom Rides, local residents joined together to form the Cambridge Nonviolent Action Committee (CNAC). The organization flourished under the leadership of Gloria Richardson, who was drawn to the group by her cousin, Frederick St. Clair, and her daughter, Donna, who had participated in the January sit-ins. By the spring of 1962, she became an adult supervisor of CNAC. Breaking from the legacy of prior organizers in

⁴² Peter B. Levy, *Civil War on Race Street: The Civil Rights Movement in Cambridge, Maryland*, (Gainesville, FL: University Press of Florida, 2003), 40.

⁴³ As quoted in: Levy, *Civil War on Race Street*, 41, 34.

Cambridge, including her grandfather, Maynadier St. Clair, Richardson adopted a far less accommodating posture toward the white establishment, while retaining many of the traditional tactics that had proved effective. Richardson constructed a broad base of support by drawing from the working classes along with the more moderate, black middle class, and incorporated many women into leadership roles. Under Richardson's guidance, CNAC made strides during the summer of 1962 by embarking on Project Eastern Shore, in which the group aimed to promote political awareness by educating and empowering African Americans through workshops and meetings. Despite the fact that this program was in part led by two college students and activists from outside of the city, these efforts to uplift black communities through electoral politics faced little scrutiny from white residents, particularly in contrast to the criticism that had been directed toward sit-ins earlier in the year. It was clear that the method of protest that activists employed was of greater concern to the people of Cambridge than the composition of the leadership.

While voter education drives produced success, the slow-pace of desegregation in Cambridge indicated that purely political strategies would be insufficient. Throughout the spring and summer of 1963, CNAC staged sit-ins and picketed in protest of segregated facilities, and mild violence accompanied many of the integration attempts. The most notable clash occurred on the July 12. During a sit-in at Dizzyland, a popular hangout for white youths, a white mob attacked some of the demonstrators while police officers sat idly by. It was not until fellow activists rushed to the aid of the victims that the officers intervened and the violence subsided.⁴⁴ Later that evening, demonstrators engaged in a peaceful "freedom walk" to the courthouse, where a white mob was demanding the release of a man who had participated in the afternoon's

⁴⁴ Hendrick Smith, "Martial Law Is Imposed in Cambridge, Md., Riots," *New York Times*, July 13, 1963, 1.

assault. The group threw eggs and stones at the civil rights activists, and as night approached, violence erupted in the streets. Though no fatalities resulted, many white-owned businesses incurred damage from fire and gunshots wounded twelve people.⁴⁵ In response, President John F. Kennedy directed criticism toward the movement in Cambridge. Kennedy drew contrast between efforts in Cambridge and the upcoming March on Washington for Jobs and Freedom, noting cooperation with police forces and strict nonviolence as the responsible method of addressing grievances. In Cambridge, he claimed that activists had “almost lost sight of what the demonstration is about” and called for “a cessation of the kind of demonstrations that would lead to rioting.”⁴⁶ Kennedy’s statement embodied the attitude that many white residents and politicians had expressed in relation to civil rights activism. By blurring the lines between the demonstrations organized and promoted by CNAC and the acts of individuals, Kennedy placed the blame for the violence that ensued that evening on the civil rights activists. While Kennedy upheld the right to protest, he undermined the ability of activists to demonstrate in acceptable ways by blaming the movement for any violence carried out, whether by organization members or individual citizens. Just as Cambridge’s white residents blamed “outside agitators” for any civil disturbances, even acts of violence spearheaded by white residents, the President’s statement similarly indicated that the movement itself was accountable for the violence.

Against this backdrop, the condemnation of H. Rap Brown in the aftermath of the “Brown riot” of 1967 marked a continuation of attitudes rather than a departure from previous thought. The disorder in Cambridge took place on the evening of July 24, after H. Rap Brown

⁴⁵ George Collins, “Embattled Defenders Fire from Rooftops,” *Baltimore Afro-American*, July 20, 1963, 1; Levy, *Civil War on Race Street*, 86.

⁴⁶ President Kennedy’s News Conferences, “News Conference 58” July 17, 1963. <https://www.jfklibrary.org/Research/Research-Aids/Ready-Reference/Press-Conferences/News-Conference-58.aspx>. Accessed December 30, 2017.

delivered a fiery address from the roof of a car. This evening was not Brown's first visit to Cambridge; in 1964, he had worked alongside Gloria Richardson and other CNAC members to lead a peaceful protest outside of a rally where Democratic presidential candidate George Wallace was speaking. Three years later, Brown had returned to stir the local movement at the request of Gloria Richardson, who had since relocated to New York. Brown arrived at 9:00 that evening, and proceeded to deliver a characteristically spirited address, employing inflammatory rhetoric and espousing views that tended to align more closely with Malcolm X than those embraced by SNCC in the early 1960s.⁴⁷ Proclaiming to residents that if, "America don't come around, we going to burn it down, brother," Brown relied on his typical bravado to excite the crowd and elicit applause.⁴⁸

Following his address, Brown accompanied a young resident, Pamela Waters, to her home to ease her fears of the strong police presence along the street. As the two walked, a small crowd began to trail behind them, and an officer stationed in the area ordered the group to stop. Though they were passing through peacefully, the officer fired two shotgun blasts, and fragments from one of these shots ricocheted and struck Brown's face. No violence erupted immediately following this event, but a few isolated incidents occurred throughout the night. Black residents reported that a car of white teens drove through the predominantly-black Second Ward, accompanied by the sound of firecrackers or a shotgun. The same car passed through later and was met by gunfire. An officer was shot while responding to a call and suffered a minor wound. Later, several black teens were spotted pouring gasoline on the street and igniting it. After midnight, Pine Street Elementary School, which Brown had referred to during his speech,

⁴⁷ Lisa Corrigan, *Prison Power: How Prison Influenced the Movement for Black Liberation*, (Jackson: University Press of Mississippi, 2016), 57; Levy, *Civil War on Race Street*, 140.

⁴⁸ As quoted in: Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s*, (Cambridge: Harvard University Press, 1995), 255.

erupted in flames. However, despite pleas from black residents, the local Rescue and Fire Company refused to send a truck and instead channeled resources to protect the white sections of the town. When Cambridge residents awoke the following morning, the damage from the night before confronted them. Approximately twenty buildings were burned with an estimated \$300,000 in property damage, and many residents were left homeless. No lives were lost that night, but days later Hansel Greene, an African American businessman in Cambridge, committed suicide after losing his entire business in the flames.⁴⁹ His death marked the only fatality that resulted from the events of that night.

Immediately following the disorder, widespread press coverage propelled Cambridge to the national spotlight. In an effort to decipher what had led to the unrest in Cambridge, and how to address the underlying issues as a nation, the media, members of law enforcement, and politicians presented an array of explanations for the disturbance. At the local level, Cambridge's police chief Brice Kinnamon offered an interpretation that aligned neatly with the analyses that Mayor Mowbray and President Kennedy had promoted earlier in the decade. Movement leaders and activists were held responsible for previous disorder in Cambridge, and in keeping with this tradition, Kinnamon decisively assigned blame for the "riot" to Brown. Testifying before the Senate Judiciary Committee the following month, Kinnamon claimed that Brown was the "sole cause" of the disorder, citing his incendiary rhetoric and the influence of outsiders as support for this assertion. Kinnamon was not alone in his assessment; many other law enforcement officials who testified before the committee following disturbances in their cities echoed Kinnamon's claims.⁵⁰ Police chief Jacob Shott claimed that Stokely Carmichael's presence had triggered

⁴⁹ Levy, *Civil War on Race Street*, 144.

⁵⁰ "House Passes Bill to Punish Persons Inciting Riots," in *CQ Almanac 1967*, 23rd ed., 08-782-08-786, (Washington D.C.: Congressional Quarterly, 1968), 1.

unrest in Cincinnati, and officers from Toledo, Nashville, Newark and other cities indicated that black power militants, antipoverty workers, and members of SNCC were the root of urban upheaval in each city. This clear consensus among law enforcement was hardly surprising and reiterated the need to pass legislation that adequately addressed the sources of urban upheaval. For the Senate Judiciary Committee, the opinions of local police officers affirmed the anti-riot bill that was now under consideration.

Another notable proponent of this theory was Maryland's acting governor, Spiro Agnew. Though Agnew maintained the reputation of a moderate Republican, and enjoyed support from prominent African Americans like NAACP leader Roy Wilkins, the experience in Cambridge marked a sharp turn to the right in Agnew's politics.⁵¹ Agnew not only condemned Brown's actions, but called for "the authorities to seek out H. Rap Brown and bring him to justice."⁵² Proclaiming Brown's guilt in the absence of a formal conviction, Agnew's remarks stripped Brown of the opportunity for a truly impartial trial. Agnew's increasing distaste for what he deemed "irresponsible militants" buttressed his position among the Silent Majority but indicated a growing chasm between himself and even moderate civil rights activists.⁵³

However, the quest to indict Brown did not find support from all, and journalist Marquis Childs compared the hunt for Brown to the conviction of Communist leaders during the era of McCarthyism.⁵⁴ The line between purely conceptual revolutionary rhetoric and concrete advocacy that produced tangible results was becoming murkier each day. One particularly significant group that rejected the theory that Brown's actions directly caused the disorder was

⁵¹ Justin P. Coffey, *Spiro Agnew and the Rise of the Republican Right*, (Santa Barbara: Praeger, 2015), 53.

⁵² As quoted in: Levy, *Civil War on Race Street*, 152.

⁵³ Christopher P. Lehman, *Power, Politics, and the Decline of the Civil Rights Movement: A Fragile Coalition, 1967-1973*, (Santa Barbara: Praeger, 2014), 14.

⁵⁴ Marquis Childs, "On H. Rap Brown and Free Speech," *Washington Post*, August 30, 1967, A14.

the National Advisory Commission on Civil Disorders, commonly referred to as the Kerner Commission. Ironically, one of the group's reports, which was leaked to the press, offered a contrasting analysis of the events in Cambridge. Though the extensive news coverage of the incident suggested that the damage was substantial, the commission deemed the events in Cambridge a "low level civil disturbance," denying that a true riot had even taken place.⁵⁵ Furthermore, the commission offered an alternative explanation for the outbreak of violence, suggesting that miscommunication and expectations of violence had framed the actions of local law enforcement and led to a charged atmosphere between residents and police. With knowledge that Brown, a well-known militant, would be in Cambridge, local law enforcement prepared for the worst, and with both police officers and residents on edge, the idea that a riot would take place became somewhat of a self-fulfilling prophecy.

Nevertheless, in the immediate context of the "Brown riot," a renewed effort grew in Congress to pass effective anti-riot legislation that would prevent the repetition of events that had taken place in Cambridge and other cities during the summer of 1967. In 1966, Republican William Cramer had proposed an anti-riot bill that criminalized crossing state borders with the attempt to incite a riot as an attachment to a civil rights bill. Though this bill had been defeated in the Senate, Cramer once again introduced this proposal during early 1967, and, by August, the bill had secured passage in the House of Representatives.⁵⁶ Those in favor, such as Republican Gerald Ford, justified their support by claiming that this provision would bring "irresponsible militants" to justice, and specifically admonished individuals including Brown and Carmichael for their role in generating disorder. Ford framed the passage of the bill as an effort to "slam the

⁵⁵ As quoted in: Levy, *Civil War on Race Street*, 149; "'Raw Memo' to Panel Links Cambridge Riots to Fears of Whites," *New York Times*, March 6, 1968, 24L. Accessed April 7, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/118391632?accountid=7082>.

⁵⁶ "House Passes Bill to Punish Persons Inciting Riots," 1.

door” on individuals who “threaten law-abiding Americans with injury and death,” and further condemned the administration’s permissive attitude and failure to crack down on crime.⁵⁷ This sentiment was widespread among legislators, and even the Kerner Commission conceded that both “militant organizations” and “individual agitators” generated an atmosphere that cultivated violence and disorder.⁵⁸ The SNCC members were not the only activists brought into the bill’s discussion however, and other legislators considered whether the anti-riot act might be applied to King, whose appeal for nonviolent civil disobedience could easily amount to insurrection.⁵⁹

While the anti-riot bill gained strong support, with a vote of 347-70, its opponents voiced concerns about its effectiveness and questioned its constitutionality as well. Not only did the bill fail to address many of the systemic issues that had been acknowledged as causes of urban unrest, such as poor housing and education, but Democrat Frank Thompson Jr. of New Jersey contended that its vague language threatened due process and that the act was “in nature a bill of attainder aimed at one man—Stokely Carmichael.”⁶⁰ Whether Carmichael, Brown, or even King, was the target of this legislation, Thompson’s assessment addressed an important issue. By framing civil rights activists as the cause of urban disorder, whether through inflammatory remarks or advocacy of civil disobedience, the anti-riot provision undermined the movement and created a new law by which activists could face prosecution and imprisonment.

These concerns were echoed by members of the Johnson administration as well. Amidst the mayhem of the summer of 1967, cabinet members debated the best course of action, and Secretary of State Dean Rusk and Vice President Hubert Humphrey both expressed a desire to

⁵⁷ “Ford Assails Brown and Carmichael,” *New York Times*, Aug 30, 1967, 26. Accessed December 18, 2017.

⁵⁸ *Report of the National Advisor Commission on Civil Disorders*, (Washington, D.C.: U.S. Government Publishing Office, 1968), 4. Accessed April 7, 2018, <https://www.ncjrs.gov/pdffiles1/Digitization/8073NCJRS.pdf>.

⁵⁹ Christopher P. Lehman, *Power, Politics, and the Decline of the Civil Rights Movement: A Fragile Coalition, 1967-1973*, (Santa Barbara: Praeger, 2014), 17.

⁶⁰ “House Passes Bill to Punish Persons Inciting Riots,” 1.

resolve the volatile situation in American cities through legislative means. Though Ramsey Clark strongly opposed the idea that urban rebellions were the product of collective conspiracy and rejected the notion that participants had crossed states lines, other administration members conveyed their increasing frustration with these attitudes and felt it was necessary to bring militants like Carmichael and Brown to justice.⁶¹ The quest for effective legislation was renewed in January of the following year, as the administration contemplated implementing a federal anti-riot act, similar to Cramer's proposed bill, as part of the President's legislative program. In a memorandum to Special Assistant Joseph Califano, Assistant Attorney General Warren Christopher noted that this form of legislation would not only potentially deter individuals from inciting or prolonging a civil disturbance but would also boost the administration's credibility in crime control efforts. As many Americans gradually became disillusioned with what they perceived as an overly permissive, liberal administration, Christopher felt that an anti-riot bill would indicate "a strong stance on crime and unlawful civil disorder at a time when these problems are foremost in the minds of many Americans."⁶² However, there were several drawbacks to the proposed legislation. Noting that "riots are essentially a local problem," Christopher expressed doubt concerning the bill's effectiveness.⁶³ A federal anti-riot act would not resolve the local issues that fed disorder, and establishing federal control in this area could potentially remove responsibility from local administrations while simultaneously failing to truly prevent urban disorder. Another significant concern was potential infringement of constitutional rights. Free speech, travel, and even peaceful assembly could all be under threat through this

⁶¹ Joseph A. Califano, Jr., *The Triumph and Tragedy of Lyndon Johnson: The White House Years*, (New York: Simon & Schuster, 1991), 221.

⁶² Memorandum from Warren Christopher to Joseph Califano, January 15, 1968. Box 9, Personal Papers of Warren Christopher, Lyndon Johnson Library and Museum, 2.

⁶³ Memorandum from Warren Christopher to Joseph Califano, 3.

proposed law. Despite the administration's efforts to define the terms "incite" and "riot" precisely, law enforcement could manipulate the law and its implementation could disadvantage particular groups, including those whose goals conflicted with those of the administration. Christopher also noted that the provision might act not only as a deterrent to looting or arson but to organizing in general, writing that "individuals, desirous of assembling peacefully in support of a cause, might be reluctant to risk the chance of the demonstration turning (through no efforts of their own) into a disturbance."⁶⁴ By acknowledging the possibility of this provision to undermine even peaceful protest, Christopher's statement framed the legislation as not only a measure to reduce crime, but as a form of legal repression against social and political activism as well.

Cramer's proposed anti-riot bill had not gained passage in the Senate by the close of 1967, but the following year brought a new opportunity. In February of 1968, a fair housing bill was pending in the Senate, which President Johnson urged members of Congress to support.⁶⁵ This piece of legislation was particularly bold; not only did this bill allow for federal intervention into matters of private property under the banner of civil rights, but these provisions could be readily applied to those in the North as well. Representing one of the first major civil rights efforts with a scope extending beyond the borders of the southern states, many senators and representatives hesitated in guaranteeing their support. However, in March, Johnson's long-awaited fair housing bill was approved by the Senate, and during this process, an anti-riot provision was neatly attached to the bill to appease conservative lawmakers such as Dixiecrat

⁶⁴ Memorandum from Warren Christopher to Joseph Califano, 4.

⁶⁵ "Text of Letter from President Johnson to Senator Hart," February 19, 1968. Box 66, Personal Papers of Ramsey Clark, Lyndon Johnson Library and Museum.

Strom Thurmond.⁶⁶ While a piece of legislation that would potentially undermine the civil rights movement may have appeared to be a strange addition to a bill that aimed to uplift African American communities, the pairing of these measures was fairly logical when one considers the Civil Rights Act of 1968 as a measure that primarily addressed racial injustice in order to quell urban disorder. By addressing the lack of adequate housing, which had been cited as a source of urban upheaval, the bill not only promoted justice, but peace as well. Johnson described this legislation as an effort to “relieve the crisis in our cities,” and through the addition of an anti-riot provision, the bill represented a bipartisan solution to civil disorder.⁶⁷

When the fair housing bill had originally come before Congress in 1966, it had similarly been packaged with William Cramer’s anti-riot measure, but the legislation was unable to gain the needed support. However, in 1968, the atmosphere was starkly different; not only had the summer of 1967 related the need to enact meaningful legislation to ameliorate the unrest in major cities, but the events directly preceding the bill’s passage played an influential role in guaranteeing support. The Senate had passed the fair housing bill on March 11, but despite President Johnson’s urging, the House of Representatives had yet to approve the legislation by early April. However, events unforeseen by Johnson would accelerate the bill’s passage.

On April 4, while the fair housing bill was delayed in the House, an assassin’s bullet killed Martin Luther King, Jr. The final months of King’s life and his tragic death in Memphis not only influenced the passage of the Civil Rights Act of 1968 directly, but also offered a vivid illustration of the increasing use of legal repression to undercut dissent. King had channeled his efforts towards securing economic equality, and in keeping with this goal, his newest programs

⁶⁶ Lehman, *Power Politics, and the Decline of the Civil Rights Movement*, 54; Marjorie Hunter, “Riot Curb Added to Bill on Rights by Senate, 82-13,” *New York Times*, March 6, 1968. Box 66, Personal Papers of Ramsey Clark, Lyndon Johnson Library and Museum, 1.

⁶⁷ “Text of Letter from President Johnson to Senator Hart,” 1.

relied on the involvement of hundreds of disadvantaged Americans to provide a compelling image of the poverty that these individuals faced. Despite King's adherence to a nonviolent philosophy, many of these efforts could potentially disintegrate into disorder, and the media and legislators alike voiced concern over the fate of these demonstrations. For instance, the Poor People's Campaign involved the influx of poor Americans into the capitol city, and without meticulous planning to arrange for proper accommodations, transportation and meals, there was little assurance that these demonstrators would remain dedicated to nonviolence. A march that King organized to support striking sanitation workers in Memphis illustrated this possibility; local militants and other unaffiliated individuals sabotaged King's nonviolent demonstration and began damaging property and looting. The mayhem that ensued was swiftly met by a strong police presence, and law enforcement officials employed tear gas, batons and other weapons against the marchers, resulting in one fatality.⁶⁸

When King announced that he would return to Memphis to organize a new march, determined to ensure success this time by leading nonviolent seminars and ensuring cooperation from local groups, state and city officials began preparing. Just as the federal government and D.C. Police Department were simultaneously designing extensive anti-riot operations in preparation for the upcoming Poor People's Campaign in April, officials in Memphis anticipated King's arrival by implementing strict curfews and requesting the presence of the National Guard. Efforts to prevent upheaval also took the form of legislative action. The state legislature in Tennessee passed a particularly severe anti-riot statute that provided the opportunity to arrest demonstration leaders like King in the event of any violence during a demonstration.⁶⁹

⁶⁸ Clay Risen, *A Nation on Fire: America in the Wake of the King Assassination*, Hoboken, NK: John Wiley & Sons, Inc., 2009), 17.

⁶⁹ Risen, *A Nation on Fire*, 31.

Meanwhile, in Washington, King's plans entered discussion concerning the anti-riot provision. While these measures were undoubtedly formulated in response to the genuine issue of violence and disorder in America's major cities, the effect that this legislation had on activism, whether intended or not, was concerning. By undermining the ability of nonviolent activists, such as King, to exercise the right to assembly without legal repercussions, policymakers weakened peaceful protest as a viable option for effecting change.

While the state and federal responses to King's planned marches outline the extent by which social activism shaped anti-riot measures, which specifically targeted movement leaders, these upcoming demonstrations did not immediately spur the passage of the Federal Anti-Riot Act. Though the anticipation of these demonstrations failed to garner the needed support for the legislation, the devastating news of King's assassination in Memphis days before his scheduled march ultimately provided the needed backing. Despite the uneasy relationship that Dr. King and President Johnson had maintained in recent years, Johnson expressed his grief for the slain leader and attempted to funnel the nation's sorrow into a constructive outlet: the fair housing bill. Johnson's recent withdrawal of his name from the upcoming presidential race left him determined to solidify his legacy with the passage of a final civil rights bill, and, in the wake of King's assassination, Johnson saw an opportune moment to secure the bill's passage in King's honor. Appealing to Congress, Johnson encouraged members to fulfill their duty to "achieve brotherhood and equality among all Americans" in the wake of this "senseless act of violence."⁷⁰ The bill represented an important effort to guarantee racial and economic justice, and, in many ways, the legislation did testify to King's valiant efforts in these fields.

⁷⁰ Memorandum from Lyndon Johnson to John W. McCormack, April 5, 1968. Box 66, LE, White House Confidential Files, Lyndon Johnson Library and Museum, 1.

However, the desire to honor King's legacy was not the only factor that motivated Congress. In the days following the assassination, over 120 U.S. cities experienced severe turmoil. These disorders did not only affect major urban centers like Chicago, Washington D.C., and New York City, but also materialized in smaller, Southern cities including Huntsville, Alabama, and Jackson, Mississippi.⁷¹ The widespread nature of the April disturbances had a profound impact on the nation. Rural Americans no longer felt insulated from urban disorders, and as the legitimacy of liberalism was falling into decay, white backlash bolstered the Republican party's claims for "law and order."

Furthermore, in many cities that experienced upheaval, policymakers could point to the presence of militant leaders as the primary source of disorder. For instance, District of Columbia Attorney David Bress led an investigation concerning Stokely Carmichael's involvement in fomenting the D.C. "riot."⁷² Additionally, the urban upheaval that took place in the days following King's assassination was not only attributed to militant movement leaders like Carmichael but was traced back to its alleged root: civil disobedience. Following the turmoil of early April, senator Strom Thurmond addressed his constituency, claiming, "We are now witnessing the whirlwind sowed years ago when some preachers and teachers began telling people that each man could be his own judge in his own case."⁷³ Effectively linking the civil rights movement with violence and disorder in the minds of many Americans, politicians like Thurmond advanced the very notions that had shaped the Federal Anti-Riot Act. Not only was violence intertwined with the movement, but according to Thurmond, the movement had essentially spawned the violence that American cities were experiencing.

⁷¹ Risen, *A Nation on Fire*, 76; Thomas Picou, "Did Dr. King's Assassination Cause Riots?" *Chicago Daily Defender*, April 15, 1968, 4.

⁷² "U.S. Probing Carmichael's Role in Riot," *Washington Post*, April 12, 1968, B1.

⁷³ As quoted in: Risen, *A Nation on Fire*, 7.

Within this broader context, the Civil Rights Act of 1968 garnered the necessary support in the House of Representatives. The turmoil of the previous year, and week, had certainly left an imprint on the bill, both in terms of the fair housing provision and the anti-riot measure. However, while the bill had surfaced as a solution to urban insurrection, despite its emphasis on speech and activism rather than looting and arson, the implementation of this legislation illustrated its true target. This statute was not employed until Richard Nixon assumed office in 1969, accompanied by his Vice President Spiro Agnew, who had so viciously accused H. Rap Brown of inciting the Cambridge “riot.” Therefore, it is unsurprising that, under this administration, the Federal Anti-Riot Act was utilized in response to several legitimate acts of protest. The most notorious targets of the anti-riot measure included the Chicago Eight, the antiwar activists who were charged under this provision following the outbreak of violence during protests at the 1968 Democratic National Convention in Chicago. Though the convictions were later overturned, the fact that this piece of legislation was first employed against such a genuine and clear-cut act of political protest, which was later deemed a “police riot” due to the brutality unleashed on protesters, underscored the intent of legislators in crafting this statute.⁷⁴ Similarly, the act was used to weaken protest at Wounded Knee, the site that members of the American Indian Movement occupied in 1973 in protest of the federal government’s treatment of Native Americans. Authorities created blockades to prevent supporters who had crossed state lines from visiting the site of Wounded Knee. While some activists, including Ralph Abernathy of the nonviolent SCLC, were able to make an appearance, the Federal Anti-Riot Act prevented other activists from appearing in solidarity, including Angela Davis, whose ties with the

⁷⁴ Jon Wiener, “Introduction: The Sixties on Trial,” in *Conspiracy in the Streets: The Extraordinary Trial of the Chicago Eight*, (New York: The New Press, 2006), 18.

Communist Party and black militancy marked her as an undesirable.⁷⁵ These acts of protest, while not technically nonviolent, contrasted considerably with the image of violent urban rebellions that the anti-riot statute had allegedly risen in response to.

Whether or not the new administration's interpretation of the statute emphasized disruptive protest over urban crime, or if the bill had aimed to silence activists from its origin, the Anti-Riot Act undoubtedly placed limitations on activism. This statute furnished authorities the opportunity to arrest activists from out of state, and even in the absence of a conviction, this action could effectively end a demonstration. Moreover, the mere existence of this legislation could deter individuals from participating in a demonstration, as the events at Wounded Knee illustrated. By placing restraints on speech and assembly, the federal government revealed the lengths it would take in order to suppress dissent. While concerns about increasing crime rates were authentic, both the development and the implementation of the Federal Anti-Riot Act indicated that legislators had other targets in mind. Whether through King's philosophy of nonviolent civil disobedience or Brown's use of inflammatory rhetoric to resist the white power structure, legislators clearly identified prominent movement figures as the root cause of disorder. By directing its efforts toward these leaders, the Federal Anti-Riot Act represented an effort to undermine the ability of activists, and therefore the movement itself.

⁷⁵ Lehman, *Power, Politics, and the Decline of the Civil Rights Movement*, 296; Paul Chaat Smith and Robert Allen Warrior, *Like a Hurricane: the Indian Movement from Alcatraz to Wounded Knee*, (New York: The New Press, 1996), 228.

CHAPTER III

“HELL NO, WE WON’T GO”: THE FEDERAL FLAG DESECRATION

ACT

On April 16, 1967, newspapers across the nation reported on the massive anti-war demonstration that had taken place in New York City the previous day. Accompanying incendiary titles were photographs of the rally, attended by over 100,000, and graphic images of the American flag set ablaze.⁷⁶ These images provided the impetus for new federal legislation that specifically prohibited desecrating the U.S. flag. As the American conflict in Vietnam escalated, a massive campaign against the war took root on the home front. Technological advances and the popularity of television meant that many Americans were able to witness the war from their living rooms, and the lack of a definitive declaration of war called in to question the reasoning behind the conflict. Opposition against the war took on various forms including peaceful marches and draft dodging, and many different groups registered their dissent including Students for a Democratic Society (SDS) and the Student Nonviolent Coordinating Committee (SNCC). Burning the American flag became a hallmark of many anti-war protests during this period, and in response to this trend, and specifically the April 15 demonstration, the federal

⁷⁶ “King Speaks: 125,000 March in New York,” *San Francisco Examiner*, April 16, 1967, 4. Accessed March 27, 2018, San Francisco Chronicle Digital Historic Archive, <http://infoweb.newsbank.com/resources/doc/nb/image/v2:142051F45F422A02@WHNPX-151419149C37BF74@2439597-1514021872EB04EB@2?p=WORLDNEWS>; Joseph Egelhof, “Anti-War Rally Brings Violence to N.Y. Streets,” *Chicago Tribune*, April 16, 1967, 1. Accessed March 27, 2018, ProQuest Historical Newspapers: Chicago Tribune, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/179195050?accountid=7082>; Richard Dougherty, “Thousands March in War Protests,” *Los Angeles Times*, April 16, 1967, C401. Accessed March 27, 2018, ProQuest Historical Newspapers: Los Angeles Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/155690944?accountid=7082>.

government enacted a new law that prohibited “knowingly cast[ing] contempt” upon the national symbol by “publicly mutilating, defacing, defiling, burning, or trampling upon it.”⁷⁷

Though the notable cases of *Texas v. Johnson* and *United States v. Eichman* have firmly established that burning the American flag constitutes a form of symbolic expression, the numerous state level provisions and the Federal Flag Desecration Act remained relatively intact throughout the course of the Vietnam War. Many activists faced prosecution for their actions, and the criminalization of burning the flag, which has been deemed the appropriate manner to retire a flag respectfully, highlights the true sentiment that prompted these efforts. Enacted in 1968, against the backdrop of rising opposition to the war, the Flag Desecration Act symbolized yet another attempt by the federal government to quell dissent. This legislation represented a continuation of both the effort to place limitations on expression during times of war, and the attempts to undermine the new forms of activism that emerged during the 1960s through legal repression. While this legislation is no longer in place, many of the surrounding issues remain at the forefront of our national consciousness. The use of patriotic symbols to express dissent and the corresponding backlash have persisted and are likely to linger for many decades.

Though flag desecration is most frequently associated with demonstrations during the Vietnam War, this form of political protest had been a staple of dissidents for over a century. Legislative efforts to uphold the integrity of the flag were visible in these early years, and while nineteenth century policy generally emphasized the use of the American flag in advertising and commercial purposes, some individuals faced prosecution for destructing the national symbol. For example, amidst the polarizing tensions preceding the Civil War, William B. Mumford

⁷⁷ “The 1968 Federal Flag Desecration Law 18 U.S.C. § 700,” in *Desecrating the American Flag: Key Documents of the Controversy from the Civil War to 1995*, ed. Robert J. Goldstein, (Syracuse: Syracuse University Press, 1996), 79.

removed and destroyed an American flag from the federal mint in New Orleans and was retroactively convicted of treason and executed in 1862.⁷⁸ However, flag desecration statutes experienced a shift in objective during the first half of the twentieth century, as more individuals employed the banner to promote political positions. Against the backdrop of the Bolshevik Revolution and coinciding with waves of immigration and labor unrest, increasingly radical political groups used the American flag to voice their opposition to certain events or policies.⁷⁹ The outbreak of the Great War in Europe, and the U.S. entry into the war in 1917, also contributed to these heightened tensions. Cases of defiling or desecrating the flag multiplied during this period, and included Bouck White, a pacifist and Socialist pastor who incorporated the emblem into a negative caricature and ignited the flag on the eve of his trial, and E.V. Starr, a Montana man sentenced to a \$500 fine and ten to twenty years of hard labor for his vocal disdain toward the flag.⁸⁰ Many states also passed “red flag laws” during the Red Scare of 1919, which prohibited flying red flags rather than damaging or defiling the American flag. Though these laws were overturned in *Stromberg v. California* (1931), this legislation revealed how the display of oppositional flags also served as a mode of protest, much like anti-war activists used the flag of the National Liberation Front (NLF), pejoratively referred to at the Viet Cong, during the 1960s. By this time, the crusade against flag desecration as political protest was flourishing, and though few protesters received the draconian sentences of Mumford and Starr, the drive toward prosecuting “flag-burners” was in motion.

⁷⁸ Robert J. Goldstein, *Desecrating the American Flag: Key Documents of the Controversy from the Civil War to 1995*, (Syracuse: Syracuse University Press, 1996), 1.

⁷⁹ Michael Welch, *Flag Burning: Moral Panic and the Criminalization of Protest*, (New York: Aldine de Gruyter, 2000), 25.

⁸⁰ Goldstein, *Desecrating the American Flag*, 43.

Using the American Flag as a site of protest, or a way to question American principles, was not restricted to burning or destroying the national symbol. Many people altered the flag, affixing a peace symbol for instance, or integrated the flag into artwork. A notable instance is American artist Jasper Johns' infamous painting *Flag*, produced in the mid-1950s at the height of the Red Scare. Johns employed encaustic rather than traditional oil paint, which produced a unique texture and allowed the spectator to carefully make out the collage of newspaper clippings, covering the hysteria of the McCarthy era, on which the flag had been painted over. While Johns clearly made no attempt to set the flag ablaze, his use of the emblem to construct an incisive commentary on the nature of American democracy mirrored many similar attempts throughout the following decades. Though it remains ambiguous whether Johns' work offered a mere commentary or a scathing critique, the image of the flag evidently provided an arena for important discussions about American values and principles. Even more compelling is Harlem born artist and activist Faith Ringgold's *Flag for the Moon: Die Nigger*, produced in 1969. By embedding the painting's subtitle within the stars and stripes of the American flag, Ringgold called into question the massive spending and national attention allotted to space exploration while racism and poverty remained rampant in the United States, similar to SCLC President Ralph Abernathy's "March Against Moon Rocks" in 1971. This work also invited an interpretation of the U.S. moon landing, complete with the planting of an American flag, as a symbolic act of colonialism, claiming newfound land as U.S. territory.⁸¹ Once again, the American flag provided a literal canvas on which a dialogue about the meaning of democracy in America could be constructed.

⁸¹ Albert Biome, "Waving the Red Flag and Reconstituting Old Glory," *Smithsonian Studies in American Art* 4, no. 2 (1990): 18.

The use of the flag as a mode of protest, and the subsequent government efforts to undermine dissent, only intensified with the onset of the Vietnam War. This period was accompanied by many threats to American civil liberties. In the absence of a formal Congressional Declaration of War, which indicated a violation of constitutional procedure, the legitimacy of the conflict came under question. Under the Johnson administration, the CIA engaged in extensive surveillance and illegal activities to thwart the antiwar movement through Operation CHAOS, and this program was expanded upon during Richard Nixon's presidency.⁸² The Nixon administration additionally issued a determined effort to curtail the freedom of the press in 1971 through the Pentagon Papers case. Anti-war protesters also faced extreme hostility and violence from the organized establishment, as the 1968 Democratic National Convention and the Kent State and Jackson State shootings suggest. Legislation concerning the burning of the nation's most prominent symbol, the American flag, also reflected this attitude toward anti-war protest. Mirroring the justification presented in support of the Espionage and Sedition Acts enacted during World War I, legislators framed the issue as one of upholding the morale of troops. Where burning draft cards was later declared illegal on the basis that it obstructed a U.S. policy, desecrating the flag was seen as undermining patriotism.

As opposition to the war escalated, many prominent civil rights leaders and organizations began to register their objections as well. The Student Nonviolent Coordinating Committee (SNCC) emerged as the first group to publicly state its opposition in early 1966, and the following year Martin Luther King, Jr. delivered his iconic "Beyond Vietnam" address at

⁸² Tom Wells, *The War Within: America's Battle over Vietnam*, (Berkeley: University of California Press, 1994), 184.

Riverside Church in New York City.⁸³ Many of these leaders echoed one another in their criticisms, calling attention to the financial drain of the war effort on poverty programs, the disproportionate representation of African Americans as draftees, and the innate racism that manifested itself through the conflict. As Reverend James Bevel of SCLC eloquently stated, “the welfare of non-white peoples in this nation is inextricably linked with the welfare of nonwhite peoples around the world,” and thus, “colored peoples everywhere must speak out and act courageously.”⁸⁴ Acting out of moral obligation, King, Bevel, Stokely Carmichael, and many others began to channel their efforts toward the antiwar movement. In stark contrast to both W.E.B. Du Bois’s call to “close ranks” during the first World War, and the Double V Campaign, which promoted achieving victory over fascism abroad and racism at home during World War II, the union of the peace and freedom movements represented a new approach.⁸⁵ Rather than attempting to secure the benefits of American citizenship through patriotic devotion or combining domestic civil rights agitation with support for U.S. democracy, many African American leaders emphasized a total rejection of the war as an extension of American racism and a symbol of U.S. hypocrisy.

However, some saw the civil rights cause and the peace movement as fundamentally incompatible, and even those who sympathized with one or both of these movements often condemned what an editorial from the *New York Times* deemed the “fusing of two public

⁸³ Student Nonviolent Coordinating Committee, Statement on Vietnam, January 6, 1966. Accessed March 27, 2018, <http://www.crmvet.org/docs/snccviet.htm>; Martin Luther King, Jr., “Beyond Vietnam – A Time to Break Silence,” April 4, 1967. Accessed March 27, 2018, <http://www.americanrhetoric.com/speeches/mlkatimetobreaksilence.htm>.

⁸⁴ James Bevel, “Letter to the Editor of *The Times*,” *New York Times*, April 12, 1967, 46. Accessed March 27, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/117435814?accountid=7082>.

⁸⁵ As quoted in: Manning Marable and Leith Mullings, eds. *Let Nobody Turn Us Around: Voices of Resistance, Reform, and Renewal; An African American Anthology*, (New York: Bowman & Littlefield Publishers, Inc., 2000), 242; Hall, *Peace and Freedom*, 6.

problems that are distinct and separate.”⁸⁶ This attitude and widespread criticism failed to diminish enthusiasm, however, and many of these prominent leaders participated in various anti-war efforts. Most notable among these was the Spring Mobilization Committee to End the War in Vietnam, commonly referred to as the Mobe. The Mobe represented an uneasy coalition of many different organizations and ideologies, including religious groups, civil rights organizers, counterculture members, pacifists, and socialists. Reverend James Bevel, an aide to Martin Luther King, Jr., was appointed as national director of the committee. Many other prominent black leaders held positions in the organization or were involved with its efforts in other capacities, including Ralph Abernathy of SCLC, Julian Bond of SNCC, James Farmer of CORE, and individuals such as Harry Belafonte and John Lewis, formerly of SNCC.⁸⁷ In this manner, the Mobe represented one of the most tangible expressions of the alliance between the peace and freedom movements, and therefore one of the most threatening to the U.S. government.

The Mobe’s central enterprise was to organize the April 15 rallies, which would occur simultaneously in New York City and San Francisco. King’s involvement in this venture represented a particular threat to the Johnson administration. White House Counsel Harry McPherson realized that his support of the peace movement would induce broader opposition against the war and help to bridge the peace and freedom movements even further. This underlying goal had shaped the Mobe’s decision to appoint Rev. James Bevel as its national director, as committee members believed that by drawing in King’s support, many African Americans would join the effort as well.⁸⁸ In many regards, this assumption proved true. The

⁸⁶ “Dr. King’s Error,” *New York Times*, April 7, 1967, 36. Accessed March 27, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/117485426?accountid=7082>.

⁸⁷ Simon Hall, *Peace and Freedom: The Civil Rights and Antiwar Movements of the 1960s*, (Philadelphia: University of Pennsylvania Press, 2005), 108.

⁸⁸ Tom Wells, *The War Within: America’s Battle over Vietnam*, (Berkeley: University of California Press, 1994), 116; “An Aide to Dr. King Appointed to Head New Antiwar Group,” *New York Times*, January 28, 1967, 3.

April demonstration in New York drew well over 100,000 participants, though conflicting numbers were reported by police and the marchers. The skies were overcast and a light drizzle fell upon demonstrators as they assembled in Sheep Meadow in Central Park. The participants represented a broad assortment of Americans including teachers, veterans, religious leaders, Native Americans, business owners and counterculture members. The magnitude and diversity of the crowd demonstrated a rising opposition to the war and attracted national attention.

Participation in the rally indicated an act of protest in itself, but others engaged in additional forms of resistance. As demonstrators gathered in Central Park, a group of approximately seventy men began to burn their draft cards, constituting the largest organized effort to obstruct the draft thus far. Additionally, several individuals set fire to an American flag, hoisting it above the massive crowd. Though these participants remained unidentified and were not arrested, many photos captured the blazing flag, and national newspapers circulated these powerful images widely.⁸⁹ Following the gathering in Central Park, demonstrators began the march toward the United Nations Plaza, led by Dr. King, Dr. Benjamin Spock, and Harry Belafonte. Along the way, marchers came upon counterdemonstrators. Some merely chanted the Pledge of Allegiance while other tossed eggs or paint at the demonstrators, and a few injured anti-war demonstrators with steel rods from a nearby construction site. At the U.N. Plaza, many of the leading figures gave speeches, including King, SNCC chairman Stokely Carmichael, and Floyd McKissick of CORE. Many of these speakers once again drew upon the links between the peace and freedom movements, emphasizing the racial implications of the war and highlighting

Accessed March 27, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/118179271?accountid=7082>.

⁸⁹ Douglas Robinson, "100,000 Rally at U.N. Against Vietnam War," *New York Times*, April 16, 1967, 1. Accessed March 26, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/118044919?accountid=7082>.

the interconnected nature of the two issues. Only a few weeks after delivering his first definitively oppositional speech to the war, King reiterated many of his objections and further discussed his position on the intersection between the civil rights and anti-war movements. Stating that he did not advocate “a mechanical fusion of the civil rights and peace movements,” but hoped that “the fervor of the civil rights movement” might be “imbued into the peace movement to instill it with greater strength,” King framed both issues as moral dilemmas.⁹⁰ Others, like Belafonte, echoed King’s feelings that the war was fundamentally immoral, and most called for an immediate withdrawal of troops from Vietnam. Bevel took on a decisively militant tone, issuing a vague warning about the consequences that Johnson may face if he did not concede.⁹¹

The San Francisco demonstration also proved a tremendous success with an estimated 65,000 braving the gloomy weather to register their dissent. Demonstrators marched from downtown San Francisco to Kezar stadium, where speakers including Coretta Scott King and Julian Bond addressed the crowd.⁹² Like the New York demonstration, the sheer size of the march illustrated an undisputable success, and the massive attention that these rallies gained across the nation represented a significant threat to the Johnson administration. Despite the efforts of officials like Secretary of State Dean Rusk to frame the event as the product of the “Communist apparatus,” it became clear that the tides of public opinion were experiencing major

⁹⁰ Martin Luther King, Jr., “Address by Dr. Martin Luther King, Jr., April 15 Mobilization to End the War in Vietnam New York City, Saturday, April 15, 1967,” <http://www.crmvet.org/docs/mlkviet2.htm>.

⁹¹ Robinson, “100,000 Rally at U.N. Against Vietnam War,” *New York Times*, April 16, 1967, 1.

⁹² Lynn Ludlow, “A Peaceful Parade,” *San Francisco Examiner*, April 16, 1967, 1. Accessed March 27, 2018, San Francisco Chronicle Digital Historic Archive, <http://infoweb.newsbank.com/resources/doc/nb/image/v2:142051F45F422A02@WHNPX-151419149C37BF74@2439597-1511B39835F05A5B@0?p=WORLDNEWS>.

shifts.⁹³ If establishment backlash offered any indication of the rallies' success, the demonstrations must have been a tremendous feat.

However, this success did not immediately manifest in the tangible way that many activists hoped, and the April demonstrations indicated many of emerging conflicts within the anti-war and civil rights movements. As recorded in the *Movement*, a publication issued by the San Francisco Bay Area Friends of SNCC, many viewed the April protest as simply inadequate.⁹⁴ While mobilizing a large population and demonstrating widespread opposition to the war was an important task, some participants found the carefree and somewhat gleeful attitude of peace activists and hippies to be unsettling against the backdrop of death and destruction in Vietnam. Others objected to certain forms of protest, such as burning draft cards, which they felt exceeded the bounds of acceptable protest. However, despite the lack of immediate concession from the Johnson administration, the demonstrations had achieved their central aims. Constituting the largest U.S. demonstration to date, the Spring Mobilization not only represented the massive opposition to the war but, according to Bevel, indicated the beginning of newly energized efforts to effect change.⁹⁵

This incident not only spoke to the increasing hostilities surrounding the Vietnam War, but to the generational and political differences emerging in New York City. As political dissent escalated during the late 1960s, New York's many parks became areas of contention. Middle class residents with traditional values despised the unconventional lifestyles and anti-establishment attitudes of many youths who gathered in Washington Square Park, in the heart of

⁹³ As quoted in: Wells, *The War Within*, 135.

⁹⁴ "How Do We Stop the War?" *The Movement* 3, no. 5 (May 1967): 7. Accessed April 4, 2018, <http://www.crmvet.org/docs/mvmt/6705mvmt.pdf>.

⁹⁵ James Bevel, Letter from April 22, 1967. Accessed March 26, 2018, The Martin Luther King, Jr. Center for Nonviolent Social Change, <http://www.thekingcenter.org/archive/document/spring-mobilization-committee-end-war-vietnam>.

Greenwich Village, and in other public spaces throughout the city. Various clashes between these conflicting parties arose during the late 1960s and into the early 1970s. Additionally, Mayor John Lindsay's permissive attitude and mild opposition toward the war effort generated the illusion that the city's leadership was far more concerned with accommodating the counterculture than addressing the concerns of middle class residents.⁹⁶ This sentiment was not new, and at the turn of the century similar debates had emerged. However, throughout the early 1900s, the city's parks, and primarily Central Park, restricted events to "non-political" demonstrations, allowing Fourth of July celebrations but prohibiting protests against the trial of Sacco and Vanzetti for instance.⁹⁷ By the time of the Spring Mobilization, the parks had become a haven for the counterculture, and even those who held reservations about the U.S. intervention in Vietnam hardly condoned the impudent actions of many protesters, such as burning the American flag.

These actions not only triggered hostility from New Yorkers, but from American citizens and politicians across the nation. Beginning on May 8, less than a month after the Spring Mobilization, efforts in Congress were underway to pass new legislation prohibiting flag desecration.⁹⁸ Directly citing the Central Park incident as the impetus for this legislation, state representatives held four days of hearings that revealed the bill's explicit attempt to suppress dissent. The debate was a patriotic event, with representatives expressing their disdain for flag burners. Georgian Democrat Maston O'Neal was quoted as claiming that, "A flag burner is an

⁹⁶ Vincent J. Cannato, *The Ungovernable City: John Lindsay and His Struggle to Save New York*. (New York: Basic Books, 2001), 142; Martin Arnold, "Lindsay and Aides Working to Smooth Over Police-Hippie Clash," *New York Times*, June 1, 1967, 43. Accessed March 27, 2018, ProQuest Historical Newspapers, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/117767507?accountid=7082>.

⁹⁷ Roy Rosenzweig and Elizabeth Blackmar, *The Park and the People: A History of Central Park*, (Ithaca: Cornell University Press, 1992), 497.

⁹⁸ Goldstein, *Desecrating the American Flag*, 78.

enemy of this country and should be treated as an enemy.”⁹⁹ Representative James Quillen recited a patriotic poem and claimed that “anything short of a firing squad, even though it be severe, would be agreeable to me.”¹⁰⁰ With little opposition, the bill, which prohibited the public mutilation of the U.S. flag and carried a punishment of one year in prison or a fine of \$1,000, was passed by the House on June 20.

Patriotism was central to the debate over the “flag burning bill,” as legislators casually referred to H.R. 10480, despite the fact that the word “burn” was actually removed from it before its passage. However, while politicians were quick to characterize “flag burners” as enemies of the United States and disloyal Americans, many members of the antiwar movement saw their protest as a clear expression of patriotism. In expressing his dissent of the Vietnam War and U.S. foreign policy, King claimed that “no one who has any concern for the integrity and life of America today can ignore the present war.”¹⁰¹ Rather than aiming to destruct American symbols, many members of the peace movement were simply appealing to some of the most foundational symbols of American democracy. By demanding the nation’s accountability to its citizens and for the virtues extolled through the Declaration of Independence and the Constitution to be upheld, many activists viewed themselves as the genuine patriots.

Furthermore, despite the emphasis on upholding the morale of U.S. troops, flag desecration provisions were routinely used against citizens who expressed no opposition to the war effort. The case of *Street v. New York* (1969) is particularly indicative of this. In 1966, Brooklyn resident Sidney Street set fire to his personal flag, not in solidarity with the peace

⁹⁹ As quoted in: Marjorie Hunter, “House Acts to Make Mutilation of Flag a Federal Crime,” *New York Times*, June 21, 1967, 1. Accessed March 27, 2018, ProQuest Historical Newspapers: New York Times, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/118017689?accountid=7082>.

¹⁰⁰ “Congressional testimony by Rep. James Quillen, May 8, 1967” in *Desecrating the American Flag*, ed., Goldstein, 80.

¹⁰¹ King, “Beyond Vietnam – A Time to Break Silence,” 1.

movement, but in an act of protest and infuriation in response to the shooting of James Meredith, a civil rights leader who had embarked on a solo “March Against Fear” across the state of Mississippi.¹⁰² The Supreme Court ruled that Street’s prosecution was unconstitutional because he had been reprimanded in part due to his statement: “If they let that happen to Meredith we don’t need an American flag.”¹⁰³ By appealing to a clear violation of the first amendment’s freedom of expression, the court avoided making a straightforward judgement on the constitutionality of burning the American flag. Nevertheless, the case demonstrated a distinct effort to criminalize the action of burning the flag as a mode of dissent, whether or not this protest was directed at U.S. troops.

Yet, few legislators questioned the bill’s effect on protest. Many of those who opposed the effort to create a federal law pertaining to the issue found their opposition rooted in the matter of jurisdiction rather than constitutionality. Representative Emanuel Celler, for instance, expressed his personal disgust with the flag burning and the Central Park protest, but felt that there was no need to implement a federal law. Noting that most states already had legislation prohibiting flag desecration, Celler felt it would be unproductive to merely reiterate these provisions through federal law without first employing state level initiatives against demonstrators.¹⁰⁴ However, others identified the potential infringement of personal liberties that these efforts represented and advised legislators to exercise caution in crafting the statute. Among these was U.S. Attorney General Ramsey Clark, who not only called into question the necessity of a federal provision but suggested eliminating vague language to ensure that the bill

¹⁰² Welch, *Flag Burning*, 51.

¹⁰³ As quoted in: Supreme Court majority ruling in *Street v. New York* (1969) in *Desecrating the American Flag*, ed., Robert Goldstein, 120; Robert J. Goldstein, *Flag Burning and Free Speech: The Case of Texas v. Johnson*, (Lawrence, KS: University Press of Kansas, 2000), 35.

¹⁰⁴ “Celler Reluctantly Agrees to Flag-Burning Hearings,” *New York Times*, April 20, 1967, 23.

did not threaten first amendment rights.¹⁰⁵ More adamant in his opposition was representative John Conyers, who maintained that the bill, which was “designed to suppress dissent, is unconstitutional as an abridgement of First Amendment guarantees and...can only result in making the dissent more widespread, more bitter, and more valid.”¹⁰⁶

Despite these reservations, however, the first federal flag desecration bill became law on Independence Day of 1968. Abbie Hoffman, a leader of the Youth International Party (“Yippies”) and an infamous member of the Chicago Seven, was the first person convicted under this new provision for wearing a shirt plastered with the image of the American flag in October of 1968.¹⁰⁷ Though overturned in 1971, Hoffman’s conviction further demonstrated the repressive nature of the law and the manner in which its vague language allowed lawmakers tremendous latitude in implementation. Many others faced prosecution during this period as well for a variety of offenses including burning the flag and superimposing symbols upon it. Scholar Robert Goldstein’s comprehensive study of Vietnam era flag desecration cases reveals at least sixty cases.¹⁰⁸ Though this figure did not only pertain to prosecutions under the Federal Flag Desecration Act, and also included state level cases, the broad consensus that flag burning was a quintessentially un-American act was significant within the context of the Vietnam War.

Even after the United States withdrew from Vietnam in 1973, the issue of flag desecration remained forefront in the minds of many Americans. The 1989 controversy sparked by the Supreme Court’s decision in *Texas v. Johnson* illustrated the widespread public support

¹⁰⁵ Ramsey Clark to Emanuel Celler in *Desecrating the American Flag: Key Documents of the Controversy from the Civil War to 1995*, ed. Robert Goldstein, (Syracuse: Syracuse University Press, 1996), 86.

¹⁰⁶ “Minority Views of Hon. John Conyers, Jr., and Hon. Don Edwards on H.R. 10480” in *Desecrating the American Flag*, ed. Robert Goldstein, 87.

¹⁰⁷ Michael Welch, *Flag Burning: Moral Panic and the Criminalization of Protest*, (New York: Aldine de Gruyter, 2000), 53.

¹⁰⁸ Robert Justin Goldstein, *Burning the Flag: The Great 1989-1990 American Flag Desecration Controversy*, (Kent, OH: Kent State University Press, 1996), 16; Welch. *Flag Burning*, 50.

for legislation that aimed to uphold the integrity of the American flag. In the midst of this case, the Federal Flag Desecration Act of 1968 received renewed attention as well. During the spring, the School of the Art Institute of Chicago (SAIC) displayed an exhibit by a student who went by the name of “Dread Scott.” The piece was entitled, *What is the Proper Way to Display the American Flag?* and contained a photomontage, mounted to the wall, with photographs of the American flag in various scenarios. Some were draped over coffins, and others were set on fire. Below the images was a book that invited spectators to answer the perennial question. However, most controversial was the exhibit’s use of an American flag, which was placed on the ground so that the spectator might actively engage with the display by stepping on the flag as he or she recorded a response.¹⁰⁹ This exhibit elicited outrage from a variety of individuals and groups, including the state legislature. The Illinois legislature responded to this art exhibit by designing laws that specifically prohibited placing flags on the ground, and spitefully decreased funding for SAIC and the state arts council. Federal politicians also responded to the incident by proposing an amendment to the 1968 Flag Desecration Act that was specifically designed to criminalize the actions of the “so-called artist,” as Senator Bob Dole dubbed Scott.¹¹⁰ By explicitly prohibiting the placement of an American flag on the floor or the ground, legislators ensured that the amendment would specifically target Scott rather than those who engaged with the exhibit.

Though the rulings in the *Johnson* case and *United States v. Eichman* during the 1990s firmly established that burning the flag qualified as symbolic speech, and therefore was protected under the U.S. Constitution, these rulings have been contested by U.S. presidents, policymakers,

¹⁰⁹ Robert Goldstein, *Desecrating the American Flag: Key Documents of the Controversy from the Civil War to 1995*, 143; Steve Johnson, “When Art Raises Red Flags: Why the Art Institute Exhibit Became the Picture of Controversy,” *Chicago Tribune*, March 9, 1989, C1. Accessed April 2, 2018, ProQuest Historical Newspapers, <https://search.proquest.com.ezproxy.library.tamu.edu/docview/1015406569?accountid=7082>; An image of this exhibit is available from <http://www.dreadscott.net/works/what-is-the-proper-way-to-display-a-us-flag/>.

¹¹⁰ “Senate Floor Debate, March 16, 1989,” in *Desecrating the American Flag*, ed. Robert Goldstein, 157.

and ordinary citizens. The moral panic over desecrating, or merely showing contempt toward, the American flag has proven to be an enduring feature of the American political landscape. The debates surrounding the 1968 legislation inevitably reemerged in the 1980s, and even today, traces of this sentiment can be identified in broader discussions concerning protest and patriotism. Although burning or insulting the U.S. flag is often perceived as a treasonous act, and sometimes indicated a complete rejection of American ideals, others merely appealed to the emblem of American freedom and democracy as a way to call attention to its pitfalls. Both times of war and times of peace have furnished opportunities to suppress dissent, and by passing specific legislation that applied to distinct groups, U.S. policies have gradually undercut the right to petition the government. The Federal Flag Desecration Act ultimately represented an effort to legislate patriotism and stifle opposition, and like the Mulford Act and the Federal Anti-Riot Act, this law should be understood as part of a broader backlash against social activism.

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