

## The Price of Civil Rights: Black Lives, White Funding, and Movement Capture

Megan Ming Francis

What influence do funders have on the development of civil rights legal mobilization? Fundraising is critical to the creation, operation, and survival of rights organizations. Yet, despite the importance of funding, there is little systematic attention in the law and social movements and cause lawyering literatures on the relationship between funders and grantees. This article recovers a forgotten history of the National Association for the Advancement of Colored People's (NAACP) campaign to protect black lives from lynchings and mob violence in the early twentieth century. I argue that funders engaged in a process of movement capture whereby they used their financial leverage to redirect the NAACP's agenda away from the issue of racial violence to a focus on education at a critical juncture in the civil rights movement. The findings in this article suggest that activists tread carefully as the interaction between funders and social movement organizations often creates gaps between what activists want and what funders think movements should do.

**I**n 1916, the National Association for the Advancement of Colored People (NAACP) mounted the largest campaign in history against lynching and racist mob violence. Focused on the protection of black lives from state-sanctioned violence, the NAACP organized mass demonstrations, advocated for an anti-lynching bill in Congress, and won a landmark criminal procedure decision in front of the Supreme Court. One hundred years later, racial violence has reemerged on the national political scene as the defining civil rights issue in contemporary U.S. politics. Chanting “Black Lives Matter,” activists have taken to the streets in big cities like New York City and small towns such as Ferguson to bring attention to the disposability of black lives at the hands of law

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Please direct all correspondence to Megan Ming Francis, Department of Political Science, University of Washington, Gowen Hall 37, Box 353530, Seattle, WA 98195; e-mail: [meganmf@uw.edu](mailto:meganmf@uw.edu).

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enforcement. Numerous scholars have rushed to explain the persistence of racist violence against blacks and have linked it to such factors as discriminatory policing, unresponsive federal institutions, political policies that criminalize poverty, and persisting housing segregation (Epp et al. 2014; Gottschalk 2014; Lerman and Weaver 2014; Massey and Denton 1993; Soss 2011; Taylor 2016). This top-down analysis is important in shining a light on oppressive institutions but it is only one part of the story. The other is how activists have strategized internally and externally with funders over the meaning of civil rights. Thus, another way of looking at the present situation is: Why does the protection of black bodies from private and state-sanctioned violence remain an unmet challenge for civil rights groups committed to racial equality? A major but under recognized reason, I propose in this article, is directly connected to *movement capture*—the process by which private funders use their influence in an effort to shape the agenda of vulnerable civil rights organizations.

The puzzle is perplexing because throughout the twentieth century, the NAACP has been at the center of the U.S. civil rights movement and racial violence used to be at the center of the NAACP (Carle 2013; Francis 2014; Johnson 1933; Sullivan 2009; Zangrando 1980). During the first quarter of the twentieth century, the NAACP firmly established itself as the preeminent civil rights organization focused on the protection of black lives from racial violence. At the time, lynching and mob violence were at the top of the NAACP's issue agenda since racial violence was believed to be the greatest obstacle that African Americans in the North and South faced to gaining equality in America. The original NAACP platform in 1909 stated, "We regard with grave concern the attempt manifest South and North to deny black men the right to work and to enforce this demand with violence and bloodshed."<sup>1</sup> Seven years later, racial violence remained high on the list of NAACP's concerns. As explained by Secretary Roy Nash, an African American, in 1916 in response to criticism from a white NAACP founding member Mary White Ovington that the NAACP's program of advancement was not radical enough, "All he [the American Negro] wanted was a chance to live without a rope around his neck ..." (Kellogg 1967: 134). From the viewpoint of the NAACP, before the organization could appropriately address other problematic areas of civil rights such as voting, labor, and housing, it was necessary to focus on ending lynching

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<sup>1</sup> Platform of the National Negro Committee, 1909. National Association for the Advancement of Colored People (hereafter cited as NAACP Papers).

and mob violence so that African Americans could live to enjoy the benefits of their struggle.

The importance of a social movement focused on the protection of black lives stemmed from the NAACP's core belief that the right to life—to have one's body protected—was one of the central tenets of American democracy and liberal theory. However, the NAACP shifted its agenda to a now-celebrated campaign against segregated education after 1930. We know much about the evolution of the NAACP's education litigation campaign, but surprisingly we do not know why the NAACP pursued the issue of education. In the voluminous literature written about the civil rights movement, there is not one account that explains why the NAACP abandoned its earlier radical campaign against racial violence and pursued an education-centered approach in the mid-twentieth century.<sup>2</sup> To understand this substantial agenda shift inside the NAACP, I believe we need to focus more attention on the actions of its biggest funder: the American Fund for Public Service (most often referred to as the Garland Fund after its benefactor Charles Garland).

Fundraising is critical to the operation, professionalization, and survival of rights organizations (Haines 1984; Jenkins and Eckert 1986; McAdam 1982; McCann 1994; McCarthy and Zald 1977; Piven and Cloward 1977). Today, the largest civil rights organizations in the United States receive the bulk of their financial donations from foundations and philanthropies. Yet, despite the importance of funding to the execution of successful litigation campaigns, there is little systematic attention in the law and social movements and cause lawyering literatures on the relationship between funders and grantees.<sup>3</sup> For the most part, legal mobilization scholars view external funding and additional resources as overwhelmingly positive and indispensable to successful rights litigation (Epp 1998; Galanter 1974; Teles 2008; Tushnet 1987).

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<sup>2</sup> Note on terminology: The NAACP and the NAACP-Legal Defense Fund (LDF) are two separate organizations. The origins of LDF can be traced to the legal department that Charles Hamilton Houston helped to enlarge as part of the Garland Fund grant in the 1930s. In 1940, Thurgood Marshall (a protégée of Houston) established LDF as a separate legal entity due to tax concerns. It was not until 1957, after the *Brown v. Board* decision that the LDF became independent from the NAACP. As a result of the timeline of this article—which focuses on the formulation of the grant—I will refer to the NAACP and not the LDF. Nevertheless, it is important to note that the Garland Fund had a lasting impact on the trajectory of both organizations.

<sup>3</sup> In three different volumes on cause lawyering, there is scant attention about funders, see: Austin Sarat and Stuart Scheingold, ed. *Cause Lawyers and Social Movements*. Stanford, CA: Stanford Law and Politics, 2006; *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press, 1998; *Cause Lawyering and the State in a Global Era*. New York: Oxford Univ. Press, 2001.

Not all agree. A number of noteworthy accounts have challenged this dominant approach by drawing attention to the deceptive underbelly of foundation/grantee relationships as it relates to legal mobilization (Ferguson 2007, Ferguson 2013; Marquez 2003). Through rich case studies of civil rights organizations, these scholars demonstrate that funders influence can be more serpentine: funders co-opted litigation strategy and attempted to de-radicalize militant black and Latino organizations. I contend that these convincing accounts are important first steps in theorizing the relationship between funders and legal mobilization. However, this work is underspecified and still lacking a theoretical framework for understanding the mechanisms that lead to greater funder control over the agenda setting of cause lawyering.

Drawing on economic theories of regulatory and state capture (Hellman et al. 2003; Laffont and Tirole 1991; Levine and Forrence 1990; Stigler 1971), I use *capture* as a way to understand how private funders operate like interest groups or private firms, to buy influence over the goals and strategies of activists and cause lawyers. In this article, I propose the concept of *movement capture*—the process by which private funders leverage their financial resources to apply pressure and influence the decision-making process of civil rights organizations. The movement capture framework hinges on the power imbalance between those that have resources and those that need them. In this way, movement capture relates to work that highlights the power asymmetries embedded in the relationship between community organizations (international and domestic) and funding from NGO's and businesses who take a "corporate social responsibility" approach to governance (Frynas 2005; Margolis and Walsh 2003; Vogel 2007). The institutional environment matters and funders are most likely to maximize their influence over civil rights organizations during the early stages of organizational development when funders are scarce or during a period of considerable financial instability. According to this framework, funders are self-interested actors that can exploit their elevated financial position by linking provision of funds to the pursuit of new goals or by shifting the salience of existing agenda issues.

Utilizing this framework of movement capture, I analyze the NAACP's interaction with the Garland Fund. Although the focus of this article is directly centered on the NAACP/Garland Fund dynamic, this movement capture framework could be applied to other cases. Specifically, I argue the Garland Fund was a principal cause in the shifting of the NAACP's agenda away from racial violence to education. The NAACP's landmark campaign against segregated education did not develop independently nor was it a collaborative endeavor with the Garland Fund. Rather, the

NAACP's early civil rights litigation agenda was *captured* by the Garland Fund and redirected away from the issue of racial violence to the issue of education segregation. The NAACP, who viewed safety from mob violence and lynchings as the pinnacle civil rights struggle of the twentieth century, was severely underfunded by 1925 and without any viable prospects of big donors to support its anti-lynching activism. In this dire funding climate, the Garland Fund tied the biggest donation the NAACP had ever received to the pursuit of a different civil rights issue: education. I also find that an unintended consequence of this capture was the NAACP (and later the NAACP-LDF) moving away from the linked issues of racial violence and criminal justice and adopting a dominant focus on education (desegregation litigation) in the rest of the twentieth century.

The periodization of civil rights law has helped to conceal the capture of the NAACP's agenda by the Garland Fund. The main thrust of the literature documenting the NAACP's civil rights litigation has focused on the post-*Brown* period and the formal equality apparatus it constructed. Although these accounts of the NAACP's *Brown* decision acknowledge the complicated racial terrain in which NAACP lawyers and reformers operated, they primarily focus on the unsatisfying aftermath and the ill-fated attempts of a multiracial coalition to bring about equality in education (Bell 1980, 2004; Guinier 2004; Klarman 1994; Rosenberg 1991). In recent years, this focus on courts, lawyers, and outcomes has been critiqued by a number of scholars whose research has decentered this elite-driven *Brown* narrative and expanded the chronological boundaries of rights making and NAACP organizing to the period before *Brown* was decided (Bates 1997; Brown-Nagin 2012; Carle 2009; Frymer 2008; Gonda 2015; Johnson 2010; Lee 2014; Lovell 2012; Mack 2012). An influential entry in this pre-*Brown* scholarship is Risa Goluboff's (2007) work, which forces us to reckon with the NAACP's efforts to bring cases on behalf of black workers to the courts throughout the 1940s. Highlighting the indeterminate nature of the NAACP's agenda during this period, Goluboff (2007: 5) writes "the world of civil rights was conceptually, doctrinally, and constitutionally up for grabs." These scholars emphasize the importance of focusing on paths not taken and the role of lawmaking outside of formal legal arenas.

Despite the wave of pre-*Brown* scholarship, this time period is still significantly underdeveloped. An economic-centered civil rights movement was not the only lost promise of civil rights. A preceding movement that focused on the protection of black lives was also lost. The analysis in this article goes beyond existing studies of civil rights legal mobilization because it focuses on an earlier

period and a new cast of actors: black NAACP leaders and white funders. In doing so, it denaturalizes the formation of the education desegregation campaign and helps to focus attention on the way power inequalities becomes embedded, at the very inception, in legal mobilization campaigns.

Often, the NAACP's campaign against racial violence is either overlooked or dismissed as unrealistic in the context of Jim Crow America. To be clear, I am not asking a retrospective question about the feasibility of a racial violence campaign today; I am asking what looked possible from the standpoint of black leaders at the NAACP in the time period before a formal legal campaign against segregated education was launched. My aim is to reconstruct the struggles between the NAACP and the Garland Fund as they experienced them—using the actors' own language. It is to understand the NAACP's leadership as activists trying to chart the course of civil rights—rather than cast them as willing participants in an education-centered civil rights movement from the outset. Widening the analytical lens helps to illuminate not just movement capture but also the broader framework of the workings of racial power and how it structures the actions that elite actors from the Garland Fund to the NAACP took in trying to negotiate the future of civil rights. The focus on racial power owes to seminal scholarship in the field of critical race theory which has long argued that the exercise of racial power is “systemic and ingrained” in legal institutions, discourse, and society (Bell 1972; Crenshaw 1995: xiv). Critical race theorists have made plain that racial domination can be reproduced in liberal institutions by well-meaning actors.

Today, under the banner of “social justice” and “social innovation” campaigns, philanthropic institutions have expressed renewed interest in funding black emancipatory movements. Indeed, the growth of the Black Lives Matter movement has led to a circling of foundations and private funders. A focus on *movement capture* sheds light on the difficult strategic decisions faced by marginalized groups as they navigate their political and legal agendas in a funding environment where interests mostly conflict and only sometimes converge. In particular, the NAACP's interaction with the Garland Fund shows that scholars cannot fully understand the civil rights movement unless they examine the deep tension that often existed between its many funders and the numerous groups that were supported.

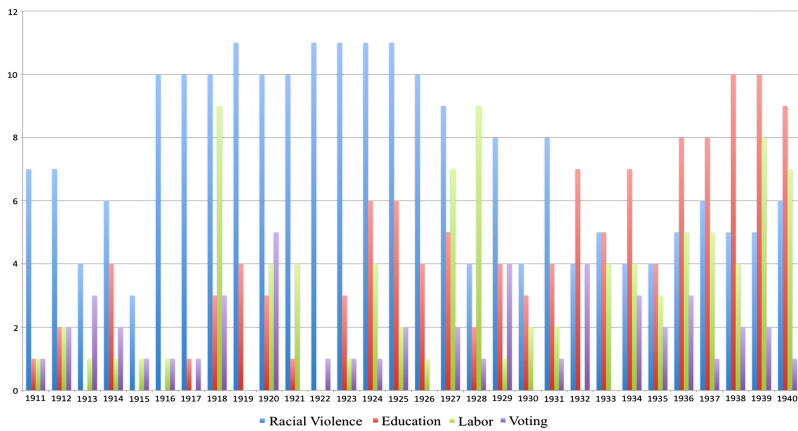
The rest of this article will proceed as follows. The “Data and Historical Method” section provides detailed information on the source data from the archive repositories. The following section, describes the background and goals of the Garland Fund. The third section documents the NAACP's campaign against violence

and the organization's agenda in the time period before the Garland Fund grant. The fourth section explores the interaction between the Garland Fund and the NAACP and the process of movement capture. And in the final section, I wish to emphasize that an analysis of racial hierarchies is critical to any study of legal mobilization during the civil rights era.

## Data and Historical Method

This is an article about movement capture but it is also about the production of civil rights knowledge. The present understanding of the origins of the education desegregation litigation campaign is entrenched in epistemological legacies of white liberalism that have submerged the centrality of racial violence to the struggle for equality. The methodological approach I adopt in this study is indebted to the work of postcolonial and feminist scholars who have drawn attention to the way power operates in archives and how it influences the decisions that researchers make in the process of narrative formation (Stoler 2002; Hartman 2008, Smallwood 2016). Trouillot (1995, p. 25) argues that only by examining the production of history “can we discover the differential exercise of power that makes some narratives possible and silences others.” Attending to the silences in the colonial archive, Stoler (2002, p. 87) suggests archives be viewed “as both transparencies on which power relations were inscribed and intricate technologies of rule in themselves.” In other words, we need to think more critically about the conditions that produce archival materials and about the decisions researchers make about whose voices to count and what lives are legible in the writing of civil rights history.

The contestation of black NAACP leaders around an education-centered civil rights agenda is often absent from accounts of this early time period. The intervention I make in this narrative history is through a detailed examination of the NAACP and American Fund for Public Service (AFPS) archive repositories (see Supporting Information Appendix). The methods I use to interpret the past are “reading along the grain” (Stoler 2009) to critically read the AFPS archive as “subject” rather than “source.” This technique entails that we not treat the AFPS archive as a trove of authoritative empirical facts but that we acknowledge the attendant social and political conditions—the Jim Crow racial order—that structured what could be recorded about the NAACP. Reading along the archival grain of the Garland Fund is especially useful in exposing the interior process whereby white funders were able to exert influence over the agenda of black activists in

**Table 1.** NAACP Monthly Board Minutes, Mentions of the Important Issue Areas

Source: NAACP Board of Director Minutes 1911–1940, NAACP Papers, Reel 1, Manuscript Division, Library of Congress, Washington DC.

the making of modern civil rights. At the same time, I have employed the method of “reading across” (Lowe 2016) to analyze the NAACP archives alongside the AFPS archive. Overlapping these two archives magnifies significant discrepancies between the two accounts. By bringing these archives in relation to one another, I wish to challenge the benign narrative of the NAACP/Garland Fund alliance and demonstrate that something more akin to capture occurred between funder and grantee.

Fortunately, there is an abundance of NAACP archival materials that allows a rare view into the lives of its black leaders. It is possible to obtain valuable insight about what black NAACP leaders saw, thought, and felt about the grant from the Garland Fund. To understand the beginnings of the NAACP and how it envisioned and strategized about black freedom, I consulted different files from the NAACP’s Papers including: National Board of Director Minutes for the years: 1911–1940 (Part 1, Box 1: A1-4), Annual Reports which laid out the NAACP’s year-to-year agenda to its members (Part 1, Box 1: A25), and the Legal Committee files from 1931 to 1939 (Part 1, Box 1: A27-28). The materials from this section consisted mostly of meeting minutes, reports, and letters about emerging legal issues.

In the time period before there was an accepted understanding of the term “civil rights,” I thought it instructive to understand what the NAACP viewed as the most important issues for the organization to address. To gain insight into the scope of the



NAACP's agenda in this formative time period, I categorized the subject matter of the NAACP Board of Director meeting minutes, as this was the time where the most important issues were discussed and copious minutes kept (see Table 1). To analyze this data, I read and coded all the minutes based on the different civil rights issue area from the NAACP meetings from 1911 to 1940, 11 per year for 29 years. This timespan represents the NAACP's agenda-setting during three pivotal periods: (1) operating as a grassroots civil rights organization without the Garland Fund, (2) over the time of the Garland Fund's growing influence, and (3) the decade that followed the substantial education grant. The purpose was to compare the frequency with which the organization addressed issues of lynching and mob violence in comparison to three other rights areas that are more commonly associated with the NAACP in the civil rights literature: labor, education, and voting. The coding scheme that I developed used the following keywords for each issue area: "labor" or "union" or "sharecropping" for labor; "schools" or "education" or "teacher" for education, "ballot" or "voting rights" or "disenfranchisement" for voting, and "mob violence" or "lynching" or "accused of murder" for criminal justice. Because I read through and did not simply do a keyword search, I was able to dismiss those occurrences of code words such as "union" that were not really about the issue of labor and instead referred to marriage.

The AFPS Papers during the same time period tell a different story. In order to reconstruct and trace the establishment and shifts in the grantmaking priorities at the AFPS, I read through the entirety of the AFPS records. However, the analysis of the AFPS in this article relies primarily on the following: the Correspondence files (Reel 2, Boxes 2 and 3) which included internal and external correspondence of members of the board of directors, the Board of Director Meeting Minutes for the years 1922–1940 (Reel 4, Box 6), and committee reports that surveyed the landscape of specific areas of the AFPS's concern (Reel 4, Box 7).

In an attempt to understand how the AFPS understood its relationship to the NAACP, I probed the different portions of the AFPS Papers that focused on the NAACP. The AFPS Papers contained a list of various grants and loans the NAACP received from 1922 to 1941 (Reel 23, Box 36). And the correspondence about the reduction of the proposed \$100,000 grant to the NAACP as well as the formal plan to pursue segregated education which is included in the box titled "Loans, 1939–1941" (Reel 28, Box 44). Much of the papers in these two boxes were letters from AFPS program officers to James Weldon Johnson and Walter White of the NAACP. Additional documents consisted of internal memoranda about the roll-out of the grant. The papers in this section evidence excitement

about the potentiality of making a significant legal impact but they also showcase the ways the AFPS exerted increasing control over the deployment of the grant via a “joint committee” made up of Garland Fund and NAACP representatives. However the “joint committee” was not balanced—it was structured in a way that allowed the Garland Fund to exercise outsize influence: three members were from the Garland Fund (Morris Ernst, Roger Baldwin, and Lewis Gannett) and two members from the NAACP (Arthur Spingarn and James Weldon Johnson).

### The Garland Fund and the American Left

In 1919, Charles Garland refused his million-dollar inheritance, declaring he would not take money from “a system, which starves thousands while hundreds are stuffed” (Samson 1996: 1). A supporter of the American Left, Garland did not want to take part in an exploitive capitalist system which he “wanted to destroy” but eventually accepted the money after Baldwin convinced him it could be put to use in a national trust “directed to social and economic freedom” of the masses.<sup>4</sup> There were no rigid restrictions placed on the funds but there were two charges by Garland meant to guide the administrators of the fund in their grantmaking duties. The first was “that the money should be distributed as fast as it can be put into reliable hands.”<sup>5</sup> Garland had little interest in the maintenance of a long-standing foundation that would dole out small grants over time; he felt there were plenty of worthy causes that would greatly benefit from money in the present. The second was that the funds be used “to the benefit of mankind—to the benefit of poor as much as rich, of black as much as white, of foreigners as much as citizens, of so-called criminals as much as the condemned.”<sup>6</sup> As far as Garland was concerned, building a just social order required the Fund to ally itself with some of the most marginalized groups in American society.

The Garland Fund was incorporated in 1922 and Baldwin quickly assembled a board of directors that amounts to a roster of notable white radicals including Judah Magnes, Sidney Hillman, Harry Ward, Frank Walsh, Scott Nearing, Mary McDowell, William Foster, and Norman Thomas (Witt 2019). James Weldon Johnson, described as “a negro of wide interest and great ability” was the

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<sup>4</sup> Garland to Baldwin, Letter, November 21, 1922. American Fund for Public Service Papers, (hereafter cited as AFPS Papers), Reel 1, Box 1.

<sup>5</sup> Garland to Board of Directors (BOD), Letter, November 16, 1922, AFPS Papers, Reel 4, Box 8; AFPS Papers, Minutes of the Tenth Meeting of the BOD’s of the AFPS, December 22, 1922.

<sup>6</sup> Garland to Baldwin, Letter, July 15, 1922, AFPS Papers, Reel 4, Box 8.

lone African American on the Board.<sup>7</sup> The stated purpose of the Garland Fund was to provide money for the following movements:

“Those in the economic field closest to the interests of the producing classes—namely the industrial workers and farmers; Those which deal with the interests of minority groups, particularly industrial or racial, disadvantaged under present conditions; Experimental movements in the field of education.”<sup>8</sup>

From the outset, the Garland Fund operated very differently than other foundations—not only in its programmatic funding areas but also the structure of the Fund. The directors of the Fund and the consultants were not paid—they volunteered a substantial amount of time. The Fund’s money was exclusively pledged to support activities in the areas of organized labor, education, and the protection of minorities.

The refusal of Garland to accept his inheritance and the subsequent founding of the American Fund for Public Service received a considerable amount of newspaper attention.<sup>9</sup> As a result, the first round of grantmaking (July 1922–January 31, 1923) brought 320 grant applications, a high yield for the burgeoning foundation.<sup>10</sup> Many requests were outright denied as the Fund had an explicit policy of not backing individual and partisan causes and strongly preferred organizations with national significance to organizations with local significance. The Garland Fund wasted no time in identifying the organizations that fell outside of its scope and acted favorably upon 49 proposals.

The NAACP was the lone group focused on the rights of African Americans to receive funding in the first round for its legislative work in the fight to pass an anti-lynching bill in Congress. In the ensuing months, the Garland Fund’s commitment to civil rights quickly expanded. To address the rights of minorities, the Committee on Negro Work was formed and focused on three different types of organizations:

“(1) the effort to secure Negroes’ civil and political rights; (2) the organization of social service work; and (3) the radical propaganda which seeks to unite white and black labor in class-

<sup>7</sup> Baldwin to Garland, Letter, May 17, 1922. AFPS Papers, Reel 1, Box 1.

<sup>8</sup> Statement of Policy, August 10, 1922. AFPS Papers, Reel 2.

<sup>9</sup> Literary Digest, LXVIII (January 8, 1921), 49–50; Harper’s Magazine, CXLII (February 1921), 397–400; New York Times, November 28, 1920, Sec 7, p. 2. As reported in: Merle Curti (1959). “Subsidizing Radicalism: The American Fund for Public Service, 1921–41.” *The Social Service Rev.* 274–95.

<sup>10</sup> Report of the American Fund for Public Service For the First Six Months of Operation, AFPS Papers, Reel 4, Box 8.

conscious, militant unions, and in a working-class political party.”<sup>11</sup>

The NAACP represented the first type of black organization and was described as “strong, militant, alert, solid.” The National Urban League represented the second and a trio of organizations including A. Philip Randolph’s literary magazine *The Messenger*, the African Blood Brotherhood, and Friends of Negro Freedom, represented the third category. These five organizations made up the majority of the Garland Fund’s grantmaking in the area of race relations. However, it was evident from the beginning that the NAACP was most favored as the National Urban League’s capitalist ties were viewed with disdain and the radical propaganda organizations were small in membership.

In the early years, the Garland Fund explicitly eschewed a policy of shaping the issue agenda and grant proposals of its grantees. Garland minced no words in explaining to Baldwin that the Board of Directors “shall not attempt by promise or by the setting forth of conditions or by any other means to control the policy of any group or individual entrusted with this money or a part of this money.”<sup>12</sup> This was an imperative influenced by Garland’s desire not to usurp the agenda of vulnerable organizations and later a board rule of only responding to proposals.<sup>13</sup> The following years witnessed a dramatic shift in this policy.

### The NAACP’s Campaign against Racist Violence

To understand the litigation that produced *Brown v. Board of Education*, it is necessary to go further back in the causal chain and examine the NAACP’s battle to have the right to live protected. In other words: I find that the starting point of a more expansive litigation campaign against segregated education can be traced to the NAACP’s earlier response to lynchings and mob violence. This is so because *both* the NAACP’s focus on education desegregation litigation and the funding structure that birthed the storied NAACP Legal Defense Fund (NAACP-LDF) originated from a generous grant from the Garland Fund in 1930. However, as noted in the Garland Fund archives, it was the NAACP’s anti-lynching campaign that first attracted the attention of the funder

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<sup>11</sup> Survey of Enterprises in the Liberal, Labor and Radical Movements in the United States, Prepared by Roger Baldwin & Stuart Chase, July 1923, p. 292, AFPS Papers, Reel 4, Box 7.

<sup>12</sup> Garland to BOD, Letter, July 15, 1922, AFPS Papers, Reel 1, Box 1.

<sup>13</sup> Minutes of the BOD’s of the AFPS, October 17, 1923, AFPS Papers, Reel 1, Box 1.

in 1922 and provided the basis of an invaluable relationship between the two organizations. In this section, I discuss the NAACP's campaign against lynching and mob violence and how it situated the NAACP at the forefront of rights litigation in the first quarter of the twentieth century.

From the beginning, the NAACP remained committed to raising national awareness to the injustice of racial violence. Particularly notable was the development of its anti-lynching and mob-violence reduction campaign in 1916. Lynching persisted, the NAACP believed because most white Americans knew very little about the persistence of lynching and mob violence in African-American communities. If they were aware of the terrorism of lynching, the NAACP reasoned, white Americans would be appalled and steps would be taken "to end this miserable disgrace and foul blot upon the fair name of America."<sup>14</sup> To shift public opinion, the NAACP concentrated on investigating lynchings and developed a media strategy focused on: writing articles and producing anti-lynching pamphlets to reach white Americans. In addition, the NAACP had its own in-house magazine *The Crisis* that was curated and edited by Du Bois. By articulating the terror of lynching and broadcasting it to a wider audience through these different channels, the NAACP hoped the norm of acceptability (in the South) or ambivalence (in the North) to lynchings would change and turn decidedly against lynching.

The NAACP's public opinion crusade was not enough; the organization knew a lot of power lay in politics and felt it necessary to supplement publicity with work in the legislative arena where it sponsored an anti-lynching bill and began a historic drive in Congress in 1921. In a very short time, the NAACP remade itself into an anti-lynching lobbying organization and through direct lobbying to individual Congressmen, pressured lawmakers in the House of Representatives to pass the anti-lynching bill (Zangrando 1980). In less than a year, leading House Republicans went from a hands-off approach to anti-lynching legislation to actively advocating on its behalf and defending the necessity for such legislation against a determined coalition of southern Democrats. The anti-lynching bill passed the House of Representatives by a commanding two-third vote. However, the bill died in committee in the Senate and never passed into law.

The NAACP also trained its eyes on the Oval Office where, after much persuasion, they succeeded in placing racial violence on the presidential agenda (Francis 2014). Through a relentless barrage of appeals, the NAACP convinced President Woodrow

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<sup>14</sup> Annual Report for the Year 1919, NAACP Papers, p. 17.

Wilson and President Warren G. Harding to publicly denounce lynching and mob violence.<sup>15</sup> After mounting pressure, Wilson conceded to NAACP demands during his second term and Harding complied with NAACP requests for a strong statement against lynching. The public statements made by Wilson and Harding against lynchings are particularly remarkable because both came from men who initially expressed an unwillingness to address the issue.

Nevertheless, despite this work, lynchings continued to increase. Exasperated with the pace of progress in the social and political arenas, the NAACP turned its attention to the courts where the organization was able to challenge the boundaries of constitutional doctrine in the area of criminal procedure through *Moore v. Dempsey* 261 U.S. 86 (1923). The case originated after a race massacre in Arkansas led to the sham trial and indictment of 12 African-American men for murder. The year was 1919 and mob dominated trials and coercive methods of dealing with black defendants in southern courtrooms were the norm. The federal government did not interfere in state criminal proceedings and no uniform criminal procedure code existed. Individual states were responsible for the handling of their own criminal proceedings.

The circumstances surrounding *Moore* were daunting; still, the NAACP chose to get involved as the organization viewed the death sentences for the 12 men as an example of “legalized lynching.” The question before the Supreme Court was whether the presence of a mob in a courtroom violated the Due Process Clause of the 14th Amendment. In a precedent-setting decision written by Justice Oliver Wendell Holmes, the Supreme Court ruled in favor of the black defendants and declared that a fair trial means freedom from mob domination.

In the aftermath of *Moore*, the NAACP quickly began to ride the momentum from its victory toward a greater focus on litigation. The February 1923 board meeting minutes provide evidence of the NAACP’s heightened interest in litigation as a strategy to achieve its goals: In preparation for discussion at this meeting, the NAACP drafted three pages of proposed activities that was interested in pursuing in the near future. After the section on “Anti-Lynching” the proposal contained a section on “Legal Defense”

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<sup>15</sup> See President Woodrow Wilson, *A Statement to the American People*, July 26, 1918. Reprinted in *The Papers of Woodrow Wilson* Vol. 49, edited by Arthur Link, Princeton: Princeton Univ. Press, 97–99. President Warren G. Harding, *Address to Joint Session of Congress*, April 12, 1921, Warren G. Harding Papers, Manuscript Division, Library of Congress, Washington, DC. For section on lynching, see pp. 39–41.

which stated that in addition to the fight for the men on trial in Arkansas,

“[t]he scope of our defense work should be widened so as to include the giving of aid to branches that have undertaken the defense of cases too costly or too important for them to handle alone.... For comprehensive and effective legal defense work, a defense fund from \$25,000 to \$50,000 is necessary.”<sup>16</sup>

The NAACP wasted little time in using *Moore* as leverage for fundraising for its legal department: from 1923 to 1924, the NAACP legal defense fund grew from \$120.01 to \$1068.<sup>17</sup> While this figure does not seem like much today, it represents a near 600% increase in 1 year and a significant surge in momentum for the young organization.

Although it seems improbable, the NAACP firmly believed the breakthrough in civil rights would come by way of the area of racial violence. In other words, from the perspective of the NAACP in the first quarter of the twentieth century, a campaign centered on lynching and mob violence—not on education—represented the most viable path toward civil rights. After all, *Moore v. Dempsey* was a Supreme Court victory that evinced the Court concerned about the injustices of racial violence; the Supreme Court victories in education would not occur for another decade. Presidents Wilson and Harding made statements in support of the NAACP’s battle and a majority of members in the House of Representatives voted for federal involvement in lynchings. In addition, the central marches and organizing from the NAACP in the first quarter of the twentieth century were centered around racial violence—not education. The overwhelming message from the NAACP’s archives in this period is that racial violence was the first frontier in the battle for civil rights and the revolution in racial violence was just around the corner.

### **Anti-Lynching Funding Leads to Education Funding**

The battle against racist violence paved the way for the NAACP’s later campaign against segregated education by establishing an important relationship with the Garland Fund and by showcasing the usefulness of courts in the struggle for equality. If the NAACP had not engaged in a national struggle to end lynching, there may have been no *Brown* because the relationship that

<sup>16</sup> BOD Minutes, February 5, 1923, NAACP Papers.

<sup>17</sup> Fourteenth Annual Report for the Year 1923, p. 48, NAACP Papers, Fifteenth Annual Report for the Year 1924, p. 59, NAACP Papers.

led to the funding of the education desegregation campaign was established much earlier, when the NAACP was working against racist violence. The first grant and second grant from the Garland Fund occurred in 1922 and 1923 to support the NAACP in its anti-lynching campaign. In other words, the publicity the NAACP garnered from its national work in the anti-lynching campaign drew the attention of the Garland Fund and led to a grant of \$2500 and an additional appropriation of \$865.50 to provide publicity to assist in passing the Dyer anti-lynching bill in Congress.<sup>18</sup> Subsequently, ads were taken out in major newspapers across the United States to urge readers to contact their senators in support of the Dyer Bill. A typical ad filled a full page and called lynching “The Shame of America.” The Garland Fund acknowledged with satisfaction that the NAACP’s “anti-lynching campaign in 1922 was successful beyond anticipation.”<sup>19</sup> A few months after the bill died in the Senate, the importance of litigation was impressed upon the Garland Fund after the NAACP’s Supreme Court victory.

The *Moore* victory was almost everything the Garland Fund wanted from its grantees: it was a decision of tremendous national significance and brought about by an oppressed minority. The only aspect it was missing was an explicit focus on organized labor or education: the two areas the Garland Fund was most interested in supporting. The Garland Fund was never shy about its two preferred funding areas. In April 1924, a proposal for a 5-year program for the Garland Fund put education at the crux of what it meant to build a new world order:

“This program is based on the assumption that what is most needed in the United States at the moment is a carefully worked out and consistent propaganda for economic and social emancipation. If the Fund is to participate in this work, it must do so educationally without commitments to any of the factional or partisan groups that are aiming to bring about the result.”<sup>20</sup>

The report went on to detail how education could be incorporated into the other activities of the Garland Fund. And at the end of 1924, Baldwin submitted a memo that was to guide the Board of Directors in deciding what organizations to give preference to

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<sup>18</sup> Appropriation of \$2500 was voted on October 11, 1922 for educational campaign in connection with Federal Anti-Lynching Campaign. Additional appropriation of \$865.50 was voted on and approved on January 24, 1923. Reel 10, Box 15, AFPS Papers.

<sup>19</sup> Report of the Committee on Negro Work, October 13, 1929. Reel 4, Box 7, AFPS Papers.

<sup>20</sup> Consistent Educational Work Looking to the Establishment of a New World Order, Scott Nearing, April 3, 1924, AFPS Papers, Reel 2, Box 2.



in grantmaking. In descending order of importance, “enterprises organized within the labor movement” was first, “research and educational work being aided in making new studies” was second, and third was “the protection of minority groups.”<sup>21</sup>

The Garland Fund’s issue priorities presented a unique set of hurdles to the NAACP as they did not seamlessly map unto the NAACP’s agenda. In fact, it appeared as if the central interests of the two organizations were misaligned. By 1924, the NAACP was mostly concerned with racial violence and not education—to the extent that education-related issues were rarely mentioned in board meetings. NAACP board minutes are particularly elucidative (see Table 1), showing that in comparison with other areas of racial injustice for every year from 1911 to 1931, racial violence was where the NAACP focused most of its attention. Even local NAACP branches were concerned about racial violence as evidenced by an increase in letters and local branch reports. However, after 1931, there is a sharp shift as education issues take on increased importance for the NAACP’s Board of Directors. How did education concerns come to occupy the majority of the organization’s agenda in the succeeding years? The answer, I will argue in the rest of this article, is directly connected to a shift in the grantmaking policy of the Garland Fund.

In October 1923, 7 months after the *Moore* decision, the board of directors of the Garland Fund debated a change in its policy of only responding to grant proposals and instead “pick out those lines of activity which we feel most valuable and aid them to the exclusion of others.”<sup>22</sup> Discussed with no resolution for years, in May 1929, the treasurer Morris Ernst forced the issue in light of the Garland Fund’s dwindling financial assets. Frustrated with the snail pace of radical progress amidst the numerous grants the Fund had administered, Ernst warned: “I am convinced that we are traveling along at present without a clear concept of our purpose.” In writing the board, Ernst registered fairly sharp criticisms of the existing grantee portfolio: “there is little of genius in any of our plans and above all else, scarcely a project is voted on with high enthusiasm of any of the members.”<sup>23</sup> To mitigate this problem, Ernst proposed the board divide itself into subcommittees that would develop innovative programs on specific subject matters. At the base of this proposal was an uneasy assumption that the board members would be better suited to develop a

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<sup>21</sup> A Few Questions Concerning Our Policy Which May Serve Members of the Board of Directors in Preparing Memos, Roger Baldwin, December 1924, AFPS Papers, Reel 2, Box 2.

<sup>22</sup> Minutes of the BOD, October 17, 1923, AFPS Papers.

<sup>23</sup> Ernst, Letter, May 4, 1929, AFPS Papers, Reel 2, Box 2.

radical rights program than the disadvantaged groups it had previously funded.

Following Ernst's memo, Baldwin wrote the board that instead of appropriating money based on applications, they consider selecting "our own major projects and put all the money into them."<sup>24</sup> And at a relatively uneventful board meeting on May 14, 1929, the board decided to revise its grantmaking policy. It was agreed by all members to no longer accept grant applications "but only projects sponsored by members of the board or its committee." Further, it was determined "the board should select its major projects through special committees which shall be responsible for proposing expenditures covering the different fields."<sup>25</sup> The committee responsible for civil rights issues was the Committee on Negro Work made up of Johnson, Ernst, and Lewis Gannett.

This policy departure has never been addressed in the literature on the NAACP but it is a critical juncture in understanding the formation of the NAACP's education desegregation campaign. The shift in the Garland Fund's decision-making process from responding to applications from grantees to designing programs for grantees opened the door for funder interests to crowd out the most pressing concerns of the marginalized groups it worked with. In specific terms, it set the Garland Fund and the NAACP down a new path of civil rights development—one where education concerns became elevated and eventually made the centerpiece of the agenda.

## Ghostwriting Civil Rights

In deciding the contours of a new program to champion, the Committee on Negro Work consulted a report written by Johnson at the behest of Baldwin "regarding the policy of the fund as it relates to the Negro as a minority group."<sup>26</sup> Writing in 1924, the year after *Moore*, Johnson made clear the fight against racial violence should be prioritized. In the report, Johnson praised the Garland Fund for its support of the NAACP's educational campaign against lynching in Congress: "I do not believe that any sum of money which the Fund has thus far appropriated has helped to bring about more definite results than the money expended in the educational campaign against lynching." Johnson concluded his report by providing five recommendations for how

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<sup>24</sup> Baldwin to BOD, May 13, 1929, AFPS Papers, Reel 2, Box 2.

<sup>25</sup> Minutes of the BOD, May 14, 1929, AFPS Papers, Reel 2, Box 2.

<sup>26</sup> Johnson to Baldwin, Letter, May 15, 1924, AFPS Papers.

the Garland Fund could have the greatest impact in the fight for civil rights. The first recommendation was: "Continuing aid in the educational campaign against lynching." Second, Johnson used *Moore* in arguing for the financing of a legal defense fund to pursue cases that would establish similar precedent and ensure the "protection of life by the ordinary processes of law." His third and fourth recommendations centered on dealing with the precarious state of black industrial workers and farmers. The last proposal suggested that the Garland Fund "could well assist the Negro in his fight for a fair share of the public school fund in those states where separate public schools are established by law." Playing to the Garland Fund's interests in education, Johnson recommended a study of different state education funding laws in hopes of bringing about equalization in resources.<sup>27</sup>

From the perspective of black self-determinism, Johnson's proposed plan and its subsequent rejection by the board are significant. As the only African-American member on the Garland Fund's Board of Directors, Johnson occupied a unique position in the organization as the voice of the black community and had used this insider position to propose a plan of attack that championed further support for anti-lynching education and a legal defense fund that went after similar criminal procedure cases like *Moore*. However, Johnson's status as the authentic voice for African Americans also carried a number of constraints and he had to walk a fine line, especially when his vision of racial equality conflicted with other more privileged white members on the board.

The focus on education in Johnson's plan was essentially an afterthought and centered on the need to provide equal funding to white and black schools. But Johnson's report was written in 1924 and by 1929, the grantmaking policy at the Garland Fund was in flux. Despite the NAACP's expressed interest in working against racial violence and Johnson's insistence that the Garland Fund could have the greatest impact in this area, other board members were less convinced and while they admired the work of the NAACP, they preferred to stick closer to the Fund's traditional focus in labor and education.

Much had shifted in the interim. By 1929, the Committee on Negro Work had completely broken with the original policy of staying out of the plans of its grantees and was spearheading an ambitious appeal to the rest of the board to grant the NAACP a large sum of money (\$294–314,000) to pursue equal rights for African Americans through the courts. The Committee argued:

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<sup>27</sup> Johnson to BOD, Policy of the Fund as it relates to the Negro as a Minority Group, Memo, April 25, 1924, AFPS Papers.

“the largest single contributions which this Fund could make to the release of the creative energies of the producing class in American would be to finance a large-scale, widespread, dramatic campaign to give the Southern Negro his constitutional rights, his political and civil equality, and therewith a self-consciousness and self-respect which would inevitably tend to effect a revolution in the economic life of this county.”

As the Garland Fund was being spent out, the Committee urged the rest of the board members to take a bold stand and make “this campaign for the Negro its major field in allotting the remainder of its funds.”<sup>28</sup>

The Committee on Negro Work recommended: “a dramatic large-scale campaign to give Negroes equal rights in the public schools, in the voting booths, on the railroad, and on the juries” in every state.<sup>29</sup> Notably, these four lines of struggle mirror what many people today believe to have been the most important areas of civil rights struggle throughout the twentieth century but they did not perfectly map onto the NAACP’s concerns in the 1920s. Although the NAACP had been working on weakening the constitutional structure in the other recommended areas—education was an issue in which the organization had recently gotten involved in investigating after the Garland Fund’s \$5000 grant to Du Bois in 1926 to conduct a study of education funding in southern states as part of a series in *The Crisis*. The studies on education funding showed a large discrepancy in the amount allocated to black and white schools but it did not warrant a full campaign as the NAACP viewed racial violence as a far more critical concern. In the budget laid out for the 1929 plan, the Committee on Negro Work allocated \$10,000 for lynching—memorable since it was the lowest amount for a line item of the budget and signaled the Fund’s waning interest in a defining NAACP issue.<sup>30</sup>

A number of concerns plagued the Committee on Negro Work after its 1929 proposal, including: the dominant focus on the litigation strategy, amount of funds, and connection to labor. To rework the proposal, the Committee on Civil Liberties merged with the Committee on Negro Work in an attempt to create a plan that was better representative of the Board of Directors’ desires. Johnson reached out to Walter White for

<sup>28</sup> Committee on Negro Work to Directors of the American Fund for Public Service, Final Report, October 1929, AFPS Papers, Reel 4, Box 7.

<sup>29</sup> Memo, October 18, 1929, AFPS Papers.

<sup>30</sup> Committee on Negro Work to Directors of the AFPS, Final Report, October 1929, AFPS Papers, Reel 4, Box 7.

information regarding what the NAACP was doing around “Negro labor” to quell the board’s concerns that the proposed plan lacked a labor angle. White responded with a list of activities—first of which was the NAACP’s work around racial violence which culminated in *Moore v. Dempsey*.<sup>31</sup> Also included was a study on lynching. White was acting strategically—his reaffirmation of racist violence concerns and absence of any reference to education signaled his disapproval with the framing of the new proposal. Only eight days after writing Johnson about racial violence, Ernst wrote White to temper his expectations and to alert him of the revised proposal the Committee would bring before the Garland Fund for approval. The new proposal reduced the proposed plan to a leaner budget of \$100,000.

In theory, paring down the previous proposal to \$100,000 was to be a collaborative process between the Committee on Negro Work and the NAACP—in reality, the Garland Fund had considerable influence over the NAACP due to its financial resources. It is the 1930 plan where education takes center stage in the committee’s vision for how the funds should be used. It is well known that this is often attributed to the NAACP’s will as linked to a memo from White laying out a plan of attack (Tushnet 1987: 13). What has thus far gone obscured in the historical record is the effort that went on behind the scenes to make it appear as if education was the NAACP’s authentic preference.

On March 8, 1930, a disgruntled Ernst chastised White for stalling on the development of the Garland Fund’s proposal and in returning cost estimates to pare the initial proposal down to \$100,000, “I think your delay is prejudicing us considerably.”<sup>32</sup> But this was not a forgetful oversight on White’s part, as much as it should be read as a form of calculated resistance. Not immediately responding to Ernst was a small way that White had developed to retain some measure of control. Directly after White received the letter, he messaged Johnson to request advice about how to proceed with Ernst. In this letter, White notes that the AFPS already had information about the NAACP’s preferred plan of attack as well as the costs:

“You will remember that when you were in the office some days ago I pointed out that previous memoranda to the American Fund had pretty well covered the exact costs of the cases. At that

<sup>31</sup> White to Johnson, Memo, January 9, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

<sup>32</sup> Ernst to White, Letter, March 8, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

time you said that the only thing additional needed was to emphasize that we actually have individuals on the scene who can commence these suits, as in the case of Dr. Nixon of El Paso, West in the Virginia Primary Case, and others in our various suits to contest racial injustices.”<sup>33</sup>

The following day, in a private reply to White, Johnson warned about Ernst’s increasing influence:

“I suggest that you make an appointment with Morris at his office or his home, and go over the matter with him in detail. There may be something in his mind that he is anxious to have go into the program that he has not yet clearly set out. Or you may ask for a meeting with the Committee. I think that the plans Morris wants included are the legalistic ones, but you ought to make ours.”<sup>34</sup>

After this exchange with Johnson, White wrote to Ernst about his growing discontent in being used as a pawn in Ernst’s civil rights vision:

“If you will tell me specifically what you want, the details of which are rather hazy in the minds of Jim [James Weldon Johnson], Arthur Springarn and my own, I will give you what you want. The present haziness is due to the fact that so far as costs are concerned this has been pretty clearly set forth in previous memoranda.”<sup>35</sup>

Fearful of losing the Garland Fund’s patronage, White grudgingly complied with Ernst requests and outlined a program and budget. In returning a draft of the program, White, perhaps, most vividly captures the level of NAACP disapproval with the Garland Funds increasing control: “At last here is the Memorandum drafted along the lines which you suggested. This is only a rough copy for you, Lewis and Jim to use as a basis. I have no pride of authorship, so don’t hesitate to speak frankly about it.”<sup>36</sup> As these letters indicate, Ernst *not* White was key to the emergence of an education-focused civil rights grant proposal.

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<sup>33</sup> White to Johnson, Letter, March 10, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

<sup>34</sup> Johnson to White, Letter, March 11, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

<sup>35</sup> White to Ernst, Letter, March 13, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

<sup>36</sup> White to Ernst, Letter, March 28, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

In a Jim Crow world, where white men and women controlled the majority of the wealth; White and Johnson understood their place in the racial hierarchy and the importance of compromise—even if it was an unbalanced compromise. By May 1930, the final plan was submitted to the Garland Fund's board. Arguing that continued support for union workers to support the labor movement “would be like pouring water down a sink,” the plan proposed labor could be best helped by attending to the civil rights injustices endured by black workers. To this end, the Committee recommended a narrowing of the Garland Fund's programmatic goals to focus solely on the rights of African Americans and reasoned that lawsuits undertaken by the NAACP were the best route to pursue. Declaring that this area was “revolutionary,” the approved plan was to give \$100,000 to fund a series of lawsuits, which would be filed in four different areas (Education, Jim Crow Cars, Jury Discrimination, and Residential Segregation).<sup>37</sup> In making the case for funding lawsuits in four different areas, the memo stressed the contingency of the issues and that breaking these four systems of oppression were key to bringing about equal rights.

The Committee on Negro Work wasted little time in repackaging the NAACP's fight for civil rights away from criminal justice to education. The plan marks the first time that a focus on racial violence was no longer present. There are two small references to the NAACP's campaign against racist violence in their 19-page memo, one of which was wrapped in its cost-benefit rationale for selecting the NAACP as the organization to carry out its proposed campaign. In making a case for gifting the NAACP with this grant instead of the American Civil Liberties Union (who was referred to as “a spendthrift bunch of wastrels”) or any other left-leaning organization, the Garland Fund's Board used *Moore v. Dempsey* in their rationale, writing to supporters they reasoned:

“Compare for instance, the costs and results of the Arkansas cases with 12 men twice condemned to die—carried through to a victory in the Supreme Court. The NAACP has been more effective per dollar spent. It has a personnel, a record, and a proven technique that justify more confidence than any other organization in the entire racial field with which we are acquainted.”<sup>38</sup>

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<sup>37</sup> The Committee on Negro Work to the Directors of the American Fund for Public Service, Memo, undated—scrawled on bottom of the paper is “pre-May 28, 1930.” AFPS Papers, Reel 4, Box 7.

<sup>38</sup> Ibid.

So while racial violence proved the NAACP an able civil rights litigation organization, the end result was the cementing of a strategy to go after civil rights—not the specific contours of the agenda itself. After a heated discussion (some members such as Baldwin were critical of the legal focus) and a close vote of 6–5 by the Garland Fund’s board of directors, this plan was approved.

To grasp why the NAACP was not more insistent on the issue of racial violence necessitates an understanding of the precarious state of the NAACP’s finances and the power imbalance in the relationship. Other studies have documented how foundations manipulate grassroots movement strategies, advance an elitist issue agenda, and undermine radical racial justice movements (Ferguson 2013; INCITE! 2007; Kohl-Arenas 2016; Lowry 1999; Marquez 2003; Morey 2019; Morris 1986; Reckhow 2012; Roelofs 2003; Rooks 2006; Willoughby-Herard 2015). An early study by Robert Allen (1969) called attention to the role of foundations in coopting and controlling militant black organizations in the civil rights movement through the power of funding. Allen’s seminal work details how the Ford Foundation utilized funding to “tame” the Congress On Racial Equality’s (CORE) activist work and shifted CORE’s emphasis from black power to black capitalism. The work of these scholars reminds us that decisions regarding target population, organizational strategy, and issue priorities are made in a larger environment where funders exert a considerable amount of leverage.

The Garland Fund could have so much sway over the NAACP’s agenda because the material incentives were such that the Fund had a lot to offer the cash-strapped NAACP. To provide some perspective on the significance of the Garland Fund’s first grant to the NAACP: no foundations or large donors (\$1000 and over) contribute to the NAACP before the Garland Fund got involved.<sup>39</sup> Wealthy donors stayed away from the NAACP because it was viewed as too radical. In comparison, the National Urban League received funding from five foundations including Rockefeller and Carnegie. The NAACP mainly fundraised through its membership and was constantly trying to raise funds in order to undertake larger projects but with little success. The close relationship with the Garland Fund after the victory in *Moore* transformed the NAACP’s calculus around fundraising and issue formulation.

## Making Civil Rights History

As the plan crystalized, it became clear that racial violence was not the only issue on the chopping block. In a 4-year timespan,

<sup>39</sup> Memo, January 14, 1924, AFPS Papers, Reel 4, Box 7.



the Garland Fund's ambitious proposal to attack four pillars of racial discrimination was whittled down to one—education. The elimination of the three other issue areas and the coalescing around the issue of education owes to a dramatic reduction in the Garland Fund's assets and to the now infamous Margold Report.

The first step after the Garland Fund approved the \$100,000 grant was to hire an attorney who could research and map an implementation plan. Nathan Margold, a protégé of Felix Frankfurter came highly recommended and was selected in 1931. While the approved plan contained a focus on four different issues, very quickly, it was determined internally that “the first offensive would best be launched against the unequal and inequitable distribution of public school funds as between the races.”<sup>40</sup> As a result, Margold devoted the majority of his report to education litigation and argued the NAACP should go after school segregation writ large instead of “frittering away funds” on the more complicated equalization lawsuits.<sup>41</sup> Margold's work was interrupted with the disappointing news that the Garland Fund would not be able to meet its pledge due to a large devaluation in securities as a result of the Great Depression.<sup>42</sup>

In 1931, the NAACP was alerted that the Garland Fund was in the midst of formulating a revised program to fit the new financial realities.<sup>43</sup> The dramatic reduction in funds sent the Committee on Negro Work scrambling and it was forced to pare down its ambitious agenda. No longer could the Committee on Negro Work pursue four areas of civil rights (Education, Jim Crow Cars, Jury Discrimination, and Residential Segregation)—it was forced to choose and decided to attack discrimination in education and discrimination in interstate transportation on a proposed budget of \$20,000.<sup>44</sup> The Board of Directors approved only half of the requested amount with a possible appropriation of \$10,000 in the future if its financial position improved. This did not bode well for the NAACP and in a letter to the Committee of Negro Work, White protested the abandonment of issues the NAACP cared about calling it a “problem.”<sup>45</sup>

In 1934, Charles Hamilton Houston, former dean of Howard University Law School, accepted a position with the

<sup>40</sup> Johnson, Synopsis for Program, June 27, 1930. NAACP Papers. AFPS, Chronological File, 1922–1935, I C: 196.

<sup>41</sup> Second Installment of the Margold Report, AFPS Papers, Reel 28, Box 44; Margold to White, Letter, May 2, 1932, NAACP Papers, AFPS, Chronological File, 1922–1935, I C: 196.

<sup>42</sup> Baldwin to NAACP, Letter, October 2, 1931, AFPS Papers, Reel 28.

<sup>43</sup> NAACP Annual Report, 1931, AFPS Papers, Reel 28.

<sup>44</sup> Baldwin to Members of the Board, Letter, June 12, 1933, AFPS Papers, Reel 23.

NAACP as full-time legal counsel and spearheaded the education effort. In his role, Houston tweaked Margold's proposal and decided that with the reduced budget of \$10,000, "it is exceedingly difficult to execute an effective program on a national scale on two issues as large as discrimination in education and discrimination in transportation" and called for a "concentration of effort" on the issue of education.<sup>45</sup> With the reduction in funds, the narrowing of the agenda was inevitable. Under Houston's tenure, the NAACP would handle three different types of education desegregation suits connected with the Garland grant: suits against segregated higher education, suits to equalize teacher salaries, and suits challenging unequal facilities in primary and secondary education. And in 1954, the NAACP and LDF secured a heralded position in American legal history with the Supreme Court's decision in *Brown v. Board of Education*. But without the funding from the Garland Fund, this landmark decision in constitutional law would never have occurred.

### **The Racial Innocence of the NAACP's Education Campaign Narrative**

Throughout this article, I have argued the traditional assumption in scholarship that the NAACP and the Garland Fund worked collaboratively in the formation of a campaign against segregated education consistently fails to be borne out by the archival evidence. Rather, the NAACP's early civil rights agenda was redirected by the Garland Fund away from racial violence to education. Of course, some will chafe at this analysis, countering that the story of the NAACP/Garland Fund relationship should be interpreted through a resource mobilization or strategic lens of the NAACP switching issues areas to stay afloat in a competitive funding environment and that education is where the interests between the two organizations ultimately intersected (Kluger 1975; McAdam 1982; McCarthy and Zald 1977). Steven Teles (2008), for example, has positioned an "organizational maintenance" model as a way to understand the dynamic interaction between wealthy funders and public interest groups that need to acquire resources. In this section, I discuss how the organizational maintenance explanation, while admittedly useful in understanding the relationship of non-

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<sup>45</sup> White to Committee on Negro Work, Memo, September 13, 1933, AFPS Papers, Reel 23.

<sup>46</sup> Houston to Joint Committee of the NAACP and the AFPS, Memo, October 26, 1934, AFPS Papers, Reel 23.

profits/funders, cannot be so easily grafted onto the NAACP/Garland Fund relationship as it is devoid of an analysis of the way racial hierarchies interact with the strategic decisions made by racially marginalized organizations.

When scholarship argues the NAACP was simply acting strategically in its move from racial violence to education, it subsumes the contestation between liberal whites at the Garland Fund and black leaders at the NAACP and elevates the focus on colorblind issues such as the ability to obtain organizational and material resources. To be clear, I do not mean to suggest the organizational maintenance rationale is without merit but that it is incomplete and does not fully explain why the NAACP embraced an education-focused rights agenda. Specifically, I argue this counter explanation is symptomatic of the problem James Baldwin has referred to as racial innocence—that of America’s deliberate unwillingness to confront the true history of race in America (Baldwin 1954, 1963).<sup>47</sup> Innocence, according to Baldwin, is the act of insulating oneself against the visible racial inequalities in the United States.

The racial innocence in the production of civil rights scholarship is exhibited in how the remembering of the battle against segregated education has occasioned the forgetting of the battle against racial violence and the reimagining of so-called “appropriate” strategies to counter racial injustice. For example, when we construct civil rights narratives that bend over backward in their focus on the education battle and remain silent on mob violence and lynchings, we send a clear message about what civil rights stories are worth telling, whose perspectives are valued, and what civil rights issues are central to racial reckoning in the United States. The problem with the mainstream education narrative of civil rights is not that desegregating education was not important to black citizenship or that education was not a radical issue but how it conceals the fight against racial violence and advances a distorted version of civil rights memory. As a result of this evasion, liberal commitments to racial justice are reconstituted in terms of education reform and permanently unlinked from racial violence. And herein emerges a real danger in the organizational maintenance model whereby it can mistakenly look backward at all agenda shifts as strategic and resource-driven on the part of the civil

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<sup>47</sup> Lawrie Balfour (1999: 374) on Baldwin’s racial innocence: “Baldwin’s Attack on American Racial Innocence Focuses on a Kind of Ignorance, a Refusal to Deal Deeply with Racial Injustice by Protecting Beliefs about the Character of American Society from the Countervailing Evidence of American History.”

rights organization and ignore the reproduction of the structures and practices of racial domination.

How does the racially subordinate status of the NAACP vis-à-vis the Garland Fund influence its ability to retain control of its agenda? Rather than engaging in an analysis about why the NAACP shifted the focus of its legal agenda, traditional civil rights discourse has retrospectively constructed a race-neutral strategic narrative. By choosing to interpret the education desegregation campaign as one that represented the strategic interests of the NAACP, traditional civil rights scholarship stakes a position in whose narratives are respected and credible. The chorus of scholars who support some form of the strategic organization narrative of the education campaign is vast. However, this perspective downplays the significance of racial power dynamics and missteps in taking the words of foundation executives as the authoritative evidence of what the NAACP's black leadership wanted civil rights to look like.

The NAACP's leadership read the situation on the ground as needing to protect black lives before other rights were secured. The NAACP was not alone. The early twentieth century represented a remarkable level of consensus in the African-American community that racial violence was the dominant civil rights issue. Radical activist Ida B. Wells had drummed up a considerable amount of domestic and international support for her anti-lynching crusade. Even Booker T. Washington spoke out against the lynching of innocent African Americans in 1912 and quietly funded anti-lynching work.<sup>48</sup>

The historical record of the final moments of the formulation of the Garland Fund's grant to the NAACP does not evidence an NAACP that strategically moved away from the issue of racial violence and eagerly embraced education. A closer examination of the archives reveals the impact material resources played in the redirecting of the NAACP's agenda and the constraints it placed on NAACP leaders. It was exceedingly difficult to raise money for campaigns against lynching and mob violence. As a result, Johnson and White were both caught in a difficult bind and protested the increasing control of the Garland Fund in their own discreet ways: Johnson through the writing of a memo and White by pushing back on Ernst regarding the revised scope of the campaign. Du Bois shared in their frustration. In 1930, Du Bois made it known that he was upset about being cut from the Garland Fund's grant and felt "that the intention of the Board of Directors was

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<sup>48</sup> Booker T. Washington, "Is the Negro Having a Fair Chance?" *Century* 75 (November 1912): 46–55.

carefully to exclude *The Crisis* from any benefit.”<sup>49</sup> White responded to Du Bois that he included an appropriation for *The Crisis* in his initial draft but that it had been “excluded” when the proposal went to the Garland Fund’s Board for approval.<sup>50</sup>

The marginalization of Du Bois and *The Crisis* are important events that highlight the mismatch between archival records and mainstream accounts, which depict the education desegregation campaign as a strategic or a collaborative initiative between the NAACP and the Garland Fund (Bell 1976; Kluger 1975; Ogletree 4; Rabin 1976; Tushnet 1987). In this oft-repeated version of events, the increasing focus on education is traced back to Du Bois’s 1925 education study and his statements in *The Crisis* calling for a movement to secure equal rights in black and white schools (Tushnet 1987). But this explanation is insufficient to account for this startling shift in the NAACP’s issue agenda from racial violence to education, especially in light of (1) the many causes Du Bois championed from his position as editor of *The Crisis* from Pan-Africanism to labor unions and (2) his waning influence over the rest of the NAACP’s board as his disagreements with other members eventually culminated in his resignation from the organization in 1934. During the time period of this grant formation, Du Bois (1940) was moving away from education to a “racial program for economic salvation” and had become deeply skeptical that black students would ever receive decent treatment in white schools (101–02). In particular, the mainstream narrative of Du Bois being the catalyst for the NAACP’s education desegregation campaign does not quite square with the concurrent elimination of Du Bois from the Garland Fund’s grant.

Finally, and perhaps most importantly, this straight line that is drawn between Du Bois and the Garland Fund has not properly wrestled with Du Bois’ eloquent treatise on “Negro Education” (Du Bois 1918) and his stinging critique of elite northern philanthropies “whose influence is going to dominate” black interests in *The Crisis*. Du Bois considered block grants to black organizations to independently carry out education work; such as the type of grant he received for his study in 1925, to be the ideal type of grantmaking. In contrast, foundation grants that did not divest full control and required “cooperation” between a white philanthropic board, such as the Garland Fund education grant in 1931, was the type of grantmaking that Du Bois despised. Du Bois was especially distrustful of southern education initiatives funded by the Phelps Stokes Fund and the Rockefeller funded General

<sup>49</sup> Du Bois to White, Memo, June 10, 1930. NAACP Papers. Part 1:C, Box 196.

<sup>50</sup> White to Du Bois, Memo, June 12, 1930. NAACP Papers. Part 1:C Box 196.

Education Board foundation as he harbored considerable skepticism that white-controlled philanthropies could ever be truly emancipatory in the field of education. Du Bois (1918: 178) pointed out how education philanthropies did not treat African Americans as equal participants in the formulation and implementation of grants focused on black southerners:

“The reason that boards of trustees like those that control the Phelps-Stokes Fund find it much easier to work *for* the Negro than *with* him; the reason that forgetting the investigations by Negroes at Atlanta University they turned to white institutions to encourage investigation and neglected established and worthy work is because if they are going to cooperate with the dominant white South and even certain classes of Northerners they cannot meet Negroes as men. The propaganda that is so largely carried on and the influence that is so often formed through social intercourse must always, at present, be offered with the Negro unrepresented and unheard.” (emphasis in original)

This concern, regarding the misalignment between black interests and white interests, was not unfounded, as Derrick Bell (1976, 2004) would write many years later in his reflections of school desegregation litigation. Reading Du Bois’ treatise in light of the Garland Fund grant suggests an alternate interpretation: he could have genuinely valued a movement focused on desegregating southern schools but did not want money from the Garland Fund or any other white philanthropy that sought to influence the implementation of the grant.

The past and its compounding forms of historical erasure have constrained our ability to imagine alternative visions of civil rights. Upon closer examination, the existing story of the NAACP’s campaign against segregated education appears to be a convenient story of half-truths that helped scholars extol the importance of education and critique the NAACP, all while ignoring the deep contestation between whites at the Garland Fund and the protestations of black leaders at the NAACP. The retrospective construction of this narrative has not been lost on all. As Kenneth Mack (2005: 265) has persuasively argued, after the *Brown* decision, “both historians and legal scholars began to imagine that something like *Brown* had always been the central objective of the black bar in the era of segregation.” However, in the era before *Brown*, scholars and black leaders were interested in a range of different issues and strategies. Education, I have argued in this article, became the defining issue of civil rights law because whites at the Garland Fund believed it should be and not because the NAACP believed education represented a more viable

doctrinal route available to black litigants. Another way of putting it is that this hegemonic education-centered civil rights narrative has helped veil the complicity of liberal whites in the creation of a civil rights legal paradigm that the NAACP's black leadership, from the very beginning, did not truly believe would bring about equality.

### **The High Price of *Brown v. Board***

In the years since 1954, education has become synonymous with civil rights. And the NAACP and the NAACP-LDF, as vanguard civil rights organizations that brought about dramatic social change. Large swaths of the public exalt this triumphant legacy. Yet, it does not address how racial violence became submerged—how an issue at the forefront of the NAACP's civil rights agenda became relegated to the margins. And why, out of the panoply of critical civil rights issues, did education rise to the top?

This article uncovers a more complicated account of the development of the NAACP's campaign against segregated education—one steeped in white funder control, missed opportunities, and the marginalization of black voices in the negotiation of civil rights. The NAACP/Garland Fund alliance conforms more closely with a process of capture than that of genuine compromise. It was the product of a black organization desperate for funding and a white philanthropy that exploited this resource disadvantage. In doing so, the Garland Fund participated in a process of movement capture whereby it used its abundant financial resources to incentivize a shift in the NAACP's agenda. Archival records reveal that education was never universally accepted as the centerpiece issue for the NAACP's black leadership but that the organization was caught in a difficult bind between the desires of white liberals, a foundation with valuable resources, and the urgent needs of their own racial group. However much they willed it, the NAACP could not escape the allure of the Garland Fund's grant.

In this article, movement capture is racialized but it does not have to be. Movement capture can occur between a white funder and an organization with a predominately white membership such as the American Civil Liberties Union. The movement capture framework draws our attention to power asymmetries between wealthy donors and legal mobilization organizations that need resources. Rather than listen and engage in collective action problem solving with grantees, funders often view themselves as the grand architects of progress. Recognition that funders have been able to capture rights organizations and exert control over

grantee agendas is important in considering how relations of power inequality become reproduced within purportedly progressive legal movements.

The critical historical approach I have taken to the Garland Fund archive is useful in understanding how domination or capture of black freedom dreams by white funders becomes reclassified as cooperation or collaboration in the production of civil rights history. I have argued throughout this article that money from the Garland Fund fueled a direction that the NAACP did not initially view as a priority. By doing so, the Garland Fund redefined the meaning of civil rights at a formative moment in the larger movement away from racial violence to an enlarged focus on de jure segregation. Of course, the NAACP was not alone in negotiating for greater control of its agenda with funders. SNCC, CORE, and many organizations large and small fought and sometimes split over questions of white influence over radical black politics including, specifically, the role that foundations would play in financing and shaping the struggle (Allen 1969; Morris 1986). It would also be a mistake to assume the turn toward education was completely zero-sum. Even if the Garland Fund refused to finance a campaign against racial violence, the NAACP was reluctant to abandon an issue it viewed as central to achieving equal rights for African Americans. The NAACP's interest in fighting racial violence did not fall off completely but it did greatly reduce in size: moving from a campaign focused on the three branches of government—to one, Congress. In the succeeding years, the NAACP attempted to revitalize its campaign for the passage of anti-lynching legislation in Congress but most of its organizational resources were tied up in the education desegregation fight. Thus, although the Garland Fund's grant to fund an end to segregated education did not necessarily mean the concurrent elimination of racial violence, it certainly represented an important new shift in the organization's issue priorities.

In the end, the education desegregation campaign proved to be both more and less than the Garland Fund or the NAACP envisioned. The focus on education sidelined concerns of criminal procedure, siphoned resources away from the campaign around workers' economic rights, and undermined the concerns of black labor. However, the campaign also had the effect of dramatically transforming constitutional law with the momentous *Brown v. Board of Education* decision. And even if it did not bring about direct change in education as many have alleged, it did have "cultural significance" which invigorated a new world of court-centered and legislation-centered civil rights claiming.



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**Megan Ming Francis** is an Associate Professor in the Department of Political Science at the University of Washington and is also the Director of the Washington Institute for the Study of Inequality and Race (WISIR). Francis received her doctorate in Politics from Princeton University. Francis specializes in the study of American politics, race, social movements, and the development of constitutional law.