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THE STRUGGLE FOR RACIAL EQUALITY: EXPLAINING THE FEDERAL GOVERNMENT'S RESPONSE TO THE CIVIL RIGHTS MOVEMENT

DISSERTATION

Presented in Partial Fulfillment of the Requirements for
the Degree Doctor of Philosophy in the Graduate School of The Ohio State University

By
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* * * * *

The Ohio State University
1999

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1999
ABSTRACT

All three branches of the federal government, beginning in the thirties and peaking in the mid-sixties, responded to the political demands of the civil rights movement. The goal of this monograph is to explain why. Using Tobit and Poisson time-series analyses, I examine congressional and presidential responses to black voting (1933-65) and equal employment rights (1933-72) as well as all Supreme Court cases favorable to black civil rights (1930-70). Drawing upon social movement theories and theories of the state, I quantitatively assess the impact of black insurgency (protests, riots, crisis events) and black institutional strength (NAACP); segregationist violence; public opinion; policy precedents (pre-existing legislation); and racial liberals in Congress, the White House, and on the Supreme Court. I find that federal elites responded favorably to black protests and the generation of "crisis" events like the 1963 Birmingham demonstrations, countermovement violence, and policy precedents. In select analyses, public opinion, black rioting, the strength of the NAACP, and the presence of racial liberals within the state contributed favorably to congressional, presidential, and Supreme Court responses. Taken as a whole, I argue that the civil rights movement met success because of the co-occurrence of a strong indigenous
challenge, a violent opponent, and an attentive and sympathetic public. The empirical,
methodological, and theoretical contributions of this work are discussed.
Dedicated to my Mother who gave me the love of learning:
to my Father who gave me the love of the law:
to John who gave me the love of a brother:
and to Maria who makes it all worthwhile.
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CHAPTER 1

INTRODUCTION

Despite the principles of equality set forth in the U.S. Constitution, federal policy makers in the post-Reconstruction era were indifferent to the political and economic exploitation of blacks. While black men had gained the right to vote in 1870 with the passage of the 15th Amendment, southern whites shortly thereafter enacted a plethora of laws to disenfranchise them. Within this context, the passage of the 19th Amendment in 1920 granting women the right to vote had no meaningful impact on suffrage for black women in the South. In the area of employment, black men and women had never gained the right to equal employment in the South or elsewhere. Although African Americans had escaped the chains of slavery, they had not yet secured political and economic freedom.

Political Rights. After the Compromise of 1876, national lawmakers viewed black suffrage as a strictly southern issue (Sitkoff 1978), where 90% of the U.S. black population lived in 1900. In the 1880s, white disenfranchisement of blacks began with “fraud, force, and intimidation” (Sitkoff 1978:7). These early practices included mob violence, confusing registration schemes and ballot forms, theft of ballot boxes, false counting of ballots, illegal arrests the day before elections, and a wide variety of other
devices. In order to disenfranchise blacks more systematically, all southern states between 1889 and 1908 enacted laws to repress black suffrage (U.S. Commission on Civil Rights [USCCR] 1959:30-32). With Mississippi and Louisiana in the lead, the most effective laws were the grandfather clause and the white primary (Lawson 1976). After the Court struck down these practices in 1915 and 1944, respectively, segregationists increasingly relied upon the discriminatory procedures of southern registrars to deter black voting. Widely used techniques included slowing down the registration procedure when blacks attempted to register, ruling invalid black applications due to immaterial errors or omissions, administering more difficult qualifying tests to black applicants, and purging black voters from the registration rolls (USCCR 1959, 1961).

When these legalistic and quasi-legalistic methods failed, segregationists responded with economic retaliation and violence. For example, blacks who were active in registration efforts found that landlords terminated their lease or that banks foreclosed on their mortgage. To break up suffrage demonstrations, police used night sticks, whips, electric cattle prods, tear gas, armored vehicles, and bullets (USCCR 1959, 1961; Woodward 1974; Lawson 1976; Garrow 1978). At least thirteen people died trying to gain black suffrage between 1962 and 1967. Through these and other practices, only three percent of southern blacks were registered to vote in 1940 and that percentage had risen to only to 29 percent by 1960 (Garrow 1978).

Economic Rights. Widespread employment discrimination relegated black employment opportunities largely to non-union laborers, agricultural, and domestic
workers (Lieberson 1980). In 1900, most southern blacks were engaged in agricultural work. McAdam (1982:87-88) reported an estimated 71 percent of all southern blacks who lived in rural areas were farm operators in 1910; by 1940, this percentage was 76 percent in South Carolina, 68 percent in Tennessee, and 67 percent in Texas. Black farmers were economically vulnerable because most, nearly four-fifths were either tenant farmers or sharecroppers in 1930. In non-southern cities with a workforce of at least twelve percent black, black men in 1900 averaged six percent of those employed in professional occupations (the largest category being clergy) but 34 percent of those employed in domestic and personal service occupations (the largest occupation being servants and waiters) (Lieberson 1980).

For many southern blacks, the great migration out of rural areas circa 1910 to 1950 raised their economic position. But most blacks still experienced limited employment possibilities. Lieberson (1980) noted that in the North in the 1950s, the majority of blacks worked in unskilled and non-union occupations. In fact, compared to the economic position of white immigrants from South-Central-Eastern Europe, the economic position of northern blacks had deteriorated since the 1900s. In a typical southern city, Morris (1984:1) reported that by 1950, three-fourths of black men would have been employed in such low-skill and low-paying jobs as janitors, porters, cooks, and common laborers. About half of black women would have been employed as domestics and another fifth employed as low paid service workers.
The Federal Response

The Congress. The dominant response of Congress to these political and economic hardships, circa 1880 to 1930, was to ignore them. For instance, in 1878 Congress no longer permitted the military to protect black voters in the South and in 1894 Congress ended appropriations for federal marshals to supervise southern polling places (Lawson 1976:4-6). Moreover, it was common for congressional members to submit bills attempting to codify various forms of Jim Crow racism (McAdam 1982:72). Sitkoff (1978:20), for example, reported that in 1913 and 1914, southern Democrats “(i)ntruded more racist legislation than had ever been submitted to any previous Congress.” The House did enact a few civil rights bills, such as an anti-lynching bill in 1922, but pro-rights supporters never strongly pushed for bill passage in the traditionally hostile Senate. A civil rights act did not pass Congress until 1957 and even then it was a largely symbolic measure (Congressional Quarterly 1957:564).

The President. The indifference and at times hostility of Congress paralleled the actions of the president. Sitkoff (1978:18-19) reported that President Theodore Roosevelt (1901-09) wrote of black racial inferiority and that President Taft (1909-13) referred to blacks as “political children, not having the mental status of manhood.” Ironically, even though most political scientists view President Woodrow Wilson (1913-21) as a “near great” president (Greenberg & Page 1995:435), his election “led to the most Southern-dominated, anti-Negro, national administration since the 1850s” (Sitkoff 1978:20). Wilson, for instance, openly supported the pro-Klan movie Birth of a Nation, he fired or demoted hundreds of black civil servants, and he ordered an
increase in racial segregation in a number of federal agencies (Sitkoff 1978; McAdam 1982).

The Supreme Court. Blacks found little relief in the judicial branch (Miller 1967; Howard 1999). In fact, the Supreme Court often acted as an advocate of white supremacy. Among the Court’s more notorious rulings were its defense of slavery (e.g., *Dred Scott v. Sanford* 1857), invalidation of Reconstruction legislation (e.g., *Civil Rights Cases* 1883), and support for the doctrine of separate-but-equal (e.g., *Plessy v. Ferguson* 1896). The Court “took great pains to give the most limited interpretation possible to the Fourteenth and Fifteenth Amendments” (USCCR 1959:30). Between 1876 and 1929, the Court heard fewer than one case per year involving the rights of blacks and ruled against black rights on 58 percent of those cases (McAdam 1982). Quite simply, the Court had constitutionally sanctioned racism.

Yet beginning in the 1930s, all three federal actors became more responsive to the issue of black equality. In the White House, Franklin Roosevelt (1933-45) marked a clear break from past presidents. By 1935-36, Roosevelt included an anti-discrimination mandate in an executive order, he appointed roughly 45 blacks to posts in cabinet departments and New Deal agencies (the “Black Cabinet”), and he allowed black leaders regular access to the White House (Sitkoff 1978:58-83). In terms of the legislative branch, Congress wrote anti-discrimination mandates into more than 20 New Deal statutes beginning in 1933 (Sitkoff 1978). Similarly, the Supreme Court became more responsive to minority rights after the appointment of Charles Evans Hughes as Chief Justice in 1930 (Howard 1999). Compared to four favorable decisions in the
1920s, for instance, the Court in the 1930s issued rulings favorable to blacks in 14 (88 percent) of the sixteen civil rights cases it accepted for review.

Favorable responses by all three actors peaked in the mid-1960s. Congress passed and the president signed laws that outlawed discrimination in public accommodations and in employment in 1964, ensured black suffrage in the South in 1965, and made illegal housing discrimination in 1968. Presidents Kennedy and Johnson issued two key executive orders establishing affirmative action programs in 1961 and 1965, respectively. Between 1960 and 1970, the Supreme Court handed down more favorable rulings (n = 121) on cases concerning black civil rights than any other decade. In fact, those decisions represent the majority (56 percent) of all cases handed down by the Court from 1930 to 1970 that were favorable to blacks. Why did all three branches of the federal government respond to the political demands of the civil rights movement? The goal of this research is to answer this question.

Plan of Study

I divide this monograph into six chapters. In Chapter 2, I review social movement theories used to explain the political successes of the civil rights movement. With the appropriate theoretical tools in hand, I then present three empirical analyses of federal response to black rights. In Chapter 3, I examine the factors behind congressional and presidential policies covering black voting rights, from the time of Franklin Roosevelt until the passage of the landmark Voting Rights Act of 1965. In Chapter 4, I examine the determinants of the equal employment policies of Congress and the president,
beginning with the Roosevelt administration and ending with the Equal Employment Opportunity Act of 1972. For these two chapters, I use Tobit time-series analyses to explain the passage of all bills, statutes, constitutional amendments, and executive orders. In Chapter 5, I examine the factors behind the Supreme Court’s favorable rulings on black civil rights from 1930 to 1970. I analyze Court decisions with time series regression using Poisson estimation techniques. Chapter 6 concludes the monograph with a discussion of a general theory of movement outcomes.

Contributions

This monograph contributes empirically, theoretically, and methodologically to the social movement literature and work on the civil rights movement.

Empirical. The literature on the outcomes of social movements suffers from at least two empirical shortcomings. First, scholars of social movements have conducted a disproportionately small amount of research on their political outcomes (Burstein, Einwohner & Hollander 1995; Giugni 1998). In terms of the impact of the civil rights movement on the Supreme Court, for example, there is almost no prior research. This is surprising given that the raison d'etre for social movements is to bring about social change. In addition, the bulk of work on the legislative outcomes of the civil rights movement is focused on conflicts in cities and not at the federal level (e.g., Schumaker 1975, 1978; Mueller 1978; Barkan 1984; Button 1989; Morris 1993). This monograph empirically examines the impact of the black movement on the civil rights responses of
the president, Congress, and the Supreme Court, the three most important governmental bodies in the United States.

Second, the literature on the response of Congress and the president to civil rights is dominated by qualitative approaches (e.g., Fleming 1965; Berman 1966; Lytle 1966; Garrow 1978; Whalen & Whalen 1985; Burstein 1993). While historically rich, what these studies add in detail they lack in generalizability. For example, Garrow (1978) convincingly argued that black protests in Selma, Alabama, were key to the adoption of the 1965 Voting Rights Act. This assertion is reasonable given that President Johnson specifically mentioned the Selma demonstrations in his rationale for submitting the voting rights bill to Congress (Congressional Record 1965:5059). Yet this was not the first federal attempt to secure black suffrage. Between 1933 and 1965, the House of Representatives passed six voting rights bills, Congress enacted three minor voting-rights statutes, four civil rights acts, and one constitutional amendment. The role that black protests played in these other legislative responses, however, is less clear because Garrow's (1978) work is a case study of a single law. This research uses quantitative techniques to examine the impact of black protest and other relevant factors on four decades of civil rights responses.

1 For stylistic reasons, throughout this monograph I use phrases like “black protests” or “black institutional efforts” to mean social change efforts that most likely were planned, organized, carried out, and led by black activists. This is reasonable given that blacks typically dominated the planning, organizing, participating, and leading of civil rights protests (Morris 1981, 1984, 1993; Button 1989) and the litigation strategy eventually came to be dominated by black lawyers (Kellogg 1967). I do not imply that white participation in the civil rights movement was absent or unimportant.
In doing so, this research will comment upon how the civil rights movement influenced federal actors. Although most scholars believe that the black movement had something to do with elite response, it is not clear how this influence occurred. Blacks engaged in a wide array of collective actions aimed at social change, from legal pressure, to non-violent demonstrations, to riots. Civil rights activists also generated “crisis events,” such as the freedom rides and the March on Washington, in an attempt to influence federal elites. Crisis events are thought to be important because they move particular issues like black civil rights onto the agenda of political elites (Walker 1977; Kingdon 1995). This study measures these diverse forms of movement activity and assesses their impact on multiple outcomes, multiple targets of change, and over roughly a forty year span.

Theoretical. Given the complex sequence of events that determine movement outcomes, it is not surprising that theoretical gaps exist in the movement literature. This monograph addresses a wide range of issues. In Chapter 2 (theory), I condense a large number of explanations of movement outcomes into three general causal approaches: movement centered, political opportunity, and political process. In subsequent chapters, I test the explanatory power of a variety of causal models derived from these three basic approaches. I am unaware of a study on movement outcomes that has compared the explanatory power of such a range of theories with the same data. In Chapter 3 (voting), I discuss whether these theories are best viewed as complementary or competing. I argue that existing theories are complementary in that they all contribute to our understanding of federal voting rights policies. In Chapter 4
(equal employment), I discuss the role of public opinion in policy outcomes. The majority of political scientists conceptualize public opinion as the central determinant of legislation (e.g., Miller & Stokes 1963; Page & Shapiro 1983, 1992; Burstein 1985; Wright, Erikson & McIver 1987; Erikson, Wright & McIver 1989; Hartley & Russett 1992). Yet in this chapter I argue that the role of public opinion, while relevant, did not play the dominant role in policy conflicts. Black protests seemed more important.

In Chapter 5 (Supreme Court), I discuss the role of the Supreme Court as a player in local conflicts. We know that the Court at times aided blacks in their local level struggles, such as in Montgomery, Alabama, in 1956. But it is not clear how we should theoretically view such intervention. Barkan (1984) viewed the Court as a third party actor while Morris (1984) saw its actions as a mechanism of social movement influence. I argue that the latter approach is better supported by the data.

Another goal of this monograph is to facilitate the building of a general theory of movement political outcomes. A general theory offers a systematic explanation of movement outcomes by specifying the conditions which produce social movement success or failure. To explain federal civil-rights responses, for instance. I focus on the co-occurrence of a strong indigenous movement and favorable political opportunities, in particular an attentive and sympathetic public and a violent opponent. I make this point at the end of Chapter 3 (voting) and Chapter 5 (Supreme Court) and elaborate upon the broader general theory in Chapter 6 (conclusion).

Methodological. This study addresses two methodological weaknesses in past research on movement outcomes. First, most observers of the civil rights movement
focus on the generation of “crisis” or “dramatic” events by movement actors to explain the passage of federal legislation (Sundquist 1968:259-74; Garrow 1978:235; McAdam 1983; Burstein 1985; Jenkins & Eckert 1986; Morris 1993). For example, scholars typically credit the Birmingham and Selma campaigns as having played a crucial role in federal statutes adopted in 1964 and 1965. Despite the prominent position given to crisis events in the literature, no work to my knowledge has tested statistically for the impact of crisis events on civil rights legislation. Because the paucity of quantitative work linking crisis events to legislation is most likely due to operationalizing difficulties, I offer a method to measure crisis events. Specifically, I coded a crisis event as any black initiated social-change effort listed in chronologies of the movement that made the front page of the New York Times for five consecutive days.

Second, most studies on policy outcomes have failed to differentiate weak from substantive policy responses because they have not taken into consideration the content of the policy. Typically, studies treat policy outcomes as a dichotomy—the policy is either adopted or not (e.g., Gamson 1975). This is unfortunate given that elites often meet protestors' demands with largely symbolic legislation rather than with policies that comprehensively address protestor grievances (Edelman 1964; Lipsky 1968). For instance, unlike the comprehensive 1965 Voting Rights Act, the Civil Rights Acts of 1957 and 1960 were largely symbolic attempts to secure the right to vote for southern blacks (Garrow 1978). Yet as Burstein (1985:62) noted, scholars rarely measure policy comprehensiveness because “we do not know how to measure the magnitude of legislation.” This research establishes a methodological framework for assessing the
magnitude of legislation by differentiating non-comprehensive legislation from substantive legislation. In doing so, this research provides a framework for measuring the policy victories of other social movements. I use this technique in Chapter 3 (voting) and Chapter 4 (equal employment).

I turn now to a discussion of the theories that attempt to explain elite response to the civil rights movement.
CHAPTER 2

THEORY & METHODS

The goal of this chapter is to review the theoretical approaches useful in explaining the political outcomes of the civil rights movement. In addition, I include a brief review of the general methodological approach I use throughout this monograph. I begin with theory.

In order to explain the political outcomes of the civil rights movement, I like other scholars draw upon concepts developed by resource mobilization theory.\(^1\) The

\(^1\) Beginning in the early 1970s, resource mobilization theory offered a dramatic break from previous "structural strain" or "classical" theories of collective action (see McAdam [1982] and Jenkins [1983] for reviews). Unlike these previous approaches, resource mobilization theory recognized that collective action by social movements was an organized activity carried out by participants to achieve political goals. The emergence of social movements was seen as arising from the infusion of new resources, like money and participants. One early debate centered on whether those resources came from outside the social movement community (e.g., Oberschall 1973:217-19; McCarthy & Zald 1977) or from within the aggrieved population (e.g., Morris 1981). In only a few exceptions, resource mobilization theorists have concluded that indigenous rather than external resources are essential for movement emergence and collective action—including the civil rights movement (e.g., Morris 1981, 1984; McAdam 1982, 1983; Jenkins 1983; Jenkins & Eckert 1986). Another early debate centered on the role of the political context ("political opportunities"). Some scholars have claimed that early resource mobilization theorists like Gamson (1975) did not take seriously the importance of a favorable political context to explain movement activity and outcomes (e.g., Amenta, Carruthers & Zylan 1992). I argue that this was a misreading of the literature. Not only did Gamson (1975) recognize the political context (e.g., allies, crisis periods), but other early works such as by Oberschall
two central concepts are the collective actions by a given social movement and the political context, or the "political opportunity structure" (Eisinger 1973), in which the collective action occurs. I begin with collective action.

**Collective Action**

Social movements are collective attempts at social change. The civil rights movement, like most movements, relied upon indigenous mobilization to bring about collective action. Indigenous mobilization means that the resources needed to engage in collective action, the most important being participants, organizations, and leaders, primarily came from within the aggrieved (i.e., black) community (Morris 1984). Movements use collective action to secure political victories. This collective action most often comes in the form of insurgency, an attempt by challengers to organize and/or represent interests outside institutional mechanisms (Isaac & Kelly 1981). Movements rely upon extra-institutional mechanisms of influence because they lack influence over authorities through institutional means, like through voting and interest-group lobbying (Gamson 1975; McAdam 1982). For instance, lobbying efforts by the National Association for the Advancement of Colored People (NAACP) beginning in the 1920s failed to sway Congress to adopt anti-lynching legislation (Zangrando 1965).

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(1973:215-19). Jenkins and Perrow (1977), Tilly (1978), and Piven and Cloward (1979a) clearly indicated that movement action must be judged within the political context in which it occurs. Succinct summaries of resource mobilization theory can be found in Jenkins (1983) and Morris and Herring (1986).
Yet black institutional efforts at social change were sometimes successful at influencing the Supreme Court (Greenberg 1959; Miller 1966; Berger 1978; Tushnet 1987). For instance, McAdam (1982:110-11) found a strong bivariate correlation between the number of new NAACP chapters and the annual balance of favorable Court decisions concerning civil rights cases between 1911 and 1950. Figure 2.1 presents a measure of the strength of the NAACP, the leading institutional arm of the civil rights movement. (For all data shown in this chapter, data sources and operationalizations are presented in subsequent chapters.) Figure 2.1 shows the total number of NAACP branches from 1930 to 1970. The data indicate that from 1930 to 1939, there was virtually no growth in local level branches. While new chapters were being chartered during this period (see Anglin 1949), a roughly equal number became dormant. Beginning in 1940, there was a substantial growth in the NAACP from 324 to 1247 chapters in 1947. Thereafter, however, NAACP chapters generally declined; by 1960, there were only 823 chapters. During the mid-to-late 1950s, this decline was due to the re-emergence of segregationist activity following Brown v. Board of Education (1954), the 1955-56 Montgomery bus boycott, and the 1957 Little Rock, Arkansas, school integration. These civil rights victories led to the growth of White Citizen Councils and to the largely successful legal-attack by segregationists on the NAACP. While crippling to the NAACP in many southern states, its decline left an organizational vacuum into which more radical black organizations would emerge (Morris 1984).
These more radical organizations included the Congress of Racial Equality (CORE), the Southern Christian Leadership Conference (SCLC), the Student Non-Violent Coordinating Committee (SNCC), local-level NAACP branches, and a myriad of local organizations like the Montgomery Improvement Association and the Tallahassee-based Inter Civic Council (Morris 1984). Mobilized by these and other indigenous organizations, the main thrust of the black challenge took place through non-institutional means. Figure 2.2 shows the number of black-initiated protest events from 1930 to 1970. Black protest to racial inequality did not originate in the 1950s. In fact, there has been some level of organized black resistance to white exploitation since
Figure 2.2. The Total Number of Black Protest Events, 1930-1970.

slavery (Morris 1984). Such insurgency, however, tended to be short-lived, highly localized, and involved small numbers of participants. In addition, it often occurred in the non-South. Large-scale and sustained black protests first emerged in the twentieth century with the week-long bus boycott in Baton Rouge in 1953 and the year long

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2 For instance, slave rebellions occurred in 1712 (New York city), 1739 (South Carolina), 1791, 1795, 1811 (all in Louisiana), 1825 (Maryland), and 1831 (Virginia). In the twentieth century, among the more notable direct-action tactics carried out by civil rights activists before the 1950s include the “silent protest parade” by 10,000 blacks in New York city in 1917, black boycotts of segregated schools beginning in 1922, the 1930s “Don’t-Buy-Where-You-Can’t-Work” campaigns, the 1930s demonstrations against the Scottsboro trial, and the CORE led sit-ins in Chicago in 1943 and freedom rides in 1947 (Meier & Rudwick 1976:307-404; Ploski & Marr 1976:1-31; Carter 1979; Sullivan 1996).
boycott in Montgomery in 1955-56 (Morris 1984). Nineteen-sixty, the beginning of the southern sit-in movement, marked the first massive wave of black protest across U.S. cities (Morris 1981). The heyday of black insurgency took place from the 1960 wave of sit-ins to the end of the 1965 community-wide campaign in Selma (for a review, see McAdam 1982, 1983; Morris 1981, 1984). For instance, 62 percent of all black protests between 1930 and 1970 occurred between 1960 and 1965. The most common types of protest used by civil rights activists were boycotts, sit-ins, pickets, rallies, and marches. By the late 1960s, black initiated protests dropped to low levels but did not disappear.

Insurgency also includes riots, unorganized collective actions that involve the use or threat of violence. Riots were not coordinated events, they were not directed at explicit political targets, and they did not articulate a specific political goal. Yet scholars treat black riots as a form of civil rights insurgency. This is appropriate given that riots disrupted public order just like many large scale protests (McAdam 1982), they often were generated due to specific grievances over white mistreatment (e.g., police brutality), they were carried out by black residents, and about one out of five immediately followed a non-violent black protest event. In addition, black and white leaders typically viewed riots as politically directed activity (Turner 1969: Button

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3 For instance, using Olzak’s (1998) data on riots across metropolitan areas from 1954 to 1992, 21 percent of all black-initiated riots immediately followed a black demonstration. Typically, this meant that a black protest in the afternoon turned into a riot later that night.
Figure 2.3. The Total Number of Black Riots, 1930-1970.

1978), although such a view by whites apparently declined by the late 1960s (McAdam 1982:200-01). Figure 2.3 shows the number of black riots from 1930 to 1970. Black riots first gained national attention with the 1965 Watts riot, although there had been 21 large scale riots since 1954 across metropolitan areas before Watts (Olzak 1998). The Watts riot was notable in its severity: it lasted for five days, involved an estimated 8,000 riot participants, resulted in 874 people being injured, and 35 deaths. Riot activity peaked during the summers of 1967 through 1969 with 86 percent of all black riots between 1930 and 1970 occurring during that period. Riots that lasted more than one day and had more than 1,000 participants occurred in cities like Chicago (1966.

Protests and riots are two central forms of insurgency. Another way to conceptualize black-initiated insurgency is to focus on the generation of “crisis events.” Movement-initiated crisis events are efforts by challenging groups to achieve social movement objectives that capture the nation’s attention and sympathy (cf. Jenkins & Perrow 1977:264). Widespread media coverage is essential to translate a local event into a national issue (Garrow 1978). Such events often originated with a black effort at social change which subsequently met sustained and often violent counter-demonstrations. For instance, most scholars of the civil rights movement recognize that the Birmingham campaign became a crisis event at the national level when law enforcement officers reacted to black protest with fire hoses, police dogs, and an armored vehicle (McAdam 1983; Burstein 1985). Morris (1993:629-30) in fact, noted that the police reaction “could not be ignored by major media.” A number of scholars have argued that these events have a unique and strong influence on elite decision making (e.g., Jenkins & Perrow 1977:264; Garrow 1978). Table 2.1 lists the 13 movement-initiated crisis events that made the front page of the New York Times for five consecutive days, one way to conceptualize crisis events.

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4 Movement-generated crisis events is a subset of “critical events” identified by Staggenborg (1993). In addition to movement generated events, critical events include government actions like court decisions and accidents such as the nuclear power accident at Three Mile Island. Such events signal shifts in the political environment and often lead to movement mobilization.
1. 1956. University of Alabama integration (Feb. 7-11) (5 days)
2. 1957. Little Rock integration (Sept. 3-Oct. 10) (38 days)
3. 1960. New Orleans integration (Nov. 11-19) (9 days)
4. 1961. University of Georgia integration (Jan. 10-14) (5 days)
5. 1961. Freedom ride (May 20-June 3) (13 days)
6. 1962. University of Mississippi integration (Sept. 24-Oct. 7) (13 days)
7. 1963. Birmingham demonstration (May 3-17) (15 days)
8. 1965. Selma demonstration (arrests) (Feb. 2-6) (5 days)
9. 1965. Selma demonstration (march/protest) (March 7-28) (22 days)
10. 1965. Watts riot (Aug. 13-21) (9 days)
11. 1966. Meredith march (June 6-12) (7 days)
12. 1966. Chicago riot (July 13-18) (6 days)
13. 1968. King assassination (April 5-12) (8 days)

Table 2.1. Crisis Events.

Most of the crisis events fall into three types. First, six of the events (46 percent) were small-scale collective actions by movement actors that became highly newsworthy stories when whites attempted to thwart integration efforts. Typical of these events were black efforts to achieve educational integration, most notably in Little Rock, Arkansas. Also included here is the freedom ride of 1961—a small-scale collective actions that met violent white resistance along its route in the Deep South. Second, three events, one during the Birmingham community-wide campaign and two in Selma, were crisis events given the massive scale of black protests and the violent reactions by whites, particularly the police. Third, two black riots made headlines due to their magnitude. The first was the 1965 Watts riot. The second, in Chicago in 1966, lasted for four days, included 5,000 riot participants, injured 57 people, and resulted in two deaths (Olzak 1998). The final two crisis events are more idiosyncratic.
One was the James Meredith march in 1966. What began as a one person
demonstration resulted in a six day march by hundreds of participants when Meredith
was shot on the first day of his march. The second was the assassination of Dr. King in
1968. For eight consecutive days, the event made the front page of the New York Times
with stories covering the details of the killing, Dr. King’s burial, and the widespread
rioting that was attributed to the assassination.⁵

Based on the data presented in Figures 2.2 and 2.3 as well as Table 2.1, most
scholars conceptualize the civil rights movement as having occurred between 1953
(Baton Rouge bus boycott) or 1955-56 (Montgomery bus boycott) to about 1970 (e.g.,
McAdam 1982; Morris 1984). This is the period in which blacks used mass-based and
direct-action efforts to secure political goals like suffrage and equal employment rights.
While the black struggle for racial equality continues today, the mass-based and direct-
action phase dropped to pre-1950 levels after about 1970 (McAdam 1982, 1983). Most
likely, more contemporary black efforts at social change relies upon institutional
sources of political leverage, like the election of black politicians (Santoro 1995, 1998).

⁵ I consider Dr. King’s assassination a movement initiated event for two
reasons. First, the prominent role that Dr. King played in the civil rights movement
meant that anything that happened to Dr. King during his struggle for civil rights was
perceived by the public as a movement “event.” Second, recall that Dr. King went to
Memphis, where he was shot, to aid black garbage workers in their struggle for work-
related rights.
Political Opportunities

Political opportunities refer to how receptive or vulnerable the polity is to the collective action by a given social movement (McAdam, McCarthy & Zald 1988). A central assumption of resource mobilization theory is that political opportunities are distinct from, and beyond the control of, challengers (Santoro & McGuire 1997). Movements are seen as operating within a given political context which shapes movement processes and outcomes (Kitschelt 1986; Tarrow 1994; Kriesi 1995). One way to think about political opportunities is to separate them into either long-term or short-term phenomenon (Amenta, Carruthers & Zylan 1992). To explain the emergence of the civil rights movement, for instance, McAdam (1982) focused on changes in the long-term political opportunity structure (see also Piven & Cloward 1979a). The civil rights movement did not emerge, for instance, until the importance of King Cotton declined in the South. The decline of King Cotton set in motion a sequence of demographic and political events that made federal elites more receptive and/or vulnerable to civil rights demonstrations. For instance, the economic change encouraged blacks to migrate to northern states, increased black voting strength, which in turn played a key role in the elections of Truman in 1948 and Kennedy in 1960 (McAdam 1982).

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6 As McAdam (1982:271n) noted, the theoretical distinction between political opportunities and movement actions is “hard to maintain empirically.” For instance, while public opinion may act as an independent force in determining civil rights legislation, the public’s view toward civil rights issues was in part the product of civil rights demonstrations (Schuman, Steeh & Bobo 1985).
Long term changes in political opportunities establish short-term or contemporary political opportunities. Short-term aspects of the political opportunity structure are actors and institutional structures that may have a direct impact on policy conflicts. For instance, while short term opportunities include the presence or absence of non-southern Democrats in office: such officials, in turn, came about because of long term changes in political opportunities brought about by the Civil War and Reconstruction. Scholars studying the political outcomes of social movements focus on short-term political opportunities. I divide these short-term political opportunities into three categories (Santoro 1999).

1. *Polity Openness*. The first and most important category of political opportunities is the position that elites, who control the target of change, take toward the movement goal (McAdam 1982:41). Often, the target of change is a government and elites are elected officials. Other important types of target of change include courts, federal agencies, and businesses, with elites being judges, agency heads, and business leaders, respectively. Elites are central to explaining policy outcomes because they hold the formal positions within the target of change that allow them to meet or resist the policy demands of the movement. Polities are said to be “open” to challengers when elites are favorable to social movement goals.

In the Supreme Court, the liberal Warren Court (1953-1969) is widely regarded as the most consistent advocate of black civil rights (Berger 1978; Davis & Graham 1995). In terms of elected elites since the New Deal, non-southern Democrats have been more supportive of civil rights goals than Republicans and southern Democrats
Figure 2.4. Congressional Openness, 1930-1970.

(Carmines & Stimson 1989). Taking into account the greater level of non-southern Democratic support for civil rights policies. Figure 2.4 shows a measure of congressional openness from 1930 to 1970. The index measures the number of chambers in Congress with a Democratic party majority and the percentage of non-southern Democrats in Congress. As can be seen in Figure 2.4, the 1930s and the 1960s were periods in which Congress was structurally conducive to passage of civil rights legislation.

Figure 2.5 shows a measure of presidential openness. The index measures the presence of a Democratic president and the margin of popular vote for Democratic presidential candidates. From a period of presidential openness with Roosevelt's
administration, the polity became more closed with the Truman administration and bottomed out during the first two years of the Eisenhower administration (1953-1954). This conservative trend was broken with Kennedy taking office in 1961. Second only to the Roosevelt era, the Johnson administration marked the apex of presidential openness. By 1969, however, Nixon had taken office and he was much less favorable to the civil rights movement (Button 1978; McAdam 1982).

2. Allies and Opponents. The second category of political opportunities is the allies and opponents that social movements confront. Allies create opportunities for social movements by providing them with new resources or access to political elites. Sympathetic whites acted as allies to the civil rights movement in three ways. Wilson
(1965:437) argued that the "principle value of the white liberal is to supply votes and the political pressures ... that make it almost suicidal for an important Northern politician openly to court anti-Negro sentiment." Thus the most important of the "political pressures" was a shift by whites to take more racially liberal positions on civil rights issues (Schuman, Steeh & Bobo 1985) and thus elect like-minded politicians. Burstein (1985), in fact, argued that supportive public opinion played the central role in prodding members of Congress to sponsor equal employment bills. While there are limited data on white attitudes toward specific types of civil rights policies, Burstein (1985) was able to construct a measure of attitudes toward the principle of equal employment opportunity. Figure 2.6 shows the percentage of the

![Figure 2.6. Percentage of Public Supporting the Principle of Equal Employment, 1940-1972.](image)

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public who supported equal employment opportunities for blacks and women from 1940 to 1972. It reveals a steady increase in public support for the principle of non-discrimination.

The idea of public opinion is closely related to Lipsky’s (1968) concept of the “reference public.” Using the example of an authority-challenger conflict in cities, the reference public is the “wider public to which the city administration is sensitive” (Lipsky 1968:1146). Elites who control the target of change depend upon the reference public for their positions. While Lipsky focused on direct intervention by third party actors, like liberal interest groups, we can think of the reference public for targets of change like Congress as simply the policy preferences of the general public. The policy actions of politicians typically correspond to public opinion (Miller & Stokes 1963; Burstein 1980, 1985; Page & Shapiro 1983, 1992; Wright, Erikson & McIver 1987). Lipsky’s general thesis was that protest succeeded when the reference public of protest targets entered the conflict in ways favorable to the social movement. I shall draw upon the concept of reference public throughout this manuscript.

Another way that whites aided the black movement occurred when sympathetic whites participated in civil rights protests. The impact of white participation in protest events is difficult to judge. As was evident in the 1964 Freedom Summer campaign in Mississippi, white participation in the civil rights movement was in no way trivial (McAdam 1988). Yet the overall the impact of white participation was minimal given that the civil rights movement was an indigenous challenge (i.e., from within the black community) (Morris 1981, 1984, 1993). One clear “benefit” of white participation in
the movement, however, was that when white activists met with violent deaths, the enhanced media coverage that followed apparently helped the movement garner elite attention (Oberschall 1973:231; Garrow 1978; McAdam 1983). A third form of white support was monetary donations to civil rights organizations. With the important exception of the SCLC, however, such aid followed rather than preceded black insurgency (McAdam 1982; Haines 1984; Jenkins & Eckert 1986).

In contrast, opponents drain resources and restrict movement opportunities (Barkan 1984). At the local level, for instance, segregationists in the 1950s and 1960s were able to (temporarily) thwart movement goals by adopting legalistic means of repression, such as mass jailings (McAdam 1983; Barkan 1984). Yet when segregationists made tactical mistakes by reacting violently to black demonstrations, civil rights activists were often victorious. McAdam (1983) argued that white violence aided the civil rights movement because it forced federal elites to intervene on behalf of civil rights demonstrators (see also Garrow 1978; but see Morris 1993). Figure 2.7 shows the number of countermovement killings of pro-rights activists, 1930 to 1970. As can be seen, countermovement violence roughly paralleled civil rights actions in that such events peaked between 1956 and 1966. White violence was a response to black protests, a realization that the traditional tactics of segregationists could no longer keep blacks “in their place” (McAdam 1982:142-43, 172-74; 1983: Burstein 1985).

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7 Among the more notable deaths of white civil-rights workers occurred during the Freedom Summer voter-registration drive in Mississippi in 1964 and the Selma campaign in 1965.
Figure 2.7. The Total Number of Countermovement Killings, 1930-1970.

3. Institutional Structures. The third category of political opportunities is structural or institutional aspects of the polity (Skocpol 1985; Kitschelt 1986; Kriesi 1995; Amenta & Poulsen 1996). "Open" structures aid policy advocates (Eisinger 1973). I divide institutional structures into two types. The first type of institutional structure is organizational characteristics of the target of change. An organization's structure affects its decision making by determining who participates in a decision, the amount of time allocated for the decision, the types of influence that policy supporters can have on decision makers, and the rules governing the decision process. An example of an organizational structure at the federal level is the Senate's filibuster rule. The filibuster rule requires that two-thirds of senators agree to break-off debate on
legislation. Southern senators used the filibuster sixteen times to prevent the passage of civil rights bills between 1917 and 1968 (Congressional Quarterly 1968:159).  

While I do not quantitatively measure organizational characteristics of the target of change in the subsequent empirical chapters, they nonetheless play an important role. The Supreme Court as an organization differs from the legislative and executive branches of the federal government in one crucial respect—its members are appointed and not elected. Thus, while the policy preferences of the public are thought to shape elected officials in Congress and the White House principally through elections, the Supreme Court is largely insulated from such political pressures. How this structural difference affects Court actions vis-à-vis Congress and the White House is of central interest in Chapter 5 (Supreme Court).

A second type of institutional structure involves broader political environment that determine intergovernmental relations and make-up policy precedent. With the exception of state centered theorists, such factors unfortunately have received little systematic attention by movement scholars. Intergovernmental influence simply means that one policy making body may influence the outputs of another policy making body. Congress and the president, for instance, can influence the Supreme Court because the

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8 The sixteen votes on cloture—attempts to end the Senate filibuster on civil rights bills—covered anti-lynching legislation in 1938 (two bills), 1942, 1944, and 1946; bills seeking to establish a Fair Employment Practice Committee in 1946 and 1950 (two bills); an anti-poll tax bill in 1946; two anti-literacy test bills in 1962; and omnibus civil-rights bills in 1960, 1966 (two bills), and 1968 (three bills). The three instances in which two-thirds of senators voted to end the filibuster occurred for the 1964 Civil Rights Act, the Voting Rights Act of 1965, and the Open Housing Act of 1968 (Congressional Quarterly 1968).
president appoints and the Senate confirms the members of the Court (Epstein, Walker & Dixon 1989; Rosenberg 1991; George & Epstein 1992). I examine the impact of Congress and the president on the Supreme Court in Chapter 5 (Supreme Court).

Often intergovernmental influence occurs when a previously adopted policy affects subsequent policy adoption. I refer to this as policy precedent or "policy feedbacks" to use Skocpol and Amenta's (1986) term. An example of this type of intergovernmental influence occurs between the Supreme Court and Congress. The Court may influence Congress because it establishes the constitutionality of legislation. Lawmakers, for instance, were unwilling to act on equal employment legislation until the Court began to allow federal jurisdiction over private employment practices (Burstein 1985). A similar process may have worked in the area of black suffrage.

![Figure 2.8. The Total Number of Favorable Supreme Court Decisions on Black Suffrage, 1930-1970.](image)
Figure 2.8 shows the total number of Supreme Court rulings favorable to black voting rights. In Chapter 3, I test whether these voting rights cases affected congressional and presidential adoption of voting rights policies.

Another example of policy precedent, typical in a federalist system, occurs when policies at one level of government affect the development of policies at another level. Twenty-five state governments had equal employment laws by the time Congress enacted anti-discrimination legislation in employment and the presence of these state laws may have encouraged national legislation (Burstein 1985). Figure 2.9 shows the total number of states with enforceable equal-employment laws. Federal lawmakers may have been more willing to adopt legislation when the public either took no notice

Figure 2.9. The Total Number of U.S. States with Enforceable Equal Employment Laws, 1930-1970.
or reacted favorably to state level representatives who adopted similar legislation
(Burstein 1985:63-65). I test for the effect of state laws on federal laws in Chapter 4
(equal employment).

Similarly, legislation adopted by a policy-making body may influence its own
subsequent policy decisions. For instance, the inclusion of "sex" in Title VII came
about, in part, because Congress had adopted the Equal Pay Act in 1963 which had
established the extent of employer discrimination against women (Burstein 1985; see
also Amenta, Carruthers & Zylan 1992). Similarly, Walker (1977) noted that once
Congress saw fit to adopt auto-safety legislation in 1966, it then enacted laws
concerning coal mine safety in 1969 and occupational safety in 1970 (see also Kingdon
1984). Because equal employment legislation predated post-Reconstruction suffrage
policies, voting rights legislation may have been affected by equal employment law. I
test for this influence in Chapter 3 (voting rights).^9

In sum, social movement scholars focus on two concepts to explain elite
response to social movements. The first factor is collective action, which includes
institutional challenges, protests, riots, and crisis events. The second factor is the

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9 Another type of institutional structure is policy histories. Significant
legislation usually emerges from previous policy attempts that address the same issue.
For instance, Garrow (1978) noted that the 1965 Voting Rights Act was being
developed before the Selma demonstration, an event most scholars attribute to the
Selma protests. In fact, federal attempts to increase black voting post-15th Amendment
had been taking place since the House passed an anti-poll tax bill in 1942. Similarly,
Burstein (1985) noted that the development of equal employment law dated back to the
1930s. Such earlier policy activity ultimately determined the content of Title VII long
before it was passed in 1964. Unfortunately, policy histories are difficult to
quantitatively measure and thus I do not examine them in this monograph.
political context, or political opportunities, which includes elites, allies and opponents, and the institutional structures of the target of change and the larger political environment. Not all factors are relevant for every authority-challenger conflict and not all concepts lend themselves to be quantitatively measured.

**Causal Models of Movement Policy Outcomes**

Scholars disagree on the conditions that make elites responsive to movement goals. (For recent reviews of this literature, see Burstein, Einwohner & Hollander [1995] and Giugni [1998].) Previous accounts of the outcomes of the civil rights movement, like works by Piven and Cloward (1979a), McAdam (1983), Barkan (1984), Burstein (1985), and Morris (1993), typically focus on a variable or set of variables. For instance, Morris (1993) highlighted the role of black protest while Barkan (1984) focused on countermovement violence. Approaches by Morris (1993) and others can be considered theories because they identify a salient factor in the authority-challenger conflict and because they explain why elites respond to that factor. However, they are not *comprehensive* theories because they are usually vague as to what role additional factors play in the policy outcome. For example, while Morris (1993) argued that the 1964 Civil Rights Act was largely due to black protests inspired by the 1963 Birmingham demonstrations, it is not clear if Morris’ approach excludes other potentially relevant factors, such as countermovement violence and liberals in Congress and the White House. In general, the literature has sought to validate a particular theoretical perspective rather than to discover the relative contributions of alternative
theories. Because each theory has identified an apparently salient aspect of the authority-challenger conflict, I view these potentially "competing" theories as complimentary. In fact, movement success on such contentious issues like black civil rights is most likely due to the co-occurrence of a number of favorable factors.

Approaches to movement outcomes can be grouped into three basic approaches: (1) movement centered approach that focuses on collective action, (2) a political opportunity approach that focuses on the political opportunity structure, and (3) a political process approach that focuses on both collective action and political opportunities. These approaches differ in terms of the emphasis and causal order they place on collective action vis-à-vis political opportunities (Santoro 1999). All three approaches are associated with one or more specific causal models or "theories," which I subsequently test (cf. Burstein 1985:70-71). I place scholarly work into theoretical "camps" based on the general thrust of their argument. Unfortunately, this is not always a straightforward process because scholars rarely adopt a clear causal model that links political opportunities and collective action to policy outcomes (Barkan 1984; Burstein, Einwohner & Hollander 1995:279).

Movement Centered Approach. A movement centered approach focuses on the role that collective action by the challenging group plays in compelling elites to enact movement supported policies. Social movements are seen as having the

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10 In addition, scholars have examined how characteristics of social movement organizations (SMOs), like the degree of SMO centralization and bureaucracy, affect policy outcomes (e.g., Gamson 1975; Staggenborg 1989). A focus on SMO characteristics, however, is more appropriate when comparing SMOs than in this
mobilization capacity to force elites, regardless of political opportunities, to enact favorable legislation. A movement centered approach need not completely ignore political opportunities, but the political context in which insurgency occurs is viewed as secondary. Generally, a movement centered approach stresses protest actions but the argument is theoretically consistent with institutional tactics directed at social change. Perhaps the most direct evidence for the centrality of collective action in the policy process is the most obvious: Congress passed major civil rights acts in 1964 and 1965, a period that witnessed widespread black protests.

Exemplifying a movement centered approach is Morris' (1984, 1993) "indigenous approach," presented in Figure 2.10. Morris (1993:633) credited the black-initiated "economic boycott, massive demonstrations, mass arrests, picketing, defiance of the (federal court) injunction, and sit-ins" with forcing the settlement between local elites and civil rights leaders. Political opportunities were not irrelevant, simply secondary in importance. For instance, Morris (1993) noted that favorable federal intervention "facilitated the settlement" between the demonstrators and local elites. Morris (1993:633) also credited the Birmingham demonstration with playing the "crucial role" in congressional adoption of the 1964 Civil Rights Act (see also Sundquist 1968:259-70; McAdam 1983:749). Similarly, a number of scholars attributed the passage of the Voting Rights Act of 1965 largely to the Dr. King-led analysis which examines the impact of a social movement on elite responses.
A second variant of the movement centered approach is the political mediation model which argues that the effect of social movement action on policy outcomes works through, or is mediated by, actors in the broader political environment (see Figure 2.11). Applying this model to the civil rights movement, one would argue that black

My conception of the political mediation model differs from Lipsky’s (1968) and Jenkins & Perrow (1977) who gave the lion’s share of credit for movement victories to actors in the broader political context rather than to movement actors. This alternative view sees movement actors as limited in their ability to directly influence the target of change; instead they must rely upon favorable actions by third party actors. Lipsky (1968:1145-46) succinctly captured this view:

"It is intuitively unconvincing to suggest that fifteen people sitting uninvited in the Mayor’s office have the power to move City Hall. A better formulation would suggest that the people sitting in may be able to appeal to a wider public to which the city administration is sensitive. Thus in successful protest activity the reference publics of protest targets may be conceived as explicitly or implicitly reacting to protest in such a way that target groups or individuals..."
activism helped shape the political context, making it more favorable to the enactment of civil rights policies. This may have been facilitated by NAACP lawsuits, the growing electoral importance of the black vote, and black demonstrations that heightened public concern for civil rights legislation (McAdam 1982:271n; Burstein 1985). For instance, the only time that more than half of the public identified civil rights as "the most important problem facing" the United States was between 1963 and 1965, the peak of civil rights protests (McAdam 1982: Figure 8.2). Once the political context became receptive to civil rights issues, elites enacted civil rights legislation. In Chapter 5, I argue that black protests and NAACP legal pressure prodded the Supreme Court to hand down favorable Court rulings and such rulings, in turn, influenced lawmakers to enact civil-rights legislation.12

respond in ways favorable to the protestors” (emphasis in original).

Both versions of the political mediation model are equally valid. I do not use Lipsky’s version because the movement that I study is a much stronger actor than what Lipsky appears to have had in mind.

12 A third variant of the movement centered approach, that I do not examine in this monograph, is a movement mediation model. A movement mediation model argues
Political Opportunity Approach. A second perspective on elite response to movement supported legislation is a political opportunity approach. A political opportunity approach, while not ignoring collective action, stresses the importance of political opportunities in determining policy outcomes. In this regard, this perspective represents the antithesis of a movement centered approach. Perhaps the strongest support for a political opportunity approach is that when national elites were extremely hostile to the goals of the civil rights movement, circa 1880 to 1930, there were few black demonstrations and no federal civil-rights statutes.13

that favorable political opportunities spur-on collective action and that collective action in turn forces favorable policy outcomes. If we view political opportunities as long-term phenomenon, a movement mediation model is essentially the argument scholars have used to explain the emergence of the civil rights movement and hence its subsequent influence (McAdam 1982). Such a model also can apply to short-term political opportunities; that is, phenomenon that may have immediate impacts on a movement’s ability to achieve success. Morris (1981:758) implicitly recognized the importance of short-term political opportunities when he noted that sit-ins first occurred in border southern states rather than in the Deep South. In the former Confederate states, opponents most likely were too strong or would have engaged in too violent counter-actions if movement activists protested. But while the mildly-supportive political context influenced where insurgency occurred, Morris (1981:764) argued that it was the sit-ins themselves that “forced” cities to desegregate public and private establishments.

13 I do not include Kitschelt’s (1986) version of the political opportunity model. He argued that the relationship between collective action and movement outcomes is spurious: both are caused by shifts in political opportunities. To argue that movement activity is irrelevant to policy outcomes, however, is an extreme position within the movement literature. I am unaware of any local or national-level study of the civil rights movement, for instance, that would support such an argument. Even scholars who view political opportunities as the central determinant of policy outcomes recognize that movement activity plays some role in the policy process (e.g., Jenkins & Perrow 1977; Burstein 1985; Amenta, Carruthers & Zylan 1992).
The work by Jenkins and Perrow (1977), while not analyzing the civil rights movement, exemplifies a political opportunity approach. They argued that supportive third parties not only encouraged farm worker insurgency but also played the dominant role in prodding growers to grant union contracts to farm workers. Farm worker insurgency was not irrelevant, but without third party support it was incapable of forcing growers into signing union contracts. Goldstone (1980) also presented an argument consistent with a political opportunity approach. He re-analyzed and recoded Gamson’s (1975) data on 53 challenging groups and argued that success was due to societal-wide political or economic crises. Regardless of the characteristics of the challenging group, success occurred in periods of national crisis. Periods of national crisis are “system-wide events beyond the control of both challenger and antagonist that require the reserve capacity of the polity to deal with them on a temporary, emergency basis” (Gamson 1990:176). Goldstone considered the Civil War and Reconstruction, WWI and the post-WWI recession, the Great Depression and WWII, and the peak of the Vietnam war periods of national crisis (for critiques of Goldstone [1980], see Gamson [1980]; Jenkins [1983]; Morris & Herring [1986]).

Goldstone’s (1980) work represents a distinct model of social movement outcomes. I do not test for the impact of national crisis for two reasons. First, it is not clear what periods of U.S. history classify as a national crisis (Gamson 1980). Second, neither Congress nor the president enacted significant civil-rights legislation during the Great Depression and the WWII, the only periods of national crisis in the twentieth-century according to Gamson (1975). At best, the concept of national crisis can help us explain Roosevelt’s executive order in 1941 establishing the first federal commission on equal employment opportunity for blacks. In the year that WWII started for the United States, Roosevelt was more vulnerable to the threat by A. Philip Randolph, the President of the Brotherhood of Sleeping Car Porters, to march on Washington to
A specific application of the political opportunity approach, state centered theory, argues that the political outcomes of social movements rest heavily upon policy entrepreneurs and the institutional context (Amenta & Poulsen 1996). State centered theory offers insights useful for explaining civil rights legislation, although I am unaware of previous work that has applied it to the civil rights movement. Policy entrepreneurs, meaning liberals in the context of black civil rights, are decision makers who promote movement supported legislation without pressure by movement activists (Walker 1977; Amenta & Poulsen 1996). These actors bring with them to office a political agenda that translates into different policies and is thus independent of protest and other "society centered" effects (Skocpol 1985). For instance, five of the eight U.S. states in 1961 with anti-discrimination mandates in the private housing market had experienced virtually no black protests (Colorado, Connecticut, Minnesota, New Hampshire, and Oregon) (USCCR 1961:208). Compared to Republicans and southern Democrats, non-southern Democrats in Congress and Democratic presidents may have acted as policy entrepreneurs given their more supportive role in civil rights legislation (Sundquist 1968; Lawson 1976; Sitkoff 1978; Carmines & Stimson 1989). Thus, state centered theory conceptualizes congressional openness (shown in Figure 2.4) and presidential openness (shown in Figure 2.5) as measures of policy entrepreneurs. Applied to the context of the Court, who sits on the bench is relevant for the outcome of protest racial discrimination by war contractors. In order to avoid such a march, and the negative publicity it would have generated, he met the protestor's demands (Gamson 1975).
the case. Unlike previous Courts, for example, the responsiveness of the Hughes Court was in large part due to the fact most of its members were racially liberal (Howard 1999).

In terms of the institutional context, state centered theory would focus on intergovernmental influences and policy precedent (Albritton 1979; Amenta, Carruthers & Zylan 1992). Recall that intergovernmental influences, including policy precedent, occurs when one policy making body influences the actions of another policy making body. For instance, the Supreme Court may influence Congress, Congress and the president may influence the Court, and state governments may influence the federal government. Policy precedent, one type of intergovernmental influence, means that existing legislation may influence subsequent policy decisions, such as congressional equal-employment policies may influence voting rights legislation. Figure 2.12

![Diagram](image)

Example: Amenta & Poulsen (1996)

**Figure 2.12. State Centered Theory.**
explains elite decisions using state centered theory. All subsequent chapters test this theory.

A second application of the political opportunity approach is democratic theory which claims that policy makers are primarily responsive to public opinion (Burstein 1980, 1985; Page & Shapiro 1983, 1992). Public opinion “works” because politicians view enacting legislation in line with majority preferences as an important way to get re-elected and because citizens tend to elect legislators who want the same policies they do (Wright, Erikson & McIver 1987). Political scientists have gathered an impressive array of evidence to support the link between public opinion and policy outcomes (see Jacobs & Shapiro [1994] for a review). Public policy corresponds to majority preferences roughly two-thirds of the time and changes in public opinion are followed by congruent changes in legislation also about two-thirds of the time (Page & Shapiro 1992:2). This link is particularly strong for civil rights issues (Miller & Stokes 1963; Burstein 1979; Page & Shapiro 1983). Figure 2.13 shows the causal model consistent

![Causal Model](image)

Figure 2.13. Democratic Theory.

44
with democratic theory. I test this model only in Chapter 4 (equal employment) due to data limitations on measures of public opinion.

A third variant, the violence thesis, posits that insurgency affected federal response *only* when whites reacted to black social change efforts with violence (McAdam 1982, 1983; Barkan 1984). Barkan (1984), for example, compared the success and failure of the civil rights movement in five southern communities. He argued that federal intervention occurred after the Birmingham and Selma demonstrations because in those communities whites used violent as opposed to legalistic means of repression. Similarly, Garrow (1978) noted that Congress adopted the 1965 Voting Rights Act because countermovement violence in Selma was conveyed through the mass media to a sympathetic Congress and public. Figure 2.14 shows the causal model consistent with the violence thesis. All empirical chapters test this thesis.

![Diagram](attachment:violence.png)

**Figure 2.14. Violence Thesis.**
Political Process Approach. The last perspective, a political process approach
(McAdam 1982; cf. Burstein, Einwohner & Hollander's [1995] "political bargaining"
approach), argues that elites are responsive to movement goals when (1) social
movements are organizationally strong, tactically innovative, and/or willing to engage
in significant levels of insurgency and (2) there are favorable political opportunities.
Movement actions will have an effect on elite response only during periods of favorable
political opportunities; alternatively, favorable political opportunities will have an effect
on elite response only in the context of substantial movement activity. In statistical
terms, a political process approach would be best supported if the effect of collective
action on policy outcomes depended upon political opportunities (i.e., collective action
x political opportunities).\(^\text{15}\) Alternatively, both social movement activity and political
opportunities may have strong additive effects. A political process model is often
implicitly adopted by scholars analyzing the policy outcomes of social movements (see
Schumaker 1975, 1978; Piven & Cloward 1979a, b; Burstein 1979, 1985; McAdam
1983; Barkan 1984; Colby 1985; Santoro & McGuire 1997; Santoro 1999).\(^\text{16}\)

\(^{15}\) Handler (1978: Chapter 4) makes this argument for the implementation of
laws as well. For instance, the registration of southern blacks during the 1960s was
dependent on strong black organizing and a pro-active federal government.

\(^{16}\) Both the violence thesis and democratic theory can be theorized to operate
according to a political process approach. In terms of the violence thesis, one can
argue that segregationist violence may moderate the effect of black protest on elite
decisions (see Barkan 1984). In terms of democratic theory, Burstein (1979, 1985)
found that congressional sponsorship of equal employment bills was due to intense
protest activity and majority public support for such civil rights legislation. I shall test
for such possibilities in subsequent empirical chapters.
A specific example of a political process approach is the Piven and Cloward thesis, shown in Figure 2.15. Piven and Cloward (1979a) argued that challengers affected elite decisions through mass disruptions, meaning riots, rather than through more organized forms of protest. In particular, they argued that the effect of rioting on policy outcomes depended upon the electoral institution. What is the “electoral institution”? One conceptualization is the presence of a favorable governing coalition, characterized by “Democratic presidents and a Congress dominated by (non-southern) Democratic majorities” (pp. 183; see also pp. 64-66, 73, 130, 136, 165). With this

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17 A number of scholars claim to test the Piven and Cloward thesis by examining the non-conditioned (non-interactive) effect of black riots on government policy (e.g., Albritton 1979; Isaac & Kelly 1981; Colby 1985). The logic behind this approach is the Piven and Cloward claimed that challengers affect elite decisions when they engage in mass disruptions rather than organized forms of protest. Because it is so widely used in the literature, in subsequent chapters I too will examine the unconditioned effect of riots on federal civil-rights policies under the heading of the “Piven and Cloward” thesis.
notion of the electoral institution, the positive effect of black riots on elite response should be enhanced during periods of presidential and/or congressional openness.

Another conceptualization of the electoral institution is electoral instability. During periods of unstable electoral conditions, elites should be more responsive to riots because they do not have a secure electoral base and thus are more open to outsider demands. All subsequent chapters test the Piven and Cloward thesis.

Theoretical Critique

The above approaches are useful because they appear to capture adequately the determinants of selected policy conflicts. We know a great deal about why farm workers secured union contracts in the late 1960s (Jenkins & Perrow 1977); why the civil rights movement won in Montgomery (1956) and in Birmingham (1963) but lost in Albany (1962) (McAdam 1983; Barkan 1984; Morris 1993); and why the federal government adopted welfare policies in the 1960s (Piven & Cloward 1979a; Isaac & Kelly 1981). Understanding the conditions under which select challengers achieved a variety of victories represents the necessary building blocks to a more systematic or general theory of elite response to insurgents.

Given the complex sequence of events that determine the outcomes of social movements, it is not surprising that the literature suffers from theoretical limitations. I discuss two general limitations. First, in the analysis of authority-challenger conflicts, greater attention needs to be paid to (1) the type of social movement in question, (2) the characteristics of the target of change, and (3) the policy being sought.
1. The Social Movement. Theoretical claims typically are made without taking
into consideration the type of social movement in question. Yet the type of social
movement is a crucial factor in determining policy outcomes. For instance, scholars
who highlight the importance of non-indigenous actors like third parties tend to study
highly marginalized movements, such as farm workers (Jenkins & Perrow 1977) or
broad disorganized collectives like public-interest movements (McCarthy & Zald 1977).
Similarly, scholars who emphasize the importance of movement actors tend to study
well organized, highly mobilized, and large-scale social movements like the southern
civil rights movement (Morris 1993). Because I too study the civil rights movement,
this study's conclusions are most applicable to other well organized, highly mobilized,
and large-scale social movements. On a practical level, this means that the most
appropriate comparison is to the U.S. labor movement in the 1930s. I make this
observation again in Chapter 3 (voting rights).

2. The Target of Change. While scholars attempt to explain the actions of a
target of change, they curiously often ignore characteristics of the target of change.
Policies are enacted by organizations, the target of change, which include a wide range
of private and public organizations. The type of target of change can play a dominant
role in determining how responsive the organization is to the social movement. The
Senate's filibuster rule, for example, clearly helps account for the paucity of civil rights
legislation enacted by the Senate compared to the House. Yet, with the exception of
state centered theorists, how the characteristics of the target of change affect policy
determinants is rarely discussed. This deficiency is most apparent in the landmark
study by Gamson (1975) of 53 challenging groups between 1800 and 1945. Among the organizations that made up the target of change were universities, the federal government, a baseball league, a variety of business firms and industries, Christian churches, state and local governments, slave holders, prison organizations, and "capitalism." Yet neither Gamson, nor the numerous follow-up studies using his data (see Gamson 1990: Appendix A; Frey, Dietz & Kalof 1992) discuss how such diverse targets of change affected the success of the challenging group. For instance, scholars have examined the success of challengers who used violence but have not asked whether the efficacy of violence depended on who was the target of change. Obviously, the coercive capacity of a baseball league does not compare to that of the federal government and it is naive to think that this fact does not play a central role in determining the impact of violence. In short, to expect policy responses to be independent of the type of organization that makes the policy decision seriously underestimates the role of the target of change.

Why has this critique, rather obvious at face value, not been taken into account by movement scholars? The main reason is because unlike Gamson (1975), few studies examine policy outcomes across different types of target of change. Often, scholars examine a single target of change, such as Congress (Burstein 1985) or a single type of target of change like city governments (Barkan 1984; Button 1989). Because the type of target of change has been held "constant," scholars have not devoted much attention to discussing how policy processes may have been shaped by the types of target of change under study.
This research most directly addresses this issue in Chapter 5 (Supreme Court). Organizationally, the Supreme Court differs from the president and Congress because its members are appointed and not elected. Therefore, Court members are not formally accountable to voter preferences, elections, and electoral instability. In Chapter 5, I discuss whether this organizational difference made the Court insulated from the political pressures generated by the civil rights movement. I find somewhat contrary to my thesis, that Court members, like their elected counterparts, were swayed by black insurgency. This observation in no way means that the characteristics of the target of change are irrelevant. Two targets of change which differ in their organizational characteristics may react to insurgency differently, but it does not mean that they will always react differently. While variations in the target of change may be difficult to analyze statistically, they nonetheless are important to take into account.

3. The Policy. Scholars tend not to systematically analyze how the policy being sought can affect the policy process. Policy precedent, for instance, may differentially affect the adoption of subsequent legislation (see Burstein 1985; Amenta, Carruthers & Zylan 1992; Kingdon 1995). For instance, the 15th Amendment affected Court action concerning grandfather clauses and white primaries, but had no effect on poll taxes. In addition, different policies carry with them different sets of opponents and allies. For instance, non-southern politicians could support black voting rights because their white constituents were not threatened by black voting (i.e., blacks were already voting in the non-South). Yet even liberal white politicians faced considerable opposition to open housing legislation because both southern and non-southern whites generally preferred
near all-white neighborhoods (Massey & Denton 1993). Thus, it should not be surprising that statutes enhancing black voting rights were passed in 1957 and 1960, very early in the sequence of federal response to blacks, but that open housing legislation was not passed until 1968 after black riots had spread to most large U.S. cities. The implication of this critique for this study is that any understanding of the policy process must be judged within the specific political context of each type of policy. Such subtle variations in political context may be difficult to quantitatively measure and statistically examine, but their effects on the policy process must be noted.

In sum, the first critique of the literature is that greater attention needs to be paid to the type of social movement, the characteristics of the target of change, and the policy being sought. A second critique is that there does not exist a general theory to explain movement outcomes. By "general" theory, I mean a theory that would offer a systematic explanation of the conditions which produce social movement success or failure. What would this general theory look like? I make two observations. First, a general theory would seek to understand the conditions when social movements win rather than arguing for the "one best" causal model of movement outcomes. It would try, for instance, to understand under what conditions a social movement can compel favorable action and not whether such influence is always the principal mechanism of influence. Just as there are multiple causes of movement emergence (Jenkins 1983), a general theory of elite response would be flexible enough to recognize that there are multiple causes of movement outcomes.
Second, a general theory would incorporate (measure) a wide range of collective actions and political opportunities in order to explain a movement outcome. This statement follows directly from the assumption that no one causal model, and hence set of explanatory factors, can account for the diverse range of authority-challenger conflicts and outcomes. The difficulty here is that, for quantitative research, not all types of collective actions and political opportunities can be readily measured. But certainly the direction of future work needs to incorporate alternative theories and their corresponding measures rather than to dogmatically test the usefulness of one approach. I shall return to the issue of a general theory in the concluding chapter.

**General Methodological Approach**

In this final section, I review the outlines of the methodological approach that guides my research. Specifically, I review the rationale behind my choice of dependent variables, the logic of examining these issues over time, and my theory-testing strategy. Other methodological issues, such as the justification behind the exact years I analyze, data operationalizations, and the statistical techniques I use are detailed in each of the three empirical chapters.

The goal of this monograph is to explain the federal government’s response to the goals of the civil rights movement. I therefore examine two policy outcomes of the civil rights movement for the executive and legislative branches of the federal government. These two policy areas are voting (Chapter 3) and equal employment rights (Chapter 4). I chose these two policy areas because political and economic rights
are the two basic civil liberties that citizens enjoy (Lawson 1976; Burstein 1985). A
group without such rights is unlikely to enjoy equal rights in such areas as education,
criminal justice, health care, and housing. I also examine the responses of the Supreme
Court to black civil rights (Chapter 5). Examining the Supreme Court is essential given
its important role as a national policy-making body (Dahl 1957). Any thorough
examination of the federal government needs to understand the actions of all three of its
branches.

I use two distinct techniques to measure federal responses. First, for Congress
and the White House, I measure the comprehensiveness of their policy outputs. Policy
outputs include all House or Senate passed bills, congressional statutes, presidential
executive orders, and constitutional amendments. I have developed a method for
differentiating between policies that are largely symbolic from policies that are more
substantive. Chapters 3 and 4 explain this method in detail. Second, in terms of the
Supreme Court, I examine the total number of cases that favored black civil rights,
broadly defined. While this “counting” approach represents the standard method for
assessing Court responsiveness, it is less than ideal because it does not measure the
“comprehensiveness” of each case. Because it simply adds together the number of pro-
civil rights cases each year, it treats “landmark” cases like Brown v. Board of
Education (1954) as equivalent to less noteworthy cases. I am unaware of a method to
overcome this limitation.

I examine federal policy responses over time, circa 1930 to 1970. It is
important to examine federal policy making over time because federal responses varied
greatly over a forty year time period. To explain the ebb and flow of federal policy making, it is thus imperative that I examine the relationship between the explanatory variables and the dependent variables for the full range of federal activity. Time series analysis, including the Tobit and Poisson specifications that I use, is appropriate for uncovering patterned relationships and allows one to make causal generalizations for a historical period (Griffin 1992).

To account for federal action, I use the theories and their corresponding measures detailed in this chapter. I treat these theories as complimentary because each offers a reasonable explanation of federal policy response and thus all should be simultaneously used to predict federal policy response. In statistical terms, this means that I treat each theory, and its corresponding measure(s), in an additive manner. That is, I seek to explain federal response as a function of the indigenous approach plus the violence thesis plus the Piven and Cloward thesis plus state centered theory plus democratic theory. While this strategy represents a basic sociological approach to explain any social phenomenon, I argued above that prior work has tended to focus only on a variable or set of variables to explain federal responses.

Table 2.2 presents each of the six theories presented in this chapter and lists the empirical chapters which test their applicability. All subsequent empirical chapters test the indigenous approach (e.g., black protests), state centered theory (e.g., policy entrepreneurs), the violence thesis (i.e., segregationist killings), and the Piven & Cloward thesis (e.g., riots * electoral conditions). I test democratic theory only in Chapter 4 (equal employment) due to data limitations on measures of public opinion. I
Table 2.2. Theories Examined in Empirical Chapters.

<table>
<thead>
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<th>Theory</th>
<th>Voting</th>
<th>Employment</th>
<th>Supreme Court</th>
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<tr>
<td>indigenous approach</td>
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<td>political mediation</td>
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<td>state centered theory</td>
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<td>Piven &amp; Cloward thesis</td>
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discuss the political mediation model in Chapter 3 (voting) and Chapter 5 (Supreme Court) because data, theory, and historical evidence are sufficient to discuss its applicability.

I turn now to the empirical examination of the determinants of elite response to the civil rights movement. As is true for historical sociological work in general (Griffin 1992), my examination does not represent a test of the above theories. This is not possible given that I examine a unique social movement during one historical period. While these data are inadequate in this regard, this research is the most systematic attempt to statistically explain the national victories of the civil rights movement from the 1930s to the early 1970s. I begin with the black struggle for suffrage in the South.
CHAPTER 3

VOTING RIGHTS

Voting is the essence of citizenship, the right that theoretically guarantees all other rights in a democracy. Recognizing the power of the vote, segregationists disenfranchised the majority of southern blacks following the demise of Reconstruction. Civil rights activists, similarly, understood the necessity of regaining the vote. In the early 1900s, Booker T. Washington financed cases against the disenfranchising provisions of the Alabama and Louisiana constitutions. W.E.B. Du Bois made suffrage a central goal in his Niagara Movement in 1904, and the NAACP placed voting rights at the core of its mission in 1910 (Sitkoff 1978:11-16). While these actions garnered little notice at the time, the culmination of the struggle in Selma in 1965 captured the nation's attention (Garrow 1978). The demonstrations in Alabama pitted the civil rights movement at its height against southern resistance in its most brutal form. Conventional wisdom views the Selma crisis as the catalyst for the Voting Rights Act of 1965, the legal basis for southern black voting.

The struggle for the right to vote represented one of the most contentious issues of the civil rights movement. Black insurgency ranged from peaceful protests to riots. Southern opposition ranged from legal barriers, such as literacy tests and white
primaries, to economic intimidation and physical violence. As we now know, southern
massive resistance did not prevent black suffrage. Between 1933 and 1965, the House
of Representatives passed six voting rights bills, Congress enacted three minor voting-
rights statutes, four civil rights acts, and one constitutional amendment. The last law
was the landmark Voting Rights Act of 1965. Within the turbulence of the period,
black voter registration in the South rose from three percent in 1940, to twenty percent
in 1952, to 29 percent in 1960, and to 66 percent in 1970 (Garrow 1978).

Surprisingly, we know little about how blacks gained suffrage across the full
range of federal voting-rights legislation. The literature is dominated by qualitative
approaches that focus on specific acts; what they add in detail they lack in
generalizability (e.g., Fleming 1965; Berman 1966; Lytle 1966; Garrow 1978; Whalen
& Whalen 1985; Burstein 1993). Studies that have examined black suffrage more
generally do not draw upon social movement theory nor quantitatively assess the causal
determinants of legislative outcomes (e.g., Lawson 1976). While historically rich,
these accounts leave imprecise our understanding of the roles that black protests and
riots, countermovement violence, Supreme Court decisions, and liberals in Congress
and the White House played in the policy process. In this chapter, I quantitatively
examine the impacts of black insurgency and the political context on the full range of
federal voting-rights legislation.

Examining black suffrage is important because voting is a key to black equality.
Beginning with Roosevelt in 1936, black voting in the non-South made national political
actors take seriously civil rights issues (Sitkoff 1978; McAdam 1982). Black voting in
the South eventually moderated the position of southern Democrats toward black
equality and helped make police departments and other city services more accountable
to the black community (Keech 1968; Button 1989). Perhaps most important, voting
increased the number of black elected officials from an estimated 475 in 1967 to nearly
8,000 in 1993 (Lieberson 1980:475; Joint Center for Political Studies 1994). Such
politicians, in turn, have been forceful advocates of black civil rights (Button 1989:
Santoro 1995).

Voting rights legislation also is a strategic site to examine the usefulness of
competing explanations of movement outcomes. Morris (1993) attributed civil rights
legislation to black protests and the ability of activists to generate crisis events like the
Selma demonstrations. McAdam (1983) and Barkan (1984) claimed that the successes
of the civil rights movement were due to segregationist violence. Piven and Cloward
(1979a) argued that welfare legislation in the 1960s was a response to black rioting in
conjunction with a favorable ruling coalition in Congress. Explanations by state
centered theorists point to important changes in the institutional context, such as
favorable court rulings, supportive preexisting legislation, and policy entrepreneurs
within Congress. In this chapter, I examine the applicability of these competing
theories to explain voting rights legislation. I am unaware of a study on movement
outcomes that has compared the explanatory power of such a range of theories with the
same data. While no single movement outcome represents a critical test, any theory
that purports to explain movement outcomes should be able to account for arguably the
most significant policy victory of the civil rights movement.
I begin by identifying the barriers to southern black voting. After reviewing the legislative history of voting rights legislation, I elaborate upon the theoretical approaches discussed above. I then employ a Tobit time-series analysis that examines voting rights legislation from the beginning of the Roosevelt administration in 1933 to the enactment of the Voting Rights Act in 1965.

**Barriers to Southern Black Voting**

The 15th Amendment in 1870 codified that the right to vote could not be denied because of race; the Enforcement Acts of 1870 and 1871 granted the Justice Department and the president the power to enforce that amendment (Lawson 1976:4). Yet federal involvement with black suffrage ended with the collapse of Reconstruction (McAdam 1982). In 1876, the Supreme Court diluted the effectiveness of the Enforcement Acts; in 1878 Congress no longer permitted the military to protect black voters; and in 1894 Congress ended appropriations for federal marshals to supervise southern polling places (Lawson 1976:4-6; Sitkoff 1978:4). With the denationalization of the “Negro problem,” southern whites enacted a plethora of legislation to disenfranchise blacks.

Barriers to black voting varied across southern states and counties within each state. One of the first and most effective obstacles to black voting was the white primary system adopted by every southern state (Woodward 1974). Blacks were prevented from voting in Democratic primaries and hence their electoral influence was virtually eliminated in the one party South. The Supreme Court outlawed such systems
in 1944 (*Smith v. Allwright*). Beginning with Mississippi in 1890, all but two southern states enacted a literacy test (Lawson 1976:87). Literacy tests reduced black registration due to the poor quality of education in the South (Lieberson 1980:137-58) and their unfair administration to black applicants. When suspended in 1965, six southern states had a literacy test in place (Congressional Quarterly 1965:539). By the early 1900s, every southern state established a poll tax and four states adopted “grandfather” clauses. Grandfather clauses typically allowed white applicants to permanently register if they or their ancestors could vote before 1867; blacks would need to pass literacy tests, meet property requirements, or possess a “reasonable” understanding of provisions of state constitutions (Lawson 1976:86-115; Sitkoff 1978:7). The Supreme Court declared the grandfather clause unconstitutional in 1915 (*Guinn v. United States*). Beginning in the 1940s, four southern states adopted requirements that voters be of “good moral character” (Congressional Quarterly 1965:539). One of those states, Mississippi, specified in 1960 that persons conducting a sit-in lacked good character (USCCR 1961:69).

By the 1950s, the most prevalent forms of voter discrimination were the arbitrary registration procedures of southern registrars (USCCR 1959, 1961). With the support of southern judges and juries, registrars would slowdown the registration procedure, close the office, or quit when blacks attempted to register; rule invalid black applications due to immaterial errors or omissions; administer more difficult literacy and understanding tests to black applicants; purge black voters from the registration rolls; destroy black registration statistics in order to hamper anti-discrimination efforts:
and refuse to inform black applicants whether their application had been approved or denied (USCCR 1959, 1961).

When legalistic methods failed to deter registration efforts, segregationists responded with economic retaliation: landlords terminated leases and evicted tenant farmers, banks foreclosed on mortgages and denied credit, school boards canceled contracts and employers fired workers, and merchants refused to gin the cotton or purchase the crops of black farmers (USCCR 1959, 1961). Segregationists also resorted to violence. Police responded to suffrage demonstrations with night sticks, whips, electric cattle prods, and tear gas. Blacks active in voting campaigns received death-threats and had burning crosses and fire bombs set upon their property. At least thirteen people died trying to gain black suffrage between 1962 and 1967 (see USCCR 1959, 1961; Watters & Cleghorn 1967; Lawson 1976). Through the actions of segregationists and the indifference of national actors, southern blacks had been "organized out" of institutional politics (McAdam 1982:164).

**Legislative History, 1933-1965**

Congressional and executive response to the disenfranchisement of southern blacks was long delayed and most often symbolic in nature. The House of Representatives first addressed black suffrage when it passed five anti-poll tax bills between 1942 and 1949. The first three met with Senate filibusters and through parliamentarily maneuvers the last two never came to a Senate vote (Lawson 1976:65-82). In 1946, President Truman established the President's Committee on Civil Rights which in 1947 recommended
ending poll taxes and establishing monetary penalties against obstructions of the right to vote (McCoy & Ruetten 1973:87-93).

Legislation of the 1950s was only marginally more substantive than previous federal attempts. A fairly strong omnibus civil-rights bill passed the House but not the Senate in 1956. A year later Congress enacted the Civil Rights Act of 1957, the first civil rights law in 82 years. The act allowed the Attorney General to initiate court injunctions for voting rights violations and strengthened the Civil Rights Division of the Justice Department. Yet the act was a largely symbolic attempt to increase black voting. Even President Eisenhower remarked that the bill was “largely ineffective” (Congressional Quarterly 1957:564) because it required that those accused of denying black suffrage could request a jury trial: a charge that few southern juries would uphold (Lawson 1976:168-73). Recognizing this flaw, the Justice Department initiated only six voting rights cases between 1957 and 1960 (Congressional Quarterly 1960:203). Perhaps the most important consequence of the 1957 act was that it created the Civil Rights Commission (McKay 1973). The commission in 1959 issued the first in a series of comprehensive reports on the denial of black voting rights. In that year, Congress extended the life of the commission for two years.

The pace and content of voting rights legislation changed dramatically in the 1960s. After 37 days of debate including nine days of a southern-led filibuster, Congress passed the modest Civil Rights Act of 1960. That act established the “referee” system which allowed southern registrars to be replaced with federal appointees. To replace southern registrars, however, involved a time-consuming and
arduous court procedure. The 1960 act also required that voting records be kept for 22 months in order to prevent segregationists from destroying such data and allowed the federal government to sue states over voting rights violations. This latter provision was an attempt to circumvent the southern tactic of having registrars quit so that no one could be sued for voting violations (Lawson 1976:210-11). As with the previous act, civil rights supporters viewed the 1960 law as a southern victory given the ineffectiveness of the referee system. Thurgood Marshall, for instance, commented that the statute was not "worth the paper it's written on" (Berman 1966:135).

In 1961, and again in 1963, Congress extended the life of the Civil Rights Commission which continued to document the denial of black suffrage and make progressive policy recommendations. After a short filibuster, Congress in 1962 enacted the 24th Amendment which outlawed the poll tax in federal elections. Five southern states still required a poll tax as a voter qualification at that time (Congressional Quarterly 1962:404). While the poll tax was a burden, more important obstacles to black voting included the unequal application of qualifying devices like literacy tests, the slowdowns and insults of registrars processing black applicants, the purging of blacks from registration rolls, and economic and physical intimidation (USCCR 1959:52). After 82 days of a southern-led filibuster, Congress enacted the landmark Civil Rights Act of 1964. While the most controversial aspects of the law were its anti-discrimination mandates in employment and public accommodations, the law addressed voting rights as well. The act required the U.S. Bureau of Census to gather voting statistics; it contained anti-literacy test measures by making a sixth grade
education a presumption of literacy and specified that such tests had to be in writing; and it outlawed the unequal application of voting registration procedures and the rejection of applications for immaterial errors or omissions.

Finally, Congress passed the Voting Rights Act of 1965. The act represented the most comprehensive attempt by Congress to grant blacks suffrage (Congressional Quarterly 1965:533; McKay 1973; Lawson 1976; Garrow 1978; Handler 1978; Lieberson 1980). The Voting Rights Act met a southern-led filibuster despite the fact that only 37 percent of southern whites opposed the bill (Gallup 1972:1933). The act suspended the use of literacy tests and other voter qualifications such as having good moral character; it required the Attorney General to institute proceedings against the use of state and local poll taxes; it specified which political subdivisions were subject to Attorney General litigation; it required Attorney General approval of new voting laws enacted by state or local governments whose prior voting laws had been nullified; it established the “registrar” system which allowed the federal government to replace southern registrars through administrative and not court action; and it quantified voting discrimination by establishing the “trigger mechanism.” The trigger mechanism specified that discrimination was evident if a literacy test or a similar qualifying device was in place in 1964 and if less than 50 percent of the voting age population had been registered or had voted in the 1964 presidential election. The impact of the Voting Rights Acts was most acutely felt in Alabama, Louisiana, and Mississippi where white resistance to black enfranchisement was the most entrenched (McMillen 1977).

Figure 3.1 shows the comprehensiveness of federal voting-rights legislation from 1933 to 1965 (measurement explained below). High scores indicate years that witnessed substantial legislation; low scores indicate years in which largely symbolic legislation was passed; years with scores of zero indicate that no bills, statutes, executive orders, or constitutional amendments were enacted. As shown in Figure 3.1, the 1930s and 1940s witnessed little or no activity; the 1957 Civil Rights Act stands out compared to prior years, but it nonetheless was a modest bill; the federal response was most pronounced between 1960 and 1965; and the Voting Rights Act of 1965

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Figure 3.1. Federal Voting-Rights Legislation, 1933-1965.
represented breakthrough legislation. In the next section, I review the main theoretical approaches to explain the political outcomes of the civil rights movement.

**Theoretical Approaches to Civil Rights Legislation**

Previous accounts of the outcomes of the civil rights movement, like works by Piven and Cloward (1979a), McAdam (1983), Barkan (1984), and Morris (1993), typically focus on a variable or set of variables. For instance, Morris (1993) highlighted the role of black protest while Barkan (1984) focused on countermovement violence. Approaches by Morris (1993) and others can be considered theories because they identify a salient factor in the authority-challenger conflict and because they explain why elites respond to that factor. However, they are not *comprehensive* theories because they are usually vague as to what role additional factors played in the policy outcome. For example, while Garrow (1978) argued that the 1965 Voting Rights Act was largely a response to white violence during the Selma protests, it is not clear if Garrow's approach excludes other potentially relevant factors, such as black rioting and liberals in Congress and the White House. In general, the literature has sought to validate a particular theoretical perspective rather than to discover the relative contributions of alternative theories. Because each theory has identified a salient aspect of the authority-challenger conflict, I view these potentially "competing" theories as complimentary. In fact, movement success on such contentious issues like suffrage is most likely due to the *co-occurrence* of a number of favorable factors.
Four theoretical perspectives seem most promising to explain the outcomes of the civil rights movement: the indigenous approach, the violence thesis, the Piven and Cloward thesis, and a state centered approach. Table 3.1 summarizes these perspectives and lists their corresponding measures.

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<td>State Centered</td>
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<td>- presidential &amp; congressional openness</td>
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Table 3.1. Theories of Movement Outcomes and Corresponding Measures.

1 Burstein (1985) principally relied upon democratic theory to explain congressional sponsorship of equal employment bills. The central claim of democratic theory is that policy makers are responsive to public opinion (Page & Shapiro 1992). Unfortunately, after searching collections of opinion data (e.g., Gallup 1972; Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992), I can find no question asked repeatedly since the 1930s concerning attitudes specifically directed toward granting blacks the franchise. Nonetheless, politicians seem to have been aware that the majority of Americans favored black suffrage (Lawson 1976; Garrow 1978). I do not argue that public opinion was irrelevant; rather this study seeks to understand what made Congress respond to it.
**Indigenous Approach.** The indigenous approach, to use Morris’ (1984) term, argues that civil rights protests *compelled* elites to enact favorable legislation (Morris 1981, 1993). At the core of the civil rights movement were protest events like boycotts, sit-ins, pickets, rallies, and marches. Black boycotts and pickets of discriminatory employers across 35 cities in the thirties represented the movement’s first widespread direct-action campaign (Meier & Rudwick 1976:314-32). Protests first emerged in a community-wide and sustained manner with the successful Montgomery, Alabama, bus boycott in 1955-56. The first massive wave of black protests across U.S. cities took place with the 1960 sit-in movement. The heyday of protest activity took place from these sit-ins to the end of the 1965 demonstrations in Selma (McAdam 1982, 1983). That the period from 1960 to 1965 also marked the apex of federal voting-rights legislation (see Figure 3.1) suggests a strong relationship between protests and policy response. Given that protest activity was at the heart of the civil rights movement, there is surprisingly little quantitative work that has linked the number of black protests to federal level legislation (for sponsorship of equal employment bills, see Burstein [1985]).

While protests were central to black insurgency, most observers focus on the generation of “crisis events” by the civil rights movement to explain federal legislation (Sundquist 1968:259-74; Garrow 1978:235; McAdam 1983; Jenkins & Eckert 1986; Morris 1993). Crisis events, a subset of protests, are efforts by challenging groups to achieve movement objectives that capture the nation’s attention and sympathy (cf. Jenkins & Perrow 1977:264). Widespread media coverage is essential to translate a
local event into a national issue (Garrow 1978). Scholars of the civil rights movement recognize that the Birmingham campaign became a crisis event at the national level when police reacted to black protestors with fire hoses, police dogs, and an armored vehicle (Morris 1993). Events similar in stature to Birmingham typically listed in chronologies of the civil rights movement include the Little Rock integration in 1957, the freedom rides in 1961, the “Ole Miss” integration in 1962, and the Selma-to-Montgomery march in 1965.

The claim that one crisis event like Selma prompted elite action is consistent with President Johnson’s remarks before a joint session of Congress: “At times history and fate meet at a single time in a single place to shape a turning point in man’s [sic] unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week in Selma, Alabama” (Congressional Record 1965:5059). Two days later, Johnson submitted to Congress the bill that became the Voting Rights Act of 1965. McAdam (1983) provides one of the few quantitative works supporting the link between crisis events and federal outcomes. He found that compared to the sit-ins, protests in the first seven weeks of the Birmingham and Selma campaigns prompted pro-civil rights actions by the federal government. Pro-civil rights action was a dichotomous measure based on whether the federal government responded in any way favorable to the civil rights movement (e.g., written pronouncements, press conferences, bill submissions). The paucity of quantitative work linking crisis events to federal civil-rights legislation is most likely due to the difficulty in operationalizing crisis events—a methodological limitation that this study addresses.
The basic argument for how crisis events affected federal legislation is that crisis events raised the salience of civil rights issues to the public (Fleming 1965; Lytle 1966; Sundquist 1968; Lawson 1976; Garrow 1978; Morris 1993). Opinion polls support this claim. From 1935 until 1955, no more than five percent of the public listed civil rights issues as the nation’s most important problem (Gallup 1972). However, that percentage rose to 29 percent one month following the Little Rock integration crisis; it reached 52 percent one month after the March on Washington in 1963; it stood at 40 percent a week after three Freedom Summer volunteers were found dead in 1964; and it again rose to 52 percent during the Selma demonstrations (Gallup 1972:1523-1934). Elected officials often enact legislation in line with majority preferences when issues are of high salience to the public (Walker 1977; Page & Shapiro 1983).

A related argument is that crisis events spurred-on black protests nationwide and elites responded to the political pressures generated by these nationwide events. Issue salience is still relevant, but elites respond to the general political turmoil of the nationwide events and not the specific crisis event itself. It is clear that a number of crisis events, like the freedom rides and the Birmingham and Selma demonstrations, helped generate protests nationwide (Garrow 1978; McAdam 1983). For instance, “Birmingham-style” protests broke out in 75 cities within ten weeks of the Birmingham demonstrations (Whalen & Whalen 1985). Morris (1993) claimed that those widespread protests generated by the Birmingham campaign led to the 1964 Civil Rights Act. President Kennedy’s speech before a nationwide television audience supports this claim. Shortly before he submitted to Congress what eventually became
the Civil Rights Act of 1964, Kennedy commented that "(t)he events in Birmingham and elsewhere have so increased the cries for equality that no city or state or legislative body can prudently choose to ignore them" (emphasis added) (Congressional Record 1963:11174). Given that the civil rights movement is so often credited with bringing about civil rights legislation, it would be surprising if neither black protests nor crisis events affected voting rights legislation.

*Indigenous Approach Hypothesis: Elites enacted voting rights legislation in response to black protests and crisis events.*

**Violence Thesis.** The violence thesis posits that the federal government responded not to black protests per se but rather to white violence (McAdam 1982, 1983; Barkan 1984). Barkan (1984), for example, compared the success and failure of the civil rights movement in five southern communities. He argued that federal intervention occurred after the Birmingham and Selma demonstrations because in those communities whites used violence as opposed to legalistic means of repression. Similarly, Garrow (1978) noted that Congress adopted the Voting Rights Act because countermovement violence in Selma was conveyed through the mass media to a sympathetic Congress and public. The violence thesis thus offers an alternative perspective as to why crisis events may have elicited a favorable federal response: such events often produced white violence (e.g., the Little Rock and "Ole Miss" school integrations, the freedom rides). While Garrow (1978) convincingly argued for a link

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2 It is also consistent with the violence thesis to argue that the positive effect of black protests on federal legislation will be enhanced by white violence. I tested for this interaction (protest * segregationist killings) but it was not significant.
between white violence and the Voting Rights Act of 1965. research has not quantitatively linked segregationist violence to the full range of voting rights legislation nor to civil rights legislation in general.

**Violence Thesis Hypothesis:** *Elites enacted voting rights legislation in response to segregationist violence.*

**Piven & Cloward Thesis.** Piven and Cloward (1979a) developed a theory to explain the ebb and flow of federal welfare relief. One of their arguments was that challengers brought about elite concessions when they engaged in mass disruption rather than more organized forms of protest. Previous work interpreted this to mean that black riots should unconditionally (i.e., in a non-interactive manner) affect policy outcomes (Albritton 1979; Isaac & Kelly 1981; Schram & Turbett 1983; Colby 1985). Research has shown that riots increased welfare expenditures (Isaac & Kelly 1981; Schram & Turbett 1983) but for other issues, riots were met with mixed responses (Welch 1975; Button 1978, 1989; Mueller 1978). Scholars have yet to establish the link between riots and the passage of voting rights policies. While the best known and largest riots occurred after the 1965 Watts riots, and hence beyond the time-frame for the current analysis (see footnote 7), there had been 37 black riots between 1957 and 1965 compared to just five in the preceding 25 years. In fact, the year before the most comprehensive voting-rights law in 1965 marked the highpoint of black rioting to that point. Black riots also had peaked the year before the second and third most comprehensive voting-rights acts.
While examining the unconditioned impact of riots on policy response is consistent with Piven and Cloward's (1979a) thesis, they in fact claimed that riots increased welfare expenditures only in the context of a vulnerable electoral institution (Piven & Cloward 1979a:65-66, 183). In their words, "the political impact of institutional disruptions depends upon electoral conditions" (emphasis in original) (Piven & Cloward 1979a:31). One way that Piven and Cloward conceptualized the electoral institution was the presence of a Democratic president and a Congress dominated by a non-southern Democratic majority (64-66, 73, 130, 136, 165, 183). I refer to such a favorable ruling coalition as indicating presidential and congressional "openness." Consistent with Piven and Cloward, the crucial period for voting rights

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3 Recognizing that Piven and Cloward (1979a) theorized the *conditioned* effect of rioting on elite response, Hicks and Misra (1993:679-80n) are one of the few scholars to provide a justification for examining the non-conditioned effect of riots. They note: "(Piven and Cloward) can also be read to predict ample protest only for those conditions of elite vulnerability that augur well for elite concession, in effect reducing elite vulnerability to a prerequisite for the occurrence of notable protest rather than a contingency for protest's consequences ... Moreover, protest has been found to predict welfare concessions in studies devoid of explicitly contingent formulations of protest effects."

4 An alternative conceptualization is "electoral instability." Yet electoral instability is conceptually ambiguous and hence difficult to test. For instance, it both causes and is the consequent of insurgency (Piven & Cloward 1979a:64, 67, 170-71); is evident if Democratic presidents win by a landslide (pp. 64-65) or by a narrow margin (pp. 225-28); if black voters or southern whites switch from the Democratic to the Republican party (pp. 214-215); if black voters do not vote (p. 215); or if politicians fear *potential* voter instability (pp. 170-71, 239). In addition, some degree of instability appears to be an ubiquitous condition. Piven and Cloward (1979b:1012), for example, noted that voting instabilities were present in the elections of 1948, 1952, 1956, and 1960.
legislation witnessed heightened black rioting as well as high percentages of non-southern Democrats in Congress and a Democratic president.

*Piven & Cloward Hypothesis:* Elites enacted voting rights legislation in response to riots or the effect of riots was enhanced in periods with a favorable ruling coalition.

**State Centered Approach.** While state centered theory has not been used to explain civil rights legislation in the United States, it is relevant because it offers an explanation of state policy making. State centered theorists argue that the political outcomes of social movements rest heavily upon policy entrepreneurs within the state and the institutional context (Skocpol 1985; Skocpol & Amenta 1986; Amenta & Poulsen 1996).^5^ Policy entrepreneurs are decision makers who promote movement supported legislation without pressure by movement activists (Walker 1977; Amenta & Poulsen 1996). These actors bring with them to office a political agenda that translates into different policies and is thus independent of protest and other "society centered" effects (Skocpol 1985). For instance, five of the eight U.S. states in 1961 with anti-discrimination mandates in the private housing market had experienced virtually no black protests (Colorado, Connecticut, Minnesota, New Hampshire, and Oregon) (USCCR 1961:208). Compared to Republicans and southern Democrats, non-southern Democrats in Congress and Democratic presidents may have acted as policy entrepreneurs given their more supportive role in civil rights legislation (Sundquist

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^5^ My use of state centered theory is limited because I examine only one country and thus I hold constant some of the most important aspects of the "state" (see Skocpol & Amenta 1986).
The 89th Congress that passed the Voting Rights Act, for instance, contained the highest percentage of non-southern Democrats since 1938.°

In terms of the institutional context, policy precedent such as pre-existing legislation may influence policy decisions (Walker 1977; Albritton 1979; Skocpol & Amenta 1986; Amenta, Carruthers & Zylan 1992). "(O)nce policies are enacted and implemented, they change the public agendas and the patterns of group conflict through which subsequent policy changes occur" (Skocpol & Amenta 1986:149). Just as the Equal Pay Act of 1963 helped to prod lawmakers to include "sex" into Title VII coverage in 1964 (Burstein 1985), voting rights legislation may have been affected by equal employment law. Equal employment legislation predates post-Reconstruction era suffrage policies. President Roosevelt, for instance, issued three executive orders pertaining to black equal-employment rights beginning in 1940 (Bonfield 1967). Policy precedent also can take the form of legal precedent. Favorable Supreme Court responses to black voting rights may have encouraged federal voting-rights legislation. Through its rulings, the Court may draw elite and public attention to an issue as well as establish that legislative intervention would withstand constitutional scrutiny. The Court handed down eighteen favorable decisions regarding black suffrage between 1933 and 1965, twelve of them between 1960 and 1965.

° Thus "liberals" in the White House or Congress can be conceptualized as either policy entrepreneurs or indicating periods of presidential and congressional openness.
State Centered Hypothesis: Elites enacted voting rights legislation in response to the presence of policy entrepreneurs (non-southern Democrats) and supportive policy precedent (equal employment legislation, Supreme Court voting-rights decisions).

Data and Methods

I measured the dependent and independent variables with secondary data and archival sources. To measure federal legislation, I coded all House and Senate passed bills not subsequently enacted into law, congressional statutes, presidential executive orders, and congressionally-ratified constitutional amendments covering black voting rights from 1933 to 1965. I began my analysis in the year Roosevelt took office because his administration and the congresses of that era marked a turning point in federal response to race issues (Sullivan 1965; Sitkoff 1978:58-83; McAdam 1982; Carmines & Stimson 1989). For instance, Roosevelt in 1934 was the first president to publicly proclaim that lynching was murder; he included an anti-discrimination mandate in a 1935 executive order for WPA programs; by 1935 he had appointed roughly 45 blacks to posts in cabinet departments and New Deal agencies (i.e., the “Black Cabinet”); and by 1936 he allowed black leaders regular access to the White House (Sitkoff 1978:58-83). Similarly, Congress wrote anti-discrimination mandates into more than 20 New Deal statutes beginning in 1933 (Sitkoff 1978). I ended the analysis in 1965 because the passage of the Voting Rights Act solidified the legal right of blacks to vote (Lawson 1976; Garrow 1978; Handler 1978; Lieberson 1980). Analyses of policy outcomes typically end with the passage of “breakthrough” legislation (e.g., Jenkins & Perrow 1977; Burstein 1985; Amenta, Carruthers & Zylan 1992). Chart 3.1 presents data
sources and variable operationalizations. Chart 3.2 shows bivariate correlations, means, and standard deviations.

**Dependent Variable**

One limitation to past research is that scholars commonly treat policy outcomes as a dichotomy—the policy is either adopted or not (e.g., Gamson 1975; Jenkins & Perrow 1977; Morris 1993). Such an approach cannot distinguish weak from substantive policies because it does not take into consideration the *content* of the policy. This is problematic because elites often respond to insurgency with largely symbolic policies rather than with substantive concessions (Edelman 1964: chp.2; Lipsky 1968). Much of the history of voting rights, in fact, represented modest bills with weak enforcement mechanisms.

I constructed a voting-rights policy scale, displayed in Figure 3.1, to distinguish less comprehensive from substantive policies (cf. Burstein 1985:19-32; Santoro & McGuire 1997). I coded the content of voting rights bills, statutes, executive orders, and constitutional amendments into five categories: *enforcement powers* are provisions that increase federal authority to prevent discrimination; *acts outlawed* are provisions outlawing types of voting discrimination; *coverage* are provisions that addresses who must comply with the policy; *information gathering* establishes commissions or mandates agencies to investigate or record the extent of discrimination; and *quantification* are provisions that establish criteria to quantify where discrimination is taking place or provide a numerical remedy. Chart 3.3 lists policy categories, provisions, and policy responses. Based on these dimensions and using a summative
measure. I constructed an index of voting rights comprehensiveness (Cronbach’s alpha = .90).

Independent Variables

Insurgency. Using secondary data collected primarily from the New York Times Index, I recorded the total number of black-initiated protest events and riots each year. While using New York Times coverage has limitations (Olzak 1989), both measures are widely used and seem particularly relevant given that many in Congress actually used the Times to learn of black insurgency (Garrow 1978:161). To measure crisis events, I examined all events listed in chronologies of the civil rights movement to see which movement initiated events made the front page of the New York Times for five consecutive days (cf. Garrow 1978). The choice of five days is somewhat arbitrary but represents a conservative measure given that it is a difficult threshold for any movement generated event to make. Between 1933 and 1965, ten events classified as crisis events. I summed the cumulative number of such events each year.

Political Context. I measured the presence of a favorable ruling coalition at the congressional and presidential level. Congressional openness is an index of the percentage of non-southern Democrats in Congress and the number of chambers controlled by Democrats. Presidential openness is an index composed of the presence

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7 The ten events are the University of Alabama integration (1956), the Little Rock integration (1957), the New Orleans integration (1960), the University of Georgia integration (1961), the second freedom ride (1961), the "Ole Miss" integration (1962), the Birmingham demonstrations (1963), the Selma arrests (1965), the Selma-to-Montgomery march (1965), and the Watts riot (I omitted the 1965 Watts riot because it took place after the Voting Rights Act of 1965 had become law).
of a Democratic president and the percentage margin of popular votes for Democratic presidential candidates minus the percentage margin of popular vote for Republican presidential candidates. I measured countermovement violence with the total number of countermovement killings of civil rights activists each year reported in the New York Times Index. Legal precedent is captured by the total number of favorable Supreme Court decisions regarding black voting rights each year. Finally, as an indicator of supportive preexisting legislation, I computed the comprehensiveness of equal employment legislation each year following the procedure established for voting rights.

**Method of Analysis**

I used time series analysis in order to capture the dynamic causes of policy adoption over time. Time series analysis is well suited to uncover patterned relationships and allows one to make causal generalizations across a historical period (Griffin 1992). I used Tobit regression because the dependent variable contains a high percentage of zeros, years in which there was no federal activity. The data are censored because one cannot observe comprehensiveness in years with no legislation. Tobit regression is appropriate for censored data (Ronck 1992; Green 1993; for recent examples using Tobit, see Walton & Ragin [1990]; Jacobs & O'Brien [1998]). Tobit regression uses two formulas to predict values on the dependent variable -- one for years at zero and another for years above zero (Ronck 1992). Tobit regression combines probit estimates of the probability that a year will have a non-zero score on the policy scale for years with a value of zero with estimates of the effects of the
explanatory variables on the policy scale for years with a non-zero score on the policy scale.

A typical concern with time series analysis is autocorrelation, which unfortunately is a topic not well developed in the context of Tobit or other probability models (Haynes & Jacobs 1994). If autocorrelation is present, the standard errors can be biased although the parameter estimates remain consistent. My strategy to overcome this limitation was to run models first with OLS regression and to check for autocorrelation with the Durbin-Watson $d$-statistic, the Breusch-Godfrey serial-correlation LM test (one and two year lags), and the Ljung-Box Q-statistics from the correlogram. Autocorrelation was not present as indicated by Durbin-Watson $d$-statistics of around 2.0 (Durbin-Watson $d$-statistics presented in Table 3.2), the non-significant chi-square statistics from the LM test, and the non-significant Ljung-Box Q-statistics from the correlogram. These diagnostic tests lend credence to the claim that autocorrelation is not present in the Tobit models; hence the standard errors should not be biased making hypothesis testing possible.

The analysis is constrained by having a small sample size ($n=33$) which limits the number of explanatory variables one can enter into regression analysis. I therefore present “trimmed” models that only include significant variables. Except where theoretical or substantive reasons dictate otherwise, I lagged independent variables one year because it is reasonable to expect that Congress would take some time to respond to political events. Using a one year lag avoids simultaneity bias and limits “specification searching” for optimal lags (Hicks & Misra 1993:685). One exception to
the one year time-lag is for congressional and presidential openness. I did not lag these measures because politicians at time one should affect legislation at time one. A second exception is for black protests and crisis events. I did not lag these variables because to do so would preclude the Selma demonstrations from having an effect on the 1965 Voting Rights Act—a specification clearly at odds with the historical record (Lawson 1976; Garrow 1978).\footnote{One drawback to not lagging protests is that I cannot select only protests that occurred before voting rights legislation was enacted in a given year because I have yearly counts of insurgency (I make this distinction for crisis events; see Chart 3.1). While this is less than ideal, the majority of voting rights laws were enacted late in each year (e.g., Eisenhower on September 9 signed the 1957 Civil Rights Act, the civil rights commission was extended in September of 1961 and October of 1963). In addition, the 1960 sit-in movement and the Selma demonstrations came before the 1960 and 1965 statutes, respectively. If protest is lagged one year, its effect remains positive but is no longer statistically significant.}

Results and Discussion

Models 1 through 4 (Table 3.2) present the central analyses (recall that coefficients indicate both the likelihood that a policy was adopted and policy comprehensiveness). Because crisis events and protests are highly correlated (r=.82), models 1 and 2 include protests but not crisis events while models 3 and 4 include crisis events but not protests. I enter equal employment laws in separate equations (models 2 and 4) because they may attenuate the insurgency coefficients given that they are likely a product of black insurgency (e.g., equal employment laws are highly correlated with protests.

---

\footnote{One drawback to not lagging protests is that I cannot select only protests that occurred before voting rights legislation was enacted in a given year because I have yearly counts of insurgency (I make this distinction for crisis events; see Chart 3.1). While this is less than ideal, the majority of voting rights laws were enacted late in each year (e.g., Eisenhower on September 9 signed the 1957 Civil Rights Act, the civil rights commission was extended in September of 1961 and October of 1963). In addition, the 1960 sit-in movement and the Selma demonstrations came before the 1960 and 1965 statutes, respectively. If protest is lagged one year, its effect remains positive but is no longer statistically significant.}
<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
</tr>
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<tr>
<td><strong>Black Insurgency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Protests</td>
<td>.031**</td>
<td>.026**</td>
<td>-----</td>
<td>-----</td>
<td>.023*</td>
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<tr>
<td></td>
<td>(2.880)</td>
<td>(2.648)</td>
<td></td>
<td></td>
<td>(2.156)</td>
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<tr>
<td>Crisis Events</td>
<td>-----</td>
<td>-----</td>
<td>.525*</td>
<td>.394*</td>
<td>.126</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(2.073)</td>
<td>(1.693)</td>
<td>(.528)</td>
</tr>
<tr>
<td>Riots (t-1)</td>
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<td>.036</td>
<td>.237</td>
<td>.199</td>
<td>-.056</td>
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<tr>
<td></td>
<td>(.212)</td>
<td>(.087)</td>
<td>(.430)</td>
<td></td>
<td>(-.124)</td>
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<td></td>
<td></td>
<td></td>
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<tr>
<td>Congressional Openness</td>
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<td>-.332</td>
<td>-.261</td>
<td>-.157</td>
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<tr>
<td></td>
<td>(-.828)</td>
<td>(-.676)</td>
<td>(-1.530)</td>
<td>(-1.285)</td>
<td>(-.779)</td>
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<tr>
<td>Countermovement Killings (t-1)</td>
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<td>.457**</td>
<td>.273'</td>
<td>.282'</td>
<td>.459**</td>
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<tr>
<td></td>
<td>(2.206)</td>
<td>(2.378)</td>
<td>(1.347)</td>
<td>(1.545)</td>
<td>(2.378)</td>
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<tr>
<td>Riots (t-1) x Congressional Openness</td>
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<td>.646***</td>
<td>.942***</td>
<td>.799***</td>
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<td></td>
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<td>(3.271)</td>
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<td>(3.819)</td>
<td>(3.291)</td>
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<tr>
<td>Equal Employment Legislation (t-1)</td>
<td>-----</td>
<td>.268*</td>
<td>-----</td>
<td>.286*</td>
<td>.256*</td>
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<tr>
<td></td>
<td></td>
<td>(1.952)</td>
<td></td>
<td>(1.906)</td>
<td>(1.843)</td>
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<tr>
<td>Constant</td>
<td>-1.696</td>
<td>-1.687</td>
<td>-1.491</td>
<td>-1.503</td>
<td>-1.707</td>
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Table 3.2. Tobit Regression of Black Voting-Rights Policies on Black Insurgency and the Political Context, 1933-1965."
Table 3.2. (continued).

<table>
<thead>
<tr>
<th></th>
<th>Model 1</th>
<th>Model 2</th>
<th>Model 3</th>
<th>Model 4</th>
<th>Model 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>$\chi^2$</td>
<td>49.336***</td>
<td>52.861***</td>
<td>45.066***</td>
<td>48.417***</td>
<td>53.144***</td>
</tr>
<tr>
<td>$df$</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>N</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-35.933</td>
<td>-34.171</td>
<td>-38.068</td>
<td>-36.393</td>
<td>-34.029</td>
</tr>
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<td>$R^2_{xy}$</td>
<td>.957</td>
<td>.962</td>
<td>.926</td>
<td>.955</td>
<td>.947</td>
</tr>
<tr>
<td>Durbin-Watson $d$-statistic$^b$</td>
<td>2.090</td>
<td>2.132</td>
<td>1.954</td>
<td>2.050</td>
<td>2.171</td>
</tr>
</tbody>
</table>

Notes: $t$-statistic in parentheses
$^+$ $p < .10$  * $p < .05$  ** $p < .01$  *** $p < .001$ (one-tailed)

$^a$ non-significant variables: presidential openness, Supreme Court voting-rights cases

$^b$ based on identical OLS model.
(r = .69) and crisis events (r = .68). I discuss the logic behind model 5 shortly. I organize my findings following the four theoretical perspectives.

**Indigenous Approach.** Black protests significantly affected the adoption of voting rights legislation (models 1 & 2). This result is consistent with the historical record. Before the emergence of the civil rights movement, the federal government did little to aid black suffrage. Yet the massive wave of black sit-ins beginning in February of 1960 was met by the third strongest voting rights law in May of that year. Similarly, Congress passed the landmark Voting Rights Act of 1965 in the year black protests peaked. This finding adds quantitative support for the conventional view that the civil rights movement acted as a catalyst for voting rights legislation (e.g., Lawson 1976). Crisis events also led to the adoption of voting rights legislation (models 3 & 4). This result is consistent with previous accounts that have stressed a few highly-publicized civil-rights events as having prompted federal response (e.g., Sundquist 1968:259-74). This finding advances these previous accounts in two ways. First, it makes clear that voting rights policies were affected by more than just Selma; rather Selma was but one of a number of crisis events that prompted federal elites to enact voting rights legislation.

Second, the analyses provide some indication as to why crisis events were linked to federal activity. Recall that one explanation for the link between crisis events and federal response, derived from the violence thesis, was that such events provoked white violence. Note, however, that the effect of crisis events occurred net of counter-movement killings. Another explanation for the connection between crisis events and
federal response, consistent with the indigenous approach, was that crisis events inspired black demonstrations on a national basis. This perspective is supported by analysis shown in model 5 which includes both crisis events and protests. While black protests continued to have a significant and positive effect, crisis events did not.

Consistent with Morris (1993), lawmakers seem to have responded to the general political turmoil generated by the crisis event rather than to the event itself. This conclusion must be tentative, however, because of the difficulty in estimating the independent effects of each factor given their high bivariate correlation.

**Violence Thesis.** Consistent with the general argument of McAdam (1983) and Barkan (1984), countermovement violence had a significant impact on federal voting rights legislation. The reluctance of federal elites to intervene in black suffrage, in part, was broken when civil rights activists met violent deaths at the hands of whites. Does this conclusion contradict Gamson’s (1975) widely cited finding that violence works? It does not simply because Gamson’s argument was more nuanced. He argued that violence worked *only* in situations where the public condoned the actions of the violence users. The public was presumably not supportive of white killings of blacks by the 1950s (see Garrow 1978). Without the support of the “reference public” (Lipsky 1968), white violence backfired against its users.

**Piven & Cloward Thesis.** The effect of black riots on voting rights legislation depended on the presence of a favorable ruling coalition in Congress. (An interaction between riots and presidential openness was non-significant.) Consistent with Piven and Cloward (1979a,b), models 1 through 4 show that riots had a significant positive
effect only when Congress had some degree of openness. In terms of congressional
openness, given that its coefficient was non-significant in years with no riots, the effect
of congressional openness was of little consequence until the late 1950s given the
virtual absence of black riots. Yet beginning in 1957, every year experienced at least
one riot and by 1959 Congress had taken an explicitly liberal turn (the 1958
Democratic landslide increased the percentage of non-southern Democrats in Congress
from 26 percent to 37 percent). By 1965, in fact, the percentage of non-southern
Democrats in Congress had risen to 42 percent and the number of riots had peaked at
nine. Thus, the enactment of voting rights legislation occurred during a period of
significant rioting, at least in the pre-Watts era, and the presence of liberals in office.
To my knowledge, this is the first study to extend the Piven and Cloward thesis beyond
welfare relief.

Why did black violence "work," at least when liberals were in office, despite
the public’s opposition to violent demonstrations? Based on Button’s (1978:174-75)
observation, I speculate that it had to do with the nature of the riots themselves. Before
the massive Watts riot, black initiated riots tended to be small scale events that resulted
in few deaths and relatively little property destruction. Using Olzak’s (1998) data, for
instance, most riots from 1954 to before the 1965 Watts riot lasted less than one day
and resulted in no deaths. It is plausible that while pre-Watts riots were novel enough
to have caught the attention of policy makers, they were too limited in scale to bring
about public or elite backlash. Button (1978:159) noted:
“if the disorder is not so severe that it threatens stability, yet intense enough to be noticed and to stimulate public officials to action, it can succeed in achieving certain goals for its partisans. The initial riots of the 1960s approximated this middle-range of severity, thereby affecting a degree of social change without bringing about political repression.”

**State Centered Approach.** The state centered approach views politicians as potential policy entrepreneurs who press for movement supported legislation without prompting by outside pressures. In terms of voting rights, however, this claim is not supported. Presidential openness did not affect voting rights legislation. This finding is consistent with the limited voting rights legislation passed during the Roosevelt and Truman administrations. Such Democratic presidents, including Kennedy until 1963, never strongly pushed for civil rights issues for fear that it would threaten the passage of more “high priority” legislation (McCoy & Ruetten 1973; Brauer 1977; Sitkoff 1978). While liberals in Congress did affect voting rights legislation, they did so only in the presence of black rioting. That is, instead of initiating legislation, they appear to have simply responded to outside political pressure. Instructive here are the actions of Congress in the 1930s. The congresses of that era were structurally conducive to passage of civil rights laws. From 1933 to 1938, for instance, Democrats controlled both chambers and the percentage of non-southern Democrats in Congress ranged from 40 percent to 48 percent—a figure that compares favorably to congresses of the 1960s. Without significant black agitation, however, liberals in Congress did not press for substantive voting legislation (Lawson 1976; Sitkoff 1978).

I also found that Supreme Court voting-rights decisions did not have a significant impact on voting rights legislation. This does not mean that Supreme Court
actions were irrelevant for voting laws. As Burstein (1985) noted for equal employment laws, Congress usually does not consider legislation until the Supreme Court deems federal intervention constitutional. Beginning with decisions against grandfather clauses (*Guinn v. United States* 1915, *Lane v. Wilson* 1939) and white primaries (e.g., *Nixon v. Herndon* 1927, *Smith v. Allwright* 1944), civil rights supporters recognized that the Court was willing to outlaw procedures designed to disenfranchise blacks under the 14th and 15th Amendments. This left disenfranchising laws and arbitrary registration procedures vulnerable to federal legislative relief. While my findings indicate that congressional action was not a direct result of these decisions, Court actions provided the legal framework for subsequent legislation.

Consistent with state centered theory, I found that the passage of comprehensive equal-employment laws positively impacted voting rights legislation (models 2 & 4). Apparently, legislative attention directed toward fair employment facilitated congressional consideration of anti-discrimination mandates in voting. This linkage between policies, as Skocpol and Amenta (1986) theorized, is not uncommon. Walker (1977), for instance, noted that once Congress saw fit to adopt auto-safety legislation in 1966, they then enacted laws concerning coal mine safety in 1969 and occupational safety in 1970 (see also Kingdon 1984). One of the limitations of testing for policy feedbacks, however, is that the findings do not address why elites adopted the original policy, in this case equal employment legislation. Based on research by Burstein (1985) and results presented in Chapter 4 (equal employment), part of the impetus behind the adoption of such laws was black protest activity. Gamson (1975), for
instance, noted that Roosevelt's Executive Order 8802 establishing the Committee on Fair Employment Practice in 1941 was due to the threatened march on Washington, D.C., by A. Philip Randolph. Thus, it is likely that some of the influence of equal employment policies on voting rights policies should be attributed to black protest (i.e., protest → policy precedent → subsequent policy adoption). I referred to this approach as a political mediation model in Chapter 2 (theory).

Conclusion

Like all historical sociological work, the generalizability of this chapter's findings are limited to the phenomenon studied and the historical period (Griffin 1992). While there is no such thing as a typical social movement, the civil rights movement was one of the most contentious movements in U.S. history: it was a prolonged conflict that mobilized large numbers of people across a geographically disperse area, it met a violent opponent and an ambivalent elite, and it pursued a broad legislative agenda. Caution therefore must be used when applying this study's findings to other challenges. For instance, the importance of crisis events is surely limited to the mass-based and highly contentious movements that can produce them. In addition, voting rights was obviously only one goal of the civil rights movement. It is not clear how policy determinants varied across other civil rights issues, in particular issues like open housing that the non-southern public did not support, or issues such as educational desegregation that principally took place through the courts.
With those caveats in mind, the empirical examination of voting rights legislation produced four main findings. First, following the indigenous approach, black protests and movement generated crisis events played an important role in voting rights legislation. The latter finding supports the widespread claim that events like Birmingham and Selma, and a few other highly publicized events, were central determinants of federal legislation. I argued that crisis events affected voting rights legislation because they inspired black protests nationwide and elites reacted to those nationwide protests. Second, consistent with the violence thesis, countermovement killings led to voting rights legislation. It is likely that such violent actions backfired against segregationists because public sentiment did not condone the violence. Third, in line with Piven and Cloward's (1979a) thesis concerning welfare expenditures, the positive effect of riots on voting rights legislation became significant and was enhanced in years when non-southern Democrats controlled many congressional positions and Democrats controlled both chambers of Congress. Similarly, liberals in Congress enacted voting rights legislation only during periods of black rioting. Fourth, the presence of equal employment laws significantly affected voting rights legislation. Consistent with a state centered approach, this result illustrates how supportive preexisting legislation can impact movement supported legislation. Taken together, these findings have implications for our understanding of the outcomes of the civil rights movement and the study of movement outcomes in general.

One debate on the outcomes of the civil rights movement is whether the movement "compelled" policy change or whether its policy victories depended upon a
favorable political environment. Morris (1993) argued that the civil rights movement “forced” elite concessions while other scholars noted that its outcomes were largely the product of actors in the broader political context (McAdam 1983; Burstein 1985). On the one hand, my findings suggest that it was not an either-or situation. Both insurgency and aspects of the political environment were important for the outcome studied. On the other hand, I argue that the image of the civil rights movement as “forcing” favorable legislation is misleading. Instead, I believe that the impact of black insurgency on elite response was inherently conditioned by the political context.

The significant impacts of crisis events and protests at first may seem to indicate that the civil rights movement “compelled” federal action. That imagery would be misleading because nearly all accounts of the civil rights movement have noted that the mechanism which linked demonstrations to elite actions was the presence of a sympathetic audience (Lipsky 1968; Garrow 1978; Burstein 1985; Morris 1993). While black demonstrations raised the salience of civil rights to the nation, the majority of the public was already supportive of most civil rights issues by the 1950s (Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992). Thus the effects of crisis events and protests occurred within the context of a supportive, albeit ambivalent, public. Similarly, I noted that the effect of segregationist killings backfired against its users because the public did not condone such violent actions (Gamson 1975; see also Dahl 1967). While it is correct to place the credit for voting rights legislation squarely on the shoulders of the courageous activists who risked their lives in pursuit of it; their ability to reach that goal was conditioned by a favorable political context.
Based on the results of this chapter, I argue that elite response was due to the co-occurrence of a strong movement coupled with favorable political opportunities. More specifically, I speculate that the black movement won suffrage because of the co-occurrence of a strong indigenous challenge, a violent opponent, and an attentive and sympathetic public. The results of this chapter empirically have demonstrated the importance of movement activity (protests, crisis events) and countermovement violence. Support for an attentive and sympathetic public, or what Lipsky (1968) termed a favorable reference public, comes from Gallup (1972) opinion surveys revealing the high salience of civil rights issues to the public from Little Rock (1957) to Selma (1965) and majority public support for the principle of non-discrimination by the 1950s (see Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992).

By focusing on the social movement, the reference public, and the alliance and conflict system, this approach draws upon the most salient factors identified in previous "competing" accounts of movement outcomes. Specifically, it draws upon Morris’ (1984) indigenous approach that is focused on black protests, scholars like Barkan (1984) who emphasized the importance of countermovement violence, and Lipsky (1968) who noted that the position that the broader public takes toward the movement’s goal conditions the impact of collective action on the target of change (see also Gamson 1975; Schumaker 1978).

This description of federal adoption of voting rights legislation is consistent with McAdam’s (1982) “political process” approach in which he argued that the successes
of the black movement in the mid-sixties were due to a strong indigenous movement in conjunction with favorable political opportunities. It differs from McAdam's thesis in that it specifies with more precision the relevant factors. It also is consistent with a variety of approaches used to explain state policy making in regard to welfare. For instance, at the heart of the "political mediation" model (Amenta, Carruthers & Zylan 1992), the "political resource" theory (Hicks & Misra 1993), and the "institutional politics" theory (Amenta & Poulsen 1996) is the notion that the effect of outside agitation on state policy making is conditioned by the political context.

If I am correct that the co-occurrence of a strong indigenous challenge with a violent opponent and an attentive and sympathetic public can largely explain federal response to black suffrage, future studies should find similar processes for other large-scale and contentious social movements. Most specifically, these findings should be consistent with the responses of other federal actors to black political rights during the same historical period. The most useful quantitative and qualitative approaches will analyze movement outcomes over time, examine the applicability of multiple theoretical perspectives, and differentiate symbolic from substantive responses. While the study of movement outcomes is no longer in its infancy, much work remains to be done.
<table>
<thead>
<tr>
<th>Variable</th>
<th>Operationalization</th>
<th>Data Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voting Rights Legislation</td>
<td>All House and Senate passed bills not subsequently enacted into law, congressional statutes, presidential executive orders, and congressionally-ratified constitutional amendments covering black voting rights were coded based on the five policy dimensions presented. The House was given credit for statutes, constitutional amendments, and House passed bills not enacted into law; the Senate was given credit for statutes, constitutional amendments, and Senate passed bills not enacted into law; and the president was given credit for executive orders, statutes, and constitutional amendments (Kennedy supported the poll-tax ban). For every bill, statute, executive order, and constitutional amendment, I summed the number of “enforcement powers” that the policy contained across House, Senate, and presidential actions (see Chart 3.3). Thus, a statute that contained three voting-rights enforcement powers would have a score of nine—three for the House plus three for the Senate plus three for the president. I then converted this distribution into a z-score. I followed this same procedure for the remaining four policy categories and then summed the five z-scores. A constant was added to each year so that the lowest value on the voting rights scale was a zero (to allow for Tobit regression). I followed this same procedure for the equal employment scale.</td>
<td>To identify presidential executive orders, I used Berman (1970), Harvey (1971), Wolk (1971), McCoy &amp; Ruettten (1973), Brauer (1977), Sitkoff (1978), Kirby (1980), Weiss (1983), Burk (1984), Graham (1990), and Title 3 of the Code of Federal Regulations index (select years). I located the text of presidential executive orders in Title 3 of the Code of Federal Regulations. To identify congressional civil rights bills, statutes, and constitutional amendments, I used the Congressional Quarterly (1945-1965), Lawson (1976), Sitkoff (1978), Kirby (1980), Weiss (1983), Burk (1984), and Graham (1990). I located the text of congressional statutes and constitutional amendments in the U.S. Statutes at Large (1933-1965). I located the text of House and Senate passed bills not enacted into law in the Congressional Record (U.S. Congress 1933-1965) and policy summaries in the Congressional Quarterly (1945-1965). McAdam (1982) for 1954 to 1965 data; Jenkins, Lundman &amp; MaGuire (1998) for 1946 to 1953 data; Santoro for 1933 to 1945 data.</td>
</tr>
<tr>
<td>Protests</td>
<td>The total number of black protest events reported in the New York Times Index each year. Protests are collective actions that use non-routine methods whose goal is the advancement of black rights. McAdam (1982) and Jenkins. Lundman &amp; MaGuire (1998) used keywords (e.g., Negroes-US-General) to identify black protest events. See McAdam (1982: Appendix 1) for a detailed description of the coding procedures.</td>
<td>McAdam (1982) for 1954 to 1965 data; Jenkins, Lundman &amp; MaGuire (1998) for 1946 to 1953 data; Santoro for 1933 to 1945 data.</td>
</tr>
<tr>
<td>Riots</td>
<td>The total number of black riots each year. Riots are collective actions initiated by blacks that involve the use of violence. Data primarily come from the New York Times Index with supplemental data; see Isaac &amp; Kelly (1981).</td>
<td>Isaac &amp; Kelly (1981) for 1947 to 1965 data; Santoro for 1932 to 1946 data.</td>
</tr>
</tbody>
</table>
Chart 3.1 (continued).

Crisis Events: All events listed in chronologies of the civil rights movement were checked to see which movement-initiated events made the front page of the New York Times for five consecutive days. The total cumulative number of such events are summed each year. I coded events in the year they occurred unless they took place after voting rights policies were enacted in which case they were coded as having occurred the following year.

Congressional & Presidential Openness: Congressional openness is the number of chambers in Congress with a Democratic party majority at the beginning of the first session of each Congress and the number of non-southern Democrats in Congress divided by the total number of Democrats and Republicans in Congress at the beginning of the first session of each Congress. Each measure standardized (z-scored) and summed. Presidential openness is the presence of a Democratic president (1 = yes, 0 = no) and the percentage margin of popular vote for Democratic presidential candidates minus the percentage margin of popular vote for Republican presidential candidates. Each measure standardized (z-scored) and summed.

Counter-movement Killings: Countermovement killings are the total number of countermovement killings of people identified with the civil rights movement of any race reported in the New York Times Index. A variety of headings were searched in the New York Times Index in order to identify the event, such as “Negroes” and “Education.” See Burstein (1985: Appendix) for a detailed description of the coding procedures.

Supreme Court Cases: The number of favorable civil-rights decisions by the Supreme Court each year that pertain to black suffrage. Cases denied review (certiorari denied) are excluded (see Miller 1966:447). Cases are considered favorable if legal scholars consider the case a victory for the civil rights of blacks—usually meaning that the black defendant or plaintiff won.


Burstein (1985) for 1940 to 1965 data; Santoro for 1932 to 1939 data.


Continues
### Chart 3.1 (continued).

| Equal Employment Law | The equal employment scale is based on the following federal responses: Executive Order (EO) 8587 (1940); EO 8802 (1941); EO 9346 (1943); EO 9664 (1945); EO 9808 (1946); EO 9980 (1948); EO 9981 (1948); House bill (HR) 4453 (1950); EO 10308 (1951); EO 10479 (1953); EO 10557 (1954); EO 10590 (1955); HR 627 (1956); Civil Rights Act (CRA) of 1957; Public Law (PL) 86-383 (1959); EO 10925 (1961); PL 87-264 (1961); EO 11114 (1963); PL 88-152 (1963); and the CRA of 1964. For scale construction, see the voting rights scale. |
|---|------------------------|------------|-----------------|----------------|--------------------------|------------------------|--------------------------------|-------------------------------|--------------------------------|-------|---------|
| 1 | 1.00                   | .80**      | .78**           | .89**          | .21                      | .05                    | .60**                          | .30                           | .79**                           | 1.52  | 4.06    |
| 2 |                        | 1.00       | .82**           | .74**          | .22                      | -.10                   | .30                           | .48**                         | .69**                           | 28.48 | 54.58   |
| 3 |                        |            | .80**           | .83**          | .23                      | .23                    | .50**                          | .41**                         | .68**                           | 1.27  | 2.45    |
| 4 |                        |            | .82**           | .83**          | .22                      | .00                    | .73**                          | .29                           | .70**                           | 1.00  | 2.02    |
| 5 |                        |            |                 | .83**          | .36*                     | .36*                   | -.10                           | .12                           | .15                             | -.24  | 2.01    |
| 6 |                        |            |                 | .83**          | .36*                     | .36*                   | .09                            | .08                           | .40*                            | .77   | 1.70    |
| 7 |                        |            |                 |                |                          |                        | 1.00                           | .01                           | 1.00                            |       |         |
| 8 |                        |            |                 |                |                          |                        |                                |                               |                                 |       |         |
| 9 |                        |            |                 |                |                          |                        |                                |                               |                                 |       |         |

* p < .05 ** p < .01 (two-tailed)

<table>
<thead>
<tr>
<th>enforcement powers</th>
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<tbody>
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<td>HR 627 (1956); CRA (1957); VRA (1965)</td>
<td>Attorney General granted the authority to seek court injunction against obstruction of right to vote</td>
</tr>
<tr>
<td>CRA (1960); CRA (1964); VRA (1965)</td>
<td>Attorney General granted the authority to sue political subdivisions over voting rights violations</td>
</tr>
<tr>
<td>VRA (1965)</td>
<td>new voting laws enacted by state or local governments whose prior voting laws had been nullified had to be approved by the Attorney General before they could take effect</td>
</tr>
<tr>
<td>CRA (1960); VRA (1965)</td>
<td>allowed local registrars to be replaced</td>
</tr>
<tr>
<td>VRA (1965)</td>
<td>replacement of local registrars through administrative action</td>
</tr>
<tr>
<td>acts outlawed/suspended</td>
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</tr>
<tr>
<td>HR 1024 (1942); HR 7 (1943); HR 7 (1945); HR 29 (1947); HR 3199 (1949); 24th Amendment (1962); VRA (1965)</td>
<td>anti-poll tax measures (nationwide)</td>
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<td>CRA (1964); VRA (1965)</td>
<td>anti-literacy test measures</td>
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<td>VRA (1965)</td>
<td>suspended other non-literacy tests</td>
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<td>CRA (1964)</td>
<td>outlawed unequal application of voting registration procedures and rejection for immaterial errors or omissions</td>
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<tr>
<td>coverage</td>
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<tr>
<td>VRA (1965)</td>
<td>established which states or political sub-divisions were subject to Attorney General litigation</td>
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<tr>
<td>information gathering</td>
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<td>CRA (1960); CRA (1964)</td>
<td>required the preservation and/or collection of election records and voting statistics</td>
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<tr>
<td>E.O. 9808 (1946); HR 627 (1956); CRA (1957); PL 86-383 (1959); PL 87-264 (1961); PL 88-152 (1963); CRA (1964); VRA (1965)</td>
<td>empowered federal commission to investigate voting rights violations</td>
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<tr>
<td>quantification</td>
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<tr>
<td>VRA (1965)</td>
<td>quantified voting discrimination</td>
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Notes: CRA = Civil Rights Act; VRA = Voting Rights Act; PL = Public Law; EO = Executive Order; HR = House Resolution/Bill; number in parentheses is adoption year.

CHAPTER 4

EQUAL EMPLOYMENT RIGHTS

Conventional wisdom views black insurgency as the catalyst for the passage of civil rights legislation in the sixties: a plausible approach given that black protests and riots peaked during this time period. Yet this view ignores public opinion which had by the sixties become overwhelmingly favorable toward the principle of non-discrimination (Schuman, Steeh & Bobo 1985). For instance, the percentage of whites who favored equal employment treatment for blacks rose from 42 percent in 1944, to 83 percent in 1963, and to 95 percent in 1972 (Burstein 1985). Similarly, while 46 percent of whites approved of desegregated streetcars and buses in 1942, that number stood at 62 percent in 1956 and 88 percent in 1970 (Smith & Sheatsley 1984). These favorable trends in public opinion would seem central to civil rights legislation in light of the strong link between public opinion and policy outcomes (Page & Shapiro 1983, 1992; Erikson, Wright & McIver 1989; Hartley & Russett 1992).

Unfortunately, few studies on the outcomes of the civil rights movement and social movements in general have used public opinion as an explanatory factor. The most notable exception is Burstein (1985) who examined the link between public opinion and the number of members in each two-year Congress who sponsored an equal employment bill from 1941 to 1972. Sponsorship was used as a proxy for
congressional support of equal employment legislation (Burstein 1985:33-35). Burstein’s (1985:90) central conclusion was that public opinion acted as the primary determinant of congressional sponsorship; a controversial claim because it meant that the civil rights movement played a secondary role. Burstein’s work was pioneering because he connected the dominant political-science explanation of policy enactment—public opinion—to the social movement literature on policy outcomes. In addition, his time series work represents one of the few quantitative, non-welfare studies on the outcomes of the civil rights movement at the federal level.

Burstein’s conclusions, however, can be challenged because of the limitations of his dependent variable. One drawback to the sponsorship measure is that, from the movement’s point of view, more sponsorship did not necessarily correspond to more success. For instance, the 87th Congress (1961-62) had nearly twice the number of sponsors of an equal employment bill than the previous Congress yet neither session passed fair employment legislation. In addition, relatively small differences between congresses could mean enormous difference in success. The 88th Congress (1963-64), for example, had only three more sponsors than the previous session but it passed the Civil Rights Act of 1964. One way to avoid this limitation is to focus on the passage of bills or statutes. Another limitation to a focus on sponsorship is that it ignores the content of the sponsored bill. Thus sponsorship of the modest 1950 equal-employment bill is equivalent to sponsorship of the landmark 1972 statute. A final critique of the congressional sponsorship measure is that it neglects presidential actions. During the
forties and fifties, nearly all federal equal-employment activity took place through presidential executive orders (Bonfield 1967).

A second limitation to Burstein's (1985) analysis is that he could not adequately test alternative explanations. Because he used the two-year Congress as the unit of analysis (n = 16), he ran a series of regression models predicting congressional sponsorship with public opinion plus one additional explanatory variable. This approach negates the ability to examine the independent effect of public opinion while simultaneously holding constant multiple independent variables that are associated with movement outcomes. Both of these limitations leave suspect not only his conclusion that public opinion played the dominant role in equal employment legislation, but also that public opinion was relevant at all.

This chapter builds upon Burstein's work by examining the link between public opinion and federal adoption of equal employment legislation. This chapter advances our understanding of equal employment laws because my operationalization of them comes closer to capturing success from the movement's point of view: my measure includes congressional and presidential responses; it limits congressional responses only to policies that passed at least one chamber of Congress; and it codes the content of federal responses in order to distinguish more from less comprehensive policies. In addition, because I work with a larger sample size than did Burstein (1985), I can better examine the effect of public opinion net of alternative explanations. These alternative approaches include the traditional "indigenous approach" (Morris 1984) that focuses on black protests; the violence thesis (Barkan 1984) that highlights segregationist violence;
the Piven and Cloward (1979a) thesis that emphasizes black rioting in conjunction with a favorable ruling coalition in Congress; and a state centered approach (Skocpol 1985) that points to policy entrepreneurs within the state and a supportive institutional context.

I begin with a review of the legislative history of equal employment laws. After elaborating upon the theoretical approaches discussed above, I then employ a Tobit time-series analysis that examines equal employment legislation from the Roosevelt administration to the enactment of the 1972 Equal Employment Opportunity Act.

**Legislative History, 1933-1972**

Congressional and executive response to blatant racial discrimination by employers was long delayed and most often symbolic in nature. Two key issues concerned who would be covered under the anti-discrimination mandate and what enforcement options would ensure employer compliance (Bonfield 1967). While Congress inserted non-discrimination clauses into New Deal statutes beginning in 1933, no federal policy outlawed discrimination in government or private employment in the thirties. During the forties and fifties, federal responses covered federal employers and contractors, but not the private workforce, and established fact finding commissions which lacked enforcement powers. Nearly all of these early responses came through presidential executive orders.

In 1940, President Roosevelt issued Executive Order (EO) 8587, the first anti-discrimination mandate to cover federal civil-service employment. One year later, A.
Philip Randolph's threat to march on the capital persuaded Roosevelt to establish (EO 8802) the Committee on Fair Employment Practice (FEPC) and to bar discrimination by defense contractors. The FEPC could investigate charges of employer discrimination but the contracting agencies held the authority to cancel contracts. Roosevelt reorganized (EO 9346) the FEPC in 1943 and required a non-discrimination clause in all war-related contracts and subcontracts. The life of the FEPC was extended in 1945 (EO 9664) only to be terminated a year later by Congress. The FEPC achieved some employment gains for blacks (Ruchames 1953:156-64) but without the ability to impose sanctions, discriminatory employers could (and did) ignore its fair employment orders (Norgren & Hill 1964; Burk 1984:91).

President's Truman and Eisenhower followed the course set by Roosevelt. Based on the recommendations of his Committee on Civil Rights (EO 9808). Truman in 1948 created (EO 9981) the Commission on Equality of Treatment and Opportunity in the Armed Services. The order relied on the newly created commission to persuade the armed services to voluntarily end segregation; a goal not accomplished in the army until the Korean war. Also in 1948, Truman established (EO 9980) the Fair Employment Board which was empowered to review allegations of discrimination within federal departments and make non-binding recommendations. Truman in 1951 established (EO 10308) the Committee on Government Contract Compliance to study the problem of discrimination by federal contractors. Eisenhower, in turn, issued three executive orders: in 1953 (EO 10479) he replaced Truman's contract committee with the Committee on Government Contracts; in 1954 (EO 10557) he standardized the non-
discrimination clause in federal contracts and required that contractors post public notice of their fair employment obligation; and in 1955 (EO 10590) he replaced Truman’s employment commission with the Committee on Government Employment Policy.

Truman’s and Eisenhower’s actions did little to alleviate racial discrimination within the federal government and by federal contractors (Bonfield 1967; Hill 1977). The commissions they created had limited staff and operating budgets and they lacked the authority to back-up their findings with court enforceable sanctions. No federal contractor had a contract canceled because of discriminatory practices during either administration (McCoy & Ruetten 1973:276; Burk 1984:100). Nonetheless, such presidential orders kept public the federal commitment to fair employment and they continued anti-discrimination machinery into subsequent presidential administrations (McCoy & Ruetten 1973; Burk 1984).

Congressional responses were even more limited than Truman’s and Eisenhower’s executive orders. It was not until 1950 that the House of Representatives passed the first FEPC bill; it died due to a Senate filibuster. The bill would have created a voluntary FEPC. Ironically, the bill’s main advocate in the House attempted to gain congressional support by assuring his colleagues that the bill did not outlaw prejudice (Congressional Quarterly 1950:379). Building on a 1956 House-passed bill, Congress in 1957 enacted the first civil rights act in 82 years. The Civil Rights Act of 1957, primarily a weak voting-rights act, established the Commission on Civil Rights which could investigate the denial of equal protection. The commission first
documented employment discrimination in its 1961 report; Congress extended the life of the commission five times between 1959 and 1967.

The content of federal employment policies noticeably became more substantive in the sixties. In 1961, President Kennedy issued (EO 10925) the "most far-reaching" executive order to date (Means 1966:220; see also Bonfield 1967; Jones 1988). The order replaced Eisenhower's committees with the Committee on Equal Employment Opportunity. More important, the order specified sanctions such as debarment for contractor non-compliance that the committee itself could impose. In addition, the order established "affirmative action" requirements in that federal contractors had to file compliance reports demonstrating to the committee their fair employment practices and note their non-discrimination obligation in all employee advertisements. In 1963, Kennedy extended (EO 11114) the order to include federally-assisted construction contracts. In 1965, President Johnson continued (EO 11246) Kennedy's affirmative-action regulations but also granted the Secretary of Labor the authority to sanction discriminatory contractors and authorized the Civil Service Commission to issue binding decisions in federal fair-employment matters.

The most significant change took place in Congress, beginning with its adoption of Title VII of the 1964 Civil Rights Act. That title established the Equal Employment Opportunity Commission (EEOC) and, most important, outlawed discrimination for the first time in private employment (including unions and employment agencies). Title VII prohibited discrimination in hiring, recruitment, upgrading, demotion, and transfer. To secure the act's passage, however, Congress did not grant enforcement powers to
the EEOC. The act also excluded from its coverage state and local governments as well as educational institutions. To rectify these limitations, either the House or the Senate (but not both) over the next six years passed bills that would have allowed the EEOC to take recalcitrant employers to court (1966, 1970, 1971); to issue court enforceable cease and desist orders (1966, 1970); or to extend Title VII coverage to subnational governments and educational institutions (1970). The culmination of the struggle came with the Equal Employment Opportunity Act of 1972. The 1972 act, signed by President Nixon, extended Title VII coverage to subnational governments and educational institutions and the EEOC was allowed to litigate against private parties. Unfortunately, Congress did not grant the EEOC the power to issue court enforceable cease and desist orders—the most effective method of enforcing fair employment mandates (Bonfield 1967). With minor changes (see Burstein 1985:216n), the 1972 act solidified equal employment law in the United States.

Figure 4.1 shows the comprehensiveness of equal employment legislation from the beginning of Roosevelt's term in 1933 to the passage of the Equal Employment Opportunity Act in 1972 (measurement explained below). High scores indicate years that witnessed substantial legislation; low scores indicate years in which largely symbolic laws were passed; years with scores of zero indicate that no bills, statutes, or executive orders were enacted. Figure 4.1 summarizes the preceding legislative summary: there were no responses in the thirties; much activity occurred in the forties and fifties but little of substance; Kennedy's 1961 executive order was a noticeable
departure from prior responses; and 1964 and 1972 represented years with breakthrough legislation. In the next section, I review the theoretical approaches to explain the policy outcomes of the civil rights movement.

Theoretical Approaches to Civil Rights Legislation

As noted in Chapter 3 (voting), previous accounts of the outcomes of the civil rights movement by Piven and Cloward (1979a), McAdam (1983), Barkan (1984), Burstein (1985), and Morris (1993) typically focus on a variable or set of variables. Burstein (1985), for instance, highlighted the role of public opinion. Approaches by Burstein and others can be considered theories because they identify a salient factor in the
authority-challenger conflict and because they explain why elites respond to that factor. However, they are not comprehensive theories because they are usually vague as to what role additional factors played in the policy outcome. For example, while Morris (1993) argued that the 1964 Civil Rights Act was largely due to black protests inspired by the 1963 Birmingham demonstrations, it is not clear if Morris’ approach excludes other potentially relevant factors, such as supportive public opinion, countermovement violence, and liberals in Congress and the White House. In general, the literature has sought to validate a particular theoretical perspective rather than to discover the relative contributions of alternative theories. Because each theory has identified a salient aspect of the authority-challenger conflict, I view these potentially “competing” theories as complimentary.

Five theoretical perspectives seem most promising to explain federal equal-employment laws: democratic theory, the indigenous approach, the violence thesis, the Piven and Cloward thesis, and a state centered approach. Table 4.1 summarizes these perspectives and lists their corresponding measures.

**Democratic Theory.** Burstein’s (1985) work, the only systematic attempt to explain congressional support of equal employment laws, was guided by democratic theory. The central claim of democratic theory is that policy makers are responsive to public opinion (Page & Shapiro 1992). Public opinion “works” because politicians view enacting legislation in line with majority preferences as an important way to get re-elected and because citizens tend to elect legislators who want the same policies they do (Wright, Erikson & McIver 1987). Political scientists have gathered an impressive
array of evidence to support the link between public opinion and policy outcomes (see Jacobs & Shapiro [1994] for a review). Public policy corresponds to majority preferences roughly two-thirds of the time and changes in public opinion are followed by congruent changes in legislation also about two-thirds of the time (Page & Shapiro 1992:2). This link is particularly strong for civil rights issues (Miller & Stokes 1963; Burstein 1979; Page & Shapiro 1983).

As noted earlier, Burstein (1985) argued that public opinion mattered and, more controversial, that public opinion rather than black protests played the dominant role in support for equal employment legislation. These arguments rest on four observations. First, at the bivariate level, congressional sponsorship is more strongly correlated with public opinion \((r = .85)\) than with civil rights protests \((r = .19)\) (see Burstein’s Table

<table>
<thead>
<tr>
<th>Theory</th>
<th>Argument</th>
<th>Measures</th>
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<tr>
<td>Democratic Theory</td>
<td>Public opinion drives elite response.</td>
<td>- pro-equal employment attitudes</td>
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<td></td>
<td></td>
<td>- attitudes * insurgency</td>
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<tr>
<td>Indigenous Approach</td>
<td>Social movements compel elite response.</td>
<td>- protests</td>
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<td></td>
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<td>- crisis events</td>
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<tr>
<td>Violence Thesis</td>
<td>Elites respond to countermovement violence.</td>
<td>- countermovement violence</td>
</tr>
<tr>
<td>Piven &amp; Cloward Thesis</td>
<td>Elites respond to riots: the effect of riots on policy response depends upon the “electoral institution.”</td>
<td>- riots</td>
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<td></td>
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<td>- riots * congressional openness</td>
</tr>
<tr>
<td>State Centered</td>
<td>Liberal presidents and congresses act as policy entrepreneurs by enacting legislation net of insurgency; policy precedents affect policy response.</td>
<td>- congressional openness</td>
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<td></td>
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<td>- state equal-employment laws</td>
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<td></td>
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<td>- Supreme Court equal-employment cases</td>
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Table 4.1. Theories of Movement Outcomes and Corresponding Measures.
4.2). Second, Burstein (1985: Table 4.3) regressed congressional sponsorship on public opinion plus one additional explanatory variable. While public opinion always had a significant positive effect, civil rights protests had a negative effect and protests specifically directed at equal employment had no effect. Third, Burstein examined whether the effect of black protests on congressional sponsorship depended on public opinion (see Burstein’s Table 4.4). He found that it did; but the effect of black protests became positive only when about 68 percent of the population held pro-equal employment attitudes. In contrast, public opinion had a significant positive effect on congressional sponsorship even when there were no black protests. These results indicated to Burstein that protests played a secondary role in the policy process by sensitizing Congress to public opinion. Fourth, Burstein (1985:90) noted that the Equal Employment Opportunity Act of 1972 passed after black insurgency had declined; only public opinion remained at favorable levels.

If Burstein’s conclusion can be applied to the passage of comprehensive congressional and presidential policies, public opinion should have a positive effect on equal employment responses. Consistent with Burstein (1985), I also test whether the positive effect of public opinion on equal employment responses was enhanced by black protests or riots. The logic behind testing for interactions between public opinion and black insurgency is that movement activity raised the salience of civil rights issues to the public\(^1\) and politicians are more likely to enact legislation in line with majority

\(^1\) For instance, while no more than five percent of the public listed civil rights issues as the nation’s most important problem from 1935 until 1955, that percentage
preferences when issues are of high salience to the public (Page & Shapiro 1983). As Burstein (1985) noted for bill sponsorship, insurgency may sensitize lawmakers to public opinion.

Democratic Theory Hypothesis: Elites enacted equal employment legislation in response to public opinion or the effect of public opinion was enhanced during periods of black protests or riots.


peaked at 52 percent in both 1963, following the March on Washington, and in 1965 during the Selma protests (Gallup 1972:1523-1934).
the federal government. In terms of equal employment laws, Kennedy issued his comprehensive 1961 executive-order the year after the massive sit-in movement and Congress adopted the second most comprehensive equal-employment law the year after the 1963 peak in black protests. The argument about how protests affected legislation is that they broke down social order and thus compelled elite action (Morris 1993).

Crisis events are efforts by challenging groups to achieve movement objectives that capture the nation's attention and sympathy. Scholars of the civil rights movement recognize that the Birmingham campaign became a crisis event at the national level when police reacted to black protestors with fire hoses, police dogs, and an armored vehicle (Morris 1993). Many observers of the civil rights movement focus on the generation of events like Birmingham to explain federal civil-rights legislation (Sundquist 1968:259-74; Garrow 1978:235; McAdam 1983; Jenkins & Eckert 1986; Morris 1993). Events similar in stature to Birmingham typically listed in chronologies of the civil rights movement include the Little Rock integration of 1957, the freedom rides of 1961, the "Ole Miss" integration of 1962, and the Selma-to-Montgomery march of 1965. Most scholars speculate that crisis events affected federal legislation because they raised the salience of civil rights issues to the public (Sundquist 1968; Garrow 1978; Burstein 1985; Morris 1993). From the indigenous approach, public opinion and issue salience merely connect protests to policy response; they do not act as an independent determinant. Given that the civil rights movement is so often credited with bringing about civil rights legislation, it would be surprising if neither black protests nor crisis events affected equal employment responses.
Indigenous Approach Hypothesis: Elites enacted equal employment legislation in response to black protests and crisis events.

Violence Thesis. The violence thesis posits that the federal government responded not to black protests per se but rather to white violence (McAdam 1982, 1983; Barkan 1984). Barkan (1984), for example, compared the success and failure of the civil rights movement in five southern communities. He concluded that federal intervention occurred after the Birmingham and Selma protests because in those communities whites used violent as opposed to legalistic means of repression. McAdam (1983) argued that the reason why black protests in 1963 and 1965 affected federal actions was because many of those events generated white violence (see also Garrow 1978). Burstein (1985) found a weak correlation between countermovement violence and congressional sponsorship ($r = .32$) and no relationship between these two factors after controlling for public opinion. Like most explanations of civil rights legislation, past research has not quantitatively linked segregationist violence to federal civil-rights legislation. In particular, because white violence was usually a reaction to black protests (McAdam 1983; Burstein 1985), it is not clear if counter-movement violence affected federal legislation net of black protests.²

² It is also consistent with the violence thesis to argue that the positive effect of black protests on federal legislation will be enhanced by white violence. I tested for this interaction (protest * segregationist killings) but it was not significant.

³ McAdam (1982, 1983) offered a slight variation on the violence thesis. He speculated that the link between violence and federal response was most apparent between 1961 and 1965 when black insurgency was often explicitly aimed at provoking white violence in order to bring about favorable federal intervention (but see Morris 1993). I examined whether the effect of countermovement violence on equal
Violence Thesis Hypothesis: Elites enacted equal employment legislation in response to segregationist violence

Piven & Cloward Thesis. Piven and Cloward (1979a) developed a theory to explain the ebb and flow of federal welfare relief. One of their arguments was that challengers brought about elite concessions when they engaged in mass disruption rather than more organized forms of protest. Previous work interpreted this to mean that black riots should unconditionally (i.e., in a non-interactive manner) affect policy outcomes (Albritton 1979; Isaac & Kelly 1981; Schram & Turbett 1983; Colby 1985). Research has shown that riots increased welfare expenditures (Isaac & Kelly 1981; Schram & Turbett 1983) but for other issues, riots were met with mixed responses (Welch 1975; Button 1978, 1989; Mueller 1978). Scholars have yet to establish the link between riots and the passage of equal employment policies. It is interesting to note that from 1933 to 1972, the ten years with the most riots occurred between 1961 and 1972—the time period which saw the most substantive activity on equal employment policies (see Figure 4.1). Burstein (1985:83-85) found a fairly strong correlation between rioting and congressional sponsorship (r=.62) but that relationship disappeared when controlling for public opinion.

Employment legislation was enhanced during the years 1961 through 1965 by creating a dummy variable coded 1 if the year was between 1961 and 1965, 0 otherwise, and then computing a product term countermovement violence * years<sub>1961-1965</sub>. This product term was not significant (analysis not shown). This suggests that McAdam's more historically contingent version of the violence thesis did not apply to equal employment legislation.
While examining the unconditioned impact of riots on policy response is consistent with Piven and Cloward's (1979a) thesis, they in fact claimed that riots increased welfare expenditures only in the context of a vulnerable electoral institution (Piven & Cloward 1979a:65-66, 183). In their words, "the political impact of institutional disruptions depends upon electoral conditions" (emphasis in original) (Piven & Cloward 1979a:31). One way that Piven and Cloward conceptualized the electoral institution was the presence of a Democratic president and a Congress dominated by a non-southern Democratic majority (64-66, 73, 130, 136, 165, 183). I refer to such a favorable ruling coalition as indicating presidential and congressional "openness." If Piven and Cloward's work can be applied to non-welfare outcomes.

Recognizing that Piven and Cloward (1979a) theorized the conditioned effect of rioting on elite response, Hicks and Misra (1993:679-80n) are one of the few scholars to provide a justification for examining the non-conditioned effect of riots. They note: "(Piven and Cloward) can also be read to predict ample protest only for those conditions of elite vulnerability that augur well for elite concession, in effect reducing elite vulnerability to a prerequisite for the occurrence of notable protest rather than a contingency for protest's consequences ... Moreover, protest has been found to predict welfare concessions in studies devoid of explicitly contingent formulations of protest effects."

An alternative conceptualization is "electoral instability." Yet electoral instability is conceptually ambiguous and hence difficult to test. For instance, it both causes and is the consequent of insurgency (Piven & Cloward 1979a:64, 67, 170-71): is evident if Democratic presidents win by a landslide (pp. 64-65) or by a narrow margin (pp. 225-28); if black voters or southern whites switch from the Democratic to the Republican party (pp. 214-215); if black voters do not vote (p. 215); or if politicians fear potential voter instability (pp. 170-71, 239). In addition, some degree of instability appears to be an ubiquitous condition. Piven and Cloward (1979b:1012), for example, noted that voting instabilities were present in the elections of 1948, 1952, 1956, and 1960.
riots should directly affect equal employment laws or its effect should be enhanced with non-southern Democratic control in Congress.

*Piven & Cloward Hypothesis:* Elites enacted equal employment legislation in response to riots or the effect of riots was enhanced in periods with a favorable ruling coalition.

*State Centered Approach.* State centered theory seeks to explain state policy making. State centered theorists argue that the political outcomes of social movements rest heavily upon policy entrepreneurs within the state and the institutional context (Skocpol 1985; Skocpol & Amenta 1986; Amenta & Poulsen 1996).\(^6\) Policy entrepreneurs are decision makers who promote movement supported legislation without pressure by movement activists (Walker 1977; Amenta & Poulsen 1996). These actors bring with them to office a political agenda that translates into different policies and is thus independent of protest and other "society centered" effects (Skocpol 1985). In terms of the Supreme Court, for instance, the responsiveness of the Hughes Court (1930-1941) to black civil rights was in large part due to the fact most of its members were racially liberal (Howard 1999). In terms of the legislative and executive branches, non-southern Democrats in Congress and Democratic presidents may have acted as policy entrepreneurs given their more supportive role in civil rights legislation compared to Republicans and southern Democrats (Sundquist 1968; Lawson 1976; Sitkoff 1978; Carmines & Stimson 1989). Thus "liberals" in the White House or

\(^6\) My use of state centered theory is limited because I examine only one country and thus I hold constant some of the most important aspects of the "state" (see Skocpol & Amenta 1986).
Congress can be conceptualized as either policy entrepreneurs or indicating periods of presidential and congressional openness.

Two aspects of the institutional context seem relevant for employment law. First, in a federalist system, legislation at one level of government may be affected by the development of policies at another level. "(O)nce policies are enacted and implemented, they change the public agendas and the patterns of group conflict through which subsequent policy changes occur" (Skocpol & Amenta 1986:149). Twenty-five state governments had equal employment laws by the time Congress enacted Title VII (Sovem 1966) and the presence of these preexisting state laws may have encouraged national legislation. Federal lawmakers may be more willing to adopt national legislation when the public either took no notice or reacted favorably to state level representatives who adopted similar legislation (Burstein 1985:63-65). Second, legal precedent can affect legislative activity. Favorable Supreme Court responses to black employment rights may have encouraged federal legislation. Before Congress made employment discrimination illegal in 1964, the fair employment rulings of the Court typically concerned racial discrimination by railroad unions (e.g., Steele v. Louisville & Nashville Railroad 1944) (Berger 1978:142-44). Through its rulings, the Court may draw elite and public attention to an issue as well as establish that legislative intervention would withstand constitutional scrutiny. The Court handed down six of its seventeen favorable decisions regarding black employment rights between 1961 and 1972.
State Centered Hypothesis: Elites enacted equal employment legislation in response to the presence of policy entrepreneurs (non-southern Democrats), supportive preexisting legislation (state equal-employment legislation), and/or supportive legal precedent (Supreme Court equal-employment decisions).

Data and Methods

I measured the dependent and independent variables with secondary data and archival sources. To measure federal legislation, I coded all House and Senate passed bills not subsequently enacted into law, congressional statutes, and presidential executive orders covering equal employment rights. In models without public opinion (discussed below), I began my analysis in the year Roosevelt took office (1933) because his administration and the congresses of that era marked a turning point in federal response to race issues (Sullivan 1965; Sitkoff 1978; McAdam 1982; Carmines & Stimson 1989). I ended the analysis in 1972 because the passage of the Equal Employment Opportunity Act solidified fair employment law in the U.S. (Burstein 1985). This strategy is consistent with analyses of policy outcomes which typically end with the passage of “breakthrough” legislation (e.g., Jenkins & Perrow 1977; Burstein 1979, 1985; Amenta, Carruthers & Zylan 1992). Chart 4.1 presents data sources and

7 For instance, Roosevelt in 1934 was the first president to publicly proclaim that lynching was murder; he included an anti-discrimination mandate in a 1935 executive order for WPA programs; by 1935 he had appointed roughly 45 blacks to posts in cabinet departments and New Deal agencies (i.e., the “Black Cabinet”); and by 1936 he allowed black leaders regular access to the White House. Similarly, Congress wrote anti-discrimination mandates into more than 20 New Deal statutes beginning in 1933 (Sitkoff 1978:58-83).
variable operationalizations. Chart 4.2 shows bivariate correlations, means, and standard deviations.

**Dependent Variable**

I constructed an equal-employment policy scale, displayed in Figure 4.1, to distinguish less comprehensive from substantive policies (cf. Burstein 1985:19-32; Santoro & McGuire 1997). I coded the content of equal employment bills, statutes, and executive orders into six categories: *enforcement powers* are provisions that increase federal authority to prevent discrimination; *acts outlawed* are provisions outlawing types of employment discrimination; *coverage (I)* are provisions that address whether the act covers federal employees, federal contractors, and/or educational institutions; *coverage (II)* are provisions that address whether the act covers the private workforce; *information gathering* establishes/extends an equal employment commission or a committee with powers to investigate employment discrimination; and *quantification* are provisions that establish/extend affirmative action criteria. Chart 4.3 lists policy categories, provisions, and policy responses. Based on these dimensions and using a summative measure, I constructed an index of equal employment comprehensiveness (Cronbach's alpha = .76).

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8 I separated private employment coverage (II) from other coverage (I) in order to give more “weight” to policies that extended non-discrimination mandates to the larger private workforce. It is very difficult to specify with any precision the actual percentage of the workforce that each equal employment policy covered (e.g., Roosevelt's 1941 executive order covered “defense” industries and his 1943 executive order covered “war-related” industries).
Independent Variables

Insurgency. Using secondary data collected primarily from the New York Times Index, I recorded the total number of black-initiated protest events and riots each year. While using New York Times coverage has limitations (Olzak 1989), both measures have been widely used in the literature (e.g., Isaac & Kelly 1981; McAdam 1983; Jenkins & Eckert 1986; Minkoff 1997). In addition, these measures seem particularly relevant given that many in Congress actually used the Times to learn of black insurgency (Garrow 1978:161). To measure crisis events, I examined all events listed in chronologies of the civil rights movement to see which movement initiated events made the front page of the New York Times for five consecutive days (cf. Garrow 1978). The choice of five days is somewhat arbitrary but represents a conservative measure given that it is a difficult threshold for any movement generated event to make (see Chart 4.1 for list of events). I summed the cumulative number of such events each year.

While it is preferable to examine the independent effect of crisis events and black protests, intercorrelations among the independent variables makes this specification difficult. As is evident in Chart 4.2, a number of explanatory variables are strongly correlated with both protests and crisis events (i.e., public opinion, state laws, countermovement killings) and protests and crisis events have a fairly strong bivariate relationship ($r = .60$). For these reasons, and because the two measures are
conceptually related, I computed an index of *protests* that is the sum of crisis events and protests (each z-scored).\(^9\)

**Political Context.** Using a near-identical measure to that of Burstein (1985:43-50, Table 4.2 note a. 218n), I constructed an index of *public opinion* from 1940 to 1972 by averaging the percentage of respondents favoring equal employment treatment for blacks and labor force participation by married women.\(^10\) Like all similar time series measures of attitudes from the forties, yearly data on public opinion do not exist. This measure is based on thirteen surveys and years with missing data were interpolated. While the measure is less than ideal, the trend in pro-equal employment attitudes is consistent with trends in attitudes toward similar civil rights issues for that time period (Smith & Sheatsley 1984; Schuman, Steenh & Bobo 1985; Page & Shapiro 1992). I measured the presence of a favorable ruling coalition in Congress, *congressional openness*, with an index of the percentage of non-southern Democrats in

\(^9\) An alternative approach is to analyze models with crisis events but not protests and then run identical models with protests but not crisis events. I do not use this approach because results do not meaningfully change: both crisis events and protests have significant and positive effects without the inclusion of the other measure (results not shown). In addition, this alternative approach unduly complicates the presentation of the findings by doubling the number of regression models without offering additional substantive information.

\(^10\) This index differs from Burstein's measure in two minor ways. First, Burstein (1985:49-50) interpolated equal-employment attitudes directed at black treatment by using only the first (1944) and last (1972) surveys. I do not follow this procedure because it ignores survey responses that fell in-between the two surveys. He followed a similar procedure for the time trend on approval of married women working. Second, I created the public opinion index beginning in 1940; Burstein started in 1941. I go back one additional year in order to capture Roosevelt's 1940 executive order.

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Congress and the number of chambers controlled by Democrats.\textsuperscript{11} I computed *countermovement killings* with the total number of killings of civil rights activists each year. Legal precedent is captured by the total number of favorable *Supreme Court cases* regarding black equal-employment rights each year. *State equal-employment laws* is the total number of states with enforceable equal-employment laws each year. I computed the log (base 10) of state laws to allow increases in state legislation to have a declining, yet still positive, effect on policy comprehensiveness.

I tested for three interactions: public opinion * protests and public opinion * riots (democratic theory); and riots * congressional openness (Piven & Cloward thesis). Except where theoretical or substantive reasons dictate otherwise. I lagged independent variables one year because it is reasonable to expect that Congress would take some time to respond to political events. Using a one year lag avoids simultaneity bias and limits “specification searching” for optimal lags (Hicks & Misra 1993:685). One exception to the one year time-lag is for congressional and presidential openness. I did not lag these measures because politicians at time one should affect legislation at time one. I also did not lag public opinion following Burstein (1985:218n). All significance

\textsuperscript{11} I also measured *presidential openness* as an index composed of the presence of a Democratic president (z-scored) and the percentage margin of popular vote for Democratic presidential candidates minus the percentage margin of popular vote for Republican presidential candidates (z-scored). Presidential openness had a non-significant correlation of -.15 with the equal employment scale and in regression analyses, this term was never significant. This most likely reflects the fact that no substantive equal-employment laws passed during the Roosevelt and Truman administrations but Nixon signed the important 1972 act.
tests are one-tailed except for the riot coefficient given its inconsistent effect on political outcomes (see Button 1978, 1989).

**Method of Analysis**

I used time series analysis in order to capture the dynamic causes of policy adoption over time. Time series analysis is well suited to uncover patterned relationships and allows one to make causal generalizations across a historical period (Griffin 1992). I used Tobit regression because the dependent variable contains a high percentage of zeros, years in which there was no federal activity. The data are censored because one cannot observe comprehensiveness in years with no legislation. Tobit regression is appropriate for censored data (Roncek 1992; Green 1993; for recent examples using Tobit, see Walton & Ragin [1990]; Jacobs & O'Brien [1998]). Tobit regression uses two formulas to predict values on the dependent variable, one for years at zero and another for years above zero (Roncek 1992). Tobit regression combines probit estimates of the probability that a year will have a non-zero score on the policy scale for years with a value of zero with estimates of the effects of the explanatory variables on the policy scale for years with a non-zero score on the policy scale.

A typical concern with time series analysis is autocorrelation, which unfortunately is a topic not well developed in the context of Tobit or other probability models (Haynes & Jacobs 1994). If autocorrelation is present, the standard errors can be biased although the parameter estimates remain consistent. My strategy to overcome this limitation was to run models first with OLS regression and to check for autocorrelation with the Durbin-Watson d-statistic, the Breusch-Godfrey serial-
correlation LM test (one and two year lags), and the Ljung-Box Q-statistic from the correlogram. Autocorrelation was not present in the five models reported in Table 4.2. While models 2, 3, and 4 had Durbin-Watson d-statistics in the area of uncertainty, all equations had non-significant chi-square statistics from the LM test and non-significant Ljung-Box Q-statistics from the correlogram. These diagnostic tests lend credence to the claim that autocorrelation is not present in the Tobit models; hence the standard errors should not be biased making hypothesis testing possible.

Results and Discussion

Table 4.2 presents five Tobit regression models that predict equal employment legislation (recall that coefficients indicate both the likelihood of policy adoption and policy comprehensiveness). Model 1 examines equal employment responses across the entire time period (1933-1972). This equation excludes state equal-employment laws because they may attenuate the effects of federal level predictors given that the same causal processes likely produced both state and federal laws. (Preliminary analyses indicated that Supreme Court cases did not attenuate the insurgency measures.) Model 2 adds state laws into the equation. The remaining three models exclude the years 1933 to 1939 given that the public opinion measure only exists from 1940 onward. In order to judge the extent to which restricting the sample to years post-1939 affects the analyses, models 3 and 4 are identical to models 1 and 2, respectively, except they are limited to the years 1940 to 1972.
### Table 4.2. Tobit Regression of Equal Employment Policies on Black Insurgency and the Political Context.

<table>
<thead>
<tr>
<th></th>
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<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Black Insurgency</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Protests (&amp; Crisis Events) $(t-1)$</td>
<td>2.157*** (3.930)</td>
<td>1.796*** (2.677)</td>
<td>1.828*** (3.204)</td>
<td>1.740*** (2.590)</td>
<td>1.642*** (2.532)</td>
</tr>
<tr>
<td>Riots $(t-1)$</td>
<td>-.026** (-2.067)</td>
<td>-.027** (-2.115)</td>
<td>-.025** (-2.030)</td>
<td>-.025** (-2.043)</td>
<td>-.793** (-2.411)</td>
</tr>
<tr>
<td><strong>Political Context</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Congressional Openness</td>
<td>-.434 (-.990)</td>
<td>-.246 (-.509)</td>
<td>-.034 (-.069)</td>
<td>-.000 (-.000)</td>
<td>.015 (.038)</td>
</tr>
<tr>
<td>Countermovement Killings $(t-1)$</td>
<td>.176 (.668)</td>
<td>.194 (.736)</td>
<td>.146 (.553)</td>
<td>.152 (.576)</td>
<td>.251 (1.017)</td>
</tr>
<tr>
<td>Supreme Court Rulings $(t-1)$</td>
<td>3.379*** (2.499)</td>
<td>3.219*** (2.376)</td>
<td>2.862** (2.095)</td>
<td>2.841** (2.079)</td>
<td>1.656* (1.415)</td>
</tr>
<tr>
<td>State Equal-Employment Laws $(t-1)$</td>
<td>-----</td>
<td>.622 (.894)</td>
<td>-----</td>
<td>.180 (.244)</td>
<td>-----</td>
</tr>
<tr>
<td>Public Opinion (mean-centered)</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>.048 (.600)</td>
</tr>
<tr>
<td>Public Opinion * Riots $(t-1)$</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>-----</td>
<td>.026*** (2.396)</td>
</tr>
<tr>
<td>Constant</td>
<td>-.099</td>
<td>-.221</td>
<td>.720</td>
<td>.643</td>
<td>1.116</td>
</tr>
</tbody>
</table>
Table 4.2. (continued).

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>( \chi^2 )</td>
<td>24.616***</td>
<td>25.427***</td>
<td>17.067***</td>
<td>17.127***</td>
<td>28.729***</td>
</tr>
<tr>
<td>df</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>N</td>
<td>40</td>
<td>40</td>
<td>33</td>
<td>33</td>
<td>33</td>
</tr>
<tr>
<td>( R^2_{Y,X} )</td>
<td>.466</td>
<td>.485</td>
<td>.472</td>
<td>.477</td>
<td>.544</td>
</tr>
<tr>
<td>Durbin-Watson ( d )-statistic(^a)</td>
<td>1.791</td>
<td>1.792</td>
<td>1.788</td>
<td>1.758</td>
<td>2.126</td>
</tr>
</tbody>
</table>

* p < .10 ** p < .05 *** p < .01 (one-tailed)
+ p < .10 ++ p < .05 +++ p < .01 (two-tailed)

\(^a\) based on identical OLS model
As can be seen by comparing model 1 with model 3, and model 2 with model 4, the restricted sample shows the same results in terms of the direction and significance of effects. No variable gains or losses significance; some coefficients are slightly smaller in the restricted sample. Overall these results suggest that restricting the sample gives parallel results to that of the full sample. Excluding state equal-employment laws, model 5 adds a significant interaction between public opinion and black insurgency. I organize my findings according to the five theories.

**Democratic Theory.** The effect of public opinion (mean centered) on employment policies depended on the level of black rioting (model 5). (An interaction between public opinion and protests was not significant.) Public opinion did not affect equal employment policies in years with no riots ($b = .048, t = .600$), but its positive effect became significant and was strengthened as levels of black rioting increased. Public opinion thus played an important role in equal employment policies, but its effect was limited mostly to post-1956 years when riots became a yearly phenomenon. This finding suggests that lawmakers became responsive to public opinion when black violence made ignoring it a less appealing alternative.

This result supports Burstein’s (1985) thesis that public opinion was an important factor in federal legislation. The public often does get the policies that it wants (Page & Shapiro 1983) and the fact that the majority of Americans held pro-equal employment attitudes appears to have been a salient factor in the legislative process.

---

12 I excluded state laws in model 5 it was not significant in either the full or restricted samples and because it is highly correlated with public opinion ($r = .88$).
This is an intuitively appealing argument given that politicians are unlikely to pass legislation vehemently opposed by their constituents. It is, in fact, difficult to think of an example that counters this claim. As was the case for the anti-Vietnam movement (Burstein & Freudenburg 1978), public attitudes appear to help movements realize their policy priorities when the public takes a stance congruent with the movement’s goals. I discuss how these results comment upon Burstein’s (1985) thesis that public opinion played a more dominant role than black protests after reviewing the findings for the indigenous approach.

**Indigenous Approach.** Black protests had a significant and positive effect on equal employment policies. This finding persists in analyses across the full range of years (models 1 & 2) and models restricted to 1940 to 1972 (models 3 through 5). This effect is slightly attenuated with the inclusion of state equal-employment laws (models 2 & 4) but remains significant. Most important, this effect persists after controlling for public opinion (model 5). While it would be inappropriate to conclude that the civil rights movement “compelled” policy change, since other factors in the political context also were important, this finding strongly suggests that lawmakers reacted to black protests with ameliorative employment policies. This direct link seems most apparent with Kennedy’s 1961 executive order—which established the basis for today’s affirmative action programs (Jones 1988)—and Title VII of the 1964 Civil Rights Act. Both of these responses occurred the year after two massive waves of black protest, the first corresponding to the sit-in movement and the second to the protests in Birmingham and the Birmingham-inspired protests.
The findings for protests, coupled with the results for public opinion, are not consistent with Burstein's argument that public opinion played the dominant role in the policy process. I make this claim based on two observations. First, the effect of protests on equal employment policies was not moderated by public opinion; hence it is difficult to argue that protests simply sensitized lawmakers to public opinion. Rather, protests played a role independent of public attitudes. Second, public opinion affected employment policies only when there were black riots. Pro-equal employment attitudes, it would appear, attracted the attention of lawmakers only when black violence sensitized policy makers to public opinion.

**Violence Thesis.** As shown in Table 4.2, countermovement killings did not significantly affect equal employment policies in either the full or restricted samples. Overall, then, lawmakers did not respond to white violence with equal employment legislation. It is possible, however, that countermovement violence simply did not have an impact net of black protests. Recall that countermovement violence typically was an immediate response by segregationists to black collective action (Garrow 1978; McAdam 1982, 1983; Burstein 1985). In analysis presented in Table 4.3, model 6 examines the impact of countermovement killings on equal employment responses without controlling for black protests. Except for black protests, model 6 is identical to model 5 in Table 4.2. Model 6 must be interpreted with caution, however, because the chi-square statistic from the Breusch-Godfrey serial correlation LM test (1 year lag) is significant (5.652, \( p = .017 \)). Thus, the Tobit model most likely has some degree of unresolved autocorrelation. In this more limited test, countermovement killings
Table 4.3. Supplementary Tobit Regression of Equal Employment Policies on Black Insurgency and the Political Context.

<table>
<thead>
<tr>
<th>Model 6</th>
<th>1940-1972</th>
</tr>
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<tbody>
<tr>
<td><strong>Black Insurgency</strong></td>
<td></td>
</tr>
<tr>
<td>Protests (&amp; Crisis Events) (t -1)</td>
<td>---</td>
</tr>
<tr>
<td>Riots (t -1)</td>
<td>-1.565*</td>
</tr>
<tr>
<td></td>
<td>(-1.826)</td>
</tr>
<tr>
<td><strong>Political Context</strong></td>
<td></td>
</tr>
<tr>
<td>Congressional Openness</td>
<td>.382</td>
</tr>
<tr>
<td></td>
<td>(.899)</td>
</tr>
<tr>
<td>Countermovement Killings (t -1)</td>
<td>.452**</td>
</tr>
<tr>
<td></td>
<td>(1.740)</td>
</tr>
<tr>
<td>Supreme Court Rulings (t -1)</td>
<td>.993</td>
</tr>
<tr>
<td></td>
<td>(.782)</td>
</tr>
<tr>
<td>Public Opinion (mean-centered)</td>
<td>.192***</td>
</tr>
<tr>
<td></td>
<td>(2.893)</td>
</tr>
<tr>
<td>Public Opinion * Riots (t -1)</td>
<td>.020**</td>
</tr>
<tr>
<td></td>
<td>(1.814)</td>
</tr>
<tr>
<td>Constant</td>
<td>-.212</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Test Statistic</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>$\chi^2$</td>
<td>22.872***</td>
</tr>
<tr>
<td>df</td>
<td>6</td>
</tr>
<tr>
<td>N</td>
<td>33</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-68.464</td>
</tr>
<tr>
<td>$R^2_Y$</td>
<td>.566</td>
</tr>
<tr>
<td>Durbin-Watson d-statistic</td>
<td>2.260</td>
</tr>
</tbody>
</table>

* p < .10  ** p < .05  *** p < .01 (one-tailed)
*+ p < .10  **+ p < .05  +++ p < .01 (two-tailed)

* based on identical OLS model
significantly and positively affected equal employment responses when black protests were excluded. This suggests that the association between federal response and countermovement violence was largely due to black protests that influenced both outcomes. Although this observation must be seen as tentative, it is consistent with Morris (1993) who argued that elites responded not to white violence per se but rather to the breakdown in social order caused by black protests.

**Piven & Cloward Thesis.** Findings reported in Table 4.2 provide limited support for the Piven and Cloward thesis. As shown in model 5, black riots had a significant negative effect on equal employment policies when public opinion was at its mean (44.8 percent favorable). Yet the negative effect of riots was diminished and became positive when about three-quarters of the population held pro-equal employment attitudes. This finding seems to indicate that riots sensitized policy makers to public opinion. While this specific interaction was not a part of Piven and Cloward’s argument, it is consistent with their thesis that elites grant concessions to challengers during periods of mass disruptions. The most precise specification of the Piven and Cloward thesis, the riot * congressional openness term. was not significant in any model. The failure of the most unruly of black collective actions to play an independent role in equal employment laws also stands in contrast to the significant and non-interactive effect of black protests resulting from indigenous organizing efforts.

**State Centered Approach.** The state centered approach views politicians as potential policy entrepreneurs who push for movement supported legislation without prompting by outside pressures. For equal employment rights, however, this claim is
not supported (Table 4.2). Even at the bivariate level, congresses with Democratic control and high percentages of non-southern Democrats were no more likely to adopt equal employment legislation than congresses with Republican control or with many southern Democratic members. The 1964 and 1972 equal employment statutes, for instance, passed with only slightly more than the average percentage of non-southern Democrats in Congress; years with the greatest percentage of non-southern Democrats (1933-1938) passed no legislation. Similarly, state adoption of equal employment laws did not affect federal legislation. Not only did these laws not seem to be taken seriously by most state officials (Sovern 1966; Bonfield 1967), neither did they impress federal politicians.

Yet one measure derived from a state centered approach. Supreme Court decisions, significantly affected equal employment responses. Between 1933 and 1972, the Court ruled favorably on eleven cases concerning black equal employment rights and these cases often preceded federal adoption of equal employment policies. Court rulings may have affected Congress because they drew lawmaker's attention to the issue of fair employment or because they established the legal precedent necessary for legislative action. For instance, the most comprehensive piece of legislation, the 1972 act, was preceded by the famous *Griggs v. Duke Power* (1971) ruling. In addition, years with the second (1964) and fourth (1970) most comprehensive equal-employment responses came one year after favorable Court rulings on equal employment policies (see Motley 1976; Berger 1978). This is consistent with the claim by state centered
As I noted in Chapter 3 (voting), one of the limitations of testing for policy feedbacks is that the findings do not address why elites adopted the original policy, in this instance the equal employment cases of the Supreme Court. At least part of the impetus behind Court decisions on civil rights cases in general were black protests and NAACP legal pressures (see Greenberg 1959; McAdam 1982:110-11; Greenberg & Page 1995:542: Chapter 5). Thus, it is likely that some of the influence of the Court on congressional and presidential policies should be attributed to black institutional and extra-institutional pressures.

Conclusion

This chapter investigated the ability of five theories to explain legislative and executive adoption of equal employment bills, statutes, and executive orders from the Roosevelt administration until the 1972 Equal Employment Opportunity Act. Like other historical sociological works (Griffin 1992), the generalizability of this chapter's findings are limited given the uniqueness of the civil rights movement. The black struggle was a prolonged conflict that mobilized large numbers of people across a geographically disperse area, it met a violent opponent and an ambivalent elite, it pursued a broad legislative agenda, and it took place during a unique historical period. In addition, equal employment was obviously only one type of policy pursued by the civil rights
movement, although the findings from this chapter are generally parallel to analyses of the impact of the civil rights movement on federal voting rights legislation (Chapter 3).

I first review findings based on the four theories not derived from democratic theory. Consistent with the indigenous approach, black protests led to equal employment policies. This finding is in line with the conventional view that the civil rights movement acted as a catalyst for federal legislation. Unlike the claims of the violence thesis, lawmakers did not respond to countermovement killings with equal employment policies. Rather, results—while tentative—support the view that elites responded more to protests than to the countermovement violence that typically followed black protests. I also found limited support for Piven and Cloward’s (1979a) thesis. Black riots seem to have sensitized lawmakers to public opinion, but they did not otherwise benefit the movement for the issue at hand. Finally, from a state centered approach, Supreme Court decisions supporting black equal employment were often followed a year later by comprehensive employment policies.

In contrast to these more “mainstream” approaches to movement outcomes, the focus of this chapter was on the utility of democratic theory to explain equal employment legislation. The central tenet behind democratic theory is that policy makers respond to public opinion. I sought to extend Burstein’s (1985) work which had linked public opinion to congressional sponsorship of equal employment bills. This study departed from Burstein’s (1985) work because I examined the content of presidential and congressional policies and because this study’s larger sample size allowed for a more rigorous test of alternative explanations of equal employment
legislation. Like Burstein's (1985) study, however, I too relied on a less-than-ideal measure of public opinion. I assessed the extent public opinion was (1) an important determinant of equal employment responses net of alternative explanations and (2) whether public opinion was the driving force behind such policies. Results indicated support for the first proposition. Public opinion helped prod lawmakers into adopting equal employment policies, but this effect occurred only in the context of black riots. This finding suggests that, as Burstein (1985) argued, public opinion did matter. This is an important finding because it shows that even for contentious issues like civil rights legislation during turbulent periods, conventional electoral politics play an important role. In fact, that the impact of public opinion on elite response depended upon rioting suggests that electoral politics may play a heightened role during periods of political turmoil.

The second proposition that public opinion played the dominant role, however, was not supported. This conclusion is evident by the conditional role of public opinion in equal employment policies but the consistent and unconditioned role of black protests. This should not be interpreted, however, as trivializing the role of public opinion in policy outcomes. My suspicion is that public attitudes affect policy outcomes principally through its influence on actors in the broader political environment. From the founding of the NAACP in 1909-10 to the thirties, whites disapproved of even the basic principle of racial equality. During this period, most political actors also were unreceptive. The Supreme Court, for instance, heard few civil rights cases and ruled unfavorably on most of the cases it did accept (Miller 1966).
At best, U.S. presidents and non-southern Democrats in Congress did not forcefully push for civil rights legislation; at worst they were openly racist (Sitkoff 1978). The terrorist campaigns of the Ku Klux Klan operated as effective means of social control (McAdam 1982). In contrast, as the public became more favorable to the principle of non-discrimination from the forties onward (see Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992), there was a parallel shift in pro-civil rights decisions by the Supreme Court (McAdam 1982), non-Southern Democrats became more vocal supporters of black civil rights, countermovement violence began to backfire against it users (Garrow 1978; Barkan 1984), and elite patronage increased (Jenkins & Eckert 1986). Thus, I think that the effect of public opinion is very real, but it forms the backstage from which more proximate actors enter or avoid policy conflicts. In terms of equal employment responses, it was favorable public opinion that allowed black violence to play a positive role in the policy process.

The challenge for future work is to make the role of public opinion more explicit than is typically done in standard accounts of movement policy outcomes. The prevalence of public opinion polls means that researchers can usually gauge, even if roughly, the degree to which the public supports, opposes, or is ambivalent toward a policy goal. Understanding the context of public opinion should help researchers better understand the processes that lead to policy victories and defeats. For instance, even though scholars typically assume that movements must use non-institutional tactics to affect change, institutional tactics may work when issues are supported by the public, as was the case for the English-only movement (Santoro 1999), or for movements that can
frame their policy as being consistent with mainstream public values like the battered women's movement did in Ohio (Gagné 1996). While public opinion is usually not the ally of challengers seeking to change the status quo, it appears to set the stage where policy struggles take place.
Variable | Operationalization | Data Source
---|---|---
Equal Employment Policies | All House and Senate passed bills not enacted into law, congressional statutes, and presidential executive orders covering black equal-employment rights were coded based on the six policy dimensions presented. The House was given credit for statutes and House passed bills not enacted into law; the Senate was given credit for statutes and Senate passed bills not enacted into law; and the president was given credit for executive orders and statutes. For every bill, statute, and executive order, I summed the number of "enforcement powers" that the policy contained across House, Senate, and presidential actions (see Chart 4.3). Thus, a statute that contained two enforcement powers would have a score of six—two for the House plus two for the Senate plus two for the president. I then converted this distribution into a z-score. I followed this same procedure for the remaining five policy categories and then summed the six z-scores. A constant was added to each year so that the lowest value on the equal employment scale was a zero (to allow for Tobit regression). | To identify presidential executive orders, I used Sovereign (1966), Bonfield (1967), Jones (1988), and Title 3 of the Code of Federal Regulations index (select years). I also located the text of presidential executive orders in Title 3 of the Code of Federal Regulations. To identify congressional civil rights bills and statutes, I used the Congressional Quarterly (1945-1972). I also located the text of congressional statutes and in the U.S. Statutes at Large (1933-1972). I located summaries of House and Senate passed bills not enacted into law in the Congressional Quarterly (1945-1972).
Protests | The total number of black protest events reported in the New York Times Index each year. Protests are collective actions that use non-routine methods whose goal is the advancement of black rights. McAdam (1982) and Jenkins, Lundman & MaGuire (1998) used keywords (e.g., Negroes-US-General) to identify black protest events. See McAdam (1982: Appendix 1) for a detailed description of the coding procedures. | McAdam (1982) for 1954 to 1972 data; Jenkins, Lundman & MaGuire (1998) for 1946 to 1953 data; Santoro for 1932 to 1945 data.
Riots | The total number of black riots each year. Riots are collective actions initiated by blacks that involve the use of violence. Data primarily come from the New York Times Index with supplemental data (see Isaac & Kelly 1981). | Isaac & Kelly (1981) for 1947 to 1972 data; Santoro for 1932 to 1946 data.

Chart 4.1. Operationalization of Variables and Data Sources.
### Chart 4.1 (continued).

| Crisis Events | All events listed in chronologies of the civil rights movement were checked to see which movement-initiated events made the front page of the *New York Times* for five consecutive days. The total cumulative number of such events are summed each year. The 13 events are the University of Alabama integration (1956), the Little Rock integration (1957), the New Orleans integration (1960), the University of Georgia integration (1961), the second freedom ride (1961), the "Ole Miss" integration (1962), the Birmingham demonstration (1963), the Selma arrests (1965), the Selma-to-Montgomery march (1965), the Watts riot (1965), the Meredith march (1966), the Chicago riot (1966), and the King assassination (1968). | Burke (1974: Appendix 3), Ploski & Marr (1976:31-75), Powledge (1992:649-56). Coded from the *New York Times* (microfilm) front page (select years). |
| Public Opinion | The average percentage of respondents who favored equal employment opportunities for blacks and labor force participation by married women, 1940 to 1972. The index is based on two series of questions: (1) "Do you think Negroes should have as good a chance as white people to get any kind of job, or do you think white people should have the first chance at any kind of job?" (percentage of whites who answered as good; asked in 1944, 1946, 1947, 1963, 1966, and 1972); (2) "Do you approve of a married woman working in business or industry if she has a husband capable of supporting her?" (percentage who approved; asked in 1938, 1945, 1946, 1967 [not identified by Burstein], 1969, 1970, and 1972). Years with missing data interpolated between adjacent data points. For attitudes concerning black treatment between 1940 and 1943, I (apparently) followed Burstein by using 1.893 as the yearly rate of change (1.893 represents the yearly change in attitudes for that question from 1944 to 1972). | Burstein (1985:44, 46, 218 fn 8); Hastings & Southwick (1974); National Opinion Research Council (1972); Klein (1984). |
| Congressional Openness | The number of chambers in Congress with a Democratic party majority and the number of non-southern Democrats in Congress divided by the total number of Democrats and Republicans in Congress. Each measure z-scored and summed. | Congressional Directory (1931-1949); *Statistical Abstract of the United States* (1955-1997). |
Chart 4.1 (continued).

<table>
<thead>
<tr>
<th>Counter-movement Killings</th>
<th>The total number of countermovement killings of people identified with the civil rights movement of any race reported in the <em>New York Times Index</em>. A variety of headings, such as “Negroes” and “Education,” were searched in the <em>New York Times Index</em> in order to identify the event (see Burstein [1985: Appendix] for a detailed description of the coding procedures).</th>
<th>Burstein (1985) for 1940 to 1972 data; Santoro for 1932 to 1939 data.</th>
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<tr>
<td>Supreme Court Rulings</td>
<td>The number of favorable civil-rights decisions by the Supreme Court each year that pertain to black equal-employment rights. Cases denied review (<em>certiorari denied</em>) are excluded (see Miller 1966:447). Cases are considered favorable if legal scholars consider the case a victory for the civil rights of blacks—usually meaning that the black defendant or plaintiff won.</td>
<td>Miller (1966), Motley (1976), Ploski &amp; Marr (1976), Berger (1978), Davis &amp; Graham (1995).</td>
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<tr>
<td>State Equal-Employment Law</td>
<td>The log (base 10) of the total number of states with enforceable equal-employment laws each year (years with zero assigned .01). States coded as follows: 1945 (NY, NJ); 1946 (MA); 1947 (CT); 1949 (NM, OR, RI, WA); 1953 (AK); 1955 (MI, MN, PA); 1957 (CO, WI); 1959 (CA, OH); 1960 (DE); 1961 (ID, IL, KS, MO); 1963 (HI, IN, IA, VT); 1964 (MD); 1965 (AZ, ME, MT, NE, NV, NH, UT, WY); 1966 (KY); 1967 (WV); 1968 (OK).</td>
<td>Sovem (1966); Bonfield (1967); Bureau of National Affairs (1968:508, 1973:66-83). Data for Oklahoma and Kentucky coded from their annotated statute books (Oklahoma, Title 25, section 1505; Kentucky, Chapter 344, section 344.230).</td>
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<tr>
<td>Mean</td>
<td>2.31</td>
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<tr>
<td>Std Dev</td>
<td>4.02</td>
<td>50.73</td>
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*p < .05 ** p < .01 (two-tailed)

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<th>enforcement powers</th>
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<tr>
<td>HR 627 (1956); HR 10065 (1966); S 2453 (1970); HR 1746 (1971); EEOA (1972)</td>
<td>granted employment commission the authority to initiate discrimination charges</td>
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<tr>
<td>EO 10925 (1961); EO 11246 (1965); HR 10065 (1966); S 2453 (1970)</td>
<td>granted employment commission authority to issue court enforceable cease &amp; desist orders</td>
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<td>acts outlawed</td>
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<td>CRA (1964); HR 10065 (1966); S 2453 (1970); EEOA (1972)</td>
<td>prohibited discrimination in hiring, recruitment, upgrading, demotion, and transfer</td>
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<td>coverage (I)</td>
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<td>EO 8587 (1940); CRA (1964)</td>
<td>federal employment</td>
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<td>S 2453 (1970); EEOA (1972)</td>
<td>state and local employment</td>
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<td>S 2453 (1970); EEOA (1972)</td>
<td>educational institutions</td>
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<td>EO 8802 (1941); EO 9346 (1943); EO 10557 (1954); EO 11114 (1963); EO 11246 (1965)</td>
<td>federal contractors/specified new federal requirements for contractors</td>
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<td>coverage (II)</td>
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<tr>
<td>CRA (1964); HR 10065 (1966); S 2453 (1970); HR 1746 (1971); EEOA (1972)</td>
<td>private employment</td>
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<td>information gathering</td>
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<tr>
<td>EO 9808 (1946); EO 9980 (1948); EO 9981 (1948); EO 10590 (1955); HR 627 (1956); CRA (1957); PL 86-383 (1959); PL 87-264 (1961); EO 10925 (1961); PL 88-152 (1963); CRA (1964); PL 90-198 (1967)</td>
<td>established/extended an employment commission or a commission with powers to investigate employment discrimination</td>
</tr>
<tr>
<td>EO 8802 (1941); EO 9346 (1943); EO 9664 (1945); HR 4453 (1950); EO 10308 (1951); EO 10479 (1953); EO 10925 (1961)</td>
<td>established or extended a contract compliance commission</td>
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<td>quantification</td>
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<tr>
<td>EO 10925 (1961); EO 11114 (1963); EO 11246 (1965)</td>
<td>established or continued affirmative action requirements for government contracts</td>
</tr>
</tbody>
</table>

Notes: CRA = Civil Rights Act; PL = Public Law; EO = Executive Order; HR = House Resolution/Bill; S = Senate Resolution/Bill; EEOA = Equal Employment Opportunity Act; number in parentheses is adoption year.

CHAPTER 5

THE SUPREME COURT

Research on the outcomes of the civil rights movement has relied upon the presence of electoral conditions to explain the civil rights responses of Congress and the White House. For instance, Garrow (1978) and Morris (1993) noted that black demonstrations affected federal policies because they raised the salience of civil rights issues to the relatively supportive public. Issue salience is thought to affect policy outcomes because politicians are accountable, and hence responsive, to voter preferences (Page & Shapiro 1983). Piven and Cloward (1979a) argued that the effect of black riots on welfare expenditures was conditioned by the electoral institution. During periods of unstable voting patterns by the electorate, elites are more receptive to “outsider” demands because their electoral base is less secure. Burstein (1980) claimed that elections could account for Senate voting on civil rights bills. In a later work, Burstein (1985) found that black protests affected congressional sponsorship of equal employment bills only when the electorate overwhelmingly supported the principle of equal employment. In sum, a variety of approaches posit that the civil rights responses of federal elites ultimately depended upon electoral conditions.
Given this logic, the Supreme Court appears to be largely insulated from the political pressures generated by black insurgency. While vulnerable to NAACP legal challenges, the Court is not subject to voter preferences, elections, and electoral instability because its members are appointed and not elected. In addition, its membership is relatively stable and its decisions are guided legal precedent (*stare decisis*). Despite this claim, it nonetheless seems reasonable to speculate that the heightened responsiveness of the Court in the 1950s and 1960s to black civil rights was in some way related to the civil rights movement (Greenberg & Page 1995:542). The goal of this chapter is to examine the role of black protests and riots, as well as NAACP legal pressure, in prodding the Supreme Court to enact favorable rulings on civil rights cases from 1930 to 1970.

Examining the link between the civil rights movement and Court response contributes to the social movement literature in four ways. First, this chapter represents one of the few works that uses social movement theory to quantitatively assess the determinants of Court decisions. Research on movement outcomes almost exclusively examines targets of change controlled by elected officials. Examining the factors behind judicial responses is an important endeavor given that Court actions profoundly affected the political outcomes of the civil rights movement (for the role of the Court in other movements, see Staggenborg [1991]; Rosenberg [1992]). I elaborate upon this point shortly. Second, it comments upon the role that electoral conditions play in connecting insurgency to policy responses. If the Supreme Court was influenced by unruly black actions, it would suggest that not only may insurgency affect
a policy making body insulated from the ebb and flow of electoral politics, but it would call attention to alternative ways that protest may affect elite decisions.

Third, movement scholars traditionally have viewed the Supreme Court as a third party actor who, based on its own discretion, may intervene in local policy conflicts. Barkan (1984), for instance, held this view of the Court’s intervention in the 1955-56 Montgomery, Alabama, bus boycott. Consequently, whatever role the Court historically has played in the legislative victories of the civil rights movement at the local level is seen as distinct from black insurgency. Yet if Court rulings were themselves influenced by black insurgency, then it would be more accurate to view at least some of the impact of the Court on city responses as an indirect effect of black insurgency (i.e., protest → Court rulings → civil rights legislation). If there is no link between insurgency and the Court, it would suggest that the Court is appropriately viewed as a third party actor whose actions are empirically distinct from movement activity.

Fourth, these data allow me to theorize about the permeability of the U.S. political system at the national level to black political goals. Gamson (1975) and McAdam (1982) framed this debate around a test of pluralism. Pluralism argues that sufficiently organized groups can find institutional means to present their demands (Dahl 1967). Within the U.S. federalist system, challengers have multiple points of access to decision makers. While their demands are not assured of being routinely met, they often are because no group so organized can be excluded from coalition politics. Thus pluralism would predict that NAACP legal pressure would lead to favorable Court
decisions. Only groups who resort to violence or who engage in extra-institutional behavior are assured to meet an unreceptive policy-making body. This logic leads to the conclusion that the direct action tactics of the civil rights movement as well as black rioting would not be effective means of pressing for political demands. Similarly, segregationist violence against civil rights activists should backfire against the violence users (Garrow 1978). By measuring black institutional and extra-institutional activity, as well as countermovement killings, this chapter is in a unique position to empirically assess these pluralist predictions.

I begin with a brief review of the role of Supreme Court in the black struggle for racial equality. I then discuss the civil rights cases of the Supreme Court from 1930 to 1970. After elaborating upon the mechanisms by which the civil rights movement may have impacted judicial decisions, I present Poisson time-series analyses predicting Court responses to issues concerning black civil rights. Findings indicate that black institutional and extra-institutional actions, including riots through the mid-sixties, were important predictors of Court decisions. I use these results to suggest ways in which protest may affect elite decisions without relying upon electoral conditions. In addition, I speculate that much of the Court’s intervention in local level battles should be seen as resulting from political pressures generated by the civil rights movement.

The Court’s Influence on the Black Movement

Beginning in the 1930s and lasting throughout the 1960s, the Supreme Court played a crucial and beneficial role to the civil rights movement. As a producer of political
change, the Court at times helped civil rights activists secure concessions from local
level elites. The most noteworthy example of this type of intervention occurred in 1956
with the Montgomery bus boycott. After the year-long bus boycott, city officials
agreed to desegregate the city’s buses one day after U.S. marshals served the Supreme
Court’s desegregation order (Robinson 1987:163). The Court’s supportive action was
so noteworthy because that boycott in many ways marked the beginning of the southern
civil rights movement (McAdam 1982; Morris 1984). Another example of supportive
Court intervention occurred during the sit-in movement. The Court gave legal backing
to the sit-in movement when it issued a remarkable 57 separate rulings overturning the
convictions of participants in various sit-ins (Grossman 1967).

The Supreme Court also aided the movement’s goal of securing federal civil
discrimination legislation. Lawmakers are unlikely to address an issue if they feel that the
Court will overturn their legislative “intrusions” (Sovern 1967). Consistent with this
claim, when Congress banned discrimination in public accommodations in 1964, the
Court already had made racial segregation illegal in public beaches (1955), golf courses
(1955), libraries (1961), and parks (1963) (see Rosenberg 1992:39n). In addition, the
Court upheld the constitutionality of all of the landmark civil-rights statutes that
Congress passed in the 1960s.

Perhaps most important, the Court’s favorable rulings infused a sense of
political efficacy within the black community that aided mobilization for civil
disobedience (McAdam 1982; Morris 1984). Movement participants are rational in that
they usually do not engage in direct action unless there is a reasonable chance of
success. Court actions signal to insurgents the degree that high risk activism may bring about desired political outcomes. In particular, the 1954 *Brown v. Board of Education* decision was a watershed event that signaled to activists that the political system had become vulnerable to social change (Oberschall 1973; Kluger 1975; McAdam 1982; Morris 1984).

**The Court's Civil Rights Decisions, 1930-1970**

Until the 1930s, the Supreme Court heard few cases involving black civil rights and ruled unfavorably on the majority of the cases it accepted. Among its more notorious rulings were its defense of slavery (e.g., *Dred Scott v. Sandford* 1857), invalidation of Reconstruction legislation (e.g., *Civil Rights Cases* 1883), and support for the doctrine of separate-but-equal (e.g., *Plessy v. Ferguson* 1896). Between 1876 and 1929, the Court heard fewer than one case per year involving the rights of blacks and ruled unfavorably on 58 percent of those cases (McAdam 1982). Despite the 14th and 15th Amendments, the Court had constitutionally sanctioned racism.

The long period of judicial ambivalence towards black rights began to change after about 1930 (Berger 1978). Beginning with the appointment of Charles Evans Hughes as Chief Justice (1930-1941), the Court became more responsive to minority rights and government protection of civil liberties (Davis & Graham 1995; Howard 1999). In the 41 years between 1930 and 1970, the Court handed down a decision other than denial of review (*certiorari denied*) on 247 cases involving black civil rights and issued rulings favorable to blacks in 217 (88 percent) of those cases. Figure 5.1
Figure 5.1. Favorable Supreme Court Rulings on Black Civil Rights, 1930-1970.

shows the total number of favorable Supreme Court rulings each year from 1930 to 1970. Civil rights cases include, but are not limited to, efforts to secure support for civil rights statutes; to desegregate schools, public accommodations, and transportation; to establish the right to protest, organize, vote, work, choose housing, and sit on juries; to outlaw peonage; and to make inadmissible in court forced confessions from black suspects. With fairly significant yearly fluctuations, Figure 5.1 shows the Court's growing support for black civil rights. It also indicates that favorable rulings peaked between 1963 and 1965. Within each of the four decades shown in Figure 5.1, the Court heard a wide range of cases and each decade witnessed its share of landmark decisions.
In the 1930s, the Court ruled favorably on 14 (88 percent) of the sixteen civil rights cases it accepted for review. This response compares favorably to the four pro-rights decisions the Court handed down in the 1920s. Three of the cases in the 1930s originated from the trials of the “Scottsboro boys,” nine black youths accused of raping two white women. In the context of the first interracial civil-rights demonstrations since the abolition movement (Carter 1969), the Court established that blacks had the right to effective assistance of counsel (Powell v. Alabama 1932) and that trials could not exclude blacks from juries (Norris v. Alabama 1935). By allowing black organizations to picket discriminatory employers (New Negro Alliance v. Sanitary Grocers 1938), the Court gave support to the “Don’t-Buy-Where-You-Can’t-Work” campaign—the first widespread direct-action campaign of the civil rights movement (Meier & Rudwick 1976:314-32). Perhaps most noteworthy, the Court began to lay the legal groundwork to the eventual dismantling of the separate-but-equal doctrine. In Missouri ex rel. v. Canada (1938), the Court required that the University of Missouri admit Lloyd Gaines to its law school because it did not provide a separate school for blacks. While it would take another two decades for the infamous Plessy decision to be overturned, it signaled that the Court was willing to take seriously the “equal” part of the separate-but-equal doctrine.

In the 1940s, the Court heard 44 cases and handed down 37 (84 percent) decisions favorable to the civil rights of blacks. These favorable rulings covered such issues as rights in the administration of justice, union employment, housing, and voting as well as desegregation in education and interstate transportation. In the field of
employment, the Court held that a railway union could not discriminate against black workers in the same craft (Steele v. Louisville & Nashville Railroad 1944). In the area of open housing, the Court made restrictive covenants unenforceable under the 14th Amendment (Shelley v. Kraemer 1948). Restrictive covenants, contractual agreements among property owners that they would not sell or rent their homes to blacks, were one of the most effective ways whites maintained racially segregated neighborhoods in northern cities (Massey & Denton 1993). In terms of suffrage, the Court made unconstitutional white primaries administered by political parties (Smith v. Allwright 1944). By preventing blacks from voting in Democratic primaries, white primaries virtually eliminated black electoral influence in the one party South. The first CORE-led freedom rides took place in 1947 after the Court struck down a Virginia law mandating segregation in interstate transportation (Morgan v. Virginia 1946). The Court also reversed the convictions of black suspects in cases where police obtained coerced confessions (e.g., Chambers v. Florida 1940) and ordered desegregation in an Oklahoma law school because the state had not yet established a separate facility for blacks (Sipuel v. University of Oklahoma 1948).

In the 1950s, the Court ruled favorably on 45 out of 56 (80 percent) civil rights cases. Its most famous ruling, of course, was Brown v. Board Education (1954) which established that separate was inherently unequal. Both preceding and subsequent to Brown, the Court advocated educational desegregation in sixteen separate rulings during the decade. The Court extended the logic of Brown to other contexts by striking down segregation in theaters (1954), on public beaches and in bathhouses (1955), on
municipal golf courses (1955), on motor buses (1956), and in private cafeterias located in public buildings (1957) (see Davis & Graham 1995). One of the new issues brought before the Court during this period was the largely successful attack by segregationists against the NAACP (see Morris 1984). While the issue would last into the 1960s, the Court aided the NAACP by ruling that it did not have to reveal its membership list to state authorities (NAACP v. Alabama 1958). In addition, as in the previous decade, the Court made clear that it would not tolerate forced confessions (e.g., Reeves v. Alabama 1954), the exclusion of blacks from juries (e.g., Avery v. Georgia 1953), white primaries (Terry v. Adams 1953), and racial discrimination by railroad unions (e.g., Conley v. Gibson 1957).

The responsiveness of the judicial branch to civil rights issues in the 1960s paralleled the responsiveness of the legislative and executive branches. From 1960 to 1970, the Court handed down 121 (92 percent) favorable rulings out of a total of 131 civil rights cases. As a crucial aid to black activists, the Court typically gave legal support to the direct action tactics of the civil rights movement. In particular, its overwhelming approval for the right of blacks to use public accommodations translated into legal backing for the sit-in movement. In the area of voting, the Court declared racial gerrymandering (1960), requirements that a candidate’s race be printed on ballots (1964), understanding tests (1965), and state and local poll-taxes (1966) to be illegal. In terms of open housing, the Court ruled that racial discrimination in the sale, leasing, or renting of property was impermissible (Jones v. Alfred H. Mayer Co. 1968).

Supporting the legislative victories of the civil rights movement, the Court upheld the
constitutionality of federal civil-rights laws enacted in 1957, 1960, 1964, and 1965 (e.g., *South Carolina v. Katzenbach* 1966) and gave broad interpretations to Reconstruction laws to protect blacks from police and citizen violence (e.g., *Monroe v. Pape* 1961). Without question, the actions of the Court from 1930 to 1970 marked a decisive break from its past decisions and played an important role in the development and success of the civil rights movement. Within the framework of social movement theory, I turn now to a review of explanations of Court decisions.

**Explaining the Court’s Civil Rights Decisions**

Despite being largely removed from electoral politics, the Court is nonetheless susceptible to challenges by social movements (Greenberg & Page 1995). The most straightforward way that challengers may influence Court decisions is through litigation. While this mechanism is open to all interest groups, Reconstruction-era amendments granted black litigants some degree of leverage over the Court. Even the hostile White Court (1910-1921), for instance, recognized that white-only residential zones violated the due process clause of the 14th Amendment (*Buchanan v. Warley* 1917) and that grandfather clauses violated the 15th Amendment (*Guinn v. United States* 1915).

Founded in 1909-10, the organization that would assume leadership in the legal strategy was the NAACP and eventually the NAACP Legal Defense Fund. Along with a focus on publicity through its publication of the *Crisis* magazine, the generation of
protest meetings to acquire members, and investigations of racial injustice such as lynchings, the organization established a legal department within the first year of its existence (Kellogg 1967). It was not until the 1930s, however, that the NAACP began a relatively-coordinated litigation strategy (Tushnet 1987). While the legal campaign focused on education, the NAACP pursued cases in every area of black civil rights. The strategy met considerable success. The Supreme Court accepted for review 54 cases between 1915 and 1958 that were presented by NAACP lawyers and the organization won landmark decisions in virtually every area of litigation (Greenberg 1959: Appendix B). It is not surprising that the growth of the NAACP appears to be related to the increased number of supportive Court rulings. McAdam (1982:110-11), in fact, found a high bivariate correlation between the annual number of new NAACP chapters and the yearly balance of favorable Supreme Court cases. Given the historical record and McAdam’s (1982) research, it would be surprising if this analysis did not uncover a connection between the strength of the NAACP and Supreme Court decisions on civil rights cases.

While litigation represents an institutional challenge, Court cases often had origins in extra-institutional activity. In fact, a general way that challengers influence judicial decisions is to purposively break a law in the hope that the Court will grant a writ of review (certiorari). In conjunction with activists purposively breaking laws, segregationists typically used laws as a means to suppress black demonstrations. Southern police, for instance, charged leaders of bus boycotts with interfering with a lawful business, participants of sit-ins with trespassing and breach-of-peace, and
marchers with breaking anti-parade and anti-assembly ordinances (Miller 1966; Berger 1978; Ploski & Marr 1976). At times, these legalistic means thwarted, or at least delayed, local level victories (Barkan 1984). Yet there are numerous examples of successful litigation arising from black extra-institutional actions, such as from the Montgomery bus boycott (Gayle v. Browder 1956), the 1960 sit-ins (e.g., Garner v. Louisiana 1961), the 1961 freedom rides (e.g., Abernathy v. Alabama 1965), and mass marches in South Carolina and Alabama (e.g., Edward v. South Carolina 1963).

In addition, black protests may affect judicial decisions without relying upon litigation. As Greenberg and Page (1995) point out, Court justices most likely watch the same news and read the same papers as do other Washington, D.C., residents. Thus, just like federal lawmakers, they may be "moved" by the dramatic images of racial injustice often conveyed by black protests through the media (Garrow 1978; McAdam 1983:744n). If we accept the claim by Morris (1993), Garrow (1978), and others that the media's depiction of events like the Birmingham and Selma campaigns swayed the priorities of presidents and members of Congress, it is certainly possible that such images influenced judicial elites. In fact, that the mid-sixties witnessed a peak in both favorable Court decisions and black demonstrations suggests a connection between the two phenomenon. A focus on the impact of indigenous organizing efforts within the black community to affect elite decision making represents an "indigenous approach" to policy outcomes (e.g., Morris 1981, 1993). Although traditionally seen as occurring through insurgency, it is theoretically consistent with organized black efforts relying upon institutional means.
If we accept the claim that outside political events may affect Court decisions, then two other theories on the outcomes of the civil rights movement may be used to explain Court actions. The violence thesis posits that federal elites responded not to black protests but rather to segregationist violence (McAdam 1982, 1983; Barkan 1984). Barkan (1984), for example, argued that federal intervention occurred after demonstrations in Birmingham because whites used violent means of repression while federal intervention was not forthcoming in the Albany campaign because whites used legalistic tactics in that city (see also McAdam 1983). Similarly, Garrow (1978) noted that Congress adopted the Voting Rights Act of 1965 because black demonstrations in Selma met with white violence that was conveyed through the mass media to a sympathetic Congress. From a pluralist perspective, violence (whether initiated by whites or blacks) will backfire against its users because political actors do not consider it a legitimate form of power and because it antagonizes coalition partners (Dahl 1967).

Contrary to pluralist claims, the Piven and Cloward (1979a) thesis posits that challengers bring about elite concessions when they engage in mass disruption rather than more organized forms of protest. This perspective differs from the indigenous approach given that the latter is focused on organized black efforts at social change. Typically, scholars have tested the Piven and Cloward thesis by examining whether black riots affected policy outcomes (Albritton 1979; Isaac & Kelly 1981; Schram & Turbett 1983; Colby 1985).1 Research has shown that riots increased welfare

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1 Piven and Cloward (1979a:31) also argued that "the political impact of institutional disruptions depends upon electoral conditions" (emphasis in original). In
expenditures (Isaac & Kelly 1981; Schram & Turbett 1983) but for other issues, riots were met with mixed responses (Welch 1975; Button 1978, 1989; Mueller 1978). Button (1978) argued that the executive and legislative branches of the federal government responded favorably to riots in the early 1960s but reacted with political repression to the more destructive riots of the late 1960s (see also McAdam 1982). If this logic applies to the judicial branch, it means that favorable Court response to black riots in the mid-sixties would diminish or disappear by the late 1960s.

Three additional factors may help account for judicial decisions. Each of these factors, in large part, are consistent with insights from a state centered approach. State centered theorists argue that the political outcomes of social movements rest heavily upon policy entrepreneurs within the state and the institutional context (Skocpol 1985; Skocpol & Amenta 1986; Amenta & Poulsen 1996). Policy entrepreneurs are decision makers who promote movement supported legislation without pressure by movement activists (Walker 1977; Amenta & Poulsen 1996). These actors bring with them to office a political agenda that translates into different policies and is thus independent of protest and other “society centered” effects (Skocpol 1985). For instance, in terms of previous chapters, I tested this assertion with an interaction term of riots * congressional openness. This specific interaction does not seem relevant for the present analysis because congressional members do not make-up the target of change. I did test whether the effect of riots varied by the presence of the liberal Warren Court (1953-1969), but such an interaction was non-significant.

My use of state centered theory is limited because I examine only one country and thus I hold constant some of the most important aspects of the “state” (see Skocpol & Amenta 1986).
elected elites, five of the eight U.S. states in 1961 with anti-discrimination mandates in the private housing market had experienced virtually no black protests (Colorado, Connecticut, Minnesota, New Hampshire, and Oregon) (USCCR 1961:208). Applied to the context of the Court, who sits on the bench is relevant for the outcome of the case. Unlike previous Courts, for example, the responsiveness of the Hughes Court was in large part due to the fact most of its members were racially liberal (Howard 1999). The Warren Court (1953-1969) is widely regarded as the most consistent advocate of black civil rights (e.g., Berger 1978).

In terms of the institutional context, two factors seem relevant for Court decisions. First, as Dahl (1957:285) noted, the “policy views dominant on the Court are never for long out of line with the policy views dominant among the lawmaking majorities of the United States.” The president and Congress may influence the Supreme Court in a variety of ways. For instance, the members of the Court are appointed by the president and confirmed by the Senate and the Court often seeks out and is influenced by the Solicitor General’s position on litigation (Jacob 1986; George & Epstein 1992). The connection between the Court and the president and Congress has revolved around partisan politics (George & Epstein 1992:326). Thus, the Court may be inclined to rule favorably toward black civil rights in periods with Democrats in the White House and non-southern Democratic control in Congress (Epstein, Walker & Dixon 1989), the traditional supporters of black civil rights after Reconstruction (Carmines & Stimson 1989).
Second, in a federalist system, legislation by one policy making body may influence the outputs of another policy making body. In this example, this means that policies established by the legislative branch may influence actions of the judicial branch. The agenda of the Supreme Court is clearly affected by congressional legislation. Typically, statutory interpretation cases make up more than half of the Court’s docket. For civil rights issues, this influence often occurred because federal statutes granted the Attorney General additional powers or mandates to pursue litigation. For instance, the 1965 Voting Rights Act instructed the Attorney General to litigate against state and local poll taxes. In fact, one of the criticisms of the 1957 Civil Rights Act was that the Justice Department used the law’s provisions to litigate only six voting rights cases between 1957 and 1960 (Congressional Quarterly 1960:203).

The indigenous approach offers an alternative explanation for the potential link between congressional legislation and Court decisions. Previous research has shown that Congress passed civil rights legislation partly in response to black insurgency, especially organized black protests (Sundquist 1968; Garrow 1978; Morris 1993; Chapters 3 & 4). Thus, at least some of the influence of civil rights legislation on the Court’s civil-rights decisions should be conceptualized as an indirect influence of black insurgency. From this perspective, federal civil-rights legislation may partly mediate the influence of back protest on Court decisions. I referred to this approach as a political mediation model in Chapter 2 (theory).

3 The influence, of course, can go in the opposite direction as Table 5.2 demonstrates.
In sum, while the Court is correctly seen as largely insulated from many of the political pressures confronted by lawmakers, challengers like the civil rights movement nonetheless have a number of mechanisms to influence Court decisions. Most obvious, activists used a relatively-coordinated litigation strategy orchestrated by the NAACP to affect judicial decisions. The Court also is vulnerable to extra-institutional challenges. By breaking Jim Crow legislation, whether purposely or because of the legalistic tactics of segregationists, direct action often provided a test case useful to the litigation strategy. Similarly, insurgency may have found its way into the “hearts and minds” of judicial elites given that justices most likely were exposed to it through the mass media.

In this chapter, I assess these various possibilities by examining how black institutional and extra-institutional actions affected the civil rights decisions of the Supreme Court net of countermovement violence, polity openness, congressional legislation, and the presence of liberals on the bench.

Data and Methods

The dependent variable is the number of favorable civil-rights decisions by the Supreme Court each year that pertain to black civil rights. As noted earlier, civil rights cases

Unlike McAdam (1982) and others, I do not examine the number of favorable decisions minus the number of unfavorable decisions for two reasons. First, examining the “balance” of favorable rulings is not consistent with studies examining legislative outcomes. No one, for instance, examines welfare expenditures minus expenditures for riot preparedness. Second, a victory in one case is not canceled out by a defeat in another. For instance, that the Court permitted sit-ins in lunch counters was not nullified when the Court did not allow sit-ins in county jails (Adderley v. Florida 1966). Similarly, the defeat of the NAACP’s desegregation suit in Tennessee (Gray v.
included a variety of issues, the largest number of which pertained to rights in criminal justice, public accommodations, education, and voting. Cases are coded as favorable if legal scholars consider the case a victory for the civil rights of blacks—usually meaning that the black defendant or plaintiff won. Cases denied certiorari are excluded. Data were collected from the compilations of civil rights cases from the following sources: Greenberg (1959), Grossman (1967), Miller (1966), Motley (1976), Ploski & Marr (1976), Berger (1978), Parker (1990), and Davis & Graham (1995).

I analyze Court decisions beginning in 1930, the year Hughes became Chief Justice. This is appropriate given that the Court during the 1930s showed its first signs of responsiveness to minority rights (e.g., Berger 1978; Davis & Graham 1995; Howard 1999). This logic of using 1930 as a start date is analogous to studies on legislative and executive responses to blacks that begin with the Roosevelt administration (Sitkoff 1978; Carmines & Stimson 1989; Chapters 3 & 4). The appropriate year to end the analysis is less straightforward. Typically, analyses of policy outcomes end with the passage of “breakthrough” legislation. Thus, previous

University of Tennessee 1952) did not nullify the Brown decision two years later. Regardless of these conceptual arguments, the correlation between the number of favorable decisions and the balance of favorable decisions is .98. Not surprising, when I examined the balance of favorable decisions, results do not meaningfully vary from those reported in Table 5.1 (results not shown).

The Court maintains that a certiorari denied ruling does not signify that it approves or disapproves of the lower courts’ position. For instance, the Court may refuse to hear a case because of a procedural mistake in the filing of the appeal (see Miller 1966:447). Thus, I exclude such decisions due to their ambiguous nature and because legal scholars do not consistently report them in their compilations of civil rights cases.
work on black voting-rights legislation end with the passage of the 1965 Voting Rights Act (Garrow 1965; Chapter 3) and studies on equal employment legislation end with the 1972 Equal Employment Opportunity Act (Burstein 1985; Chapter 4). This is appropriate given that blacks essentially won the right to vote in the South in 1965 and the legal right to enjoy equal employment in 1972. In the area of litigation, however, there is no year that marks the end of the black litigation struggle.

In light of this ambiguity, I analyze Supreme Court decisions across two time periods. First, following traditional approaches to movement policy outcomes, I examined Court decisions from 1930 to 1965. The rationale behind ending the analysis in 1965 is that that year was the last of the peak years of Supreme Court responsiveness (see Figure 5.1). This strategy is consistent with Chapters 3 and 4 which examined specific civil-rights policies until they reached their peak in comprehensiveness. This strategy also is consistent with Jenkins and Perrow (1977) who ended their analysis in the year in which the number of signed contracts by farm workers peaked. Thus, the period from 1930 to 1965 allows us to assess Court decisions from the first signs of Court openness to the peak years of responsiveness.

Second, I examined Court response across the years 1930 to 1970 (cf. McAdam 1982). The logic behind using 1970 as an end date is that the widespread and mass-based phase of the black struggle for equality (i.e., the civil rights movement) ended by that year (McAdam 1982, 1983). Because this chapter seeks to undercover the role of the civil rights movement in Court decisions, it is reasonable to extend the analysis to the end of the movement in question. The longer one extends the present analysis, I
suspect, the less likely it is to find that Court responses were impacted by black insurgency and other factors that peaked in the mid-sixties but fell to low levels thereafter (e.g., federal civil-rights laws).

I measured the independent variables with secondary data and data from archival sources. Chart 5.1 (Panels A & B) shows bivariate correlations, means, and standard deviations. Given that NAACP branches formed the "lifeline of the Association" (Myrdal 1944:810), I measured the strength of the NAACP with the total number of local chapters of the NAACP each year (lagged one year) from the NAACP's *Annual Report* (1929-1970). Years with missing data were interpolated. This measure differs from McAdam (1982) who used the total number of new NAACP chapters, a measure that does not take into account chapters that became dormant. I measured two forms of black insurgency using secondary data collected primarily from the *New York Times Index* (1929-1969). First, I recorded the total number each year of black-initiated protest events (lagged one year), largely from data collected by McAdam (1982) and Jenkins and Eckert (1986) (see McAdam [1982] for a detailed description of the coding procedures). Second, I coded the total number each year of black riots (lagged one year) mainly from data collected by Isaac and Kelly (1981). While using *New York Times* coverage is not without its limitations (Olzak 1989), both measures have been widely used in the literature (e.g., Isaac & Kelly 1981; McAdam 1983; Jenkins & Eckert 1986; Minkoff 1997).

I measured "polity openness," the partisan composition of the White House and Congress, with an index composed of four indicators: (1) the presence of a Democratic
president (1 = yes, 0 = no); (2) the percentage margin of popular vote for Democratic presidential candidates minus the percentage margin of popular vote for Republican presidential candidates; (3) the number of chambers in Congress with a Democratic party majority; and (4) the number of non-southern Democrats in Congress divided by the total number of Democrats and Republicans in Congress. I constructed this index with data reported in the *Congressional Directory* (U.S. Congress, 1931-1949) and the *Statistical Abstract of the United States* (U.S. Bureau of the Census. 1955-1997). I standardized (z-scored) and summed each indicator. High scores on this index indicate the presence of a favorable governing coalition; low scores indicate an unfavorable governing coalition. To measure counter-movement violence, I used data primarily collected by Burstein (1985) from the *New York Times Index*. Countermovement violence is the total number of killings of people identified with the civil rights movement of any race (lagged one year) each year (see Burstein [1985: Appendix] for a detailed description of the coding procedures). Drawing upon state centered theory, I used the years of the Warren Court as a measure of the presence of policy entrepreneurs. I coded the years of the Warren Court (1953-1969) as one, zero otherwise.

To measure civil rights laws, I coded all presidential executive orders, congressional statutes, and constitutional amendments that pertained to black voting

———

6 In previous chapters, I principally relied upon the measure of congressional openness given that the make-up of Congress was paramount in determining congressional statutes. In the present chapter, however, both Congress and the president may play an equally important role.
rights, equal employment rights, public accommodations, and open housing rights. I selected these four policy areas because each received significant congressional legislation, unlike such issues as school desegregation and anti-lynching laws (see Zangrando 1965; Rosenberg 1992). I created scales across each of these four policy areas to measure policy comprehensiveness. For each policy area, I coded the content of all federal civil-rights laws into the following policy categories: how many enforcement options did the law specify, how many acts did it outlaw, who was covered under the act, did it establish an information gathering body, and did it quantify a solution. Charts 3.3 and 4.3 from previous chapters listed the categories and provisions used for the construction of the policy scales for voting and equal employment, respectively. Chart 5.2 lists policy categories and provisions for open housing and public accommodations laws. For each of the four policy areas, I summed the number of policy provisions within each category. I then standardized (z-scored) and summed the number of categories. The resulting four policy scales represent the comprehensiveness of all federal laws that covered black rights in voting, equal employment, public accommodations, and open housing. In order to create an overall measure of the comprehensiveness of civil rights legislation, I standardized (z-scored) each of these four scales and summed them (Cronbach's alpha = .86). I lagged

7 Unlike federal response reported in Chapter 3 and Chapter 4, this measure excludes bills because such legislative actions are unlikely to result in litigation.

federal civil-rights legislation two years since it typically takes a number of years for cases arising from constitutional challenges to reach the High Court.9

Method of Analysis

I used time series analysis in order to capture the dynamic causes of policy adoption across time. Time series analysis is well suited to uncover patterned relationships and allows one to make causal generalizations across a historical period (Griffin 1992). I used Poisson regression because the data for the dependent variable are counts; values for the dependent variable can only be a nonnegative integer. Poisson regression is appropriate for count data (Barron 1992; for recent examples using Poisson, see Olzak & Shanahan [1996]; Minkoff [1997]). A typical concern with time series analysis is autocorrelation, which unfortunately is a topic not well developed in the context of Poisson or other probability models (Haynes & Jacobs 1994). If


9 To explain Court decisions, some scholars adopt a “legal” or jurisprudence model and argue that legal doctrine determines judicial decisions (e.g., Segal 1984). Such an approach is used for studies that examine a single type of case, such as search-and-seizure or capital punishment cases, because legal factors are issue-specific. For instance, whether a jury was “death-qualified,” a situation where jurors were illegally excluded if they expressed objections to capital punishment, is a factor only relevant for death penalty cases (George & Epstein 1992). In the present analysis, I do not use a legal approach because I examine Court decisions across multiple civil-rights issues.
autocorrelation is present, the standard errors can be biased although the parameter estimates remain consistent. My strategy to overcome this limitation was to run models first with OLS regression and to check for autocorrelation in three ways: (1) the Durbin-Watson $d$-statistic, (2) the Breusch-Godfrey serial-correlation LM test (one and two year lags), and (3) the Ljung-Box Q-statistic from the correlogram (Harvey 1993). Autocorrelation was not present as indicated by Durbin-Watson $d$-statistics of around 2.0 (Durbin-Watson $d$-statistics presented in Table 5.1), the non-significant chi-square statistics from the LM test, and the non-significant Ljung-Box Q-statistics from the correlogram. These diagnostic tests lend credence to the claim that autocorrelation is not present in the Poisson models; hence the standard errors should not be biased, making hypothesis testing possible.

Results and Discussion

Table 5.1 presents six Poisson regression models that predict the number of favorable Supreme Court decisions on civil rights cases. Models 1 through 4 cover the years 1930 to 1965. Across these years, black riots and countermovement killings are highly correlated ($r = .73$). Because of this, models 1 and 2 include black riots but not countermovement killings while models 3 and 4 include countermovement killings but not riots. I enter federal civil-rights legislation in separate equations (models 2 and 4)

\footnote{Results from the Durbin-Watson test in model 5 and 6 are inconclusive because the $d$-statistics fall in the area of uncertainty; but results from the Breusch-Godfrey LM test and the Ljung-Box Q-statistics indicate that autocorrelation is not present.}
<table>
<thead>
<tr>
<th></th>
<th>Model 1 1930-65</th>
<th>Model 2 1930-65</th>
<th>Model 3 1930-65</th>
<th>Model 4 1930-65</th>
<th>Model 5 1930-70</th>
<th>Model 6 1930-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Collective Action</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NAACP Branches (t -1)</td>
<td>.001***</td>
<td>.001***</td>
<td>.001***</td>
<td>.001**</td>
<td>.001**</td>
<td>.001**</td>
</tr>
<tr>
<td></td>
<td>(3.326)</td>
<td>(3.101)</td>
<td>(3.497)</td>
<td>(2.831)</td>
<td>(2.679)</td>
<td>(2.927)</td>
</tr>
<tr>
<td>Protests (t -1)</td>
<td>.004**</td>
<td>.004*</td>
<td>.003*</td>
<td>.002</td>
<td>.002</td>
<td>.004*</td>
</tr>
<tr>
<td></td>
<td>(2.432)</td>
<td>(2.223)</td>
<td>(1.730)</td>
<td>(1.169)</td>
<td>(1.515)</td>
<td>(1.945)</td>
</tr>
<tr>
<td>Riots (t -1)</td>
<td>.111***</td>
<td>.118***</td>
<td>-----</td>
<td>-----</td>
<td>-.001</td>
<td>-.002</td>
</tr>
<tr>
<td></td>
<td>(3.113)</td>
<td>(3.375)</td>
<td></td>
<td></td>
<td>(-1.268)</td>
<td>(-1.407)</td>
</tr>
<tr>
<td>Political Context</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Countermovement Killings  (t -1)</td>
<td>-----</td>
<td>-----</td>
<td>.042*</td>
<td>.066**</td>
<td>.047*</td>
<td>.045*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(2.006)</td>
<td>(2.954)</td>
<td>(2.292)</td>
<td>(2.219)</td>
</tr>
<tr>
<td>Polity Openness</td>
<td>.004</td>
<td>-.040</td>
<td>.057*</td>
<td>-.005</td>
<td>.003</td>
<td>.010</td>
</tr>
<tr>
<td></td>
<td>(.096)</td>
<td>(-1.047)</td>
<td>(1.750)</td>
<td>(-.130)</td>
<td>(.115)</td>
<td>(.360)</td>
</tr>
<tr>
<td>Warren Court</td>
<td>.488*</td>
<td>.230</td>
<td>.807***</td>
<td>.506*</td>
<td>.664***</td>
<td>.627***</td>
</tr>
<tr>
<td></td>
<td>(2.119)</td>
<td>(.939)</td>
<td>(3.790)</td>
<td>(2.219)</td>
<td>(3.572)</td>
<td>(3.332)</td>
</tr>
<tr>
<td>Federal Civil-Rights Laws (t -2)</td>
<td>-----</td>
<td>.156**</td>
<td>-----</td>
<td>.194***</td>
<td>-----</td>
<td>-.030</td>
</tr>
<tr>
<td></td>
<td>(2.853)</td>
<td>(3.370)</td>
<td></td>
<td></td>
<td></td>
<td>(-1.249)</td>
</tr>
<tr>
<td>Constant</td>
<td>.096</td>
<td>.372</td>
<td>-.185</td>
<td>-.365</td>
<td>.329</td>
<td>.212</td>
</tr>
</tbody>
</table>

Table 5.1. Poisson Coefficients from the Regression of Favorable Civil-Rights Rulings of the Supreme Court on Selected Independent Variables.
<table>
<thead>
<tr>
<th></th>
<th>Model 1 1930-65</th>
<th>Model 2 1930-65</th>
<th>Model 3 1930-65</th>
<th>Model 4 1930-65</th>
<th>Model 5 1930-70</th>
<th>Model 6 1930-70</th>
</tr>
</thead>
<tbody>
<tr>
<td>X²</td>
<td>124.107***</td>
<td>131.713***</td>
<td>118.667***</td>
<td>129.403***</td>
<td>95.995***</td>
<td>97.561***</td>
</tr>
<tr>
<td>df</td>
<td>5</td>
<td>6</td>
<td>5</td>
<td>6</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>N</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>36</td>
<td>41</td>
<td>41</td>
</tr>
<tr>
<td>Log Likelihood</td>
<td>-89.348</td>
<td>-85.545</td>
<td>-92.068</td>
<td>-86.700</td>
<td>-117.634</td>
<td>-116.851</td>
</tr>
<tr>
<td>R²</td>
<td>.655</td>
<td>.707</td>
<td>.650</td>
<td>.745</td>
<td>.604</td>
<td>.592</td>
</tr>
<tr>
<td>Durbin-Watson d-statistic</td>
<td>1.920</td>
<td>2.022</td>
<td>1.972</td>
<td>2.234</td>
<td>1.610</td>
<td>1.711</td>
</tr>
</tbody>
</table>

Notes: t-statistic in parentheses
* p < .10  * p < .05  ** p < .01  *** p < .001 (one-tailed)
* Based on identical OLS model.
because its inclusion may attenuate the insurgency coefficients given that they are likely a product of black insurgency. Models 5 and 6 extend the analysis to 1970. In these models, I enter countermovement killings and riots into the same equation because their high bivariate correlation diminishes with the additional years.

One of the most consistent findings shown in Table 5.1 is that the strength of the NAACP is significantly and positively related to the total number of favorable Supreme Court rulings. This finding is not surprising given the historical record. The NAACP was the preeminent organization fighting for black legal rights and its repeated record of success before the Supreme Court is undeniable. This finding suggests that the Court’s position within the federal government made it vulnerable to organized black efforts at social change through institutional means. As Morris (1984:26) noted, this “vulnerability could be found in spite of the immense social, political, and economic efforts and terror tactics used by white Southerners to protect white dominance.” This finding supports the pluralist notion that multiple points of access found in a federalist system makes the U.S. government permeable to organized outsiders using institutional tactics. When blocked at the local and state level in the South, and faced with largely indifferent legislative and executive branches, the Court proved to be one of the most consistently open institutions to blacks throughout the period under study (Berger 1978).

But pluralism has a much more difficult time explaining the significant impact of black protests in five of the six models in Table 5.1. While usually directed at local authorities, organized black insurrection appears to have swayed the decisions of the
Court. As noted earlier, this influence may have occurred because extra-institutional actions often led to litigation—mainly because the southern white power-structure typically used the law to prevent or punish black "agitators." What this suggests is that the consequence of segregationists using legalistic tactics varied substantially across levels of government. Based on research by Barkan (1984) and others, legalistic tactics usually were effective means of social control in local courts but often backfired before the High Court. Also, it is plausible that just as black demonstrations raised the salience of civil rights to the nation (see Gallup 1972), they also moved Court justices. I elaborate upon this point in the chapter’s conclusion. The Court, it would appear, was vulnerable to both institutional and extra-institutional tactics by the civil rights movement.

The applicability of the Piven and Cloward thesis appears to extend to appointed elites. In the period 1930 to 1965, black riots had a significant and positive impact on the number of favorable Supreme Court rulings (models 1 & 2). Yet this positive effect disappeared in analyses that included the riots of the late 1960s (models 5 & 6). That the effect of riots varied in this manner is consistent with Button’s (1978) analysis. Recall that Button argued that lawmakers reacted in an ameliorative manner to the riots of the early-to-mid 1960s when riots were novel enough to catch their attention but not severe enough to threaten political stability. After the numerous and highly destructive riots of the late 1960s, however, elites reacted in a less ameliorative manner. This same general dynamic appears to have operated for judicial elites as well.
In terms of the broader political context, I found consistent support for the violence thesis. When civil rights activists met with death at the hands of whites, the Court responded with decisions favorable to the civil rights movement. White violence most likely backfired against its users because Court members, like the "reference public" (Lipsky 1968) more generally, did not condone such killings. For instance, when three white police officers and fifteen others beat and killed three civil rights activists during Freedom Summer in 1964, the Court held that even the private citizens had acted under the "color of law" and thus were subject to additional penalties (*United States v. Price* 1966). This response was in stark contrast to the Court's actions after Reconstruction when it substantially weakened the Ku Klux Klan Act of 1871 by ruling that the 14th Amendment granted only state governments jurisdiction over the actions of private individuals (*United States v. Harris* 1883). That case involved an armed mob of nineteen whites who had taken four blacks from the custody of a local sheriff, killed one of them, and beat the others. Gamson (1975) observed some time ago that the use of violence by dominant groups against challengers worked only in situations where the public and elites, in this case judicial elites, condoned the actions of the violence users.

Insights from a state centered approach also proved useful in understanding Court decisions. While non-southern Democratic control in Congress and the presence of a Democratic president did not affect Court decisions, the Court during the leadership of Earl Warren was more responsive to civil rights issues than other Courts. Joining Warren on the bench were such noted liberals as William Brennan in 1956 and Thurgood Marshall in 1967. State centered theorists would view such elites as policy
entrepreneurs who, net of black insurgency, responded in positive ways to the demands of civil rights activists. The presence of Thurgood Marshall on the bench, however, somewhat complicates this view because he was himself a civil rights actor. Santoro and McGuire (1997) termed such elites institutional activists—movement participants who agitate from within the target of change.

Finally, congressional civil-rights legislation had a significant and positive impact on Court decisions, but that effect disappeared when the analysis was extended to 1970. The significant effect of civil rights legislation on Court decisions from 1930 to 1965, as discussed earlier, can be interpreted from two perspectives. From a state centered perspective, it simply demonstrates that the actions of one policy making body can, net of pressure politics, influence the actions of another policy making body. Most likely, this influence occurred because civil rights statutes typically granted the Attorney General additional powers to pursue litigation. In fact, the Kennedy administration used litigation based on existing statutes, such as the 1960 Civil Rights Act, as its principal strategy to achieve black civil rights. The alternative view is that black protests may indirectly have affected Court decisions through their influence on federal lawmakers (i.e., protest → federal civil-rights legislation → Court decisions). Additional analysis presented in Table 5.2 supports this view. Table 5.2 shows the results from a Tobit regression of the comprehensiveness of federal civil-rights laws (voting, equal employment, open housing, and public accommodations) from 1930 to 174.


<table>
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<tr>
<th>Model 7</th>
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<tr>
<td>1930-1970</td>
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<tr>
<th>Black Collective Action</th>
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<tr>
<td>Protests (t -1)</td>
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<td>Riots (t -1)</td>
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<tr>
<th>Political Context</th>
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<tr>
<td>Countermovement Killings (t -1)</td>
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<tr>
<td>Polity Openness</td>
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<tr>
<td></td>
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<tr>
<td>Supreme Court Rulings (t -1)</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Constant</td>
</tr>
</tbody>
</table>

| χ²                      | 47.171*** |
| df                      | 5         |
| N                       | 41        |
| Log Likelihood          | -42.574   |
| R²<sub>γ,γ</sub>        | .910      |
| Durbin-Watson d-statistic<sup>4</sup> | 2.359 |

Notes: t-statistic in parentheses  
* p < .10  * p < .05  ** p < .01  *** p < .001 (one-tailed)  
<sup>4</sup> based on identical OLS model.

Table 5.2. Tobit Regression of Federal Civil-Rights Laws on Selected Independent Variables, 1930-1965.
1965 on protest and other variables. It demonstrates that black protests had a significant and positive effect on federal laws net of riots, countermovement killings, polity openness, and Supreme Court rulings. Thus, consistent with the indigenous approach, part of the impact of federal laws on Court decisions is appropriately viewed as an indirect effect of black protests.

Conclusion

While we have increasingly learned more about the political impact of the civil rights movement on Congress (Piven & Cloward 1979a; Burstein 1985: Chapters 3 & 4), little scholarly attention has been devoted to understanding the extent to which the Supreme Court was influenced by black insurgency. This is surprising given that the Court was a key actor during the period of the civil rights movement. This chapter sought to empirically examine how the black movement impacted the civil rights decisions of the Court. Results indicate that black collective actions, whether institutional in nature, non-institutional but organized, or unorganized and violent, had important impacts on the Court's decisions.

For the years studied, the strength of the NAACP was linked to the yearly number of favorable Court decisions. This finding adds strong empirical support to the commonly held belief that the NAACP played a central role in prodding the Court to

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I used Tobit regression because the dependent variable contains a high percentage of zeros, years in which there were no federal laws. The data are censored because one cannot observe comprehensiveness in years with no legislation. Tobit regression is appropriate for censored data (Roncek 1992; Green 1993).
act in favor of its legal agenda. The successful litigation strategy of the NAACP did not by itself bring about sweeping changes for black liberation, but by affecting the High Court, it provided "moral weight and legal force" (Howard 1999:224) to the extra-institutional struggle by blacks for racial equality. While the institutional arm of the movement was important, the principal struggle by blacks took place through direct-action and non-institutional means. But even here, the Court was responsive. The yearly number of black protests significantly affected Court decisions. One way that this influence took place was because the Supreme Court consistently overturned the convictions of black demonstrators who had been arrested while engaging in protest. I also found that black riots positively affected Court decisions but that this effect existed only for the years 1930 to 1965. Most likely, the more numerous and destructive riots of the late 1960s no longer struck a sympathetic chord among the Court justices (cf. Button 1978; McAdam 1982).

Aspects of the broader political context also were relevant. Consistent with the violence thesis, countermovement violence positively affected the number of Supreme Court decisions. At times, such killings directly led to litigation before the High Court. In addition, Court justices most likely did not condone segregationist violence and granted blacks additional leeway in their battles before the Court because of such violence (Berger 1978:126). While Democratic control of the White House and Congress did not affect Court actions, the period of the Warren Court was particularly favorable to black civil rights. This finding is consistent with a state centered perspective which highlights that targets of change made-up of policy entrepreneurs can
help movements realize victories even after "controlling" for the level of insurgency. Finally, the passage of federal civil-rights statutes from 1930 to 1965 increased Supreme Court responsiveness to civil rights. In part, this result indicates that statutes often granted the Attorney General enhanced power to pursue civil rights litigation. Supplementary analysis, however, also demonstrated that federal statutes were themselves significantly affected by black protests. This finding suggests that part of the effect of black protests on Court decisions worked through federal statutes.

The general predictors of Supreme Court response to black civil rights parallel Chapter’s 3 findings concerning congressional and presidential response to black voting rights. In fact, I argue that the results from this chapter support the same general "political process" model outlined in Chapter 3: elite response was due to the co-occurrence of a strong movement coupled with favorable political opportunities. More specifically, the responsiveness of the Court to black civil rights was due to the co-occurrence of a strong indigenous challenge, a violent opponent, and an attentive and sympathetic public. The results of this chapter empirically have demonstrated the importance of movement activity (NAACP legal pressure, protests, riots until the mid-sixties) and countermovement violence. Support for an attentive and sympathetic public comes from Gallup (1972) opinion surveys revealing the high salience of civil rights issues to the public from 1957 to 1965 and majority public support for the principle of non-discrimination by the 1950s (see Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992). In sum, I think a focus on the black movement, the
supportive public, and a violent opponent highlight the most salient factors behind Court response to black civil rights.

Results from this study raise two theoretical issues. First, they comment upon the role that electoral conditions play in connecting insurgency to the policy responses by appointed elites. As noted earlier, many scholars posit that insurgency is linked to elite decisions, especially at the national level, because it affected the electorate. The preference of the electorate, in turn, is thought to influence elites who are accountable to voters through elections (Burstein 1980; Page & Shapiro 1983). Yet the Court is not formally accountable to the electorate because its members are appointed. In fact, the ebb and flow of partisan politics (i.e., polity openness) was not related to Court decisions. If I am correct that electoral conditions cannot explain the link between protests and Court decisions, in what other ways might this connection be made?

One such mechanism, as discussed above, was simply that the arrests of black demonstrators led to litigation. But I suspect that a crucial factor which linked protest to Court actions, and elite decisions more generally, was that black protests helped to change the consciousness among policy making elites. By consciousness, I mean how elites understood the role of race and the struggle for racial equality in America. In general, consciousness raising appears to be a crucial resource for challengers, one which unfortunately is often overlooked in traditional approaches to movement outcomes (Mueller 1987). In terms of the civil rights movement, we know that the dramatic images of the black struggle for equality raised the salience of civil rights issues to the public, and presumably, elites as well. From 1935 until 1955, no more
than five percent of the public listed civil rights issues as the nation's most important problem (Gallup 1972). However, that percentage rose to 29 percent one month following the Little Rock integration crisis in 1957; it reached 52 percent one month after the March on Washington in 1963; it stood at 40 percent a week after three Freedom Summer volunteers were found dead in 1964; and it again rose to 52 percent during the Selma demonstrations (Gallup 1972:1523-1934). In line with insights from “new social movement” scholars like Mueller (1987) and Ferree (1992), I suspect that the symbolic aspect of black protest acted as a powerful determinant of judicial decisions. In terms of the sit-ins, for instance, McAdam (1983:744n) noted that “many segregationists found it increasingly difficult to maintain their long-held invidious moral distinction between blacks and whites as a result of the glaring symbolic contrast evident in the sit-ins.” If such a mechanism worked for segregationists during the sit-in movement, it is likely that the powerful symbolic aspects of protest also worked for judicial elites. It was not uncommon, for instance, for Court justices to openly express their sympathies for the black struggle in their case opinions (see Berger 1978:126). A focus on the symbolic importance of protest as a mechanism of movement influence, I think, would de-emphasize the over-reliance by scholars on electoral factors like securing votes to explain policy outcomes.

A second theoretical issue that these findings raise concerns how movement scholars should conceptualize the role of the Supreme Court in local-level policy conflicts. An example of this dilemma involves understanding the role of the Court in the Montgomery Bus Boycott of 1955-56. The facts of the bus boycott are well known:
a year long and well-organized boycott met success shortly after the Court affirmed a federal court’s ruling that Montgomery’s segregated bus-ordinance was unconstitutional. Barkan (1984:556n) argued that the movement’s success should be credited to the Court and not the movement: the boycott “would have failed had it not been for the Supreme Court.” Thus, Barkan drew a clear distinction between the actions of the Court and the movement. Morris (1984:63) took a different approach when he argued that the Montgomery movement “had created the pressure that contributed to the favorable court ruling” (cf. McAdam 1983). Central to this debate is how we should conceptualize the role of the Court in local-level policy victories: as a third party actor (Barkan 1984) or as a mechanism of social movement influence (Morris 1984).

Results from this study suggest that Court intervention in local struggles like Montgomery typically should be thought of as a mechanism of social movement influence. I make this claim because of the significant impact that black protests had on Court rulings; meaning that there was a consistent relationship between black protests and Court decisions across four decades. Historically, this link was apparent in the 1930s with the trials of the Scottsboro boys and black pickets of discriminatory employers. This assertion seems reasonable even in the Montgomery example given that the federal court suit was itself an indigenous challenge. For instance, Fred Gray, the lead attorney in the suit by the Montgomery Improvement Association, was a black Montgomery lawyer who also happened to be an ordained minister (Robinson 1987). If correct, this observation suggests that rather than being a passive recipient of a
benevolent Court, the civil rights movement used the Court to help secure its local level victories.

Future work is needed to clarify the link between social movements and Court actions. Extending this analysis to other social movements would comment upon the generalizability of this chapter’s findings. For instance, an excellent comparative study would be to examine the relationship between worker insurgency and Court approval of New Deal and labor legislation. In addition, future work is needed to more clearly specify where in the judicial process challengers influence judicial decisions. What conditions, for instance, lead the Court to grant certiorari and are those factors similar to the conditions that lead justices to issue broad rather than narrow constitutional rulings or overturn legal precedent? Based on the findings from this study, I suspect that future work will show that challengers utilize multiple tools to secure concessions from judicial elites.
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<td>.57**</td>
<td>.48**</td>
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<td>.13</td>
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* p < .05 ** p < .01 (two-tailed)

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<th>Mean</th>
<th>Std Dev</th>
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<td></td>
<td></td>
<td></td>
<td>5.29</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td>797.63</td>
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<td>3. Protests (t -1)</td>
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<td>1.00</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>28.88</td>
</tr>
<tr>
<td>4. Riots (t -1)</td>
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<td>.40**</td>
<td>.16</td>
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<td>.45**</td>
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<td>6. Polity Openness</td>
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<td>.24</td>
<td>.02</td>
<td>.14</td>
<td>1.00</td>
<td></td>
<td></td>
<td></td>
<td>.54</td>
</tr>
<tr>
<td>7. Warren Court</td>
<td>.52**</td>
<td>.48**</td>
<td>.55**</td>
<td>-.04</td>
<td>.21</td>
<td>-.15</td>
<td>1.00</td>
<td></td>
<td></td>
<td>.39</td>
</tr>
<tr>
<td>8. Federal Civil-Rights Laws (t -2)</td>
<td>.34*</td>
<td>.36*</td>
<td>.75**</td>
<td>.22</td>
<td>.47**</td>
<td>.22</td>
<td>.35*</td>
<td>1.00</td>
<td></td>
<td>.00</td>
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* p < .05 ** p < .01 (two-tailed)

OPEN HOUSING SCALE

1. Enforcement powers
   - cancellation of federal contracts or other forms of federal assistance
   - allowed Attorney General to bring civil suit to ensure non-discrimination
   - allowed aggrieved parties to file suit in federal court
2. Acts outlawed
   - sale, rental, terms of housing
   - advertising
   - making untrue statements about a dwelling’s availability
   - blockbusting, steering, redlining
   - public loan discrimination
   - private loan discrimination
3. Coverage
   - percentage of housing market covered under law
4. Information Gathering
   - empowered commission to investigate discrimination in housing
5. Quantification
   - not applicable

PUBLIC ACCOMMODATIONS SCALE

1. Enforcement Powers
   - allowed Attorney General to initiate desegregation suits
2. Acts Outlawed
   - discrimination in public accommodations
3. Coverage
   - all public accommodations
4. Information Gathering
   - empowered commission to investigate discrimination in public accommodations
5. Quantification
   - not applicable

Chart 5.2. Policy Scales: Open Housing and Public Accommodations.
CHAPTER 6

CONCLUSION

The main goal of this concluding chapter is to discuss a general theory of social movement outcomes. I first, however, review the empirical findings from Chapters 3, 4, and 5. After I elaborate upon my “general theory,” I then end with a brief discussion of this study’s implications for the future of the black struggle for social equality, or what Lieberson (1980) termed, a bigger “piece of the pie.”

Review of Empirical Findings

The findings presented in Chapters 3, 4, and 5 represent the most statistically sophisticated analyses of the federal government’s response to the civil rights movement to date. Nonetheless, the generalizability of these findings are limited because I studied a unique social movement during a specific historical period. While there is no such thing as a typical social movement, the civil rights movement was one of the most contentious movements in U.S. history: it was a prolonged conflict that mobilized large numbers of people across a geographically disperse area, it met a violent opponent and an ambivalent elite, and it pursued a broad legislative agenda. Caution therefore must be used when applying this study’s findings to other challenging groups.
Perhaps the only other movement in recent U.S. history that can compare to the civil rights movement is the U.S. labor movement of the 1930s.

The findings also are limited to the specific issues that I analyzed. Blacks fought for a variety of policy goals and this study focused on only two types of congressional and presidential policies. In terms of the Supreme Court, it is not clear how the findings from Chapter 5 would compare to an analysis of Court decisions on specific policy domains, like education, equal employment, or transportation. Finally, the processes that governed the outcomes of the civil rights movement for the years studied would most likely differ from an analysis of the black struggle during Reconstruction or other distinct historical periods. Like all historical sociological work, findings are specific to the phenomenon studied (the black movement) and the historical period (circa 1930-1970) (Griffin 1992). With those caveats in mind, Table 6.1 summarizes the empirical findings.

Collective Action

Protest & Crisis Events. One of the most consistent findings is the significant and positive effect of organized black protests, including movement-generated crisis events. These findings provide strong statistical support for the conventional view that the civil rights movement played a key role in securing political concessions from federal elites. This finding supports the indigenous approach to policy outcomes.

Riots. Unlike the claim by Piven and Cloward (1979a), riots played a less consistent role in the policy process than did organized black protests. The effect of
### Table 6.1: Summary of Empirical Findings.

<table>
<thead>
<tr>
<th>Collective Action</th>
<th>Voting Rights</th>
<th>Equal Employment</th>
<th>Supreme Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>Protests (&amp; Crisis Events)</td>
<td>-</td>
<td>+</td>
<td>+</td>
</tr>
<tr>
<td>Riots</td>
<td>interaction</td>
<td>interaction</td>
<td>+ (1930-65)</td>
</tr>
<tr>
<td>NAACP Strength</td>
<td>NT</td>
<td>NT</td>
<td>+</td>
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<tr>
<th>Political Opportunities</th>
<th></th>
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<tbody>
<tr>
<td>Presidential/Congressional Openness</td>
<td>interaction</td>
<td>NS</td>
<td>NS</td>
</tr>
<tr>
<td>Appointed Policy Entrepreneurs</td>
<td>NT</td>
<td>NT</td>
<td>+ (Warren Court)</td>
</tr>
<tr>
<td>Public Opinion</td>
<td>NT</td>
<td>interaction</td>
<td>NT</td>
</tr>
<tr>
<td>Policy Precedents</td>
<td>+ (EE legislation)</td>
<td>+ (SC cases)</td>
<td>+ (CR laws; 1930-65)</td>
</tr>
<tr>
<td>Countermovement Killings</td>
<td>+</td>
<td>NS</td>
<td>+</td>
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<thead>
<tr>
<th>Collective Action * Opportunities</th>
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<tbody>
<tr>
<td>Riots * Congressional Openness</td>
<td>+</td>
<td>NS</td>
</tr>
<tr>
<td>Riots * Public Opinion</td>
<td>NT</td>
<td>+</td>
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Notes: + = significant; NS = not significant; NT = not tested; EE = equal employment; SC = Supreme Court; CR = civil rights.
riots tended to depend upon the presence of favorable political opportunities: congressional openness for voting rights and favorable public opinion for equal employment rights. In addition, federal responses to black riots were more favorable in the early-to-mid sixties and became less favorable by the late sixties (cf. Button 1978).

**NAACP Strength.** As a measure of black institutional strength, I tested for the impact of the NAACP only on the policy outputs from the Supreme Court. I limited my analysis in this manner because the historical record does not support the idea that Congress and the president were swayed by black lobbying efforts. For instance, despite a directed and coordinated effort, civil rights lobbying for anti-lynching and anti-poll tax legislation in the 1930s and 1940s had no meaningful impact on congressional policy outputs (Zangrando 1965; Lawson 1976). As we would expect, the Supreme Court was indeed affected by the strength of the NAACP. This finding adds further support for the indigenous approach.

**Political Opportunities**

**Presidential & Congressional Openness.** The partisan composition of the White House and Congress did not play a consistently important role in civil rights legislation nor did it directly affect the actions of the Supreme Court. The exception was for voting rights where a “liberal” Congress responded more favorably to black riots than a more conservative Congress. At first, this finding may seem inconsistent with the historical record given that “breakthrough” civil rights legislation like the 1965 Voting Rights Act came about during a Democratic administration and a non-southern Democratic controlled Congress. Yet as I pointed out in Chapters 3 (voting) and 4
(equal employment), neither Democratic presidents nor congresses composed of large shares of non-southern Democrats consistently pushed for civil rights legislation. In particular, despite being structurally conducive to civil rights issues, the Roosevelt years produced a paucity of civil rights responses. This finding most directly contradicts state centered theorists who would view Democratic presidents and congresses composed of large shares of non-southern Democrats as measures of policy entrepreneurs.

**Appointed Policy Entrepreneurs.** Similar to a focus on politicians, another way to conceptualize policy entrepreneurs is to focus on appointed state “insiders.” In the analysis of Supreme Court rulings, I examined whether the Warren Court acted as a policy entrepreneur by issuing favorable Court decisions after controlling for black insurgency. I found that the Warren Court responded in a favorable manner. This finding thus supports a state centered explanation of policy outcomes.

**Public Opinion.** The lack of yearly public opinion data makes it difficult to systematically test for its effect on policy outcomes. In fact, in terms of civil rights policies circa 1930, the only reasonably complete series on yearly public opinion concerns public attitudes toward equal employment opportunities. Because of these data limitations, only Chapter 4 tested for the impact of public opinion on elite concessions. I found that public opinion did matter, but its effect depended upon black rioting. In fact, the impact of favorable public opinion on equal employment policies only occurred when there were at least some black riots. This finding thus offers partial support for democratic theory.
Policy Precedents. Consistent with state centered theory, I found that all three analyses uncovered policy precedent effects: voting rights legislation was affected by equal employment legislation, equal employment legislation was affected by Supreme Court cases concerning fair employment, and Supreme Court responses to black civil rights were affected by congressional and presidential civil rights legislation. These findings indicate that pre-existing legislation sets a favorable context for subsequent policy adoption.

Countermovement Killings. In two of the three analyses, I found that federal elites responded to segregationist killings of pro-rights actors with civil rights legislation. In addition, analysis shown in Table 5.2 indicated that in four policy domains (equal employment, open housing, voting rights, public accommodations), federal responses were partly due to countermovement killings. These findings support the violence thesis.

Toward a General Theory of Movement Outcomes

One of the goals of this monograph was to help generate a general theory of movement outcomes. The general theory I propose is designed to explain the political outcomes of contentious movements by specifying the conditions which produce social movement success or failure.¹² A general theory of movement outcomes needs to (1) be guided by

¹² By contentious, I mean to exclude "consensus" movements which face a public that generally favors the movement's goals and encounters a non-violent opponent.
a set of premises, (2) focus on a limited number of core concepts, (3) link the concepts, and (4) offer predictions as to when a movement would win or lose.

**Premises.** I propose that a general theory of social movement outcomes must be guided by three premises. First, any understanding of an authority-challenger conflict needs to take into consideration the collective actions of the social movement and aspects of the political opportunity structure. This is not a radical suggestion as any empirical examination of a social phenomenon needs to take into consideration relevant causes (but see Kitschelt 1986; Morris 1993). Second, any understanding of a given authority-challenger conflict needs to be specific to a social movement, its policy goal, and its target of change (see Chapter 2). A general theory, for instance, seeks to explain how the civil rights movement secured equal employment policies from Congress and not how the civil rights movement was "successful" because this latter question is not policy specific nor specific to a target of change. Third, no single condition, or variable, can explain movement outcomes. Rather, federal response was due to the presence of multiple conditions or variables.

**Core Concepts.** To explain social movement outcomes, I focus on three core factors. This offers a parsimonious model, a characteristic of all good theories, while still incorporating the most salient aspects of the authority-challenger conflict. The first factor is the social movement. While strong movements are not always successful, and sometimes they win even when internally weak, elites seldom if ever respond to outside interests without *some* degree of agitation.
In terms of the social movement, the basic distinction I make is between a movement that is strong from one that is weak. Strong movements have the ability to generate mass-based collective actions and they have strong indigenous resources. The civil rights movement of the early 1960s was clearly a strong movement (Morris 1981, 1993). Not only did the movement principally rely upon the black community for its participants, it was able to generate widespread protests (Figure 2.2) and numerous crisis events (Table 2.1). Weak movements engage in a limited number of protests and rely heavily upon outside resources. The Latino struggle for social equality is a weak movement. This accurately describes the farm worker struggle for union contracts (Jenkins 1985) as well as the Latino fight against state English-only laws (Santoro 1999). A focus on the social movement draws upon the basic insight from the indigenous approach that the movement is a key player in policy conflicts.

The second concept is the “reference public” (Lipsky 1968). Elites who control the target of change usually depend upon actors in the broader political environment for support for their positions. As noted in Chapter 2 (theory), the vast majority of targets of change are governmental bodies controlled by politicians who, in turn, are accountable to the public for their positions. This is the central tenet of democratic theory (Page & Shapiro 1992). Thus the concept of the reference public often simply means the broader public or “audience” who witness the conflict between the authority and the challenger. Where data exist, this concept can be measured by public opinion.

While there are a variety of ways to categorize the reference public, a useful approach is to simply separate a favorable reference public from an unfavorable or
apathetic reference public. A favorable reference public is an attentive audience (one which monitors the authority-challenger conflict closely) that is sympathetic to the movement's goals. Garrow (1978), for instance, argued that the reference public for Congress (the voting public) was attentive and sympathetic to the goals of the civil rights movement in 1965. This is a reasonable assertion given that the issue of civil rights was highly salient to most Americans during the mid-sixties (Gallup 1972) and because most Americans favored the principle of racial equality by that time (Schuman, Steeh & Bobo 1985). An unfavorable reference public is an attentive public that is hostile to the goals of the social movement. For instance, white residents of Albany, Georgia, in 1961-62 undoubtedly were well aware of black protests in their community (attentive) and they were hostile to the movement's goals. A focus on the reference public is consistent with a political opportunity approach which stresses that social movements operate within a given political context which shapes movement processes and outcomes.

The third concept is third party actors, or what Klandermans (1992) referred to as the alliance and conflict system. Third parties are organized actors (unlike public opinion) who directly enter the conflict between the authority and the challenger. I make the basic distinction between an alliance and conflict system that is either favorable or unfavorable to the goals of the social movement. A favorable alliance and conflict system is one in which there is consistent support from third party actors. In the farm workers struggle, this meant consistent support from unions, universities, big city mayors like in New York city, and grocery chains. Also included are opponents
who use violence but only when the reference public does not condone such violent actions (see Gamson 1975). An unfavorable alliance and conflict system is one in which there is infrequent or inconsistent support from third parties. I include opponents who use legal tactics and, if condoned by the reference public, violence. Thus, at the national level, the 1920s represented an unfavorable alliance and conflict system for the civil rights movement’s goal of suffrage: few allies entered the policy conflict and opponents were numerous and powerful (e.g., the 1925 parade by 10,000 Ku Klux Klan members in Washington, D.C.). The importance of third party actors draws upon insights from a political opportunity approach.

**Linking the Concepts.** The general theory I present links these three concepts using a “multiple interactive causation” approach (Kaufman 1999) that posits multiple causes of an outcome. The occurrence of any one of the causal events is not sufficient to produce the outcome event without the co-occurrence of another event or events. I propose that the three core concepts or conditions co-occur in four ways and each set of conditions produce either movement success or failure. Table 6.2 lists these four types or sets of conditions, labeled Type I, II, III, and IV. I illustrate each of these four types with a specific authority-challenger conflict. Drawing upon observations from Chapter 2 (theory), note that each example of an authority-challenger conflict I present is policy specific (e.g., suffrage, union contracts) and each implies a specific target of change (e.g., Congress for voting rights, growers for union contracts). The four examples are the black suffrage movement in the 1960s (Type I), the farm workers struggle for union contracts in the late 1960s (Type II), the civil rights movement in
<table>
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<th>reference public (public)</th>
<th>alliance &amp; conflict system</th>
<th>outcome</th>
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<td><strong>TYPE I</strong> (e.g., the civil rights movement &amp; black suffrage, circa 1960)</td>
<td>STRONG many protests &amp; the generation of crisis events</td>
<td>FAVORABLE sympathetic &amp; attentive</td>
<td>FAVORABLE violent opposition</td>
<td>SUCCESS massive collective action &amp; oppositional violence</td>
</tr>
<tr>
<td><strong>TYPE II</strong> (e.g., the farm workers movement &amp; union contracts, circa late 1960s)</td>
<td>WEAK localized collective action</td>
<td>FAVORABLE sympathetic &amp; attentive</td>
<td>FAVORABLE consistent support</td>
<td>SUCCESS allies &amp; public support for the grape boycott</td>
</tr>
<tr>
<td><strong>TYPE III</strong> (e.g., the Dr. King led Albany campaign, 1961-62)</td>
<td>STRONG multiple direct actions involving a large black community</td>
<td>UNFAVORABLE hostile local public &amp; attentive</td>
<td>UNFAVORABLE legal tactics by opposition</td>
<td>FAILURE legal control &amp; a hostile reference public</td>
</tr>
<tr>
<td><strong>TYPE IV</strong> (e.g., the civil rights movement &amp; anti-poll tax legislation, circa 1930)</td>
<td>WEAK weak in direct-action tactics &amp; only minimal institutional leverage</td>
<td>UNFAVORABLE non-supportive &amp; not attentive</td>
<td>UNFAVORABLE non-supportive but non-attentive</td>
<td>FAILURE lack of black political leverage &amp; non-supportive political opportunities</td>
</tr>
</tbody>
</table>

Table 6.2. A General Theory of Social Movement Outcomes.
Albany, Georgia, in 1961-62 (Type III), and the black movement for anti-poll tax legislation in the 1930s (Type IV). Nearly all authority-challenger conflicts, I theorize, can be placed into one of these four categories. Each authority-challenger conflict is specific to a particular time period (e.g., mid-sixties) given that it is common for a conflict over time to move from one type of conflict system to another type. For instance, the struggle for black suffrage went from a Type IV conflict system in the 1930s to a Type I conflict system in the mid-1960s.

Type I and Type II authority-challenger conflicts show the two sets of circumstances that lead to social movement success; Types III and IV show the two sets of conditions that lead to movement failure. As discussed above, the social movement can be thought of as either strong or weak and the reference public and the alliance and conflict system can be thought of as either favorable or unfavorable. Note that the reference public and the alliance and conflict system move in the same direction: they are either both favorable or both unfavorable. Historically, I believe that this accurately describes the political environment in the vast number of authority-conflict challengers. I made this observation in Chapter 4 (equal employment) where I argued that when the public did not support the goals of the civil rights movement, most third party actors also were unreceptive. I noted:

The Supreme Court, for instance, heard few civil rights cases and ruled unfavorably on most of the cases it did accept (Miller 1966). At best. U.S. presidents and non-southern Democrats in Congress did not forcefully push for civil rights legislation; at worst they were openly racist (Sitkoff 1978). The terrorist campaigns of the Ku Klux Klan operated as effective means of social control (McAdam 1982).
Predicting Success. This general theory of movement outcomes predicts success when any two or all three of the core concepts are favorable to the social movement. Success, thus, can occur even when the social movement is weak but both the reference public and the alliance and conflict system are favorable to the social movement (Type II). Failure occurs when any two or all three of the core concepts are unfavorable. Thus, even a strong movement may meet failure if both the reference public and the alliance and conflict system are unfavorable (Type III). I discuss each of the four types in more detail.

Type I. The black struggle for suffrage met its greatest success in the mid-sixties (see Figure 3.1). Why? According to this general theory, the civil rights movement won because black protests were intensive, the reference public supported the goal of the movement, and countermovement violence was common. These are, in fact, consistent with the empirical results presented in Chapter 3 (voting). In terms of the social movement, recall that black protests and crisis events led to comprehensive voting-rights polices (see Table 3.2). In terms of the alliance and conflict system, I found that segregationist violence was a consistent predictor of comprehensive voting-rights polices. While it is difficult to measure the reference public with precision, available public opinion data indicate that the majority of Americans favored the principle of non-discrimination by the mid-sixties (see Smith & Sheatsley 1984; Schuman, Steeh & Bobo 1985; Page & Shapiro 1992). In fact, even most southern politicians in Congress realized public sentiment favored black suffrage (Lawson 1976).
A Type I authority-challenger conflict also accurately captures the political dynamics behind Supreme Court responsiveness. Chapter 5 made clear that the Court became responsive to black civil rights due to insurgency (e.g., protests) and countermovement violence (see Table 5.1). As mentioned above, the reference public supported the principle of non-discrimination by the 1960s, the peak years of Court responsiveness. The struggle for equal employment opportunity also seems to follow a Type I authority-challenger conflict system. I found that supportive public opinion mattered in the context of rioting and that black protests were key determinants (see Table 4.2). The effect of countermovement violence on equal employment policies was more difficult to judge. While it did not seem to play a strong role in the policy conflict, it was not irrelevant either. Taken as a whole, the results of the monograph suggest that a Type I authority-challenger conflict characterized the conditions under which the civil rights movement secured concessions from the federal government. It was the co-occurrence of a strong movement, a favorable reference public, and a favorable alliance and conflict system that led to the breakthrough legislation of the mid-sixties and early 1970s.

A Type I authority-challenger conflict draws upon the indigenous approach because it sees the social movement as a central actor in the policy process. It differs from the indigenous approach, however, in that it also places importance on aspects of the political opportunity structure. Similarly, a Type I authority-challenger conflict draws upon observations from a political opportunity approach, like democratic theory (a supportive public) and the violence thesis (countermovement killings). Yet it differs
from these approaches in that it sees these factors as working in conjunction with a strong social movement. That the effect of a given factor, like social movement strength, depends upon other factors like a supportive reference public is consistent with a political process approach. My approach differs from a political process approach in two ways. First, it specifies with more precision the contexts which produce movement success or failure. Second, it recognizes that even a weak movement can win—what I call a Type II authority-challenger conflict system.

Type II. Type II illustrates an instance in which a movement wins even when it lacks strength in extra-institutional actions. Jenkins and Perrow (1977) argued that the farm workers movement, despite being “powerless,” won union contracts in the late 1960s and early 1970s because of sustained and consistent support from third parties. Here I simply add the observation by Mueller (1987) that a sympathetic public, because it supported the grape boycott, also was crucial. Thus the combination of a favorable conflict and alliance system and a supportive reference public can account for movement success even where the movement is weak. Another example of a Type II authority-challenger conflict was the Latino struggle to prevent U.S. states from adopting English-only laws (Santoro 1999). Despite the weakness of the Latino movement, it was successful in states where its opponents could not use a referendum procedure to vote into law an English-only amendment (a favorable alliance and conflict system) and because the issue of English-only was a low salience issue to the public (i.e., a non-attentive public) (Tatalovich 1995).
In addition to the difference in the strength of the social movement, I suspect that a Type I and Type II authority-challenger conflict system differ in one crucial respect: success is much greater in a Type I than a Type II conflict system. While the civil rights movement won breakthrough legislation in the mid-sixties, the farm workers are still struggling for many of the same issues, like union contracts, higher pay, and better working conditions, that they had “won” in the late sixties and early seventies. Thus, I speculate that comprehensive success, to use my previous terminology, only occurs when all three core factors favor the social movement.

**Type III.** The black struggle in Albany, Georgia, in 1961-62 represents a Type III authority-challenger conflict. The Albany protests marked the movement's first community-wide campaign, a tactic that was to prove successful in Birmingham and Selma a few years later. In Albany, the movement was strong despite internal divisions. Yet for city leaders in Albany, the reference public (i.e., the white voters of Albany) was hostile and opponents used legal tactics to thwart movement demands. This account differs from that offered by Barkan (1984) who argued for the sole importance of the legal tactics used by segregationists.

**Type IV.** The history of the black struggle for racial equality pre-1950 is summarized by the Type IV model. An unsympathetic public and a lack of support from third parities, in conjunction with a strong and often violent opponent, meant that every major national goal of blacks circa 1600 to 1945 was doomed for failure. As an example, I chose the inability of black activists to gain an anti-poll tax law in the 1930s (see Lawson 1976). Despite congressional lobbying, the black community was unable
to mount a broad based direct-action campaign, the public was indifferent to black suffrage, and no significant third parties aided the black cause. A Type IV authority-challenger conflict is most consistent with a strong version of a political opportunity approach: an extremely hostile political opportunity structure makes both movement success and movement emergence unlikely. Kitschelt (1986) used this strong version of a political opportunity approach to explain movement outcomes (see Chapter 2, footnote 13). But again, the difference between the approach presented here and Kitschelt's (1986) argument is that a Type IV authority-challenger conflict represents only one possible set of conditions that produce movement failure.

Explaining Exceptions. The extreme diversity of authority-challenger conflicts means that not all can be summarized under a four model scheme. There are historical examples, for instance, of a movement achieving success when all three of the core factors were unfavorable. For example, the Supreme Court's decision in 1915 to outlaw the grandfather clause (Guinn v. United States) clearly occurred in a context of a weak social movement, a hostile reference public, and an unfavorable alliance and conflict system. Similarly, when Roosevelt issued an executive order in 1941 establishing the FEPC, the black movement was weak, the majority of the (reference) public did not favor the principle of equal employment, and the alliance and conflict system appears to have been unfavorable. Does this nullify the general theory?

I think not. Rather, these atypical scenarios should lead scholars to examine atypical aspects of the authority-challenger conflict. Potentially relevant answers may be found by examining the organizational characteristics of the target of change, the
presence of policy entrepreneurs, supportive policy precedent, or periods of national crisis. In the case of the Supreme Court's *Guinn* decision, the presence of the 15th Amendment, an example of policy precedent, seems adequate to account for this exception. In terms of Roosevelt's 1941 executive order, the presence of a national crisis, WWII, appears sufficient to explain his actions (see Goldstone's [1980] approach presented in Chapter 2, p. 41).

In sum, my argument is that the determinants of movement outcomes can be linked to the strength of the indigenous challenge, the actions of third parties, and the overall public sentiment toward the goal of the social movement. Outcomes depend upon the configuration of this set of conditions. My hope is that this general theory moves the literature toward seeking to understand the conditions under which challengers secure elite concessions.

**Concluding Remarks**

The struggle by African Americans for social equality represented one of the most profound political conflicts in U.S. history. Despite southern massive resistance, elite indifference, and public apathy, the organized collective actions by blacks played a central role in securing the basic civil liberties of political participation and economic opportunities. Even the Supreme Court, an institution designed to be removed from pressure politics, responded favorably to “pressure politics.”

The period of black insurgency, so crucial for civil rights successes, has long since passed (Jenkins 1987). Yet African Americans have not yet secured full political
and economic equality. While African Americans can vote, for instance, they comprised less than two percent of all elected officials in 1993 (U.S. Bureau of the Census 1997). In addition, the Court since Shaw v. Reno (1993) has made it more difficult for district lines to be redrawn to promote the election of African American candidates. Even though employment discrimination has been illegal for more than thirty years, African Americans still face a labor market which does not afford them equal employment opportunities (Kaufman 1986; Braddock & McPartland 1987; Kirschenman & Neckerman 1991; Turner, Fix & Struyk 1991; Zwerling & Silver 1992). Clearly, the struggle for racial equality continues yet the conditions that worked so well for blacks in the 1960s are unlikely to be duplicated in the foreseeable future. What this suggests is that African Americans will need to devise new tactics and modes of political influence to fight for continued social change.
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