POLICY INFRASTRUCTURE AND THE POLITICS OF CIVIL RIGHTS

By David Blanding
Ph.D., Brown University, 2014

Dissertation

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the
Department of Political Science at Brown University

PROVIDENCE, RHODE ISLAND

May 2014

This dissertation by David Blanding is accepted in its present form
by the Department of Political Science as satisfying the
dissertation requirement for the degree of Doctor of Philosophy.

Date_____   _____
                                             Marion Orr, Advisor

Recommended to the Graduate Council

Date_____   _____
                                             Susan Moffitt, Reader

Date_____   _____
                                             James Morone, Reader

Date_____   _____
                                             Wendy Schiller, Reader

Approved by the Graduate Council

Date_____   _____
                                             Peter Weber, Dean of the Graduate School

CURRICULUM VITAE

Originally from the Bronx, New York, David attended Boston University, where he was recognized for service to the undergraduate community with an induction into the University's Scarlet Key Honor Society. After graduating, David worked as a legal assistant and paralegal in the Racial Justice Program of the American Civil Liberties Union (ACLU). There, he assisted in civil litigation and public education campaigns focused on educational equity, felon disfranchisement, and racial profiling, among other issues. After matriculating at Brown in 2008, he cultivated an interest in both theoretical and empirical questions of justice through coursework in American politics and political theory. Together with his experience at the ACLU, this coursework was the impetus for his dissertation on the comparative evolution of school desegregation and voting rights policies and policy outcomes since the Civil Rights Movement. David's other research and teaching interests include public opinion, race and ethnic politics, state politics, quantitative methods and the presidency, and his work has been published in the *Harvard Educational Review* and *State Politics and Policy Quarterly.* While at Brown, he has also taught a course on human rights as part of a pre-college summer program called the Leadership Institute. In addition, David has served as a teaching consultant with the Harriet W. Sheridan Center for Teaching and Learning, a staff associate in the Writing Center, and a mentor with the American Political Science Association. In addition to his undergraduate training at Boston University, David has completed a Master of Arts in Political Science at Brown and coursework through the Interuniversity Consortium for Social and Political Research at the University of Michigan. Upon completion of the doctoral program at Brown, David will join the Taubman Center for Public Policy at Brown as a Postdoctoral Research Associate.

PREFACE AND ACKNOWLEDGEMENTS

TABLE OF CONTENTS

Page

LIST OF TABLES

LIST OF FIGURES AND ILLUSTRATIONS

CHAPTER ONE
PUBLIC OPINION, PUBLIC POLICY, AND CIVIL RIGHTS

In a perfect America, civil rights would never be abridged or denied once recognized; instead, these bedrocks of democratic citizenship would endure in perpetuity. As history attests, civil rights do not inhabit such an America. A civil right can be embraced by one set of political actors and rejected by another, or embraced at one point in time, only to be repudiated at another.

Nowhere is this clearer than in the history of those civil rights that pertain to race. For example, African Americans have had access to the ballot intermittently since at least the colonial period (Bishop 1968, 51 – 52; Dinkin 1977, 32 – 33). Indeed, when the dust of the American Revolution had settled, most northern states and some southern ones still permitted free, property-holding blacks to vote alongside similarly situated whites, though this was largely the result of a failure to prohibit voting by blacks explicitly (Dinkin 1982, 41 - 43). The Supreme Court put an end to whatever semblance of suffrage blacks had enjoyed previously when it ruled in the *Dred Scott* case that African Americans essentially had *no* civil rights.[1] *Dred Scott* made clear that, the past generosity of a few states notwithstanding, African Americans had no standing within the legal system either of the states they inhabited or of the United States itself. In this way, the Supreme Court pronounced the end of an era in which blacks could exercise *limited* rights in *some* places, and catalyzed a new era in which blacks had *no rights anywhere*. By the time the

---

[1] *Dred Scott v. Sanford,* 60 US 393 (1857). Dred Scott was an African American man who sued for his and his family's freedom after being transported on multiple occasions from a slave state, Missouri, to three states, Illinois, Minnesota, and Wisconsin, all of which had outlawed slavery under the Missouri Compromise. In essence, Scott reasoned, a slave automatically became free when he entered a territory where he could not legally be held as a slave; any person who transported a slave to a free territory was automatically guilty of assault and imprisonment the moment he entered the free territory. Scott's intent in raising these arguments had only been to obtain his freedom, but the Supreme Court broadened the scope of the case in order to disabuse Scott of his presumption that blacks even had the right to file lawsuits. Chief Justice Roger Taney noted that blacks were "considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them." He also reminded Scott that "the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument."

canons at Fort Sumter signaled the start of the Civil War, the number of states in which black people could vote had dwindled to five: Massachusetts, New Hampshire, New Jersey, New York, and North Carolina.[2]

The post-Civil War Reconstruction period was a direct rebuke to the era punctuated by the *Dred Scott* case. Radical Republicans in Congress adopted a spate a civil rights laws that placed racial equality on par with other constitutional edicts. The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution inaugurated a new regime in which African Americans were entitled to the same "privileges and immunities" as their counterparts, and could, by virtue of their new status, enforce any violations of their citizenship. These amendments were accompanied by the Civil Rights Acts of 1866, 1871, and 1875, which created the Freedman's Bureau, outlawed ethnic violence, and prohibited racial discrimination in public accommodations, respectively. For the vast majority of black people, the fundamental right to vote had merely been a cruel joke to that point, but now blacks in all states, including former slave states, could participate in electoral politics for the first time as full citizens. And they did: between 1865 and 1876, black voters from Alabama, Florida, Georgia, Louisiana, Mississippi, and South Carolina helped to elect more than a dozen fellow African Americans to Congress. Even more blacks were elected to state legislatures in the South (Morrison 1987). The charge to elected office was led by Hiram Revels, a minister from Mississippi who became the first black US Senator in 1871.

African Americans were rightly optimistic after the Civil War and Reconstruction brought them freedom from chattel slavery and recognition as full citizens of the United States. However, the political opportunities the post-war civil rights regime had facilitated would prove ephemeral, as northern commitment to the hard line of Reconstruction-era Republicans waned and southern discontent with the federal government's perceived paternalism waxed. Throughout their period of dispossession, southern Democrats had condemned Reconstruction as both a

---

[2] See Justice Benjamin Curtis' dissent in *Dred Scott v. Sanford* (1857).

northern conspiracy to mischaracterize the slave experience and as irrefragable proof of black incompetence (Du Bois 1956 [2007]; Foner 1988; Morone 2003). In the deal Rutherford B. Hayes struck to win the presidency in 1876, he relinquished control of the South to embittered former Confederates and mortgaged the political and social future the Republican Party had purchased for African Americans to the white leaders of a reconstituted Democratic Party. Unsurprisingly, Democrats immediately enacted statutes that rendered civil rights illusory for black Americans when they returned to power. The Black Codes, which governed whether, where, how, and when blacks could live, work, and participate in politics, were especially effective in chipping away at the rights enshrined in the three Reconstruction amendments. The Supreme Court helped: thirty years after remonstrating Dred Scott for presuming himself a citizen, the Supreme Court delivered the death knell to Reconstruction in the *Civil Rights Cases,*[3] which held that key provisions of the 1875 Civil Rights Act did not apply to states or private citizens. Only the federal government was bound to respect the rights of African Americans. A decade after the *Civil Rights Cases*, the Supreme Court fortified this new wall of racial apartheid when it ruled in *Plessy v. Ferguson* that states could satisfy the Equal Protection clause of the Fourteenth Amendment by providing separate accommodations for people of different races. For some 60 years after *Plessy*, slavery was functionally reinstituted in the United States, the Reconstruction amendments laid comatose under the watchful care of Dr. Jim Crow, and black political participation was buried under laws whose purpose seemed not merely to exclude blacks from the American body politic, but to relegate blacks to a lower class of biological existence.

The Civil Rights Movement awakened racial equality from the anesthesia of Jim Crow. Through a masterful combination of civil disobedience, legislative lobbying, and litigation, black and ideologically progressive white activists forced presidents, congressmen, and courts to enact policies that strengthened black civil rights. In 1954, the Supreme Court began overturning the

---

[3] *Civil Rights Cases* 109 US 3 (1883).

doctrine of "separate but equal" it had promulgated in *Plessy v. Ferguson*. In *Brown v. Board of Education*, the Court determined that "in the field of public education, the doctrine of 'separate but equal' has no place." As one justice put it in a subsequent case, *Brown* established that *Plessy* was "wrong on the day it was decided."[4] Certain as it was of the turpitude of the doctrine of "separate but equal,"[5] the Court subsequently dealt blows to racial segregation in hotels, restaurants, public pools, and other public accommodations in several decisions issued without explanation. Meanwhile, in 1957 President Kennedy issued an executive order committing the federal government to "affirmative action" in hiring. Then in 1964, Congress passed and President Johnson signed the fourth and most significant Civil Rights Act to bear the name, prohibiting discrimination on the basis of race, religion, national origin, or sex.[6] The 1964 Civil Rights Act was followed quickly by the Voting Rights Act, which outlawed discrimination on the basis of race at the ballot box. In little more than a decade, it seemed that the Civil Rights Movement had given Jim Crow its swan song. In reality, the epilogue of Jim Crow is still being written. In 2006, Congress cited evidence of continued racial discrimination as cause for renewing the 1965 Voting Rights Act for 25 years. That same year, the Supreme Court decided a desegregation case that raised fundamental questions about the viability of *Brown*. During the 2012 – 2013 term, the Court heard two cases concerning voting rights and school desegregation, one challenging Section 5 of the Voting Rights Act and the other challenging the use of race as a factor in college admissions.[7]

---

[4] *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

[5] An excellent report by the National Park Services entitled "Civil Rights in America: Racial Desegregation of Public Accommodations" (Salvatore 2004) contains an extensive list of the cases that successfully challenged racial segregation in public accommodations.

[6] Congress passed two Civil Rights Acts in the twentieth century before the 1964 iteration. The 1957 Civil Rights Act created the Civil Rights Division of the Department of Justice and the US Civil Rights Commission and the 1960 Civil Rights Act outlawed voter intimidation and violence and authorized the DOJ to inspect voter registration records.

[7] The case concerning Section 5 and Section 4(b) of the Voting Rights Act is *Shelby County v. Holder* (No. 12 -96), which is consolidated with *Nix v. Holder*. The case concerning the use of race in college admissions is *Fisher v. UT Austin* (No. 11- 345).

Today the American civil rights state is characterized by a complex interplay of public interest and public opinion. On the one hand, civil rights policies that seem to advance the public interest (by, for example, promoting core American principles like liberty and equality) often emerge despite opposition from the majority of the American public. The quintessential example is *Brown v. Board of Education*, which outlawed racially segregated schools at a time when a majority of Americans opposed integration (Schuman et al. 1997). On the other hand, policy outcomes that seem *antithetical* to the public interest sometimes emerge despite majority opinion about civil rights. For example, although a majority of Americans now profess to support racial integration, abortion in limited circumstances, stricter gun control laws, and a federal immigration policy that provides some access to undocumented persons, many states and localities are experiencing resegregation and adopting anti-immigration ordinances, stricter abortion laws, and more liberal gun possession laws.

If civil rights can emerge when a majority of the public vehemently opposes them, or can be revoked even when popular support is high, what is the relationship between public opinion and civil rights in the United States? Under what conditions does public opinion help to entrench civil rights policies and their intended outcomes and under what conditions does public opinion lead to retrenchment of civil rights policies or policy outcomes?

These questions expose a hitherto unappreciated conflict between two major bodies of literature in political science, political representation and agenda setting. Both normative accounts and empirical studies of representation tell us that whether civil rights expand or contract in a representative system like that of the United States should and often does depend upon public opinion. In normative accounts, public opinion is one of two sources of legitimacy in representative democracy: the public interest, or what sustains or promotes the power, rights, wealth, or values of the people as a whole, and public opinion, or what a majority of people prefer, and. All governments must be mindful of the public interest, but democratic governments

must, by definition, respond to and cultivate public opinion while pursuing the public interest. Some normative accounts of representation indicate that there should be a positive linear relationship between public opinion and policy outcomes over time. As the public demands more, the government should construct policies to meet that demand. Barring a decline in public demand, policies and policy outcomes should continue to move in the direction favored by public opinion in perpetuity (see Stimson 2004).

These normative propositions are borne out by a wealth of empirical research (see, e.g., Stimson, Mackuen, and Erikson 1995; Soroka and Wlezien 2010). Yet they also contradict the well-established theory of agenda setting: regardless of what the majority of the public prefers, small cohesive minorities can and often do dictate policy outcomes by controlling which issues receive public attention and in what forum those issues are debated (Elder and Cobb 1983; Lowi 1969; Schattschneider 1960).[8] For this reason, Schattschneider (1960) characterized the American people as only "semisovereign" in shaping governance and Lowi (1969) lamented the existence of "clientelism" in the American welfare state. Just as for democratic theory, there is much evidence for the claims about the relationship between public opinion and public policy (or more properly, lack thereof) posited within the agenda setting literature. Simply put, the democratic representation and agenda setting literature suggest altogether relationships between public opinion and public policy should emerge on civil rights.

American civil rights history is rife with examples of "mismatch" between public opinion and public policy, where the latter simply do not look the way one would reasonably expect given the former. These cases of mismatch cast doubt on the fundamental premise of the relationship between public opinion and public policy within normative and empirical accounts of democratic representation, and lend credence to the conception of that relationship posited by the agenda

---

[8] Although Lowi's (1969) work on clientelism is more closely associated with the interest group literature, I treat it as part of the agenda setting literature for the purpose of this analysis. I regard his work on *who* sets the agenda as a natural complement to work by others on *how* nongovernmental groups set the public agenda.

setting literature. In this dissertation, I endeavor to ascertain (1) the nature of the relationship between public opinion and civil rights in the United States, and (2) the conditions under which civil rights policies and policy outcomes reflect and defy public opinion. To do so, I therefore draw heavily on democratic representation and agenda setting theories.

Few agenda setting studies have treated the subject of civil rights specifically, but if the agenda setting account of politics is true, there is a more complex relationship between opinions and civil rights over time than democratic theory suggests. By exploring the link between public opinion and policy outcomes through the prism of civil rights, this dissertation helps to resolve the conflicting implications of democratic theory and agenda setting.

Aside from occasional policy-opinion mismatch, another noteworthy feature of American civil rights history is that not all domains evolve in the same way. For example, while school desegregation has moved in peaks and valleys, voting rights policy outcomes have exhibited what calls "political sustainability," which is "the capacity of any public policy to maintain its stability, coherence, and integrity as time passes, achieving its basic promised goals amid the inevitable vicissitudes of politics" (Patashnik 2003, 207). That different civil rights evolve differently suggests that the non-monotonic pattern in some areas is not merely a function of the fact that school desegregation stems from a civil right. To fully appreciate how political representation plays out in the context of civil rights broadly understood, then, it is necessary to analyze more than one civil rights domain. I confront this challenge through separate analyses of school desegregation and voting rights. By analyzing more than one civil rights case, this dissertation is able to shed additional light on the sources of variation across civil rights domains.

Thus, this dissertation helps to close two important gaps in our understanding of the history of civil rights in the United States. First, it builds toward an explanation of the many cases of policy-opinion mismatch that dot the historical record. I use the representation and agenda setting literature to identify a set of alternative hypotheses to account for these puzzling events,

7

then evaluate those hypotheses systematically in two civil rights domains. Second, this dissertation develops a theory to account for differences in the historical trajectories of civil rights domains. Taking school desegregation and voting rights as separate "cases," I tease out an explanation for their differences by applying the same analytical framework to both domains and comparing the results. At a broader level, this dissertation's findings about the relationship between public opinion and public policy in the context of civil rights and about the sources of variation in the evolution of two different civil rights domains strengthens our understanding of the nature of political representation in the United States. Democratic representation in the United States is, we shall see, fraught with complexities not adequately grasped by the extant body of knowledge on American politics.

1.2 Civil Rights and Political Representation

Political representation is the interaction of members of a political community with the people appointed or elected on their behalf to create or adopt universally binding laws and practices. There are two canonical conceptions of how representation *should* operate in democracies, the delegate-trustee conception propounded by Edmund Burke and the descriptive-symbolic-substantive conception propounded by Hannah Pitkin. Edmund Burke introduced his dichotomous idea of representation in a speech to the British Parliament and in his political memoir, *Reflections on the Revolution in France* (2003 [1790]). Hannah Pitkin adumbrated her tripartite conception of representation in *The Concept of Representation* (1967).

Burke divides representatives into those who, in the course of pursuing the public interest, defer to public opinion (delegates) and those who operate independently of public opinion (trustees). He is concerned, then, with the validity of public opinion as an impetus for action by representatives. By contrast, Pitkin presumes that representatives take into account the wishes of constituents. What distinguishes her three types of representation is not whether they reflect public opinion, but *what they accomplish* after taking stock of popular opinion. In other

words, the focus for Pitkin is on outputs rather than inputs. The first type of representation she delineates, descriptive representation, produces nothing in the way of tangible political change ipso facto; the second type, symbolic representation, provides emotional or expressive benefits for constituents, such as belonging and solidarity; and the third, substantive representation, alters existing policies and institutions or creates new ones in order to advance the public interest.

Burke on Representation

In his *Reflections on the Revolution in France,* Edmund Burke contrasts two types of political representative. One type, the trustee, is embodied in the members of the British Parliament and the other type, the delegate, is embodied in the emerging French Assembly. Burke is manifestly partial to the British paradigm, as evidenced by the concluding passage of his 1774 speech to the British Parliament:

> Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain, as an agent and advocate, against other agents and advocates; but Parliament is a deliberative assembly of one nation with one interest – that of the whole: where, not local purposes, not local prejudices ought to guide, but the general good, resulting from the general reason of the whole. You choose a member, indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament. If the local constituent should have an interest or should form a hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far, as any other, from any endeavor to give it effect.

For Burke, delegates are essentially repositories of popular sentiment. They give voice within the governing body to the concerns and desires of their constituents more or less as their constituents have articulated them. But since the interests of citizens will not only be many, but incompatible, a delegate who advocates for the particularistic interests of his constituents will necessarily be advocating *against* the interests of some "other agents and advocates." In turn, an entire deliberative body comprised solely of delegates would be a "congress of ambassadors from different and hostile interests." On the other hand, the trustee style of political representation operates under the assumption that the "interest" of any given nation is unitary—it knows no divisions among citizens and entertains no contradictions of particular wills, but is strictly "for

the whole" (Burke 1969 [1790], 303). Trustees operate independently of the received public opinion; they may consider the views of their constituents, but they ultimately make decisions on the basis of their own rumination and, presumably, in accordance with "the general good." While delegate representation yields "no connection between the last representative and the first constituent," trustee representation yields a "point of reference of the several members and districts of our representation" (Burke 1969 [1790], 303-304). Delegate representation fragments government by blinding legislators to the interests of constituents outside of their own jurisdictions, while trustee representation secures the public interest by blinding legislators to the particular desires of constituents within their own jurisdictions.

Burke prefers trustee representation because it seems to resolve an important dilemma of government: the incongruity between the public will and the public interest. In short, the dilemma is that the public will and the public interest may not converge. The public interest-public will dilemma is especially significant in the context of democratic government, although Burke himself is dubious of democracy. It owes its status as a dilemma to the complementary normative functions the public interest and public will serve in democratic government. The public will is what the people *express* to their legislators, but the public interest is what most benefits the people, regardless of how they feel. Insofar as democratic legitimacy rests on the endorsement of the people ("the consent of the governed"), the public will has intuitive normative value within the framework of representative democracy. Delegates help to fulfill an important function of representative democracy, legitimizing binding state actions by channeling the consent of the governed. But, trustees are equally important, in part because they "can have no action and no existence" if they are "separate from the other parts" (Burke 1969 [1790], 303)—meaning, in essence, that they are directed strictly toward the common good, and more or less ignore the factionalism that might otherwise undermine political progress. Through their deliberation in the collective assembly, trustees arrive at the public interest without having to reconcile the disparate

and competing interests of the constituencies from which they are drawn. The pluralism of political preferences in the citizenry would make it very difficult for a delegate to adhere strictly to his own constituents' preferences without compromising the interests of the whole nation. By contrast, once a trustee takes his place among colleagues in the legislature, he is no longer responsible solely to his constituents, but must balance their "local prejudices" with the "general good."

Pitkin on Representation

Hanna Pitkin's idea of representation is comprised of three categories: descriptive, symbolic, and substantive. For Pitkin, representation can be an *action* or a *state of being*; that is to say, a leader may represent by his deeds or through his mere existence. The connection between these two manners of representing is important for understanding Pitkin's rendering of representation. The two types of representation she terms "descriptive" and "symbolic" both denote "standing for" a political interest or constituency and, unlike the third type, "substantive" representation, neither need produce a tangible outcome. In the case of descriptive representation, the efficacy of a representative's actions is immaterial because the actions of the representative are themselves irrelevant; *identities* and *prior experiences*, not actions, define the extent of descriptive representation. With symbolic representation, actions are meaningful only insofar as they are proxies for ideas or sentiments that hold meaning for a community, but their defining characteristic is also the absence of a connection to tangible political change. Symbolic actions, like symbolic representatives, do not materially advance the public interest.

Descriptive representation refers to congruity between one of more demographic characteristics of a public official and the corresponding characteristics of the constituency or some portion thereof. For example, descriptive representation of African Americans is achieved by the presence of African Americans in state legislatures and other elective bodies. John Adams captures the idea best when he writes of American government (rather ironically given the

11

circumstances of the time) that "the perfection of the portrait consists in its likeness" (Pitkin 1967, 61). Notably, for Pitkin, descriptive representation is but one manner of "standing for" the represented, and an imperfect one at that. Noting that "a map or a blueprint is as much of a representation as a painting is" (71), she contends that an accurate representation of something need not be a literal replication of that thing, but could also be a miniature or a sample of the thing it purports to represent (71-73). More precisely, "the making present consists of the presence of something from which we can draw accurate conclusion about the represented…because it is in relevant ways like the represented" (81). Nevertheless, Pitkin treats descriptive representation as a legitimate kind of political representation: descriptive representation," she writes, "*is* representation….And the descriptive view can serve as a healthy corrective for the formalistic view [embodied in Thomas Hobbes' political thought], pointing to some of what the latter omits" (91).

The other means of "standing for" the represented is symbolic. Symbolic representation refers to representation which does not reify the interests of a people, but appeals to the desires and emotions of those people. As Pitkin explains, the "symbol seems to be the recipient or object of feelings, expressions of feeling, or actions intended for what it represents" (Pitkin 1967, 99). Like its descriptive companion, this kind of representation hardly realizes the interests of a constituency in a tangible way, but rather appeals to some emotional attachment among them and signals sympathy for an image, cause, or idea they embrace. The designation of a national holiday would be an example of symbolic representation in that it would provide expressive, rather than tangible, benefits to citizens.

There is, then, but one way to realize the public interest in democratic government: substantive representation. Substantive representation is representation that yields tangible change consonant with the political interests of the represented. Substantive representation refers to representation which reflects or attempts to reflect the interests of a constituency. Racial profiling

laws, for example, would constitute substantive representation. As Pitkin puts it, "the substance of the activity of representation seems to consist in promoting the *interest* of the represented, in a context where the latter is conceived as capable of action and judgment, but in such a way that he does not object to what is done in his name. What the representative does must be in his principal's interest, but *the way* he does it must be responsive to the principal's wishes" (Pitkin 1967, 155; emphasis added). Importantly, this quote indicates that substantive representation has an implicit public opinion component, for the representative "must be responsive to the principal's wishes." Without saying so, then, Pitkin situates her ideal political representative in the "delegate" column of Burke's dichotomy of representation, and perhaps thereby subjects it to the dangers Burke attaches to that modality. Pitkin dismisses this possibility, instead charging that "no one today takes a Burkean view of representation" and that "Burke's position on this issue is…related to his antidemocratic, elitist hostility to unnecessary extension of the franchise" (1967, 189).

This project is concerned primarily with substantive political representation—that is, representation that yields material changes in political institutions. In this respect, Pitkin's conception of representation is valuable. However, Pitkin's perspective on public opinion is rather limited in that it does not take into account a possibility I explicitly investigate here, namely that what elites consider to be best for the people (public interest) may not be what the people want (public opinion). *Why representation reflects or defies public opinion*, however, is a question best addressed by Edmund Burke. According to Burke, a trustee is a representative who makes decisions independently of public opinion, while a delegate is a representative who makes decisions in accordance with public opinion. While Pitkin is concerned with what results from representation, Burke is concerned with what inspires representation.

Civil Rights as a Representation Problem

As a form of political *interaction*, in practice representation depends on the actions of both constituents—those whose interests and opinions must be "made present again"—and representatives—those who must "make present again" the interests and opinions of the community. Empirically, substantive political representation is what happens when policies and political institutional arrangements reflect the public will. In other words, substantive representation is the congruence of government action and public opinion.

Empirical studies typically treat substantive representation as an equation in which current policies or policy outcomes P_t are a function of past public opinion O_{t-k} and some set of exogenous institutional and demographic factors, I_t and D_t, respectively. Issue salience, denoted S_t below, also figures into the representation equation; all else equal, policies and institutional changes should also reflect the extent of public awareness of and attention to those policies and institutional changes (Soroka and Wlezien 2010).

$$P_t = O_{t-k} + I_t + D_{t+} S_t$$

We can see from the above that public opinion falls on the "inputs" side of this representation equation and public policy and policy outcomes comprise the "outputs" side. Policies and institutional arrangements "represent" the public in the sense that current political institutions result in part from mass opinions registered at some prior point in time. The effects of opinion on policy and policy outcomes are mediated by institutions, demographic conditions, and issue salience.

Many democratic theorists expect a reciprocal relationship between public opinion and institutions: changes in demand for government action contribute to changes in institutions and changes in institutions contribute to changes in public demand for government (e.g., Patashnik 2008; Soroka and Wlezien 2010; Wlezien 1995). The expected direction of the impact of institutions on public opinion is negative. Under the thermostatic model developed by Wlezien (1995) and elaborated in Soroka and Wlezien (2010), once the government satisfies the public's

14

demands, the public should lower its demands accordingly. Stimson (2004) contends, in fact, that the American public continually adjusts its demands for government upward and downward overtime as government responds to public opinion because it prefers to maintain a middle ground between liberal and conservative policy output. In general public opinion about government activity is characterized by both an upper and lower bound, the exact parameters of which vary by issue. Barring any shift in public demand, the government would presumably continue the status quo level of activity. However, given the public's finite tolerance, continual government responsiveness means that there is always a possibility that the government will be either *too* active or *insufficiently* active for the public's taste. To mitigate extreme liberalism or conservatism in political institutions, the public recalibrates its demand for government based on the level of supply, in the form of policy and political conditions, provided by government. If the level of government activity exceeds the upper bounds public tolerance, the public becomes more conservative; conversely, if government activity does not meet baseline expectations at some point in time, the public will increase its demands proportionally.

At the same time, the crux of democratic theory is that public opinion should have a systematic effect on policy after accounting for other categories of contributors. As the equation above suggests, the direction of the effect of public opinion on political institutions is presumed to be positive: as public demand for government increases, policy should materialize and institutional arrangements should shift in the direction favored by public opinion. Political actors should develop policies and configure political institutions according to public opinion because they have strong normative and practical incentives to do as the public dictates. Public opinion confers institutional legitimacy and increases the prospects of longevity in office.

This dissertation is concerned with the pathway from public opinion to public policy. The conventional model of representation posits a systematic, positive, and linear relationship between public opinion and policy. So long as the public continues to prefer more *government* in

one or more area, government output should continue to increase in perpetuity (see Stimson 2004). However, the history of some civil rights issues in the United States calls these assumptions into question. For example, the rate of school desegregation has been inconsistent since *Brown v. Board of Education* despite what appears to be consistent liberalization of attitudes toward racial integration over the same period. If substantive representation in a democracy is what happens when institutions reflect received opinions, school desegregation is a clearly not a case of substantive representation. The discrepancies between civil rights attitudes and outcomes are surprising, given how prominently public opinion figures into both normative and empirical accounts of democratic representation. As Laswell asserted in one early study, "the open interplay of opinion and policy is the distinguishing mark of popular rule" (1941, 15). In short, normative conceptions of democracy regard public opinion, and the responsiveness of institutions to it, as central.

There is also ample empirical evidence in political science that policies and policy outcomes do in fact respond to changes in public opinion over time. On this point, the literature in political science is quite clear. Public opinion has occupied a special place in empirical studies of representation since information about the political attitudes of Americans first became available in the 1930s. The first analyses of polls were conducted in the 1950s and 1960s by researchers at the University of Michigan (Campbell at el. 1956) and Columbia University (Shapiro 2011), offering alternative perspectives on the political awareness and rational capacity of the voting masses. With the proliferation of polling data in the United States since then, numerous studies have been able to link public opinion with policymaking and other forms of institutional change.[9] The magnitude of the impact of public opinion on policy and policy outcomes varies considerably across issue domains and institutional contexts (see Burstein 2003; Soroka and Wlezien 2010; Stimson, Mackuen, and Erikson 1995), but there is considerable evidence that public opinion is

---

[9] For reviews of these studies, see Burstein (2003) and Shapiro (2011).

systematically related to policymaking and institutional change in the United States. In particular, we know from the research on the American presidency, Congress, the Supreme Court, and the welfare state that political institutions (including both governmental actors and public policies) evolve in ways that reflect prevailing political attitudes, either about the institutions themselves, the work the institutions are doing, or issues in which the institutions may be implicated.

For example, members of Congress vote on bills and adopt issue positions based upon the opinions their constituents register in order to sustain positive rapport with their constituents, increase their name recognition, and ensure their longevity in office (e.g. Hill and Hurley 1999; Maestas 2000, 2003; Miller and Stokes 1963). The president not only reacts to public opinion in executing the duties of that office (e.g. Canes-Wrone and Schotts 2004; *cf* Wood 2009), but actively cultivates public opinion in order to persuade congressmen, state elected officials, and federal civil servants who are otherwise in a position to thwart his agenda to support that agenda instead (Kernell 1997; Neustadt 1960; see also Rivers and Rose 1985). Even the Supreme Court, which one might erroneously assume to be insouciant about public opinion because its members are appointed for life rather than elected periodically (Barnum 1985; Mishler and Sheehan 1993), hews to popular opinion in issuing its decisions (e.g. Caldeira 1987; Casillas, Enns, and Wohlfarth 2011; Epstein and Martin 2011; Flemming and Wood 1997; Mishler and Sheehan 1993; Page and Shapiro 1983).

Public opinion impacts policymaking and institutional change not just at the federal level, but within states and localities as well. Erikson, Wright, and McIver's (1993) pioneering study of policy-opinion congruence at the state level has engendered a wealth of research affirming the significance of public opinion in policy outcomes at subnational levels (e.g. Berkman and Plutzer 2005; Brace and Boyea 2008; Hopkins 2010; Lax and Phillips 2009). It is also clear that the institutional impact of public opinion is not limited to specific issue domains, with studies of abortion (Arceneaux 2002; Norrander and Wilcox 1999); the death penalty (e.g. Baumgartner, De

Boef, and Boydstun 2008; Mooney and Lee 2000); defense spending (e.g. Wlezien 1996); environmental policy (e.g. Johnson, Brace, and Arceneaux 2005); gay rights (e.g. Krimmel, Lax, and Phillips 2012; Lax and Phillips 2009); and the welfare state (e.g. Brooks and Manza 2007; Shapiro and Young 1989), *inter alia,* all indicating institutional responsiveness to public opinion. These studies comport with the general expectation that in democracies, the government acts in accordance with what the people demand.

Few studies concerning the link between public opinion and policy and policy outcomes offer evidence of incongruence between public opinion and policy and policy outcomes (Fiorina 2009; see also Page and Shapiro 1983). Findings of policy-opinion mismatch are instructive because they confound the general proposition from democratic theory that governments do as the people dictate. Additionally, evidence of policy-opinion mismatch invites important questions about the nature and causes of representation scholarship in the conventional democratic line of thought might miss. For example, the existence of policy-opinion mismatch compels us to try to distinguish more systematically the cases in which policies and policy outcomes reflect public opinion from the cases in which policies and policy outcomes defy public opinion. Policy-opinion mismatch also invites us to ask: to what extent does representation result from the actions of individual political leaders and to what extent does it result from forces beyond the control of political leaders? In what cases do political leaders abide public opinion and in what cases do they disregard or defy public opinion? These questions frame the remainder of the dissertation. This dissertation investigates not only why policies and policy outcomes in areas like school desegregation evolve in peaks and valleys, but why those peaks and valleys sometimes occur in spite of favorable public opinion.

Prior research typically assumes a positive and linear relationship between public opinion and policy outcomes; not only do increased demands for government output actually increase government output, but they do so unless and until the public recalibrates its demands. Drawing

upon research on agenda setting and interest groups, I argue that this is an idealistic, if sometimes apt, rendering of the way representation manifests in the context of civil rights. For political leaders to represent public opinion continually, they would need not only to be concerned about reelection, but devoid of any independent conceptions of the public interest and immune to reasonable counterarguments from interest groups. In reality, political leaders are often confronted with compelling considerations that implicate contradictory political outcomes. For example, what seems best for the people might not be what the people want; in this case, political leaders must decide between representing the public interest and representing public opinion. Whatever they choose, they will be vulnerable to questions about the legitimacy of their actions, because public interest and public opinion are both sources of democratic legitimacy. This is the dilemma of interest-opinion divergence. Similarly, political leaders may find that what promotes equality, an important American value, requires such heavy government intervention that it conflicts with the concept of limited government, another core American value. By choosing egalitarianism, leaders may produce illiberal outcomes; by choosing liberalism, they may produce inegalitarian outcomes. This is the problem of value pluralism.

The dilemma of public interest-public opinion divergence and value pluralism help to create the preconditions for policy-opinion congruence in the area of civil rights. Proponents and opponents of civil rights constantly fight to realize their own political ends by appealing to the competing values. Some appeal to equality to advance civil rights, while others channel the value of limited government into compelling arguments against civil rights. According to the agenda-setting literature, neither the egalitarian nor the liberal contingent will win all the time (Schattschneider 1960); sometimes political leaders will be more persuaded by appeals to egalitarianism, to the benefit of its proponents, and sometimes they will side with appeals to limited government. As the two factions exchange victories and losses, what we should see over the lifetime of a civil rights issue is not the positive linear relationship between public opinion

and outcomes conventional democratic theory predicts, but a "dynamic" relationship: sometimes civil rights policies and policy outcomes will reflect public opinion and sometimes they will defy public opinion. I term this phenomenon dynamic counteraction. It departs from the idealistic rendering of political representation that has predominated thus far within the empirical literature and reveals representation to be a complex, tenuous, and pyrrhic exercise.

This is not the first study to characterize representation, the relationship between public opinion and policy or institutional output, as "dynamic." Prior research on the link between public opinion and policy outcomes has used this term to denote a systematic relationship between current policy or policy outcomes and past public opinion (Stimson, Mackuen, and Erikson 1995; Soroka and Wlezien 2009). However, "dynamic" has been something of a misnomer in previous studies, because these studies typically specify their measures of public opinion as if a *linear* causal relationship is expected. That is to say, the public opinion variable is specified in the statistical equation as if a one-unit increase in it yields a *proportional* change in the dependent variable. This linear functional form makes sense if we are interested in how a change in the level or intensity of some measure of public opinion affects policy or policy outcomes at one point in time, or if we have a strong reason to expect representation to be constant over time. But if it is really the trend in public opinion over time that leads to institutional change, measuring the *level* of some opinion in a single prior point in time may not be useful (Soroka and Wlezien 2009, 67-69).[10] The evidence from these studies is therefore better classified as affirming "causal" representation. The studies themselves point to a statistically causal relationship between public opinion and policy outcomes. As used here, on the other hand, "dynamic" means variable over time. The dynamic counteraction hypothesis predicts that there is a variable relationship between *liberal mood* and policy outcomes.

---

[10] Soroka and Wlezien (2010, 69) do consider the possibility that the effect of public opinion is non-linear in their study, and find evidence against it.

A major contribution of this study is to reconcile the theories of democratic representation and agenda setting in the context of civil rights. My evidence supports the hypothesis that competition between factions espousing alternative political values yields systematic policy-opinion mismatch in the area of school desegregation. I identify a systematic, dynamic relationship between public demand for government and racial segregation in school districts. However, I find little evidence of any relationship, dynamic or otherwise, between public demand for government and three voting rights policy outcomes, voter registration, voter turnout, and office holding. I attribute the difference in the observed relationship between public opinion and policy outcomes across the two domains to the relatively strong support Congress gave to voting rights in the form of a comprehensive and clear federal statute and four reauthorizations of that statute. The combination of statutory language and congressional support over time clarified the public interest for subnational elites weighing their options on voting rights and obviated the need for them to consult public opinion. With public opinion off the table as a decision making guide and source of legitimacy for policy makers, the effects it might otherwise have had on voting rights policy outcomes was foreclosed by the combination of statutory language establishing a civil rights policy and institutional actions taken in support of that policy over time, which I term "policy infrastructure."

Together, the findings from the analyses of school desegregation and voting rights lead me to develop a theory of the conditions under which the alternative policy-opinion relationships suggested by the democratic representation and agenda setting literatures are likely to materialize. The theory center on the role of policy infrastructure. I conclude that when, on the one hand, the policy infrastructure of a civil rights policy is weak, as in the case of school desegregation, public opinion can have the kind of relationship with policy and policy outcomes implied by my dynamic counteraction hypothesis. On the other hand, when the policy infrastructure is strong, as in the case of voting rights, public opinion becomes irrelevant.

1.3 Research Design

This dissertation endeavors to answer two important questions that have not been addressed adequately in previous research on political representation, civil rights, or public opinion. First, what role does public opinion play in the evolution of civil rights policies and policy outcomes over time? Second, why do policies and policy outcomes in different civil rights areas evolve differently?

To answer these questions, I divide my analysis into two major parts. The first part focuses on changes in policy. By policy, I mean the language that sets parameters for the exercise or enforcement of a civil right. My conclusions about policy change are drawn from qualitative analyses of statutes and case law. The second part of the analysis focuses on changes in policy outcomes. By policy outcome, I mean the social conditions or institutional arrangements designed or expected to result from a policy. My conclusions about changes in policy outcomes are drawn from quantitative analyses of several large datasets I assembled from various sources. The specific techniques and data sources are detailed prior to each analysis.

The impetus for examining changes in policy separately from changes in policy outcomes is that previous research suggests it is possible to arrive at markedly different conclusions when scholars focus exclusively on changes in policy or policy outcomes (see Streeck and Thelen 2005). For example, welfare state scholars who have studied policies like the rules governing eligibility for government social programs or the amount of funding appropriated for government social programs, have come to markedly different conclusions about the vitality of the welfare state than those who have studied policy outcomes, like income inequality and job security. The potentially contradictory conclusions that may result from focusing on changes in policies rather than changes in policy outcomes, or vice versa, suggests that it is important to be transparent about the measures of institutional change employed. In the instant case, judging the vibrancy of civil rights policies by examining policy outcomes, can lead to specious conclusions. For

example, it would be highly misleading to conclude that freedom of speech, as defined in the First Amendment, were weaker after showing that fewer people criticized the government. Clearly, a change in the enjoyment or exercise of a right is not tantamount to a change in a civil rights policy.

To assess changes in policy outcomes, I rely upon time series techniques. Because of limits in the availability of longitudinal data related to civil rights, all of the quantitative analyses are constrained to specific time periods. Generally, my analyses focus on the most recent changes, so I am unable to account for patterns in the data that might predate that time spans I use. Nevertheless, the time spans used are in all cases sufficient to convey how trends in public opinion and policy outcomes have aligned, or misaligned, as it were, over time. In general, the time series analyses I use cover more and *more recent* points in time than previous analyses of the same types of policies and policy outcomes. As a result, they contribute new knowledge about time periods previous analyses do not to capture, including ones in the distant past, ones in the immediate past, and ones *between* the time periods others have studied.

My analyses generally focus on changes in policies or policy outcomes *over time*, not on cross-sectional variation with each issue area, because I believe that time itself can be a factor in civil rights policies and policy outcomes: a civil rights policy or policy outcomes might change according to a certain temporal pattern or might have a different relationship with other factors at different points in time.[11] A strictly cross-sectional analysis would have ignored the important variation in policies or policy outcomes attributable to time and could have led to spurious conclusions about the nature or sources of the variation in policies or policy outcomes observed. The possibility of time-sensitivity pointed me toward analytical techniques that could account both for changes over time and for time-dependent covariance between the outcomes of interest

---

[11] The expectation of time-dependent covariance between the dependent and independent variables reflects my belief that the *relationship* between public opinion and civil rights is not stagnant over time. Evidence suggests that changes such as the passage of the Voting Rights Act have increased public amenability to the idea of racial equality (Kellstedt 2003; see also Schuman et al. 1997).

and the explanatory variables identified. While I do note important cross-sectional differences, I pay special attention to changes over time in all of the analyses.

Another major feature of my research approach is that it links aggregate changes at different levels of government. The reason is that civil rights are often exercised at the state and local levels, while much of the executive, legislative, and judicial enforcement occurs at the federal level. I treat subnational political institutions as embedded within a broader political context whose characteristics shape the way those institutions evolve.

Limitations of this Design

A major drawback to focusing on aggregate level changes in civil rights is the inability to make claims about individual behavior. If, as some might argue, politics is "a uniquely human activity, driven by human emotion, motive, and calculation" (Carmines and Stimson 1989, 14), the inability to describe individual behavior necessarily limits our ability to make claims about the *mechanisms* driving aggregate outcomes. There are some places in the analyses that follow where information about individual behavior would undoubtedly be instructive. For example, when I examine the relationship between public opinion about the role of government, or liberal mood, and racial segregation in school districts in Chapter Four, the results do not allow me to say definitely whether changes in racial segregation generally reflect decisions by superintendents of school districts to amend enrollment policies or attendance zones, decisions by parents to enter or exit a district, or the creation of segregated private schools by organizations opposed to integration, for example. Though I am investigating representation, the interaction of citizens and their elected representatives, I am not able to speak adequately to *who* is being represented when civil rights policies or policy outcomes change in certain ways. This is important given the debate within the public opinion literature over whether policymaking responds primarily to elite or lay citizen opinion.

The challenge of addressing individual level behavior is endemic to the study of aggregate-level political phenomena. Yet political scientists continue to study aggregate changes because our understanding of politics would necessarily be impoverished if we did *not* understand and appreciate how the behaviors of individuals play out in the aggregate or how macropolitical conditions affect individual. Furthermore, when systematic evidence is lacking, we can often make reasonable assumptions about the individual-level decisions driving aggregate outcomes and relationships. For example, changes in the legal status of school districts are clearly only made by the courts. Similarly, prior research on liberal mood, the construct used throughout the dissertation to capture public opinion about the proper role of government (Stimson 1991), that both politically sophisticated and politically unsophisticated individuals drive its changes (Enns and Kellstedt 2008). From this we can infer that where statistically significant relationships exist between *liberal mood* and some dependent variable, those relationships signify a relationship with the views held by a wide cross-section of people, rather than a small and unrepresentative subset of society.

Related to the challenge of focusing on aggregate outcomes is that of linking factors at the national level with policies and policy outcomes at the subnational level. Yet I contend that it is very plausible for national-level factors, such as opinions about government, to be associated with subnational policy outcomes, for two reasons. First, these issues often inherently link federal and local actors and outcomes by design. Both school desegregation and voting rights policies are defined in such a way that certain federal actors are *expected* to be in communication with certain subnational actors. These institutional arrangements lend credence to the possibility of systematic relationship between federal and subnational actors. The intergovernmental power-sharing relationships that govern these two policy domains heighten the theoretical significance of changes in national public opinion about the scope of government in local outcomes. In addition, there is some basis in prior literature for connecting national public opinion with local policy

change, specifically. One recent study linked changes in national opinion about immigration to changes in local public opinion and immigration ordinances (Hopkins 2010).

The second reason to expect a relationship between national and subnational outcomes is that civil rights issues in general, and the two issues under investigation here in particular, are highly salient. Soroka and Wlezien's (2010) comparative study of how spending responds to public opinion about government notes that policy-opinion congruence is likely to materialize for salient issues. The fact that most Americans are likely aware of the debates over school desegregation and voting rights allows for the possibility that meaningful relationships exist between national public opinion about government and civil rights policy outcomes.

Overall, though the focus on aggregate changes in this dissertation may leave something to be desired for some readers, I am confident that the results I provide are instructive. In the conclusion, I discuss some ways future research could tap into questions about individual behavior within the context of the two issues I examine.

Case Selection

To understand the conditions under which policy-opinion congruence and incongruence materialize in the context of civil rights, I examine analyze outcomes in two distinct civil rights issue domains, school desegregation and voting rights. My case selection loosely comports with the "most similar case" design common in comparative research in that it exploits important similarities between the two cases while controlling for some potentially confounding, but overly broad a priori differences between the cases (see King, Keohane, and Verba 1994; Soroka and Wlezien 2009).

Specifically, I examine the two issues domains for three major reasons. First, both encompass highly salient issues that have been a part of public discourse for decades. Research on representation suggests there is most likely to be meaningful correspondence between public opinion and political institutions when issues are well-known to the public (see, e.g. Burstein

2003; Shapiro 2011). Second, scholars have accumulated a great deal of quantitative longitudinal data on each issue. Arguably, in fact, there is more data available related to these two issues than related to any other civil rights issues. The relative abundance of time-series data makes it possible to appreciate both the magnitude and subtleties of changes in these domains. Third, race is strongly implicated in both of these domains, which means that the analysis is not polluted by blunt typological differences that might make it difficult to compare patterns evolution across issue domains. For example, even without accounting for public opinion, we might expect to see substantial differences in the evolution of abortion and school desegregation policies simply because the one is considered a "gender" issue and the other is considered a "racial" issue.

Notwithstanding their similarities, there is an important distinction between school desegregation and voting rights that I am able to exploit by focusing on both. Simply put, the policies and policy outcomes in the areas of school desegregation and voting rights have followed different trajectories since *Brown v. Board of Education* and the Voting Rights Act, respectively. The former represents a case of non-monotonic evolution of policies and outcomes. New school desegregation policies have occasionally altered prior ones in palpable. At the same time, the amount of racial segregation in school districts has, by several different measures, risen, fallen, and stagnated at different points since *Brown v. Board of Education*. By contrast, the Voting Rights Act represents a case of more monotonic change. Newer voting laws have generally extended or bolstered the 1965 Voting Rights Act (recent voter identification laws may be an exception here), and indicators of the de facto scope and vitality of voting rights, such as racial disparities in voter registration and turnout, point to monotonic progress.

School Desegregation

School desegregation stands as a case not only of radical institutional change but also of palpable policy-opinion mismatch. There have been major peaks and valleys in school desegregation policies and outcomes since the Supreme Court ruled unanimously in *Brown* that

racial integration was the only way to achieve racial equality in education. In over a dozen different decisions dealing with the issue of school desegregation, the Court has redefined the concept of racial integration for the purposes of the law, sanctioned mechanisms for achieving legal integration of varying degrees of feasibility, and amended the standards of legal proof in school desegregation cases. As policies have changed, the amount of racial segregation in school districts has also varied markedly over time. In the first decade after *Brown v. Board* of education, racial segregation remained the exception rather than the norm in American schools. But at the end of the 1960s, integration took off at full speed, bolstered in part by more progressive decisions of the Supreme Court. In the 1970s and 1980s, as conservatives assumed leadership positions throughout the federal government, the rate of racial integration seemed to slow considerably. By the mid-1990s, some studies suggested that racial integration was no longer occurring at all; schools were beginning to look more racially segregated than they had been in recent history, suggesting that the tides of integration were reversing.

The sizable and sometimes abrupt shifts in both school desegregation policy and policy outcomes are noteworthy because studies of institutional change have struggled to find similar patterns elsewhere (see, e.g., Hacker 2004; Patashnik 2008; Schickler 2001). In fact, the conventional wisdom is that institutions change gradually, if at all. In their groundbreaking work, Baumgartner and Jones (1991, 1993) argued that while institutions are in general stable, their developmental trajectories are occasionally disrupted or re-routed by major, exogenous shocks. Over time, these exogenous shocks to otherwise stable institutional arrangements produce a pattern of "punctuated equilibrium." The theory of punctuated equilibrium tries to account for the possibility of "*both* periods of extreme stability and short bursts of rapid change" (Baumgartner and Jones 1991, 1044-1045; emphasis added). However, subsequent scholars have often showed "extreme stability" without any "short bursts of rapid change."

Scholarship on the American presidency, Congress, and the Supreme Court has also converged around the theme of institutional stability and inertia. Neustadt compared the US president to a clerk: not only does he "rarely issue self-executing commands," but he must constantly bargain with other institutional actors, including the members of the bureaucracy and the public, to achieve his political ends ([1960] 1990, 8). With all of these veto points, presidents are rarely able to undertake radical political change.[12] The difficulties of achieving real institutional change in the presidency pale in comparison to the obstacles to change in Congress, whose defining characteristic has often been *gridlock* (Binder 2001; Steinmo and Watts 1995). The sundry competing interests of legislators in re-election, bolstering the party, and passing laws, inter alia, militate against the possibility of abrupt, radical congressional action (Schickler 2001). Additionally, the very design of the federal legislature constrains congressional policymaking; bicameralism, supermajoritarianism, and filibuster rules (the latter two in the Senate only) all contribute to Congress' apparent inability to pass laws much of the time (Binder 2001, 303-304). Finally, the Supreme Court is no bastion of activism. Even with its relative detachment from public opinion, the Court proceeds with great caution usually, preferring to defer anything more than minute change until the last possible moment (Rosenberg [1991] 2008). Systemic change rarely materializes in the nation's highest court; consequently, unlike its lower court counterparts, the Supreme Court does not really matter for the quotidian lives of ordinary Americans (Rosenberg 2005).

Observed changes in school desegregation thus raise the possibility that there is something about this issue that defies the norms of institutional change. Indeed, given the dearth of research on civil rights as "institutional" change, one might be led to conclude that civil rights in general defy conventional patterns of institutional change. But these changes in school desegregation are not the only reason for questioning the veracity of claims about American

---

[12] The exceptions are foreign policy and domestic crises; in these cases, the president is granted wide discretion to act in the national interest (Schlesinger 1973).

institutional stability and inertia; we should also be suspicious of such claims because civil rights policies have not *all* changed to the *same* degree. If it is true that American institutions are inert, we should expect similar changes across policy domains. However, this has decidedly *not* been the case: while school desegregation outcomes are marked by periods of both increase and decline, voting rights have followed a more consistent trajectory through time. Many have considered the changing nature of particular civil rights policies (see, e.g., Ogletree 2004; Walton 1988), but there does not yet appear to be a systematic explanation of the changes scholars have identified in these different areas. Where strong theories have been proffered or implied (e.g. Bell 1980), there has been little reckoning with differences in outcomes *across civil rights domains*. To address this possibility, it is worth considering changes that have occurred in an area comparable to school desegregation. There is arguably no better candidate for a "most similar case" analysis with *Brown v. Board of Education* and the concomitant issue of school desegregation than the Voting Rights Act and issue of minority voting rights.

Voting Rights

Minority voting rights have a history as storied and tortuous as that of desegregation. Voting rights, at least as they pertain to people of color, are a largely twentieth-century phenomenon. The Fifteenth Amendment was supposed to cement black suffrage in perpetuity, but it was very quickly subsumed by state laws and practices that disfranchised African Americans. The Voting Rights Act of 1965 effectively restored the black franchise and it has so far succeeded in sustaining the franchise for African Americans. Most scholarship thus rightly regards the passage of the 1965 Voting Rights Act (VRA) as the true beginning of voting rights for people of color in the United States.

Much like *Brown v. Board of Education,* the Voting Rights Act has been contested repeatedly since its passage. Unlike *Brown,* the 1965 Voting Rights Act emerged amidst widespread popular support by some accounts (Burstein 1979). Moreover, the Voting Rights Act

has largely withstood challenges from opponents. Voting rights jurisprudence does not appear to have changed to the extent that desegregation policies have. The law itself has also been renewed four separate times for successively longer periods. The 1965 law, which had a five-year sunrise clause, was renewed in 1970 with another five year expiration date. In 1975, the law was amended to include protections for language minorities and given a seven–year expiration date. In 1982, key provisions of the law were renewed for 25 years. Most recently, in 2006, Congress renewed the law for another 25 years.

Even where we may doubt the vitality of the VRA on its own, we must concede that voting outcomes have hewed more closely to expectations since the VRA was passed than school desegregation has since *Brown* was decided. Perhaps the clearest testament to this fact is the 2012 presidential election. Not only did the first serious African American candidate in American history rise from obscurity to claim the most powerful office in the world, but he did so in large part because of unprecedented turnout from black voters (Salvatore 2013).These facts, for some, point to the vibrancy of the Voting Rights Act; for others they point to the obsolescence of the law. At any rate, the success of policy outcomes in the wake of the adoption of the Voting Rights Act makes that law a useful counterpoint to *Brown.* If *Brown* is a case of civil rights retrenchment, the Voting Rights Act is a case of what one scholar called "political sustainability" (Patashnik 2008). Examining retrenchment and sustainability in the area of civil rights offers the best opportunity to understand how civil rights policies and policy outcomes respond as public opinion shifts over time.

1.4 Organization of Chapters

This dissertation not only reveals meaningful differences in school desegregation and policy and policy outcomes as public opinion evolves over time, but also indicates that policy-opinion congruence operates differently in this area than in the area of voting rights because of

differences in policy infrastructure. That conclusion unfolds over the course of five chapters that develop and test hypotheses about the relationship between public opinion and public policy.

Chapter Two of the dissertation elaborates on the way that public policies and public policy outcomes in the area of civil rights should "represent" public demand for government. Departing from both empirical and theoretical research on democratic representation, I challenge the notion that institutions will evolve as public opinion dictates and offer several reasons why patterns of institutional change might be incongruous with patterns of public opinion change. The theory I develop begins from the premise that conscientious representatives within democratic governments face a dilemma when making decisions that will be binding upon citizens. This dilemma emerges from the simultaneous, and sometimes conflicting, duties to respect articulated public preferences and to pursue the public interest. Representatives may err on the side of the one, to the detriment of the other. Indeed, this is the story of American civil rights history. At any rate, because the commitments to public opinion and public interest are equally compelling for representatives, and because the public interest may conflict with public opinion, governments may find themselves out of step with one or the other when they make certain decisions. When they eschew public opinion in favor of the public interest, as is sometimes the case with new civil rights policies, representatives must hope that public opinion eventually aligns itself with the perceived public interest, or else the policy may implode eventually. Sometimes this hope bears fruit; the public becomes more accepting of certain once-controversial notions of rights once they become embedded in political institutions. But this story is rosy at best, and incomplete at worst. What exactly does it mean for the public to come around? And why would the public come around in the first place? Moreover, what happens if the public *does not* come around? Alternatively, what if the public comes around, then changes its mind? As we shall see, these are all realistic possibilities in the case of civil rights, and the answers have shaped civil rights history over the last sixty years in ways that have gone unnoticed. Here, the role of values becomes far

clearer. What is "coming around" when the public appears to embrace a particular civil rights position, are the public's values. Indeed, it is only possible to produce institutions that misalign with public opinion by appealing to widely held values that may not have entered the initial public discussion about a civil rights policy. Because the valence of different values changes, the public may seem to have "come around" at one point, only to alter its views at another. When this happens, the trajectory of civil rights outcomes may be disrupted. This is the story of school desegregation post-*Brown*. Value pluralism also explains why the impact of any particular political value might vary over time.

The second section of the chapter disaggregates the concept of public opinion into values and attitudes. Distinguishing between political values and political attitudes as alternative kinds of public opinion reveals how discrepancies between institutions and attitudes are able to develop. Given the features of values and attitudes, some civil rights institutions may not respond to explicit political attitudes, but to latent political values, over time. This exercise helps to explain why, in issue areas like school desegregation, the trajectory of policy outcomes seems to deviate from the trajectory of public opinion suggested by survey data on the same issue. The apparent disconnect between public opinion and policy outcomes in some areas of civil rights, including school desegregation, suggests a need to understand more fully the characteristics of public opinion that might lead to spurious conclusions about its relationship with institutional change. It is not axiomatic based on the literature that there are multiple kinds of public opinion, yet I argue that we can draw spurious conclusions about the link between public opinion and institutional change because we have not yet explicitly recognized that there are different kinds of public opinion. Disentangling these two constructs is therefore the second task of this chapter. I parse the broad concept of "public opinion" into two constituent parts, *attitudes* and *values*. I then identify two distinctions between attitudes and values and describe how the features of each yield different capacities for values and attitudes to shape institutions over time. In this way, section

two of Chapter Two will make clear the ways in which public opinion, in its various iterations, can and cannot impact institutions. Indeed, it becomes clear that how we define public opinion has important implications for the conclusions we draw about the impact of public opinion on civil rights institutions in general.

Chapter Three investigates changes in school desegregation and voting rights policies. This analysis provides a preliminary and distinctive set of findings about the role of public opinion in the evolution of school desegregation and voting rights. I find, on the one hand, that major progressive policy changes concerning school desegregation have tended to emerge when public demand for government was relatively high, while more conservative policy stances have tended to be staked out when demand for government was relatively low (see Stimson 1991, 2004). This kind of relationship is consistent with conventional democratic theory. On the other hand, I find that progressive policies have continually emerged in the area of voting rights despite vacillation in demand for government. This suggests that voting rights policy has been immune, or unresponsiveness to public demand for government, in contravention of conventional democratic theory.

In Chapters Four, Five, and Six, I evaluate my argument regarding the variable impact of public demand for government on civil rights policy outcomes using rigorous quantitative models focused on the two chosen cases of civil rights change, school desegregation and voting rights. Using multiple measures of racial segregation, Chapter Four offers preliminary evidence of incongruence between public opinion and policy outcomes in the area of school desegregation. The negative relationship between public opinion and racial segregation suggests a need to refine the conventional democratic theory of representation, and I examine the evidence for the dynamic counteraction hypothesis in the context of both school desegregation and voting rights policy changes. In Chapter Four, I turn my attention to *policy outcomes* in the area of school desegregation, using two categorical indicators of the legal status of school districts and four

measures of racial segregation in school districts to assess the dynamic counteraction hypothesis in a preliminary way. Then in Chapter Five, I assess the dynamic counteraction hypothesis more rigorously using control variables suggested by the literature on school desegregation. Just as policy-opinion congruence is thought to result from institutional and demographic factors in addition to public opinion, *discrepancies* between policy outcomes and public opinion can reflect imperfections within an institution (e.g. Henig et al. 2011; Steinmo and Watts 1995), characteristics of the measures of public opinion (e.g. Berinsky 1999; Brooks and Manza 2006), or exogenous factors like demographic change. It is therefore plausible to examine each of these kinds of variables when we want to understand why policies or policy outcomes deviate from public opinion. Armed with even stronger evidence in favor of the modified hypothesis by the end of Chapter Five, I begin Chapter Six with the aim of ascertaining whether the dynamic counteraction hypothesis applies to policy outcomes in a different civil rights issue domain— namely, voting rights. Here, I presume the relationship between public opinion and civil rights change to differ sense the issue domain has itself evolved in a different way.

In Chapter Seven, the conclusion of the dissertation, I synthesize the findings from the preceding empirical chapters and examine their implications for future studies of political representation. First, I briefly address some other areas of civil rights to which my findings may apply. If I am correct in my belief that the long-term survival of civil rights policies rests on the tidal movements of public opinion about government policy activity, my analysis raises some important prescriptive questions that scholars, policymakers, and advocates will need to confront: how should leaders of social movements proceed when confronted with opinion conditions unfavorable to desired civil rights outcomes? For example, should policymakers pursue incremental change cum cultural enlightenment or should they press for radical institutional change and accept some retrenchment thereafter? These questions should be of interest to scholars interested in patterns of change in other salient civil rights domains, including abortion,

gay marriage, and immigrants' rights. In support of future research on political representation in the context of other civil rights issues, I point to some important theoretical and methodological considerations.

In sum, this dissertation supports four major claims. First, political values like liberalism and egalitarianism, rather than political *attitudes* about discrete civil rights subjects, may affect changes in civil rights policies and policy outcomes because of the distinctive characteristics of political values. Second, changes in adherence to certain political values at the national level may influence changes in civil rights policies and policy outcomes at *subnational* levels of political aggregation. Third, the effect of political values on civil rights policy outcomes may be dynamic over time. And, finally, the effect of political values on civil rights varies by issue area. These findings strengthen our understanding of political representation in the United States, and hold important implications not just for future studies of representation, but for work in the separate realms of public opinion, institutional change, and race.

CHAPTER TWO
DYNAMIC COUNTERACTION AND THE EVOLUTION OF CIVIL RIGHTS

The relationship between public opinion and institutional change is fundamentally a matter of political representation, which is often defined specifically in terms of policy-opinion congruence (Shapiro 2011, 984; see also Weissberg 1976). At its heart, then, this dissertation concerns political representation. More precisely, as we shall see, it is about the struggle to discern and represent the public interest when it may conflict with public opinion, and the conditions under which that conflict generates either congruence or incongruence between public opinion and public policy or policy outcomes. Conventional democratic theory indicates that there are strong incentives for the government to do as the public says at all times. If this is true, what explains political policy-opinion mismatch?

In this chapter, I develop a theory of how civil rights policies and policy outcomes respond to different changes in political values over time. I argue that the way political elites inside government respond to public opinion in the case of civil rights depends upon competition between two enduring tenets of American political culture: egalitarianism and liberalism. The commitment to egalitarianism should compel political leaders to adopt progressive civil rights laws and practices, but the commitment to liberalism compels political leaders to adopt conservative laws and practices. How political leaders negotiate these competing values has important implications for the congruence between public opinion and civil rights policy outcomes. I argue that political leaders are torn between egalitarianism and liberalism to such a degree that responsiveness to public opinion varies over time. Political leaders will in some cases defy calls for reduced government activity when they are amenable to egalitarian arguments for the recognition or expansion of civil rights from mobilized interest groups or citizens, and they may defy calls for the expansion of civil rights when they are receptive to liberal arguments for non-intervention coming from mobilized interest groups and citizens. The result of political

leaders' alternating defiance of and acquiescence to different factions espousing different value commitments is a kind of representation that is dynamic in the sense of varying in its direction over time. Representation in this sense results from what I term dynamic counteraction. The central claim is that occasional policy-opinion mismatch, or incongruence between public opinion and policy or policy outcomes, results from constant contestation between factions appealing to competing but widely weld American political values. Proponents and opponents of civil rights are each able at different times to harness the competing values of liberalism and egalitarianism to their advantage.

To fully appreciate how dynamic counteraction operates, we first need to understand its preconditions—the forces and processes that make congruence and incongruence between public opinion and policy or policy outcomes possible. We need to know not only whether -opinion congruence or mismatch should materialize, but when and why. Answering these questions requires us to understand the pivotal role that public opinion plays in political representation. To that end, Section 2.2 reviews the literature on policy-opinion congruence and democratic theory. Here, I note a number of studies indicating that representation is prevalent in the United States across bodies of government and issue domains. I subsequently identify the two key reasons policies and policy outcomes respond to changes in different political values in the first place, namely that public opinion confers legitimacy upon the actions of representatives and thereby contributes to longevity in representative democracy. In Section 2.3, I lay out the conditions under which policy-opinion congruence (representation) and policy-opinion mismatch arise.

Of course, "public opinion" is not comprised of a *single* signal. Rather, at any given time, the public sends a number of competing signals to government about what and how much it ought to do. Therefore, we also need to understand *which* signals are likely to induce representation or policy-opinion mismatch. Section 2.4 explores value pluralism, or the existence of multiple values with potentially incompatible policy implications. American political culture consists of

several ideational commitments that are typically grouped under the umbrella of "liberalism" (Hartz 1955). Egalitarianism and liberalism are central components of that political culture and discusses that sometimes implicate different policies and policy outcomes, complicating the representation.

Section 2.3 and Section 2.4 illuminate two major preconditions for dynamic counteraction in American politics: (1) democratic legitimacy rests on two criteria, public opinion and public interest, that are sometimes incompatible, and (2) adhering to public opinion means negotiating between potentially contradictory political values egalitarianism and liberalism.[13] Taking these conditions as given, the final task of this chapter is to explain how egalitarianism and liberalism shape civil rights—that is to say, how these two values act through legislators and citizens to change civil rights institutional arrangements. Section 2.5 describes the *process* of dynamic counteraction as one in which factions with competing value commitments are able to harness the values to their own ends to produce ebbs and flows in civil rights outcomes over time. Here, I develop a theory I term dynamic counteraction. The theory holds that proponents and opponents of civil rights are constantly jockeying for representation of their preferences. Moreover, the two sides are motivated not just by the materialization of undesirable civil rights outcomes, but by the *prospect* of undesirable outcomes materializing (Hopkins 2010; Morrison 1987). So strong is the fear of undesirable outcomes that opponents mobilize even when those undesirable outcomes have not yet materialized. At the same time that the fear of disagreeable outcomes prompts those who oppose civil rights to mobilize against them, proponents may remain quiescent. The result is that one faction of the other may succeed in having its preferences expressed in policy or policy outcomes at some point in time even though majority opinion does not favor the realization of those preferences. In other words, counteraction can trigger policy-

---

[13] For a discussion of what egalitarianism means and how it can be measured, see Kellstedt (2000) and Kellstedt (2003). For a similar discussion of liberalism, see Stimson (1991) or Stimson, Mackuen, and Erikson (2002).

opinion mismatch. The winners and losers vary over the life of any given issue. Sometimes proponents win and sometimes opponents win. The empirical result of this constant contestation of factions supportive of and opposed to government activism is a non-linear trend in the representation of public opinion within civil rights policy outcomes. That is to say, policies and outcomes sometimes move out of step with prevailing opinions, and sometimes move synchronously.

Ultimately, this chapter develops a portrait of representation that differs from the convention in political science in two important respects. The empirical literature on representation has typically adopted Pitkin's approach to representation, focusing on the *products* rather than the ideological sources of representation. I depart from this approach by focusing on the conditions under which substantive representation resembles the delegate or trustee styles described by Burke. Democratic theorists expect a positive and linear relationship between public opinion and public policy and policy outcomes (see, e.g., Soroka and Wlezien 2010; Wlezien 1995). On the view developed here, however, representation is a non-linear process that involves continual contestation between constituencies with opposing value commitments. Representation as a nonlinear process depends upon the competing value commitments of political leaders. If political leaders held fast only to egalitarianism or only to liberalism, they would be less susceptible to arguments predicated on the other value. But precisely because they also struggle to reconcile these principles in their own minds, political leaders can be persuaded to adopt policies and practices that are consonant with one value and wholly inimical to the other. The pull of these value commitments results from the fact that they are part of a broader political culture to which nearly all Americans subscribe and to which political leaders, insofar as they are concerned about their longevity and legitimacy, are bound to respect. In the final analysis, then, American political culture itself creates opportunities for policy-opinion mismatch.

2.3 Public Opinion and Representation in the US

Public opinion plays an important role in both normative and empirical accounts of political representation. In normative accounts, the significance of public opinion inheres in the fact that, almost by definition, representative democracy must provide opportunities for citizens to communicate their preferences with respect to issues of governance and representatives must have a way of discerning those desires (Dahl 1998; Donnelly 2003; Myrdal 1944, 8 - 9). As V.O. Key put it: "Unless mass views have some place in the shaping of policy, all the talk about democracy is nonsense" (1961, 7). According to human rights theorist Jack Donnelly: "Democracy, if that term is to mean more than the absence of systematic misrule by a narrow segment of society, must be government *of* or *by* the people. Beyond benefitting from good governance, the people in a democracy must be the source of the government's authority to rule" (2003, 189 - 190). Representative governments derive legitimacy from their adherence to public opinion.

Empirically, the significance of public opinion arises out of the effect in can have on the amount of time elected officials spend in office. Representative democracy necessarily creates a concern for what the people want, because satisfying the people's desires is the key to representatives' longevity in office. As Marx put it in *The German Ideology:* "Under a free government, since most public functions are elective, men who by the loftiness of their souls or the restiveness of their desires are cramped in private life, feel every day that they cannot do without the populace surrounding them" ([1840] 2000, 486). A representative government such as that of the United States receives information about the preferences of the majority primarily through the votes citizens cast and the policy preferences they express through polls.

As instruments of communication, elections and public opinion differ quite substantially in their political implications. Whereas elections constitute a summative assessment of a political leader's performance that provides no opportunity for remediation on the leader's part, public opinion is more of a formative assessment that allows elected officials to alter their behavior

41

before they lose their jobs. To put this another way, elections are the blunter instrument. Losing an election does not provide a representative who is out of step with his or her constituents' preferences an opportunity to realign himself or herself with the public while in office. The signal is also the punishment. Public opinion is comparatively forgiving. It allows representatives to correct discontinuities with constituents before they suffer the punishment of losing office.

In modern democratic governments, elections and public opinion generally work in tandem to ensure responsiveness (Shapiro 2011). The *prospect* of losing an election induces representatives to pay close attention to public opinion prior to an election. As a practical matter, those who wish to remain in office, or who aspire to higher offices, do well to heed public opinion (Maestas 2000, 2003). Political representatives thus have two powerful incentives to listen to public opinion: legitimacy and longevity.

2.4 Public Opinion, Public Interest, and Democratic Legitimacy

Public opinion is not the only source of legitimacy for a government. Another is the public interest, which is essentially anything that advances or preserves the authority, rights, power, property or values of citizens of the state. All governments also derive legitimacy from the extent to which they achieve the public interest. Indeed, states are constituted precisely for the purpose of achieving those things that define the public interest. But because representative governments, in particular, must also be concerned with the public will (Dahl 1998), they are vulnerable to a specific threat to their legitimacy.[14] The threat materializes when public opinion and public interest are incongruous, or else implicate incompatible policy outcomes. As Donnelly

---

[14] Social contract theory shows how conflicts of public opinion and public interest are not a problem for nondemocratic governments because public opinion is not a source of governmental legitimacy one the state is established. Hobbes' "Leviathan" is an authoritarian government whose power derives from the initial agreement of citizens to forego the state of nature and form a state. Everything it does is presumed to embody the will of the people who founded; thus, it never needs to consult the people about its decisions. Likewise, for Locke, the authority of the essentially monarchical state he envisages derives from "natural right." Finally, in the Social Contract, Rousseau rejects the procedure of aggregating preferences as a means of ascertaining the public will. His "general will" is not something that can be discerned only by consulting the people directly, but something enlightened statesmen tend to know almost intuitively.

observed: "Government *for* the people may or may not be democratic" (2003, 189). For Donnelly, "*for* the people" means *in the people's interest* and "democratic" means "by the people"—that is to say, *with input from the people*. As in popular definitions of democracy, the parsing of "for the people" and "by the people" reflects the common recognition that what is best is not always the same as what the people want, and what the people want is not always what is best for them.

The possibility of policy-opinion mismatch or incongruence arises out of this grand dilemma of representative governance. Divergence of the public will from the public interest forces political leaders to choose between two compelling but distinct rationales for action. The failure to satisfy either rationale threatens the legitimacy of representative government. On the one hand, "disjunctures between government policies and the new demands may lead to the questioning of beliefs in government and therefore the legitimacy of the political system" (Van Deth and Scarborough 1995, 4). In other words, policies inconsonant with public opinion are liable to invite questions about their legitimacy, as well as the legitimacy of the process and actors by which they were generated. On the other hand, no people, least of all the citizens of a democracy, is bound to respect a government that endangers or fails to protect its citizens' interests. Since undermining the public interest is a clear violation of democratic principle, actions that are inconsonant with the interests of the people are likely to incite questions about governmental legitimacy (Dahl 1998).

To give an example: suppose that a poll conducted during an economic recession indicated that a majority of Americans preferred to cut spending, but analyses by a government agency suggested that *increasing* spending would definitely improve the economy and maintaining or reducing spending could exacerbate current financial troubles. Finally, assume that improving the economy is in the public interest, as it doubtless always is in reality. Under these conditions, cutting spending would be a violation of the public interest, since it would not

improve the economy and could make it worse. Since cutting spending would not improve the economy and could make the economy worse, it would be a violation of the public interest. At the same time, however, maintaining or raising current spending levels would be a direct affront to the demands of the people. If democratic legitimacy rested solely on the public interest, it would be justifiable to defy the people and do what avoided danger to the public or yielded benefits even if the public demanded otherwise. In this case, government would be justified in raising spending levels if public interest were the only criterion for legitimacy. If, on the contrary, democratic legitimacy rested solely on public opinion, representatives could not justify defying public opinion and increasing spending. From this example we can see that while both public interest and public opinion are always necessary, neither is always a sufficient source of legitimacy in democracy. The potential incompatibility of the two creates a difficult dilemma for representatives. Choosing between public interest and public opinion when the two conflict invariably endangers governmental legitimacy.

Some democratic theorists contend that in cases where public opinion conflicts with the public interest, the latter can supersede the former without compromising the legitimacy of political leaders. Donnelly characterizes "liberal" democracy as a system of governance that "puts popular rule in its 'proper' place" by privileging human rights over the aggregated preferences of the people (2003, 193). Edmund Burke's theory of representation also endorses the prioritization of the public interest. At the end of his 1774 speech to the British Parliament, he notes: "If the local constituent should have an interest or should form a hasty opinion, evidently opposite to the real good of the rest of the community, the member for that place ought to be as far, as any other, from any endeavour to give it effect." A system of representation predicated upon deference to popular opinion is likely to fragment society by blinding legislators to the interests of constituents outside of their own jurisdictions. Conversely, a system of representation that prioritizes the "general good" is more likely to secure the "real good of the rest of the community" by blinding

legislators (in one sense) to the "different and hostile" desires of constituents within their own jurisdictions.

The thrust of the Founding Fathers' argument for representative democracy in the *Federalist Papers* is, similarly, that the public interest should take precedence over public opinion. The nation's experiment with the Articles of Confederation left an unsavory taste in the mouths of many of the Founding Fathers, prompting them to replace it with a document that inserted "a filter" between the people and the government (Morone 1990 [1998], 57 - 63). The Founders believed strongly in government for the people, but like their aristocratic counterparts elsewhere in the world at the time, the Founders were deeply suspicious of government *of* and *by* the people *stricto sensu*. The Founders' coming to terms with a pluralistic American community led them to favor efficacy or "energy" over representativeness in their government (Morone 1990 [1998], 68-69).

Madison's wariness of popular government is evident in *Federalist 10,* where he ponders the merits of "pure" or direct democracy relative to a "republic" or representative style of government. Madison worries that direct democracy will fragment the burgeoning nation into atomistic interest groups or "factions" because "the seeds of faction are sown into man." Factions result naturally from the political interactions of people. A pure democratic system is also likely to produce faction because of the singular value it ascribes to individual liberty. Liberty, on Madison's view, tends to promote political fragmentation; indeed, "[l]iberty is to faction what air is to fire, an aliment without which it instantly expires." Inasmuch as it embraces unfettered popular liberty, then, "[p]ure democracy can admit of no cure for the mischiefs of faction."

By contrast, a republic contains the institutional mechanisms sufficient to control the effects of faction. Madison also believes that representative democracy holds a distinct advantage over its "pure" counterpart in terms of the quality of its output. In a representative system, "it may well happen that the public voice, pronounced by the representatives of the people, will be more

consonant to the public good than if pronounced by the people themselves, convened for the purpose" because "it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and…will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters." Representatives, Madison argues, will necessarily be men of superior character. As such, they will also be less tendentious toward actions that undermine the public interest and more likely to adopt practices consonant with the public interest than their constituents. Madison thus proposes representative democracy as both a bulwark against faction and a sieve for the best political ideas and leaders. The Founders incorporated into the Constitution a number of other mechanism they believed were necessary to prevent or counteract the dangers inherent in democracy, including the separation of powers (see *Federalist* 51), the Electoral College (see *Federalist* 68), and the unitary executive (see *Federalist* 70), all of which, like representation itself, either distanced the government from public opinion or empowered the government to disregard public opinion in the name of public interest.

The Constitution was the Founding Fathers' attempt to strike a certain balance between the conflicting criteria of public interest and public opinion through the design of the nation's institutions of governance. In the Madisonian system of democracy, the weight of political morality falls on the side of the public interest, so that the system permits political leaders to do what is most congruous with the public interest even where the expressed opinions of the majority suggest otherwise. Operating largely through election, public opinion remains a guide to political leaders as they attempt to discern the public interest, but not a dispositive factor in governance.

Representing the public interest poses a far greater challenge than representing public opinion, as the public interest may be explicit or tacit, just or unjust, perceptible or imperceptible. But sometimes political leaders are suspicious of public opinion, as the Founders were, and must

focus on the public interest. Given the grand dilemma of democracy, what mechanisms are there for discerning the public interest when public opinion cannot be trusted? Enter political values. Political values are goals or minimum standards for political life in general.[15] Political values are also a kind of public opinion in that they signal the preferences of the public with respect to political outcomes. Yet political values also differ in two major respects from political attitudes, the *discrete preferences* the masses have about candidates, issues, and/or political events often revealed by polls.

The first major distinction between political attitudes and political values is accessibility. Public opinion scholars have increasingly recognized that opinion dynamics operate at multiple levels (Erikson, Mackuen, and Stimson 2002; Stimson 2004). But where political attitudes can be said to operate on the surface of human thought, political values operate at a deeper level of human consciousness. Changes in mass political attitudes (or "non-attitudes," as it were) are easily discernible in the kinds of polls conducted regularly (Converse 1964; Stimson 2004). At the same time, responses to any single survey question are likely to be ephemeral, contingent, and epiphenomenal for several reasons. Survey respondents may not understand certain concepts fully (see Converse 1964; Zaller 1992). They may rely upon heuristics like partisanship to formulate their responses at any given time (Campbell et al. 1960; Carsey and Layman 2006; Feldman and Zaller 1992; Jerit and Barabas 2012; Popkin 1991). They may be influenced by the wording of questions (see, e.g., Schuman et al. 1997) or the characteristics and behavior of the people administering a survey (e.g. Campbell et al. 1960; Zaller 1992). Or prevailing social norms may lead respondents to guard their true preferences (Berinsky 1999; Mendelberg 2001; Tesler and Sears 2010; White 2007). This is particularly true when people confront questions about controversial issues like race and civil rights (Huddy and Feldman 2009; Schuman et al. 1997). The attitudes expressed in a single survey question are not *meaningless*; on the contrary, attitudes

---

[15] By this definition of values, racism would not be a value. Racists do not desire to produce, affirm, or amplify, but to destroy, prohibit, and minimize.

may and often do reflect deeply ingrained preferences, including values (Borre and Goldsmith 1995; Stimson 1991 [1999]; Van Deth and Scarborough 1995). Nevertheless, asking people in a survey whether they endorse certain values or ideologies can yield non-response, inaccuracy, or inconsistency over time because latent considerations like values are likely to influence the discrete survey responses that constant political attitudes even without respondents recognizing as much (Converse 1964; Zaller 1992)..It is possible to operationalize values by methodically aggregating the discrete attitudes some large sample of people expresses about discrete theoretically related subjects (e.g. Lundmark 1995; Scarborough 1995; Stimson 1991 [1999]). In other words, to tap into values, we must aggregate multiple discrete attitudes.

The second difference between values and attitudes lies in their movement. While the movement of attitudes is frequent, rapid, and unpredictable, the movement of values is infrequent, subtle, and predictable (Stimson 1991 [1999]). Attitudes can change frequently and dramatically as individuals acquire new information from external political stimuli, especially if individuals encounter discrepancies between their predispositions and the new information (Bartels 1988; Feldman and Zaller 1992). Attitudes can also shift quickly in response to exogenous shocks, like political party conventions or international crises. But since values are themselves less perceptible (Stimson 1991 [1999]), conflicts between values and ad hoc events or considerations should also be less obvious. For example, mass support for gun control may suddenly spike in the wake of a school shooting, but this does not mean that the popular commitment to public safety has also spiked. Changes in attitudes about gun control *could* certainly reflect the changes in adherence to the value of public safety, but gun control is likely not the *only* attitude that does so. Shifts in attitudes toward gun control may or may not reflect shifts in the value of public safety. Real differences in the commitment to public safety may materialize over years and decades, rather than days, weeks, or even months. In general, in fact, changes in values typically are "tidal" or "glacial" (see Erikson, Mackuen, and Stimson 2002; Stimson 2004).

Given their aforementioned differences in accessibility and movement, political attitudes and values likely have distinct effects upon policies and policy outcomes over time. Because they change constantly and dramatically, political attitudes are likely to be limited in the extent to which they can influence institutional arrangements. The acute and frequent changes in attitudes could theoretically alter institutional arrangements, but changes in attitudes should largely cancel one another out in the long term, with the result that the effect of any single shift in attitudes on existing institutional arrangements is likely to be both negligible in magnitude and short-lived (Erikson, Mackuen, and Stimson 2002). On the contrary, the relative stability of values means that they can have substantial and long-term effects on political institutions.

Because they are widely held and deeply entrenched in the history and sociopolitical norms of a political community, values can also contribute to institutional stability or change in the face of uncertainty around political attitudes. By appealing to values, political elites can create bulwarks against the effects of the vicissitudes of political attitudes. We can think of political values as creating an "opportunity structure" or "ideational order" in which political leaders and lay citizens can act (see King and Smith 2005; Lieberman 2002; Smith 1997). Political leaders respond to the values opportunity structure by facilitating or hindering certain outcomes through the powers and authorities of their specific offices (Van Deth and Scarborough 1995). To return to the gun control example, state legislators may enact more stringent gun laws if the desire for the more nebulous idea of public safety increases in a state, whether or not support for the more specific notion of gun control increases. The existence of shared values is critical to mobilizing citizens as well (Morrison 1987). Citizens can respond to the values opportunity structure by choosing to or not to exercise their rights in certain ways. For example, notwithstanding the right to bear arms or state laws sanctioning their possession, individuals who value public safety may choose on the basis of that value *not* to acquire or use guns.

2.5 Equality and Limited Government

The two values that manifest most conspicuously in American political discourse are equality and limited government. We see them in the Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness." The self-evidence of equality bespeaks its importance, while the inalienability and divine origin of "liberty" are testament to the sanctity of the concept of limited government in American political thought.

Equality and limited government are also central themes in studies of American democracy. In *Democracy in America,* Alexis de Tocqueville remarks that the thing he finds most striking about the United States is the "equality of conditions" (1835 [2000], 3). Egalitarianism is an epiphenomenon of the conditions of freedom that have defined the nation from its inception. As Louis Hartz later put it, America lacks the "feudal and clerical oppressions" that preceded many of the antigovernment revolutions in Europe (1955, 4 - 5). American identity only came into existence as *American* identity when the colonists defeated the British in the American Revolution. Since Americans were "born free without having to become so," the suspicion of equality that exists in France and other European countries with a feudal history is absent in the United States. Equality is not merely a fact of American social life; it is an affirmative political commitment, a value that "gives a certain direction to public spirit, a certain turn to the laws, new maxims to those who govern, and particular habits to the governed" (Tocqueville 2000 [1835], 3). Tocqueville is confident, for example, that the insistence upon equality is the reason the nation has seen so few remarkable artists and scientists in its short history (Tocqueville 2000 [1835], 428). Egalitarianism, or the pursuit of equality, is thus as much a part of American political culture as equality is a part of American social life.[16]

---

[16] Some theorists contend that democracy itself creates a concern for equality. As Donnelly put it, "[su]bstantive conceptions [of democracy], tend to lose the link to the idea of the people *ruling,* rather than just benefitting. 'Democratic' thus easily slides into a superfluous synonym for 'egalitarian'" (2003, 190).

According to Tocqueville, American egalitarianism is rivaled only by a deep and pervasive suspicion of government. Just as with equality, Americans insist upon a distant and detached federal government. For Americans, "government is not a good; it is a necessary evil" (2000 [1835], 194), and they do their best to limit both the necessity for government and the authority of federal government when the need for it materializes. This pursuit of limited government is liberalism. The clearest modern pronouncement of its significance is Louis Hartz' *The Liberal Tradition in America* (1955). The liberal tradition refers to the nation's longstanding commitment to four interdependent values: equality, liberty, limited government, and market-based policy approaches. It is, in short, American political culture writ large. Throughout the text, Hartz is most in awe of "this fixed, dogmatic liberalism of a liberal way of life" in the United States, calling it a "remarkable force" (Hartz 1955, 9)."[17] Others see liberalism as inextricably linked to democracy itself (Hochschild 1984; Tocqueville 1835 [2000]).

The pervasiveness of liberalism does not mitigate "internal conflicts which have characterized American political life" (Hartz 1955, 14). In fact, liberalism is also "the secret root from which have sprung many of the most puzzling of American cultural phenomena" (Hartz 1955, 9). One such phenomenon is the American bureaucracy. In *The Democratic Wish* (2003), Morone describes a United States that has struggled throughout its history to manifest the ideal of government by the people. He argues that the American people have always maintained both a healthy fear of "public power" and a passionate belief in the idea of a "communal spirit." As a result, they have pushed throughout history for reforms that would devolve governmental power

---

Similarly, Tocqueville writes that "democratic peoples have a natural taste for freedom; left to themselves they seek it, they love, and they will see themselves parted from it only with sorrow. But for equality they have an ardent, insatiable, eternal invincible passion; they want equality in freedom, and, if they cannot get it, they still want it in slavery. They will tolerate poverty, enslavement, barbarism, but they will not tolerate aristocracy" (482). See also Dahl (2006).

[17] On the last point, Hartz echoes Tocqueville, who had written in *Democracy in America* that: "In America, the principle of sovereignty of the people is not hidden or sterile as in certain nations; it is recognized by mores, proclaimed by the laws; it spreads with freedom and reaches its final consequence without obstacle" (Tocqueville 2000 [1835], 53)

upon the people. However, movements undertaken with this "democratic wish" in mind have usually succumbed to the exigencies of political life in ways that undermine that democratic ideal, with the ironic result that "the search for more direct democracy builds up the bureaucracy" (Morone 1990 [1998], 1). Morone's argument here calls attention to an endogenous weakness in American political culture that makes ironic outcomes like the expansion of government possible even when liberalism demands otherwise.

The weakness in American political culture stems from value pluralism, the existence of multiple values that in some cases implicate incompatible political outcomes. Gunnar Myrdal is perhaps the first theorist to expose this value pluralism and its implications in the United States. In *An American Dilemma,* he notes that "[t]here are no homogeneous 'attitudes' behind human behavior but a mesh of struggling inclinations, interests, and ideals, some held conscious and some suppressed for long intervals but all active in bending behavior in their direction" (Myrdal 1944, lxxii). That conflict is the focus of *An American Dilemma* (1944). He summarizes it thus:

> The American Dilemma is the ever-raging conflict between, on the one hand, the valuations preserved on the general plane which we shall call the 'American Creed,' where the American thinks, talks, and acts under the influence of high national and Christian precepts, and, on the other hand, the valuations of specific planes of individual and group living, where personal and local interests; economic, social, and sexual jealousies; considerations of community prestige and conformity; group prejudice against particular persons or types of people; and all sorts of miscellaneous wants, impulses, and habits dominate his outlook (Myrdal 1944, *lxxi*).

At the center of American value pluralism are egalitarianism, the commitment to the principle of equality (Kellstedt 2003) and liberalism, the commitment to limited government (Stimson 1991). The attractiveness of both liberalism and egalitarianism for American political representatives inheres in the fact that both are elements of American political culture. As Myrdal put it, "the unity of a culture consists in the fact that all valuations are mutually shared in some degree" (1944, *lxxii*). Political leaders are in some ways predisposed to consider both of these values in executing the duties of their offices because they have been conditioned throughout

their lives to embrace them, just as constituents have. Indeed, "the conflicting valuations are also held by the same person," with the result that "behavior normally becomes a moral compromise" (Myrdal 1944, *lxxii*). Consequently, neither liberalism nor egalitarianism can simply be dismissed from the political calculus of decision makers. The trouble with the coexistence of egalitarianism and liberalism within American political thought, however, is that reasonable people espousing either can arrive at contradictory normative conclusions about public policy. The values themselves may also implicate contradictory policy outcomes: a robust conception of equality may require a narrow conception of individual liberty and a rejection of the principle of limited government; conversely, the commitment to limited government may require the abandonment of equality as a goal or principle. Paradoxically, then, what unifies American political culture may also sever public policy and policy outcomes from public opinion in the context of civil rights.

When it comes to civil rights in the United States, political leaders are constantly trapped between the rock of limited government and the hard place of equality because "controversies over whether and how to transform the nation's racial inequalities are often pitched as disputes over constitutional requirements of liberty and equality (Smith 1999, 328). Indeed, according to Smith, "[t]hese hypnotizingly familiar slogans give pause to many who, in at least part of their heats, are willing to support change" (1999, 328). When political leaders confront arguments and constituencies invoking both values, they must make the difficult choice of elevating one above the other.

There are always opposing political factions fighting to advance their interests in the United States (Lowi 1969; Schattschneider 1960). Indeed, this competition is a part of American politics by design. The Founding Fathers believed that they could "control the effects of faction" by "multiplying the interests" that would materialize in society, so that no single interest could ever form a perpetual majority (*Federalist 10*). Theoretically, any single contingent can be successful at any given time by mobilizing its constituency and controlling the public agenda

(Cobb and Elder 1983; Schattschneider 1960). In the case of civil rights, controlling the public agenda often involves appealing to the values of equality and liberty (Hochschild 1984; Smith 1999). Egalitarian and liberal advocacy often take distinct rhetorical forms. The former typically involves language like "equality," "equal opportunity," and "equal protection," while the latter often relies on terms such as "states' rights," "small government" (or "big government" to signify the converse) and "local control" (Carmines and Stimson 1989; Kellstedt 2003; Smith 1999).

Factions determined to expand or retrench civil rights help political leaders decide which value to privilege at any given time. Because leaders are persuadable with respect to equality and liberty, those who are better able to persuade leaders that the political value they endorse will yield outcomes in the public interest can push through their preferred changes in civil rights, even when commitment to the other political value implicate contradictory outcomes. When political leaders hew to egalitarianism, civil rights policies and policy outcomes should endure or expand. Conversely, when political leaders err on the side of liberalism, civil rights policies and policy outcomes should retrench or expire. Sometimes they privilege liberalism and sometimes they privilege egalitarianism. Still other times leaders privilege neither value commitment, resulting in stagnation. Figure 2.1 illustrates the expected political outcomes under each of the aforementioned scenarios.

Figure 2.1. Theoretical Impact of Egalitarianism and Liberalism on Civil Rights

(a)

E

L

Leader ⟶ Sustainability

(b)

E

L

Leader ⟶ Stagnation

(c)

E

L

Leader ⟶ Retrenchment

$t-1$ t

This illustration shows the expected effects of egalitarianism (E) and liberalism (L) operating at some prior point in time on current civil rights policy outcomes. Larger circles signify greater public endorsement of the value, as evident in public opinion. Panel (a) shows that when egalitarianism exceeds liberalism, civil rights outcomes should be sustainable. Panel (b) shows that when egalitarianism and liberalism are embraced to roughly equal degree, civil rights outcomes should stagnate. Panel (c) shows that when liberalism exceeds egalitarianism, civil rights outcomes should retrench.

More precisely, the figure illustrates how civil rights policies and policy outcomes would look in the present, given some prior state of political values at only one previous point in time. Over longer periods of time, leaders are likely to be persuaded by interest groups marshaling egalitarian and liberal arguments to different degrees at different points in time. In turn, the

alternating wins and losses of proponents of egalitarianism and liberalism should mean that civil rights policies and policy outcomes sometimes move out of step with what one or the other value suggests ought to be the case. The next section explores *how* the contentious deployment of liberalism and egalitarianism affects policy-opinion congruence in the area of civil rights. These connections will be elaborated using statistical data in the chapters concerning school desegregation and voting rights.

2.6 Dynamic Counteraction

We now have a framework for understanding how policy-opinion mismatch can occur in civil rights. It arises out of two conflicts: the one between public opinion and public interest, the two alternative sources of legitimacy for representative governments; the other between egalitarianism and liberalism, two alternative value commitments from which political representatives can discern the public interest. The only thing that remains to be explained is *how* these conflicts give rise to policy-opinion mismatch within the context of civil rights.

The answer is that increased demand for government (i.e. a decline in the value of limited government) can actually activate citizens and political leaders for whom increased public demand for government action portends an undesirable reality. Sometimes these opponents of civil rights are not resisting policies they oppose, but the *prospect* of policies or outcomes they oppose. Previous studies of political mobilization suggest that even the *possible* expansion of civil rights can rouse opponents to sabotage existing policies and efforts conducive to the outcomes they oppose or to adopt new policies that fit their own oppositional aims (Morrison 1987; Stanley 1987). For instance, some southern black political leaders attributed increased white turnout in the South after the enactment of the 1965 Voting Rights Act to whites' fears that black enfranchisement would threaten their hold on power (Stanley 1987, 41 - 42). Similarly, Kraemer observed that when Hawaii's Supreme Court recognized a right to same-sex marriage in

the 1996 case *Baehr v. Lewin*, opponents in *other states* where the issue was not yet on court dockets or legislative calendars began to advocate for bans on gay marriage. He writes:

> opponents…have not been quiescent. On the contrary, horrified by the prospect that gay and lesbian couples might be able to many in Hawaii and force other states to recognize their union fully and for all purposes, adversaries of same-sex marriage began a campaign to limit the effect of Hawaiian law almost as soon as *Baehr* was decided. Efforts were made to persuade state legislatures to adopt statutes explicitly declaring the same-sex marriages violate public policy and are void. These efforts succeeded in a number of states (Kramer 1997, 1965- 1966)

We might think that a shift in preferences in a direction that favors civil rights would motivate *proponents* to action, as was the case for some civil rights organizations after *Brown,* but many supporters of civil rights may not take immediate steps to advance civil rights (see, e.g., Gotham 2002; Ogletree 2004). Those who favor the outcomes implicated by trends in public opinion may feel no need to take action, while those concerned about how the future will look if pro-civil rights opinion conditions persist actually mobilize.

Even if certain political leaders fear the expansion of civil rights, why would they go so far as to *take action* against civil rights when majority opinion dictates otherwise? Democratic theory suggests that defying public opinion is costly for political leaders because popular support is a source of both legitimacy and longevity in a democracy. Elected leaders who do not accede to majoritarian demands can always be replaced with ones who do. But there are several reasons to expect defiance on the part of political leaders, and concomitant disjunctures between public opinion and civil rights policies or policy outcomes.

The first has to do with federalism. In their comparative study of feedback in policy and public opinion concerning spending, Soroka and Wlezien (2010) argue that the distribution of policy authority among multiple domestic governments makes it difficult for citizens to affix responsibility properly and can therefore reduce public responsiveness to policy change. Since citizens need to be able to connect their preferences to actual policy changes in order for their preferences to change in response to policy, the inability to attribute policy responsibility to a

particular branch or level of government may dampen the formulation of preferences. (For example, a large proportion of individuals surveyed about a policy issue might not respond, calling into question the generalizability of the remaining responses). In turn, decreased public responsiveness to policy change decreases the incentive political leaders otherwise have to represent public opinion, and ultimately the extent of policy responsiveness to public opinion (Soroka and Wlezien 2010, 49 – 53). Consider the case of school desegregation. The fact that responsibility for implementing the *Brown* mandate is shared by the federal district courts and local school districts may decrease citizens' ability to assign responsibility for changes in school segregation, to remit meaningful signals about their preferences, and to have those preferences represented in subsequent political actions. For example, parents may be aware that school districts have *a role in* school attendance policies, but they may not understand the *extent* of the school district's role vis-à-vis the federal courts in this area enough to formulate meaningful opinions about those policies and to project those opinions back to policymakers. In short, federalism may lead political leaders to take action against public opinion unwittingly.

A second reason political leaders may create a disconnect between public opinion and institutional output is that political leaders may not consider the defiance of public opinion a threat to their legitimacy and longevity in the way that democratic theory suggests, particularly if they are not subject to popular election. This was the prevailing belief about the Supreme Court before studies showed otherwise (e.g. Barnum 1985; Mishler and Sheehan 1993, 1996). Returning to the school desegregation example, the school district superintendents who implement desegregation plans and the federal judges who monitor such plans are likely to be appointed, rather than elected, to their positions.[18] Without election as a lever, public opinion

---

[18] We might think that unelected officials like judges and school superintendent might nevertheless be attentive to public opinion in order not to upset the elected officials who appoint them. But, elected officials may allow misrepresentation by appointed subordinates in order to preserve the appearance of independence or because they lack the professional capacity to discipline them. Neustadt (1960) observes

lacks the coercive force democratic theory implies it has. Alternatively, political leaders who aspire to higher offices may take actions inconsistent with the expressed preferences of their constituencies in order to increase their appeal to the (often larger and more diverse) constituencies they wish to serve in the future (Maestas 2000, 20003). Whether elected or appointed, political leaders may defy public opinion if they do not fear removal from (their current) office.

A third reason political leaders may shift the civil rights status quo in the opposite direction from that which public opinion favors is paternalism: political leaders may ignore or contradict public opinion out of a belief that the public is wrong about what it believes is best or right. I argued earlier in this chapter that paternalism was the root of the representative system of government the Founding Fathers chose to establish. Their wariness of what delegate style of representation would yield prompted them to adopt a trustee approach to the issue instead. Other examples of paternalism—often operating in the name of the public interest—abound in American political history, running the gamut from the emergence of labor protections for women at the turn of the twentieth century to the invalidation of "separate but equal" (see Bell 1980; Hochschild 1984, 15; Skocpol 1992). In *Brown,* for example, the Supreme Court ruled that the doctrine of "separate but equal" was "wrong on the day" it was institutionalized, despite the fact that a large majority of Americans still supported it (Schuman et al. 1997). As the editors of the Cincinnati Enquirer wrote after the decision, by ignoring public opinion on the issue, "[w]hat the Justices have done is simply to act as the conscience of the American nation" (quoted in Hochschild 1984, 15). If not for elite defiance of popular opinion, many other major civil rights expansions might never have materialized.

But even when re-election and legitimacy are concerns for political leaders, these may be supplanted by other, more paramount concerns. For example, leaders may be driven more by

that the even the president, whom he goes so far as to describe as a "clerk," has difficulty controlling subordinates within the executive branch.

principle than by professional self-interest (Bell 1980; Dahl 1998; Hochschild 1984; Hochschild and Scrovronick 2003). In a famous commentary on *Brown v. Board of Education*, Derrick Bell argued that "[r]acial justice—or its appearance—may, from time to time, be counted among the interests deemed important by the courts and by society's policymakers" (Bell 1980, 523). As the second *Brown* decision confirms, the Court did appreciate the challenge of imposing a nationwide mandate to desegregate. But the Court's belief that dismantling the system of racial segregation was in the nation's best interest apparently superseded its reservations about practicality and local control. In essence, the Court implied in these early decisions on school desegregation that equality and justice sometimes demand what democracy and liberalism will not provide. One legal analyst encapsulated this stance well when he argued that "[w]hen the directive of equality cannot be followed without displeasing the white[s], something that can be called 'freedom' of the white[s] must be impaired" (Black 1960; quoted in Bell 1980, 522). Even if they are fully aware that their defiance of public opinion threatens their legitimacy or professional viability, then, political leaders may consciously defy public opinion or calls for certain kinds of action in order to satisfy other principles.

Whether federalism, obliviousness, paternalism, or simple conviction leads some political leaders to defy public opinion in their approaches to civil rights, surely this is not the way *all* or even most political leaders behave. Indeed, we have already seen that most studies indicate that political leaders accede to shifts in public opinion. Yet it is not necessary for *all* political leaders to defy the trend in school desegregation. In fact, incongruities between policies or policy outcomes and public opinion need not reflect the actions of government officials at all. Actions by *lay citizens* who oppose civil rights, or at least government intervention therein, may also account for disjunctures between opinions and institutions. Like political leaders, citizens may be mobilized by the shift in public opinion in a direction that favors progress on civil rights and attempt to subvert those outcomes. If enough of these opponents mobilize in response to shifts in

public opinion, we might see systematic declines in policy outcomes, even as policies remain the same.

Thus, a shift in preferences that favors civil rights expansion may actually trigger political leaders or citizens opposed to civil rights to launch movements to reverse the presumptive course of policy outcomes. In other words, civil rights opponents may successfully advocate for civil rights retrenchment as public opinion moves in favor of civil rights sustainment or expansion. Successful mobilization against civil rights is likely to be short-lived if public opinion continues to shift in a direction that favors progressive outcomes. As they recognize the threat to their legitimacy and longevity posed by continual defiance of public preferences, political leaders should eventually realign themselves with trends in preferences for government (or else be replaced by more sympathetic officials). For their part, lay citizens should conform to growing liberalism out of concern about ostracism or else be overcome by the more powerful majority responsible for the pro-civil rights bent to public opinion (reflected in, for example, increased demand for government). In any case, the combination of initial rebellion and eventual compliance should yield a particular kind of dynamic relationship between liberalism and civil rights wherein outcomes move out of sync with the trends in values at one point in time and in sync with values at another time. I term this phenomenon dynamic counteraction.

2.7 Conclusion

This chapter addresses the important theoretical questions that structure this research. What role does public opinion play in political representation? More precisely, what role do values play? Drawing upon both democratic theory and empirical research on political representation, I argue that the potential for policy-opinion mismatch exists because the two sources of legitimacy in representative government, public opinion and public interest, do not always agree in reality. Representatives rely upon widely held political values to discern the public interest, but even this poses challenges because the values that are at the core of American

political culture, equality and limited government, sometimes promote contradictory policies and policy outcomes. The potential for conflict between the two comes into play because both equality and limited government are widely held and deeply entrenched political values. We are drawn to them *both* because we hold fast to them both in our collective mind. When our commitment to these principles creates conflict in the course of policy debates, as is often the case when these principles are translated into civil rights policy, we find it especially challenging to proceed. Our tough decisions in these moments are not merely about the existence of a commitment to each principle, or even about the *extent* of our commitment to each principle, but about our relative commitment to each principle. In the final analysis, the *dialectic* between liberalism and egalitarianism in the United States helps to explain the fits and starts evident in some civil rights domains historically.

This chapter focuses on how the invocations of these two widely held political values generates progress on civil rights at times and retrenchment at other times. Subsequent chapters will present the empirical evidence for these conflicts, as well as the evidence for these consequences in civil rights policies and policy outcomes. My theory is that the dialectic between two commitments that comprise the overarching American political culture, liberalism and egalitarianism, yields a dynamic relationship between public opinion and policy and policy outcomes as they pertain to civil rights. Over time, civil rights policies and policy outcomes will vary in their responsiveness to changes in either value, sometimes reflecting the state of affairs favored by one value and sometimes defying the implications of that value. The next three chapters test this theory using quantitative data related two to issue areas: school desegregation and voting rights.

CHAPTER THREE
THE EVOLUTION OF *BROWN V. BOARD OF EDUCATION* AND THE VOTING RIGHTS ACT

To what extent have the policy developments since *Brown v. Board of Education* (1954) and the Voting Rights Act (1965) represented what Americans want from the federal government? Has there been consistent policy-opinion congruence, as expected from democratic theory, or have there been moments of mismatch, as predicted by the dynamic counteraction hypothesis? The answer, it turns out, depends on which policy domain we examine.

In this chapter I trace the development of federal school desegregation and voting rights policies and investigate whether public demand for government, or liberalism, has affected policy changes in these two civil rights domains. The goal is to ascertain the extent to which the theory of dynamic counteraction in the context of school desegregation and voting rights policy change.

The focal points here are *Brown v. Board of Education* and the Voting Rights Act, the two political institutions that gave rise to contemporary ongoing debates about school desegregation and minority voting rights. The VRA is an appropriate comparison case with *Brown* for several reasons. Like *Brown,* the VRA emerged amidst fierce popular opposition. When it was introduced, most Americans favored the racially discriminatory laws on the books in states and municipalities (Thernstrom 2009, 26). Indeed, long after the VRA was passed, the American public continued to favor disfranchising laws and practices where they existed (Schuman et al. 1997), and many political elites actively mobilized against the law (see, e.g., Carmines and Stimson 1989). The "massive resistance" campaigns undertaken during the 1960s and 1970s and largely associated with *Brown v. Board of Education* also targeted the Voting Rights Act (see, e.g., McCrary and Lawson 2000).

In addition, *Brown* and the Voting Rights Act are both inextricably linked with the subject of race. By comparing these two issue domains, I am able to control to a large extent for

the possibility that the link to race explains the particular outcomes in either domain. The alternative to comparing the evolution of school desegregation and voting rights would be to compare the evolution of two issue domains that implicated vastly different sociopolitical cleavages, like school desegregation (race) and abortion (gender). In that case, however, the temptation to assume a priori that the different histories reflect the blunt differences between "racial" issues and "gender" issues would be far too great. More to the point of this dissertation, it would be difficult to pinpoint the role of public opinion in two domains with such blunt typological distinctions. By comparing two issue domains implicating race, the analyses in this dissertation are in a far better position to identify and appreciate the many subtle contrasts between these two most similar cases.

Indeed, notwithstanding the similarities between desegregation and voting rights, the two the issues differ in an important respect. The VRA has been renewed and expanded by Congress on four different occasions since the passage of the original law, in 1970, 1975, 1982, and 2007, with progressively longer expiration periods. Moreover, voting rights jurisprudence does not appear to have changed to the extent that desegregation case law has. In short, at the policy level, voting rights represent a case of institutional persistence, where school desegregation represents a case of retrenchment. The different evolutionary trajectories of the VRA and *Brown* could be indicative of distinct responses to changes in public opinion over time.

3.2 The Evolution of Federal School Desegregation Policy

The Supreme Court has been by far the most active federal actor on school desegregation. Since *Brown v. Board of Education*, the Court has waded into the issue of school desegregation over a dozen times (Figure 3.1). Undoubtedly, in fact, the Supreme Court has had many more occasions to contemplate and shape school desegregation policy than this figure suggests. The Court can combine school desegregation cases arising out of different appeals circuits that it believes raise the similar enough constitutional questions. In addition, the Supreme Court denies

the vast majority of writs of certiorari it receives for a hearing on school desegregation questions in any given year. In other words, the number of unique decisions the Court issues on school desegregation since *Brown* likely pales in comparison to the number of opportunities it has had to wrestle with the issue of school desegregation.

Figure 3.1 Major Supreme Court Decisions about School Desegregation, 1954 - 2007
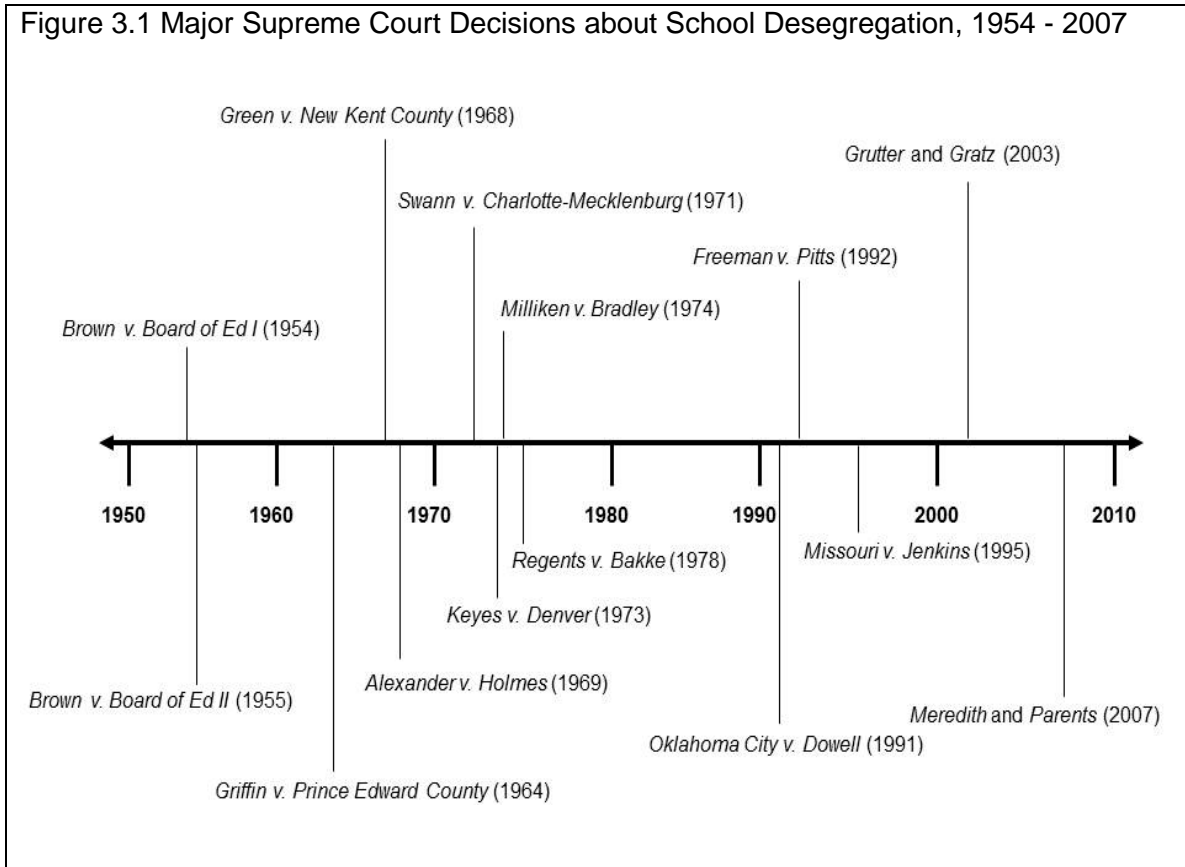
The Supreme Court's approach to school desegregation has evolved over three distinct phases since *Brown*. The first milestone of desegregation jurisprudence arose in 1964, when the Court established the urgency of the *Brown* mandate; the second arose between 1968 and 1969, when the Supreme Court reframed *Brown* as affirmative duty to integrate rather than an injunction against legal segregation; and the third arose between 1971 and 1973, when the Court sanctioned certain new mechanisms for achieving racial integration. In the two groundbreaking decisions *Brown v. Board of Education I* (1954) and *Brown v. Board of Education II* (1955), the

Supreme Court repudiated the doctrine of "separate but equal" that it had etched into the legal canon 58 years earlier in *Plessy v. Ferguson* (1896). In its 1954 decision, the Court pronounced unanimously that "in the field of public education, the doctrine of 'separate but equal' has no place." This was a manifest departure from the practice of allowing racial separation if states made equal provisions for the separate groups. *Brown* established that schools could not be equal if black and white students were separated, no matter what states did to accord the two groups some semblance of equality. The Court followed by ordering public school districts to desegregate "with all deliberate speed" in its 1955 *Brown* decision.

In 1959, the school board of Prince Edward County in Virginia was ordered to integrate its schools. In response, the district chose not to appropriate any money for the operation of the school system, effectively closing all of its schools for five years. For white children in Prince Edward County, the closure was not a tremendous problem: a private foundation was created almost immediately to operate private schools for them within the county, and because of a recent Virginia statute, white students attending these nonsectarian schools were eligible for vouchers to pay their tuition. For black students, the closure also meant an immediate return to all-black schools. The only difference for them was that their new schools were no longer under the auspices of the county government. Recognizing that Prince Edward's decision to shut its schools was intended "to ensure…that white and colored children…would not…go to the same schools," a district court ordered the school district to reopen immediately and enjoined it from paying tuition to the private foundation for white students. The Supreme Court not only upheld the ruling of the lower court in *Griffin v. County School Board of Prince Edward County*, but also established that "[t]he time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia."[19]

---

[19] *Griffin v. County School Board* 377 US 218 (1964).

The tenor of the decision in *Griffin* was thus to shift the burden from the standpoint of time for converting to unitary school systems. The new modus operandi was to require districts to operate in unitary form *immediately*. *Griffin* thus marked a new milestone in the Supreme Court's effort to desegregate schools. While the phrase "all deliberate speed" in the majority opinion from *Brown* had left room for delay on school desegregation, *Griffin* made clear that schools districts had an obligation to desegregate the moment they were ordered to do so. Although school districts were still entitled to hearings on proposed changes to their operating plans, suggested modifications to desegregation plans could not be used to delay implementation and no delay in a district's conversion from segregated to unitary could ensue because of the need for a plan modification or hearing.

The second milestone in the Supreme Court's liberal desegregation offensive occurred in the cases *Green v. New Kent County* (1968) and *Alexander v. Holmes* (1969).[20] In these two cases, the Supreme Court considered whether "freedom of choice" desegregation plans, which allowed but did not require students of different races to enroll in the same schools, satisfied the *Brown* mandate. Lower courts had initially sanctioned such voluntary integration plans, suggesting in some cases that these plans were permissible if they were the most politically feasible. For example, in *Springfield v. Barksdale,* the First Circuit Court of Appeals observed that "as we read it, through all of its opinion prior to the order the [District Court of Massachusetts] appears to hold that the plaintiffs have a constitutional right to the abolition of racial imbalance to preserve their equal educational rights, *but its order is restricted to reduction only so far as feasible within the framework of effective educational procedures*" (emphasis added).[21] The implication of the last clause in the quote above is that courts should not force school districts to desegregate if doing so is unlikely to yield racial integration. Many judges took

---

[20] *Green v. County School Board of New Kent County*, 391 US 430 (1968)*; Alexander v. Holmes,* 396 US 19 (1969)
[21] *Springfield v. Barksdale*, 348 F. 2d 261 (1965)

the resistance to compulsory desegregation plans as proof that black and white students preferred segregated schools and were unwilling to impose more stringent desegregation plans if black and white students did not want to attend integrated schools (see Taylor 1978).

However, the Supreme Court rejected arguments against compulsory desegregation predicated upon feasibility concerns in *Alexander v. Holmes.* For the Court, the practical difficulties associated with desegregation were not a legitimate pretext for maintaining racially segregated school districts. Showing its commitment to immediate and affirmative action, the Supreme Court clarified in *Green* that school districts would remain under court supervision unless and until they furnished evidence of integration in six different areas of operation: (1) student assignment; (2) faculty assignment; (3) staff assignment; (4) transportation; (5) extracurricular activities; and (6) facilities. Most school districts had read *Brown* as an *injunction against* certain practices, but the implication of both *Green* was that school districts bore an *affirmative duty to achieve* certain goals with respect to racial equality before they could be released from court supervision (Ogletree 2004, 59; Rossell 1995, 613 - 615). *Green* thus represented, in the words of William Rehnquist, "a marked extension of the principles of *Brown v. Board of Education.*"[22] The six criteria known as the "Green factors" became the basis for releasing districts from prior court orders to desegregate (or declaring them unitary") for the next 25 years.

Three years after deciding *Green,* the Supreme Court strengthened its "affirmative action" posture with its 1971 *Swann v. Charlotte-Mecklenburg* decision. Where *Green* had required schools districts to take *affirmative* steps toward racial integration, *Swann* showed that the Court was amenable to extraordinary measures to achieve racial integration immediately. *Swann* authorized the use of busing to eliminate racial segregation in districts. Busing was a substantial imposition upon school districts and local governments; it not only required the

---

[22] *Keyes v. Denver*, 413 U.S. 189 (1973)

expenditure of potentially vast amounts of money on transportation, but also challenged the bedrock principle of "local control" that had governed public education to that point nationwide. The Court was now telling districts that in addition to being required to integrate, they might be required to adopt specific administrative approaches in order to achieve racial balance.

The Supreme Court took its final step in an ideologically progressive direction on school desegregation in a 1973 case involving a school district in Denver, Colorado. The case, *Keyes v. Denver*, marked the first time the Court officially addressed the applicability of *Brown* in the North, where racial segregation was often a function of entrenched social custom rather than law. Unlike the school districts sued in *Brown*, Denver had never enacted a law explicitly designed to separate students of different races. To legal analysts like William Rehnquist, who dissented in *Keyes,* the fact that there was no law requiring racial segregation in northern cities placed them out of the reach of *Brown.* But the majority in *Keyes* suggested that racial segregation did not need to be codified in law to warrant court intervention. Although Denver had never passed a racial segregation statute, the majority reasoned that the city had effectively segregated students by race by gerrymandering its school attendance zones to mirror patterns of residential segregation. The Court held that even without a law signaling intentionality, engaging in practices that had the *effect* of segregating students by race was unconstitutional (Taylor 1978). *Keyes* also established that racial segregation in *part of* a school district could warrant a system-wide desegregation remedy. Even though only part of Denver was shown to have engaged in a pattern and practice of racial segregation, the entire school district was forced to operate under court supervision. This facet of the *Keyes* decision allowed integration advocates to pursue even more aggressive and comprehensive integration plans than they had in the past, including busing students between school districts (Bell 1980).

Together, the decisions handed down by the Warren and Burger courts in *Griffin* (1964)*, Green* (1968)*, Alexander* (1969), *Swann* (1971)*,* and *Keyes* (1973) heralded a shift from a

supportive, but relatively passive judicial role in school desegregation to a supportive and active one (see Orfield and Eaton 1997; Rossell 1995, 613-615; Taylor 1978). Yet *Keyes* was also the beginning of the end of the liberal judicial approach to school desegregation. The case was decided a year before William Rehnquist was appointed as an Associate Justice. Rehnquist was an avowed archconservative with evident skepticism of *Brown.* While a law clerk for Supreme Court justice Robert Jackson in 1952, Rehnquist had written a prescient memo in which he opined that "*Plessy v. Ferguson* was right and should be reaffirmed" (quoted in Orfield 1996, 10).[23] Rehnquist was the only justice who dissented completely from the majority in *Keyes*. Over the remainder of Rehnquist's 33-year tenure, the Court seemed to switch from an ideologically liberal to an ideologically conservative body. Figure 3.2 plots Martin-Quinn scores, which indicate the placement of the median Supreme Court justice along a liberal-conservative ideological continuum, over time (Martin and Quinn 2002). These scores can range from negative to positive. Higher values of these scores signify that the median justice on the Court in a given year, and thus the Supreme Court as a whole, is more liberal. The evidence points to ebbs and flows in Supreme Court liberalism. The highest scores appear during the 1960s when the Court issued its most liberal decisions and the lowest scores appear during the 1980s when Rehnquist was appointed Chief Justice and the federal government at large was thought to have been more conservative.

---

[23] The memo was broached during the confirmation hearings for Rehnquist's appointment as an Associate Justice, and then again during hearings to appoint Rehnquist Chief Justice of the Supreme Court, but neither discussion derailed Rehnquist's candidacy. Rehnquist claimed in both cases that he was merely channeling the views of Justice Jackson, rather that communicating his own views.

Figure 3.2 Ideological Median Supreme Court Justice, 1954 – 2009
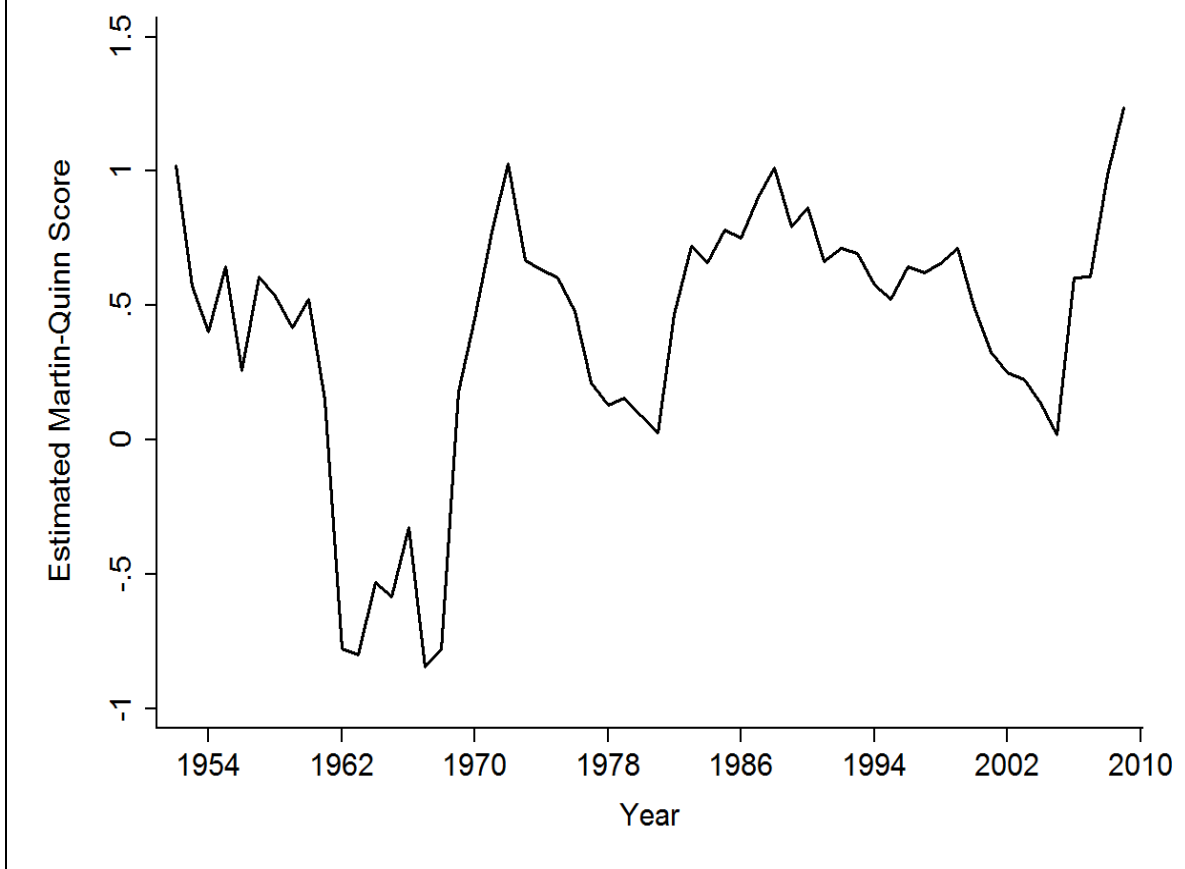
By some accounts, the sound path to racial integration laid by the comparatively liberal courts of Chief Justices Earl Warren and Warren Burger was derailed by the advent of more conservative judges under Rehnquist (e.g. Ryan 2009; Taylor 1978). Much of the desegregation jurisprudence that emerged during Rehnquist's tenure overtly challenged the letter or covertly challenged the spirit of school desegregation case law established under the Warren and Burger courts (see Table 3.1). In *Milliken v. Bradley* (1974), a case involving several school districts in metropolitan Detroit, the Court considered whether a school desegregation plan that involved multiple school districts could be used to remedy de facto racial segregation in one of them. The Court ruled that inter-district desegregation mechanisms could only be used to remedy *de jure*

segregation. This holding represented a twofold departure from *Keyes*. In *Keyes*, the Court had seemed to suggest that a desegregation plan could extend beyond the boundaries of the educational entity directly responsible for the racial inequity (Taylor 1978). Both sides of the *Keyes* dispute agreed that the *whole* district was not segregated, but the court determined that partial segregation represented a "prima facie case of unlawful [systematic] segregative design." Civil rights advocates interpreted *Keyes* as an indication that school districts could construct "metropolitan" desegregation plans that encompassed multiple school districts if necessary to integrate a single school district. In *Milliken,* proponents of an interdistrict desegregation plan asserted that the only way to integrate public schools in predominantly-black Detroit, was to enable black students to attend schools in the surrounding majority-white suburbs, many of which had only been established in order to avoid racial integration. The federal district court in Michigan agreed, and adopted a metropolitan desegregation plan that allowed black students to be transported to contiguous school districts outside of Detroit. However, the Supreme Court held that courts could only impose remedies that encompassed multiple districts if all of the districts implicated were shown to have purposefully maintained segregation. The fact that a metropolitan desegregation plan might be the only way to integrate students did not justify an interdistrict remedy.

Table 3.1. Changes in School Desegregation Policy in the Supreme Court		
Policy	**Case(s) Establishing**	**Case(s) Challenging**
Desegregation in *de facto* contexts	*Keyes* (1973)	*Milliken* (1974)
Inter-district busing	*Griffin* (1964); *Swann* (1971);	*Milliken* (1974)
Using race as *primary* criterion for K-12 enrollment	*Brown v. Board II* (1955)	*Parents* (2007)

Milliken also staked out a more conservative stance on the level of judicial review that would govern school desegregation cases. The Court determined that all instances of racial classification in education, whether discriminatory or remedial, must be subjected to its most exacting standard of juridical proof—strict scrutiny. Under this standard, school districts or courts that had adopted desegregation plans had to demonstrate that those plans derived from a compelling governmental interest and were narrowly tailored to meet that governmental interest (Spann 2000). A key feature of the doctrine of strict scrutiny is the presumption of unconstitutionality; governments bear the burden of convincing the court that the law in question is constitutional and the law is declared unconstitutional if the government fails to satisfy the two prongs of the strict scrutiny test. An empirical study has shown that laws subjected to strict scrutiny have a statistically higher probability of being declared unconstitutional (Winkler 2004). Thus, the application of strict scrutiny to school desegregation jurisprudence meant that desegregation plans were less likely to pass constitutional muster.

Three decisions the Supreme Court issued during the 1990s are also often cited as evidence of the erosion and abandonment of the *Brown* mandate by a conservative Rehnquist court: *Oklahoma City v. Dowell* (1991), *Freeman v. Pitts* (1992)*, and *Missouri v. Jenkins* (1995). In *Oklahoma City v. Dowell* (1991), the Supreme Court suggested that school districts could be released from their decrees if they could show that they made a good faith effort to remedy past discrimination, even if they had not actually *remedied* the past discrimination. In *Freeman v. Pitts* (1992), the Court encouraged lower courts to end desegregation orders piecemeal; a district could be declared "unitary" even if it had not satisfied every stipulation of its original court order. And finally, in *Missouri v. Jenkins* (1995), the Court ruled that a school district under court order to desegregate need only ensure equal opportunity, not equal or proportional results, to be in compliance with a court order to desegregate. Thus, by 1995, districts could be released from their prior court orders piecemeal, even if they had not satisfied all tenets of those orders

(*Oklahoma City v. Dowell* 1991); they could be declared "unitary" if they showed a sustained, "good faith effort" to desegregate, even if they had not achieved much success (*Freeman v. Pitts* 1992); and they could be released from court supervision if the legal obstacles to equal opportunity had been eliminated, even if segregation persisted de facto because of white flight or other conditions (*Missouri v. Jenkins* 1995). These decisions meant for critics that the federal district courts were authorized to release school districts from the only bulwark against retrenchment, their prior orders to desegregate, before many had shown sufficient progress toward integration. Premature declarations of unitary status cleared a path for "resegregation" of white and non-white students by shifting the evidentiary burden away from school districts in future desegregation suits, discounting certain persistent manifestations of racial segregation in some of the areas defined by the *Green* case, and encouraging unitary districts to abandon the tenuous progress they had made on in other aspects of their operation. Successors to the Burger Court are thought to have undermined established precedent on school desegregation by limiting the mechanisms available for desegregation and establishing mechanisms for school districts to be released from existing orders to desegregate without having fulfilled the mandate of *Brown* (Gotham 2002; Guthrie and Springer 2004; Moore 2002; Ogletree 2004; Orfield and Eaton 1997; Ryan 2009).[24] In sum, as Ryan put it, "a fairly conservative Court…did as much, if not more, to limit integration as it did to promote it" (2009, 74).

What is left of *Brown v. Board of education?* Table 3.1 above is an attempt to catalogue the changes in school desegregation jurisprudence since *Brown.* It reveals several significant policy shifts in this area. In particular, the Supreme Court has become far more conservative in its conception of the appropriateness of establishing quantifiable racial goals when developing school admissions policies. For more than a decade after *Brown,* school districts under court order

---

[24] Yoshino's (2011) discussion of "pluralism anxiety" suggests that the jurisprudential shift on desegregation may have been part of a broader change in the Court's application of the Fifth Amendment's Due Process Clause and Fourteenth Amendment's Equal Protection Clause, rather than an attack on school desegregation specifically.

to integrate were expected not only to take their racial compositions into account when developing various administrative policies, from school construction to zoning, but to establish or assume certain racial compositions as baseline goals in order to be eligible for release from their court orders. But as it became more skeptical of the use of racial quotas (*Bakke v. Regents* 1978), and later racial percentages (*Gratz v. Bollinger* 2003), in college admissions, the Court has also questioned the government's consideration of race in setting elementary and secondary school enrollment policies (*Meredith v. Jefferson* 2007). Emblematic of this paradigm shift in the Supreme Court's thinking about the propriety of racial considerations in school desegregation is Chief Justice John Robert's assertion in the companion cases *Parents Involved v. Seattle* and *Meredith v. Jefferson* that "the way to stop discrimination by race is to stop discrimination by race." The recommendation to dissever race from school desegregation in modern school desegregation case law would very likely puzzle the architects of *Brown*.

3.3 The Evolution of Federal Voting Rights Policy

As in the case of school desegregation, the Supreme Court has been a key player in shaping federal policy making around the right vote. Long before Congress passed the VRA, the Court invalidated voter disfranchisement practices like the grandfather clause (*Guinn v. United States* 1915), the all-white primary (*Smith v. Wainwright* 1944), and racial gerrymandering deemed intentionally discriminatory (*Gomillion v. Lightfoot* 1960). When the Voting Rights Act was adopted, the Supreme Court not only upheld its major provisions (*South Carolina v. Katzenbach* 1966), but continuously thwarted attempts by state and local elites to circumvent the law.

Less than six months after President Johnson signed the 1965 Voting Rights Act, the Supreme Court heard a challenge to the law's constitutionality out of South Carolina. In *South Carolina v. Katzenbach* (1966), the Court upheld the Act on the grounds that "Congress has full remedial powers to effectuate the constitutional prohibition against racial discrimination in

voting." The Court rejected the contention that Congress had encroached upon the authority of the states under the Tenth Amendment by imposing a broad prohibition on certain election practices, noting that while Congress had "exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965," that exercise had "ample precedent under other constitutional provisions" and was warranted by "nearly a century of systematic resistance to the Fifteenth Amendment" by states like South Carolina.

Just as after *Brown,* states responded to the Court's latest endorsement of a major federal civil rights policy by adopting surreptitious mechanisms for weakening its effects at the state and local level. These mechanisms were designed to dilute the significance of any votes cast by African Americans without depriving African Americans of the right to vote outright. In the 1969 case *Allen v. State Board of Elections,* which consolidated five cases challenging election laws enacted in Mississippi in 1966, the Court signaled that attempts to dilute the voting strength of the black electorate also would not pass constitutional muster. Quoting an earlier case applying the one-man, one-vote principle to state legislative districting, the Court declared that "[t]he right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot."[25] In his study of black voting in Mississippi, Parker called *Allen* "the *Brown v. Board of Education* of voting rights, critical to continuing black political progress throughout the South" (1990, 99).

The Burger Court continued the Warren Court's pro-voting rights posture during the 1960s. In three major redistricting cases, the Court suggested that the right to vote was so fundamental as to supersede the prerogatives of states or political parties. In *Baker v. Carr* (1962), the Court ruled for the first time that legislative redistricting was a "justiciable" issue whose constitutionality could be decided by courts and whose flaws could be remedied by the courts (McCrary and Lawson 2000). *Baker* charted a bold new course in the area of legislative

---

[25] *Reynolds v. Sims,* 377 US 533 (1964).

redistricting, injecting the Supreme Court into a thicket of political party gamesmanship by consigning to the Court an authority it had explicitly declaimed in the past (*Colegrove v. Green* 1946).[26]

Two years later, the Court decided the first major case concerning congressional redistricting. In *Wesberry v. Sanders,* a Georgia gubernatorial candidate filed suit with the hope of maintaining an elaborate system of congressional districts that assigned grossly unequal weights to voters in different districts by making the districts unequal in population size. The same year as *Wesberry* was decided, the Court invoked its new authority to evaluate the constitutionality of state legislative redistricting in *Reynolds v. Sims*, ultimately extending the one-person one-vote principle to that context as well. The unprecedented decisions in *Baker, Wesberry*, and *Reynolds* turned on an apparent consensus among justices that suffrage was a right of superlative importance. As the Court later wrote in *Wesberry v. Sanders*: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

The redistricting cases fit neatly into a regime of civil rights protectionism under the courts of chief justices Warren Burger and Earl Warren. Just as in the case of case of school desegregation, however, the advent of more ideologically conservative members would eventually transform the Court's general approach to voting rights enforcement from proactive to reactionary, from favoring putative victims of racial discrimination to one favoring alleged perpetrators of discrimination. In *Mobile v. Bolden* (1980), the Court seemed to take a significant step back from the affirmative approach to voter equality embodied in the *Baker, Wesberry,* and *Reynolds* cases. Led by Chief Justice Rehnquist, the Supreme Court decided in *Mobile* that persons who challenged the constitutionality of voting-related laws and practices had to prove

---

[26] *Colegrove v. Green,* 328 US 549 (1946)

that such laws not only had the *effect* of discriminating by race, but were *intended* to discriminate by race. Until that point, the assumption was that a voting law with a racially discriminatory impact was invalid ipso facto. Indeed, only nine years before *Mobile,* the Fourth Circuit Court of Appeals had suggested in a school desegregation case, *Turner v. Littleton-Lake Gaston School District* (1971), that intent and effect were functionally the same thing for legislative acts: "Legislatures are assumed to intend the natural and reasonable effect of the legislation they enact."[27] In fact, as this quote suggests, *Turner* merely reiterated a sentiment the Court had expressed in cases dating to the nineteenth century. In other words, the effect standard civil rights proponents had presumed to apply prior to *Mobile* was entrenched in constitutional law. At any rate, by imposing the new *intentionality* standard upon voting rights litigants, the court raised the burden of proof for putative victims of civil rights violations substantially. As several scholars have documented, the intentionality standard helped to suppress challenges to election law changes that clearly disadvantaged voters of color, and would likely have been invalidated if adopted before *Mobile*.

With its new approach, the Court also implied a willingness to tolerate what might be regarded as barriers to equal enfranchisement of the races. For example, in *Presley v. Etowah* (1992), a black man elected to a seat on the Etowah County, Alabama commission brought suit after four white incumbents essentially reduced his position to the equivalent of head janitor at the county courthouse. The Court held that the Voting Rights Act did not extend to racially discriminatory changes in the duties of an elected office. Some analysts suggest that in doing so, the Court severed the VRA's mandate of equal access to elected offices from its putative goal of access to *equal* elected offices. As Stone puts it: "The central purpose of the Voting Rights Act was to end various devices that either excluded blacks from voting and registration in the South, or rendered their votes ineffective. The device used by whites in Etowah County—redefining the

---

[27] *Turner v. Littleton-Lake Gaston School District*, 442 F.2d 584 (1971)

duties of office once a black man got elected—certainly renders black votes ineffective" (Stone 2002, 362). Similarly, in *Crawford v. Marion* (2007), the Supreme Court upheld state voter identification laws, even though the parties opposed to such laws furnished evidence that identification requirements depress political participation among students, the elderly, and persons of color, and even though proponents could not substantiate their claim that requiring photo identification on election days was necessary to prevent in-person voter fraud.

The Supreme Court has grown particularly dubious of Section 5 of the VRA.[28] In *Bossier I* (1997), the Court held that the Department of Justice could not refuse to approve a redistricting plan (under Section 5) simply because the proposed plan violated Section 2 of the VRA. In *Georgia v. Ashcroft* (2003), the Supreme Court seemed to sanction the "cracking" of majority-minority districts, which Congress had sought to prevent specifically with its 1982 reauthorization of the VRA (Laney 2008, 22). In a more direct challenge to Section 2, the Court held in *Bartlett v. Strickland* (2009) that Section 2 does not require state legislatures to create majority-minority districts *per se*; instead, districts with a substantial proportion of African Americans might be sufficient to satisfy the law. These decisions indicate that while the Supreme Court's esteem for the right to vote regardless of race may have persisted over time, its approach to protecting that right has vacillated significantly.

The developments in voting rights jurisprudence described above might lead one to conclude that the courts have subverted the Voting Rights Act. But as Table 3.2 reveals, such a conclusion would be misguided. To be clear, the Supreme Court has not yet explicitly overturned *any* of the components of the VRA. *Mobile v. Bolden* is not a clear case of policy retrenchment, since Congress had not previously set a standard by which it expected the courts to assess voter discrimination. Similarly, *Bartlett* was not an outright repudiation of the practice of "packing" insofar as majority-minority districts did not represent an established policy (which is unclear).

---

[28] See *Mobile v. Bolden* (1980), *Presley v. Etowah* (1992), *Reno v. Bossier Parish School Board I* (1997), *Georgia v. Ashcroft* (2003) and *Crawford v. Marion* (2007).

Table 3.2. Current Status of Key Components of the Voting Rights Act

Policy	Source	Status
Racial discrimination in voting prohibited	Voting Rights Act (1965)	Valid
Pre-clearance of new election laws (select jurisdictions)	Voting Rights Act (1965)	Valid
Literacy tests prohibited	Voting Rights Act (1965)	Valid
Grandfather clauses prohibited	Voting Rights Act (1965)	Valid
Poll tax prohibited	Harper v. Virginia (1966); 24th Amendment (1964)	Valid
Election assistance for language minorities	Voting Rights Act (1975)	Valid
Prove discriminatory effect	*Allen v. State Board of Elections* (1969)	Valid: Repealed by *Mobile* (1980); reinstated by Voting Rights Act (1982)
Majority-minority districts acceptable	Voting Rights Act (1982)	Valid, though majority-minority districts not required
Private right of action	*Allen v. State Board of Elections* (1969)	Valid

Source: Laney (2008)

Another, and perhaps more important, reason it would be misguided to conclude that the Voting Rights Act has been attenuated by the Supreme Court is that the Court has not been the only major player on federal voting rights policy. Though the Supreme Court has exercised nearly hegemonic control over school desegregation policy, it has had to share authority, and even to cede authority, to Congress on federal voting rights policy. The importance of the Court's diminished share of policymaking power in the area of voting rights cannot be understated. While the Supreme Court has become more suspicious of certain tenets of the Voting Rights Act over

time, Congress has remained a steadfast defender of the voting protections enshrined in the law. As we shall see later, Congress' ardent and repeated defense has been something of a saving grace for the Voting Rights Act.

Table 3.3 briefly adumbrates the legislative history of the Voting Rights Act. The 1965 Voting Rights Act was as comprehensive as it was controversial. Its four major provisions imposed unprecedented prohibitions on the policy making authority of the states in the area of elections, fashioned new authorities for the executive and federal branches of the federal government out of whole cloth, and included several mechanisms to ensure the federal governments' adaptability to future political conditions in the states not explicitly anticipated by the Act.

Table 3.3 Legislative History of the Voting Rights Act				
Version	Vote in Congress	President (Party)	Major New Tenets	Expiration
1965	77 – 19 (Senate) 333 – 165 (House)	Johnson (D)	• Certain election practices outlawed • Federal examiners authorized • Preclearance requirement for AL, GA, LA, MS, SC, VA • DOJ can enforce by lawsuit	5 Years
1970	64 - 12 (Senate) 242 - 132 (House)	Nixon (R)	• Preclearance requirement extended to parts of AK, AZ, CA, CT, ID, MA, NH, NY, WY	5 Years
1975	77 – 12 (Senate) 341 – 70 (House)	Ford (R)	• Literacy tests banned • Assistance for language minorities • Preclearance requirement extended to all of AK, AZ, TX and parts of CA, CO, FL, HI, KS, ME, MI, MN, MT, NE, MV, NM, NC, ND, OK, OR, SD, UT, WA, WI	7 Years
1982	85 – 8 (Senate) 389 – 24 (House)	Reagan (R)	• Covered areas can "bail-out" sooner and more easily • Discriminatory effect standard restored	25 Years
2006	98 – 0 (Senate) 390 – 33 (House)	Bush (R)	• Goal: blacks elected candidates of choice	25 Years
For more on the legislative history of the Voting Rights Act, see the 1975 report by the United States commission on Civil Rights 1975 and the 2008 Report by the Congressional Research Service. I do not count the 1992 Voting Rights Language Assistance Act as a reauthorization of the Voting Rights Act because it focused on a small part of the original law.				

The heart of the original law was Section 2, which for the first time outlawed any "voting qualification or prerequisite to voting, or standard, practice, or procedure" that "den[ied] or abridge[d] the right of any citizen of the United States to vote on account of race or color." The Court had already invalidated certain practices states had used to discriminate against racial

minorities and diminish their voting capacity. Section 2 not only cemented these prohibitions, but essentially preempted states from implementing new practices with the same goals or effects as the old ones. Among the other provisions: Section 4(a) suspended the use of any "devices" as a condition of registration or voting in any area affected by Section 4(b) of the law, which required political areas known to have engaged in certain discriminatory election practices or to have experienced certain racial disparities in election outcomes as of November 1, 1964 to submit to federal supervision of their electoral policymaking. The nature of that supervision was defined in Section 5, the "preclearance" provision. Section 5 required "covered jurisdictions" to seek approval from the Department of Justice or the federal district court based in Washington, DC *prior to* enacting any proposed change to their existing election laws. The Department of Justice and the District Court for Washington would be able to veto any election law changes they believed to be in violation of the Voting Rights Act or incongruous with its goals. Section 8 authorized the appointment of federal employees to observe elections anywhere in the country and document any violations of voting rights. Section 12(d) authorized the Department of Justice to file lawsuits against any political jurisdiction it thought was guilty of racial discrimination to compel compliance with the Fifteenth Amendment.

As is well documented, the 1965 Voting Right Act was the result of years of bipartisan bargaining and coercion. Among the Dixiecrats in Congress, there had been increasing grumbles about defecting to the Republican Party since the passage of the civil rights acts. Some, like Senator Strom Thurmond, were less committed to reforming the party from within than to attacking it from without, and did their best to delay or compromise the passage and implementation of the law. President Johnson assuaged some of these concerns, and outright negated others using his famous brand of political persuasion. Still, when it finally passed by a vote of 77 to 19 in the Senate and 333 to 83 in the House, the Voting Rights Act had indeed splintered the Democratic Party as presidents Kennedy and Johnson had always feared. Sixty-two

of the 287 Democrats in the House voted against the bill. Yet those who remained remade the Democratic Party as one more strongly committed to the civil rights and social agenda that promoted by Kennedy and Johnson during their presidencies. Notwithstanding the recalcitrance of some Democrats and Republicans since, Congress has renewed the law four times since 1965. On two of those occasions, Congress also expanded the scope of the law.

With the 1970 renewal (P.L. 91 - 285), Congress ensured that the key tenets of the Act would remain operational for at least another five years. In addition, the 1970 reauthorization revised the coverage formula that determined which political areas of the United States were subject to preclearance of their election laws to include. The revision brought portions of Arizona, California, Connecticut, Idaho, Massachusetts, New Hampshire, New York and Wyoming under federal supervision. The newly covered counties were ones in which evidence suggested that other racial minorities, especially Mexicans and Puerto Ricans, were experiencing racial discrimination at the polls. The law also guaranteed the right to vote in any election to any citizen who had resided in a political jurisdiction for more than thirty days, effectively counteracting prior attempts by state and local governments to require voters to register long before an election, effectively disfranchising people who migrated to new areas. In the end, the 1970 reauthorization earned the support of 31 Democrats and 33 Republicans in the Senate, along with 172 Democrats and 100 Republicans in the House. Seven Democrats and five Republicans abstained in the Senate, while 11 Democrats and 6 Republicans did in the House. This seemingly close partisan split had little to do with opposition to the original provisions of the Voting Rights Act. The 1970 reauthorization roused controversy within and beyond Congress, in part because it included a provision lowering voting age eligibility from 21 to 18. When Nixon signed the law, he issued a statement asserting that, although he supported lowering the voting age in principle, a constitutional amendment was required to do so. He was right: the Supreme Court held later in the same year that Congress could not impose a lower voting age on states without a

constitutional amendment.[29]

The 1975 reauthorization (P.L. 94–73) not only extended the shelf life of existing provisions of the Act for seven more years, a longer sunset period than used in previous iterations. The impetus for the extension was the concern expressed by the Department of Justice that black voter registration rates were still well below those of whites (Laney 2008, 16). Like the 1970 version of the law, the 1975 law expanded the scope of the coverage formula to encompass additional jurisdictions where racial minorities other than African Americans were prevalent and had historically confronted discrimination at the polls. In particular, Alaska, Arizona, and Texas, where Latinos were a growing presence, were brought under Section 5 coverage, along with parts of California, Colorado, Connecticut, Florida, Hawaii, Idaho, Kansas, Louisiana, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming, where there was a history of electoral discrimination against Asian Americans, Native Americans, and Pacific Islanders. That reauthorization passed the Senate by a vote of 77 to 12 and passed the House by a vote of 341 to 70.

The major innovation in the 1982 (P.L. 97-205) reauthorization to the Voting Rights Act was a reconstituted Section 2. As amended in 1982, Section 2 prohibited any electoral practices that have the intent *or effect* of diminishing minority voting strength. With this revision, Congress effectively nullified a Supreme Court decision it deemed inconsonant with the spirit of the VRA. After the Supreme Court held that putative victims of voting rights violations had to prove discriminatory intent rather than merely discriminatory effect (*Mobile v. Bolden* 1980), Congress amended the Voting Rights Act in order to provide a basis for future legal claims based on the discriminatory effects of state and local election laws (Laney 2008, 24 – 25). The 1982 reauthorization passed with the support of 85 senators and 389 representatives.

---

[29] *Oregon v. Mitchell*, 400 U.S. 112 (1970)

The most recent iteration of the Voting Rights Act (P.L. 109-146) echoed previous iterations of the law. This reflected the simultaneous recognition mostly among Democratic congressmen that the law was still warranted in some capacity and the concerns among some others, mostly Republicans, that certain aspects of the law were outdated. Other than its lengthy honorific title, the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, the statute's one major innovation was to establish the election of candidates of black voters' choice as an explicit goal (Persily 2007). Notwithstanding major partisan disagreements that arose during congressional debates about the law, it passed the House with an overwhelming majority, 390 for to 33 against (all Republicans), and the Senate with unanimous support, 98 for to none against (two Republican senators abstained).

The legislative history of the Voting Rights Act can be summarized as one of persistence, expansion, and affirmation. Not only has Congress repeatedly endorsed the law's original provisions, it has revised those to be more aggressive and encompassing over time. Moreover, Congress has used the revisions to clarify and redress what were construed to be misinterpretations of the law by the federal courts. This pattern of persistence, expansion, and affirmation is not only the principal difference between the issues of school desegregation and voting rights, but as I argue in Chapter Six, has had collateral consequences on the role public opinion has played in voting rights policy outcomes, namely black voter registration, turnout, and office holding. Before I turn to the analysis of voting rights policy outcomes, however, I want to examine the relationship between public opinion and school desegregation and voting rights policy briefly.

3.4 The Impact of Liberal Mood

Clearly there have been substantial changes in both school desegregation and voting rights policy since *Brown v. Board of Education* and the Voting Rights Act, respectively. To what

extent have policy events in each domain reflected public demand for government? Quantifying the correlation of school desegregation and voting rights policy changes with public demand can be difficult, but we can gain some analytical purchase by visually representing a timeline of policy events in tandem with trends in a quantitative measure of demand for government. I define demand for government using *liberal mood*, a measure developed by Stimson (1991) using factor analysis of mass responses to a range of survey questions about policy preferences asked since the 1950s.

Figure 3.3 overlays key events in school desegregation policy since *Brown* onto the trend in the nation's *liberal* mood. From this we can see that most progressive action on school desegregation has generally occurred when demand for government action was relatively high. Conversely, most of the conservative action on school desegregation has coincided with relatively low demand for government action. The year before *Brown I* (1954) declared an end to the doctrine of "separate but equal," *liberal mood* registered at 54.021, which is about five units lower than the median level registered at any point between 1952 and 2011 (59.06), and therefore on the conservative end of the spectrum for this period. Likewise, the Supreme Court 's exhortation for school districts to desegregate with "all deliberate speed" *Brown II* (1955) followed a year in which *liberal mood* registered at 52.015, slightly lower than in the year before *Brown I* was decided. This is not to say that either *Brown* decision is conservative in an absolute sense; indeed, as I note elsewhere, both decisions represented a dramatic departure from the prevailing and incontrovertibly conservative doctrine of "separate but equal" articulated in *Plessy v. Ferguson* (1896). But while these decisions are progressive by comparison to *Plessy,* they are also *conservative* by comparison to decisions like *Griffin* and *Green,* which set more precise and onerous standards for the attainment of racial integration in schools.

Figure 3.3 *Liberal Mood* and the Evolution of Federal Desegregation Policy, 1954 - 2010

The horizontal line represents the median value of *liberal mood* between 1952 and 2011, the earliest and latest years for which values of the variable are available.
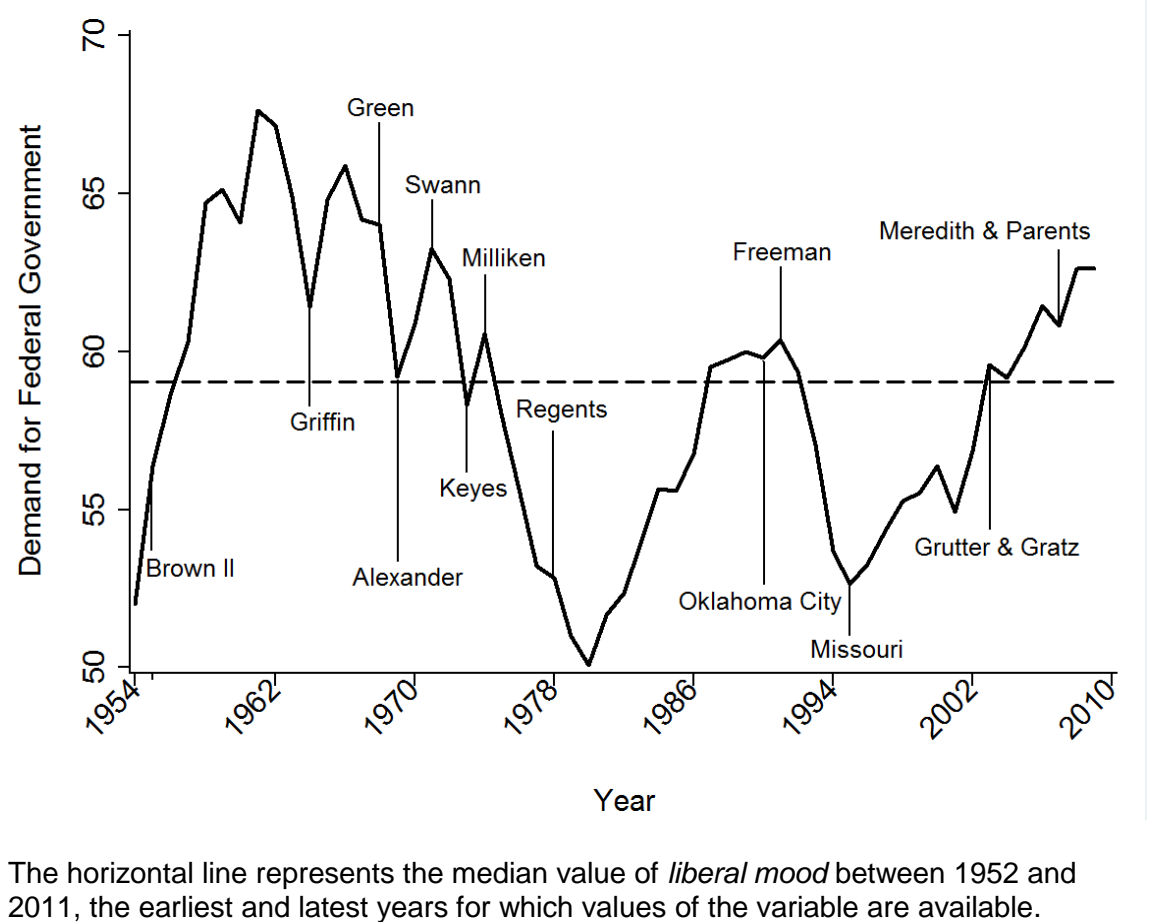
Five decisions of the Court that were relatively progressive, *Griffin v. County School Board* (1964*), Green v. New Kent County* (1968), *Alexander v. Holmes* (1969), *Swann v. Charlotte Mecklenburg* (1971), and *Keyes v. Denver* (1973), also seemed to follow years in which *liberal mood* was above the median. Liberal mood registered at 64.899 the year before *Griffin* declared that the "time for deliberate speed ha[d] run out;" at the year before *Green* introduced six criteria school districts under court order to desegregate needed to meet in order to be free from federal supervision; at 64.404 the year before *Alexander,* a case that essentially echoed the tone of *Griffin* and *Green* in its central holding, was decided; at 60.883 the year before the

Supreme Court sanctioned busing in *Swann v. Charlotte Mecklenburg* (1971); and at 62.321 the year before the *Keyes* established the segregation as an imminent mandate (1973).

By contrast, the values of *liberal mood* appear to be much lower in the year immediately prior to each of two ostensibly conservative Supreme Court opinions on school desegregation, *Milliken* v. *Bradley* (1974) and *Missouri v. Jenkins* (1995). Recall that *Milliken* is often regarded as a step backward from *Keyes* (1973), while *Milliken* is considered by many to be a step backward from *Green* (1968) and similarly progressive decisions from the 1960s and 1970s. Perhaps not surprisingly, then, *liberal mood* registered below its median the year before both of these decisions were issued. Before *Milliken,* in which the Supreme Court ruled that busing students between districts in a metropolitan area was unconstitutional, liberal mood stood at 58.31, only slightly lower than the median of 59.06, but still on the conservative end of the spectrum by comparison to the median. The year before *Missouri*, which established that school districts could be freed from a prior court order to desegregate merely by demonstrating a "good faith" attempt to integrate, *liberal mood* registered at 52.64, almost seven points below the median.

Taken together, the average value of *liberal mood* in the year immediately prior to each of the Supreme Court's progressive opinions is 63.259, while the average value of *liberal mood* in the year before each of the Supreme Court's conservative opinions is 58.315.[30] The difference, about five points, is sizable and implies, in a very rough way, that the Supreme Court has tended to issue more progressive school desegregation decisions following a year in which demand for government was relatively high and to issue more conservative desegregation opinions following a year in which demand for government was relatively low. This conclusion comports with the conventional wisdom on democratic representation. It seems that the Supreme Court has responded to, or *represented*, higher public demands for government by issuing decisions that

---

[30] For the purposes of this comparison, I count *Griffin, Green, Alexander, Swann,* and *Denver* as "progressive" decisions, and *Milliken, Oklahoma City, Freeman,* and *Missouri* as "conservative" decisions.

sustained or expanded the original policy articulated in *Brown v. Board of Education,* which had been moderate. The Supreme Court has, likewise, responded to lower levels of demand for government by issuing opinions that were more conservative.

A different picture emerges when we compare trends in *liberal mood* and voting rights policy. Figure 3.4 overlays the dates of key VRA renewals onto a plot of *liberal mood* between 1965 and 2011. We can see from the figure that extensions of the VRA do not correspond well to mass opinion shifts. The year before the 1970 reauthorization of the Voting Rights Act, *liberal mood* registered at 59.189, which is very close to the median value of the index for all years between 1952 and 2011. The 1975 reauthorization occurred after a year in which the value of *liberal mood* was 60.584, less than one point above the median but on the liberal end of the spectrum. The 1982 reauthorization happened after a year when *liberal mood* registered at 51.67 The latest renewal of the VRA, in 2006, followed a year in which *liberal mood* registered at 60.165, again slightly here than the media for the full time period. There seems, then, to be little corresponded between *liberal mood* and changes to the VRA. Unlike *Brown,* the VRA appears to have withstood the vicissitudes of *liberal mood*, with at least one of its congressional reauthorizations coming when *liberal mood* would seem to favor significantly less government intervention.

Figure 3.4 *Liberal Mood* and the Evolution of Federal Voting Rights Policy, 1965 – 2011
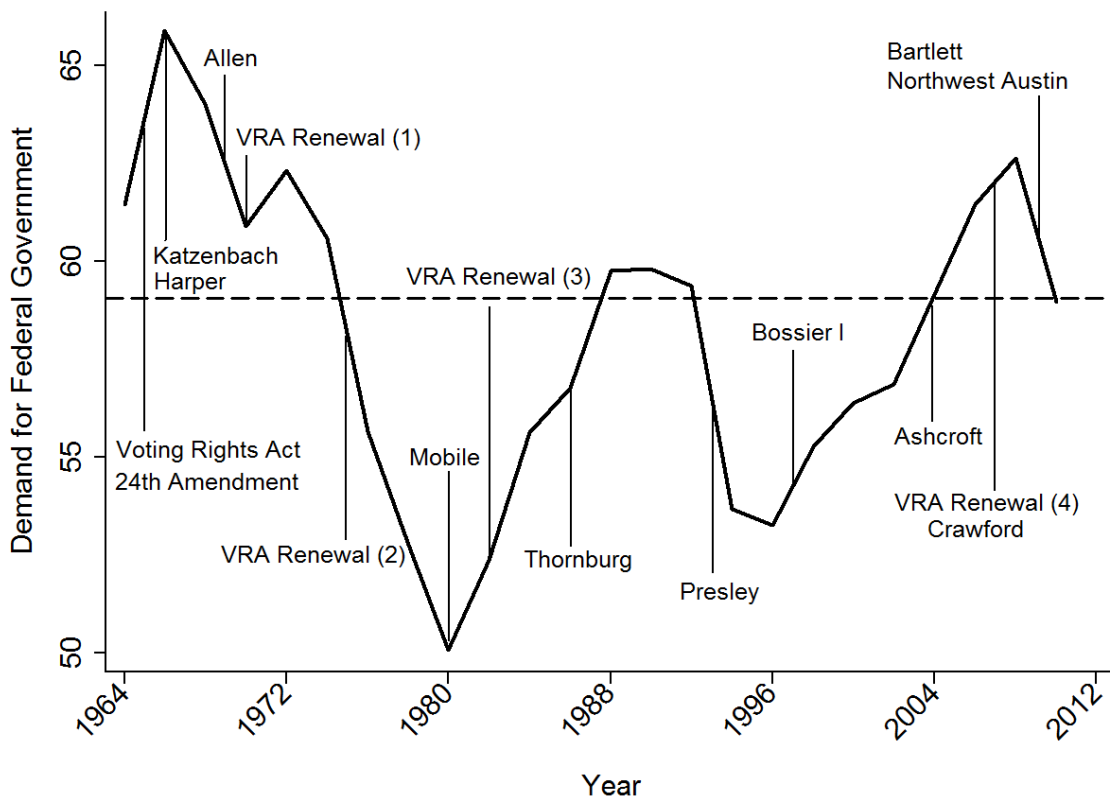
The horizontal line represents the median value of *liberal mood* between 1952 and 2011, the earliest and latest years for which values of the variable are available.

3.5 Conclusion

This chapter has briefly detailed the history of school desegregation and voting rights policy since *Brown v. Board of Education* (1954) and the Voting Rights Act (1965), respectively. The historical analysis affirms that while policies in both areas have undergone significant changes since first established, the tenor of those changes has varied across domains. In the case of school desegregation policy, the changes have been a mix of regressive and progressive over time. By contrast, in the case of voting rights policy, the changes have been almost exclusively progressive. Even where some judicial actions signaled retrenchment of pre-existing policies, such as in the *Mobile* case, the net outcome was ultimately a progressive policy once Congress intervened.

It is also clear from this analysis that public opinion has played a different role in the evolution of *Brown v. Board of Education* than in the evolution of the Voting Rights Act. More progressive school desegregation policies seem to emerge most often when *liberal mood* is at a level that indicates greater public demand for government, while more conservative school desegregation policies usually emerge when *liberal mood* is at lower levels. By contrast, progressive voting policies emerge both when liberal mood indicates high public demand for government and when liberal mood indicates low public demand for government. The relationship between voting rights policy and liberal mood is largely attributable to the fact that conservative voting rights policies have rarely emerged at the federal level. Instead, Congress in particular has continued to affirm and expand the key tenets of the Voting Rights Act seemingly without regard for public opinion.

The next three chapters consider whether the patterns in these two domains hold when the outcomes of interest are policy *outcomes.* Policy outcomes differ from policies in that they are what is designed or expected to result from the particular rules codified in school desegregation and voting rights policies. As we shall see, these analyses largely comport with the conclusions drawn here about the role of liberal mood.

CHAPTER FOUR
SCHOOL DESEGREGATION AND DYNAMIC COUNTERACTION OF LIBERAL MOOD

The right to attend racially integrated schools can be traced to the post-Civil War Reconstruction era, when African Americans nationwide enjoyed unprecedented access to American social and political life. The 1875 Civil Rights Act permitted black and white students to attend integrated schools, eat at integrated restaurants, ride integrated trains, and otherwise interact in public venues without race-based restrictions. When the Civil Rights Act was declared unconstitutional, however, the rights it conferred quickly dissipated. Racial segregation of public schools fit neatly into a broader program of oppression that not only limited blacks' opportunities for educational advancement, but offered the collateral consequences of political disfranchisement, psychological debilitation, and sociological degradation.[31] The Supreme Court acknowledged these pernicious effects in *Brown v. Board of Education* (1954):

> To separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone….The impact is greater when it has the sanction of the law, for the policy of separating the races is usually interpreted as denoting the inferiority of the negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.

By acknowledging the "feeling of inferiority" inherent in racial segregation, the Court appealed directly to the value of equality. By the time it reached *Brown* (1954), the Court had come to accept the concept of equal protection as "something more than an abstract right. It is a command which the state must respect, the benefits of which every person may demand. Not the least merit

---

[31] See, e.g., Graham (2002, 7 -14) for a discussion of this point using Missouri as an example.

of our constitutional system is that its safeguards extend to all — the least deserving as well as the most virtuous" *Hill v. Texas* (1942). The Supreme Court's declaration in *Brown* that racial segregation in schools perpetuated racial inequality was striking because the Court had confronted this issue squarely in both the *Civil Rights Cases* (1883) and *Plessy v. Ferguson* (1896) and concluded the very opposite of what it claimed in *Brown*. *Plessy* stood for the proposition that equality could be achieved amidst racial separation. In *Brown,* the Court suggested that *Plessy* had been wrong all along, but *Plessy* was quite consistent with both the holding in the *Civil Rights Cases* and the popular understanding the Court expounded in that case. Rather than merely a motivation for desegregation, then, egalitarianism has been a central point of contention in the debates about school desegregation.

How could a country so enamored with equality justify such incontrovertible inequality in education? The answer is that while Americans yearn to be egalitarian, in practice other values comprising the "American creed" obstruct the pursuit of equality (Hochschild 1981; Stone 1997). Historically, school desegregation has appealed to the egalitarian ideal in the United States, but has also grated against the ideal of limited government that is a touchstone of classical liberalism. This was evident in the debates among legal scholars after *Brown* (1954). In a famous speech delivered after the case was decided, one law professor lamented that *Brown* had not been decided according to neutral principles, while opponents charged that the decision issued partly from respect for the principle of racial equality (e.g. Bell 1980). Americans may embrace racial integration in American schools as a matter of principle, but as a matter of practice many are very wary of the federal government taking steps to integrate schools. Obstruction of egalitarianism is particularly likely when achieving equality requires government intervention—especially federal intervention, which is at variance with the classical liberal ideal of limited government. The conflict between egalitarian and liberal reasoning is apparent in the *Civil Rights Cases*,[32] which

---

[32] *Civil Rights Cases*, 109 U.S. 3 (1883)

dealt with the scope of the Fourteenth Amendment and 1875 Civil Rights Act. Here, the Supreme

Court wrote that

> If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress, with equal show of authority, enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property? … It is repugnant to the Tenth Amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people

The rhetoric employed in excerpt from the decision is indicative of liberalism. The Court

expresses concern that the government might, if allowed to enforce the Civil Rights Act against

states and private individuals, eventually claim other authorities at the expense of individual "life,

liberty, and property." In a rare move, the Court also explicitly invokes the Tenth Amendment to

invalidate the law, in essence saying that the law violates "state's rights." Pro-civil rights policies

and practices can emerge and endure despite popular opposition when they appeal to latent and

pervasive egalitarianism. But when they fail the test of classical liberalism, civil rights policies

and practices may not live up to their lofty goals. In the *Civil Rights Cases,* liberalism challenged

the egalitarianism underlying the Civil Rights Act and won. As political leaders weighing the

issue of school desegregation have confronted the crucible of liberalism, they have acted in ways

that are utterly inegalitarian. The right to attend racially integrated has long confronted the

contradictory implications of egalitarianism and liberalism The peaks and valleys palpable

throughout the history of school desegregation in the United States thus reflect the tension

between America's simultaneous and competing commitments to equality and limited

government.

This chapter focuses on how that tension between egalitarianism, in the form of attitudes

toward integration, and liberalism, the rejection of federal government activity, has manifest in

the pursuit of school desegregation since the Supreme Court's groundbreaking decision in *Brown*

v. Board of Education (1954). I begin by showing that desegregation policy outcomes have

vacillated even as support for racial integration has grown steadily. In other words, changes in the racial composition of school districts have not always matched public opinion about racial integration. Theoretically, the discrepancy between attitudes toward racial integration and integration itself could reflect flaws in the measure of attitudes. I take up this possibility through several alternative analyses using *liberal mood,* a measure of liberalism in the nation, or popular demand for federal government, that encompasses opinions about school desegregation along with other issues. The measures of school desegregation policy outcomes are drawn from two large data sources. The first is the School Desegregation Court Case Database assembled by the American Communities Project at Brown, which I supplemented with some theoretically relevant variables. The second is an original data set I assembled primarily from school enrollment figures available in the Common Core of Data at the National Center for Education Statistics.

Having two datasets of this scope offers unprecedented methodological benefits. Historically, the data needed to calculate different measures of racial segregation at the level of school districts have been scarce, and many previous scholars have had to limit their analyses to only one or a few geographic units, like "large districts," "the South," or "metropolitan areas" (e.g. Baum-Snow and Lutz 2011; Clotfelter and Vigdor 2006; Farley and Taeuber 1974; Rossell and Armor 1996), which has in turn limited the generalizability about their findings. Others have had to focus on only one or a few discrete time periods, which made it difficult to appreciate subtle longitudinal changes in racial segregation fully (e.g. Frankenberg, Lee, and Orfield 2003; Stowell, Logan, and Oakley 2008). The number of cross-sectional units and the length of the time series in the two large datasets used make it possible to avoid challenges related to sample size and generalizability that previous studies have confronted.

The theory of dynamic counteraction indicates that civil rights outcomes ebb and flow over time as representatives respond to constituencies mobilized by the prospect of undesirable civil rights outcomes and appealing to competing value commitments. I find that *liberal mood* at

a one-year lag correlates negatively with racial segregation over time within school districts that have been the subject of a court order to desegregate. I subsequently construct models in which *liberal mood* is lagged at multiple lengths simultaneously, in order to assess whether the direction of the relationship between *liberal mood* and racial segregation within school districts changes at different time intervals. It does. *Liberal mood* has a negative coefficient at some lag lengths and a positive coefficient at other lag lengths. The findings hold in alternative model specifications, providing strong evidence that it reflects the true relationship between *liberal mood* and school desegregation.

Thus, the evidence from this series of statistical models indicate that there is are systematic discrepancies between *liberal mood* and school desegregation—that is to say, policy-opinion mismatch—at discrete points in time. This conclusion comports with the dynamic counteraction hypothesis. Increases in *liberal mood*, or support for expansive government, mobilize opponents of racial integration, who then work to prevent or to quell integration. Such counteraction allows racial integration in school districts to move in a direction contrary to what the majority wants for a time. However, the stagnation induced by opponents of racial integration eventually mobilizes either the majority or people who favor a more active government (and are thus driving the trend in liberal mood), or an equally small but energetic minority that *supports* racial integration to advocate for increased integration. Even if the majority of people remain quiescent about racial integration, the energetic minority supporting racial integration can persuade elites to act in ways that foster integration by invoking the value of equality. Over time, the contestation between opponents of integration and either the liberal majority or the energetic pro-integration minority yields a dynamic relationship between *liberal mood* and school desegregation policy outcomes. Integration proceeds in accordance with trends in *liberal mood* when proponents of civil rights are ascendant, but is out of step with *liberal mood* when opponents are ascendant.

Inasmuch as they support the dynamic counteraction hypothesis, these findings cast significant doubt upon the expectation from democratic theory that racial integration would increase continually as demand for government increases over time. It seems that even while the commitment to equality in schools grows in the United States, egalitarianism alone is not enough to produce racial integration in schools (Hochschild 1984; Hochschild and Scrovronick 2003). Contestation around the proper scope of government, embodied in the dynamic impact of *liberal mood* on the four measures of racial segregation, prevents the egalitarianism underlying expressed attitudes toward integration from influencing desegregation policy and outcomes in the strictly positive and linear way democratic theory predicts.

4.2 Attitudes toward Integration of Schools

In the wake of the Supreme Court's rulings in *Brown I* (1954) and *Brown II* (1955), Americans have become increasingly supportive of racial integration in public schools (Rossell 1995; Rossell and Armor 2002; Schuman et al. 1997). When the Supreme Court issued the first *Brown* decision, less than 40 percent of white parents supported the idea of black and white students attending school together at all. But with the exception of 1963, when support dropped to about 64 percent from about 65 percent the previous year, white Americans have increasingly embraced the principle of integration. By 1990, more than 90 percent of white survey respondents were willing to send their children to a school with any black students (Figure 4.1). In fact, more than 80 percent of whites were comfortable with the idea of sending their children to *majority-black* schools.

Figure 4.1. White Support for the Principle of Integration, 1956 – 1996
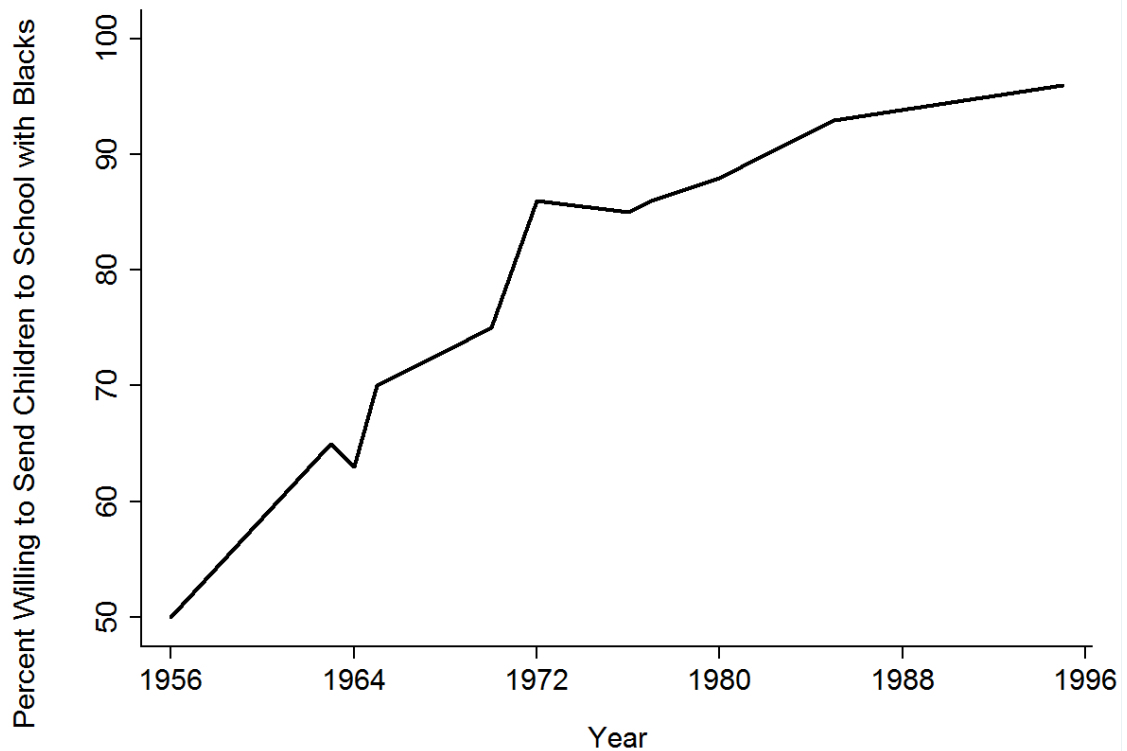
Source: Rossell (1995); Schuman et al. (1997)

The increased support among whites coincided with both racial and regional convergence of attitudes toward integration. As Figure 4.1 shows, white support for the principle of integration was substantially lower than black support in the 1960s, which was above 50 percent, but by 1991, over 90 percent of both black and white parents supported racial integration in principle. Opposition to integration had also been especially acute among southerners initially: over 70 percent of southern whites opposed sending their children to schools with even a few blacks in 1959. These views were reflected in elite behavior. In Mississippi, for example, three judges developed reputations during the decade after *Brown* for staunch resistance to applying civil rights laws. Two of them had publically protested the integration of the University of Mississippi; one had previously run for governor on a "strict segregationist" platform; another regularly littered hearing transcripts and judicial opinions with racist comments (Parker 1990, 83 – 85). Yet, remarkably, by 1980, more than 90 percent of whites *supported* racial integration in schools

(Rossell 1995, 630-637). In fact, so many Americans had expressed support for racial integration of public schools by this point that the National Opinion Research Center at the University of Chicago, which had been the source of surveys of racial attitudes toward integration for decades, stopped including the question in its surveys (Schuman et al. 1997). Surveys conducted by the Civil Rights Project at Harvard intermittently during the 1990s indicate that the high level support for integration persisted (Frankenberg, Lee, and Orfield 2003, 15-16). Surveys suggest, then, that there has been increasingly positive and broad support in the United States for the notion that students of different races should be able to attend the same schools since *Brown v. Board of Education* (1954).

With such a stark trend toward egalitarianism, it would be reasonable to expect continuous racial integration in schools districts (see Hochschild 1984). If representative democracy is the art of representing public opinion, the increasing support for integration should be reflected in policy outcomes. Indeed, with support for integration above 90 percent for both blacks and whites, a strong democratic theorist might even expect there to be 90 percent integration today. Yet the trend in *attitudes toward* integration has not translated into integration. Notwithstanding the growing American consensus over the principle of racial integration in public schools, segregation has vacillated historically. The evolution of both desegregation policy and segregation levels has been documented exhaustively by social scientists and legal scholars using several measures, and the evidence points overwhelmingly to non-linear change. Conservative policies have at times given way to progressive policies, and progressive policies have sometimes been supplanted by conservative policies. In addition, the amount of racial segregation in school districts has itself has increased, decreased, and stagnated at different points since *Brown* was decided.

4.3 Racial Segregation since *Brown*

By nearly all accounts, the Warren Court created an opening for complete racial integration of schools by carving the right to attend racially integrated schools out of the Fourteenth Amendment's Equal Protection Clause in *Brown v. Board of Education I* (1954).[33] The Court's declaration provided civil rights organizations like the NAACP unprecedented ammunition with which to fight for change, and they successfully filed dozens of lawsuits against school districts to ensure compliance with the new law. Between 1954 and 1968, over 450 school desegregation cases were brought and school districts were ordered to dismantle their "dual" systems (Figure 4.2). An additional 253 districts voluntarily adopted desegregation plans under pressure from the federal government (American Communities Project 2012).

---

[33] The Court invoked the Equal Protection Clause when it wrote: "we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, *deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment*."

Figure 4.2. Number of School Desegregation Plans Imposed by Courts, 1952- 2002
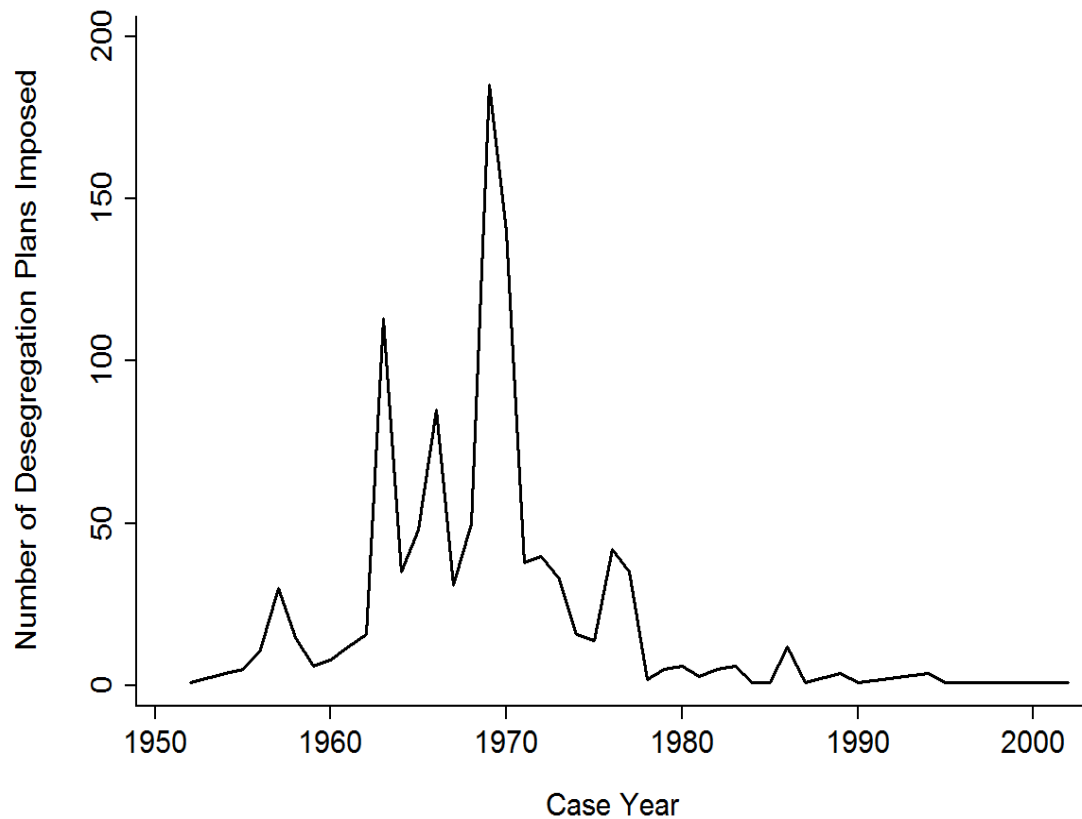
Note: Figures are based on court dates for desegregation lawsuits available from the American Communities Project at Brown University.

The explosion of litigation does not imply that the order for school districts to "desegregate with all deliberate speed" was self-executing. On the contrary, states and localities widely interpreted the Court's pronouncement as license to move slowly, if at all, toward racially integrated schools.[34] Some states and districts made only marginal or symbolic gestures toward integration, adopting "freedom-of-choice" plans that merely allowed white and black students to attend the same schools if they wanted. Other districts under pressure to desegregate responded more subtly. They closed previously all-black schools, cut funding to entire school districts, or replaced their black teachers and administrators with white ones, all of which tactics only increased racial segregation (Gotham 2002; Oakley, Stowell, and Logan 2009). Bell (1980)

---

[34] For a description of state resistance in the South, see Gotham (2002).

argued that integration was carried out during this period only if and to the extent that it comported with the interests of white parents and civic leaders. It rarely did.

As Chemerinsky put it, "[s]tate officials attempt[ed] to obstruct desegregation in every manageable way" (2009, 803). State and local elites made no attempt to disguise their opposition to federal intervention in schools. Candidates for public office staked their campaigns not on whether they opposed *Brown,* but on how fervently and creatively they did For example, during the 1963 Mississippi gubernatorial campaign, one eventual loser chided the incumbent, Paul Johnson, Jr. for his failure to prevent James Meredith's integration of the University of Mississippi and declared that "I'd shut up every school house before we see education by federal bayonet" (quoted in Parker 1990, 63). In a campaign that has come to be known as "massive resistance," several other states and localities fulfilled this pledge by issuing nullification laws or openly refusing to amend their enrollment policies to comply with *Brown* (Gotham 2002; McCrary and Lawson 2000; Ogletree 2004; Parker 1990, 18 – 23). For example, a 1964 decision involving the Surry County school district in Virginia notes that

> Upon learning of the Supreme Court's first decision in Brown v. Board of Education in 1954, the county's Board of Supervisors and its School Board, like their counterparts in Prince Edward, passed a joint resolution expressing 'unalterable opposition to integration of the races in the public schools to any degree, now or at any time in the future.' This resolution is still in effect. No plans have ever been made to desegregate Surry's public schools.[35]

The Mississippi legislature took similar steps in 1956 by declaring the *Brown* decisions unconstitutional and unenforceable in the state, repealing its previous compulsory attendance law, and establishing a commission to investigation breaches of state "sovereignty" (Parker 1990, 22). In perhaps the most famous case of state resistance, Arkansas Governor Orville Faubus commanded the state's National Guard in 1957 to block the doors of Little Rock Central High School as nine black students attempted to enter the building for the first day of classes after the Little Rock school district was forcibly integrated. In response, President Eisenhower took the

---

[35] *Griffin v. Babb* 339 F.2d 486 (1964)

extraordinary step of federalizing the Arkansas National Guard and redeploying it elsewhere. Only then did the Little Rock Nine integrate Central High School. As a result of these attempts at both passive and overt rebellion, integration was the exception rather than the norm in the first decade following the *Brown* decisions. The 1966 Coleman Report commissioned by the US Commission on Civil Rights found that less than one percent of African American students in the South were attending racially integrated schools more than a decade after *Brown* (Coleman 1966).

The resistance by states and school districts eventually prompted the Supreme Court to assume a greater role in school desegregation cases and adopt a much more aggressive approach to implementing the *Brown* mandate. By the middle of the 1970s, there had been a sea change in the racial composition of school districts. The proportion of white students in the school of the average black student increased by over four percentage points from the late 1960s until about 1975. Meanwhile, the percentage of black students in majority-white schools in the South rose to about 33 percent, a considerable increase from the nadir of less than one percent prior to 1968. Similarly, the percentage of black students attending "intensely segregated" schools, or schools whose populations are at least 90 percent non-white, declined from 63.4 percent in 1968 to 38.7 percent in 1972 (Coleman, Kelly, and Moore 1975; Frankenberg, Lee, and Orfield 2003; Rossell and Armor 1996).

As the twentieth century came to a close, the school desegregation picture was noticeably bleaker. According to Orfield and Lee (2007), a decline in the proportion of white students in the school of the typical black student that had begun in the 1980s accelerated in the 1990s and the proportion of black students attending intensely segregated schools increased slightly. Moreover, as of 2005, about 27 percent of black students in the South attended majority-white schools, 3.6 percent more than in 1968 and 16.5 percent less than in 1988. At the same time, the school of the average black student was about 30 percent white, six percentage points fewer than in 1988. My own estimates of changes also indicate that segregation has increased slightly over the last

quarter-century. Although other studies relying on measures like the index of dissimilarity show a much less pronounced change in the last few decades and are correspondingly circumspect about claiming that "resegregation" has occurred (e.g. Logan, Oakley, and Stowell 2006; Rossell and Armor 1996), it is clear even from these studies that desegregation has not followed a linear or even monotonic path since *Brown v. Board of Education* (1954). Many school districts are as racially segregated today as they were when *Brown* was decided (Orfield and Lee 2007). Table 4.1 compares interracial exposure in 1991 and 2005 within 39 school districts that have operated under court orders to desegregate, as calculated by Orfield and Lee (2007). For each of these school districts, interracial exposure declined significantly in fourteen years. For example, in the school district of Charlotte-Mecklenburg, North Carolina, interracial exposure, or the percentage of white students in the school of the average black student, declined some 27 points during this time, even while the district maintained the busing program the Supreme Court sanctioned in the 1971 case *Swann v. Charlotte-Mecklenburg*.

Table 4.1. Change in Interracial Exposure in Select Districts with History of Court Involvement

District	1991	2005
Mobile County (AL)	30	21
San Diego Unified (CA))	28	19
San Jose Unified (CA)	40	27
Denver County (CO)	32	20
Broward County (FL)	32	19
Dade County (FL)	12	6
Duval County (FL)	36	32
Hillsborough County (FL)	55	32
Lee County (FL)	69	45
Pinellas County (FL)	72	57
Polk County (FL)	59	55
Seminole County (FL)	64	58
St. Lucie County (FL)	60	47
Chatham County (GA)	34	19
DeKalb County (GA)	16	5
Muscogee County (GA)	28	20
Indianapolis (IN)	42	21
Jefferson County	66	55
East Baton Rouge Parish (LA)	31	13
Prince Georges County (MD)	19	5
Boston (MA)	18	9
Detroit (MI)	5	1
Minneapolis (MN)	44	20
Kansas City (MO)	22	8
St Louis (MO)	15	10
Clark (NV)	61	34
Buffalo (NY)	38	19
Charlotte-Mecklenburg (NC)	51	24
Cincinnati (OH)	29	16
Cleveland (OH)	21	9
Oklahoma City (OK)	32	18
Aldine ISD (TX)	30	5
Austin (TX)	29	18
Corpus Christi (TX)	20	17
Dallas (TX)	9	4
Fort Worth (TX)	20	12
Houston (TX)	9	6
Norfolk (VA)	28	20

Note: For each district in this table, "interracial exposure" denotes the percent white in the school of the average black student (Orfield and Lee 2007, 44)

Figure 4.3 displays three different measures of racial segregation that have appeared in previous studies and for which there is data over time. The first measure, displayed in panel (a), is

interracial exposure, which is again the percentage of white students in the school of the average black student. The second measure, displayed in panel (c), is the percentage of white students in majority-white schools in the South. On these first two measures, higher values signify greater racial *integration* of students. The third measure, displayed in panel (b) is the percentage of black students in "intensely segregated" schools, or schools that are at least 90 percent non-white. On this measure, higher values indicate greater racial segregation. All three measures attest to the inconsistency in the rate of racial integration since *Brown*. There are both segments of time in which integration seems is trending upward and periods when segregation is increasing.

Figure 4.3. Racial Segregation in US School Districts, 1954 – 2009
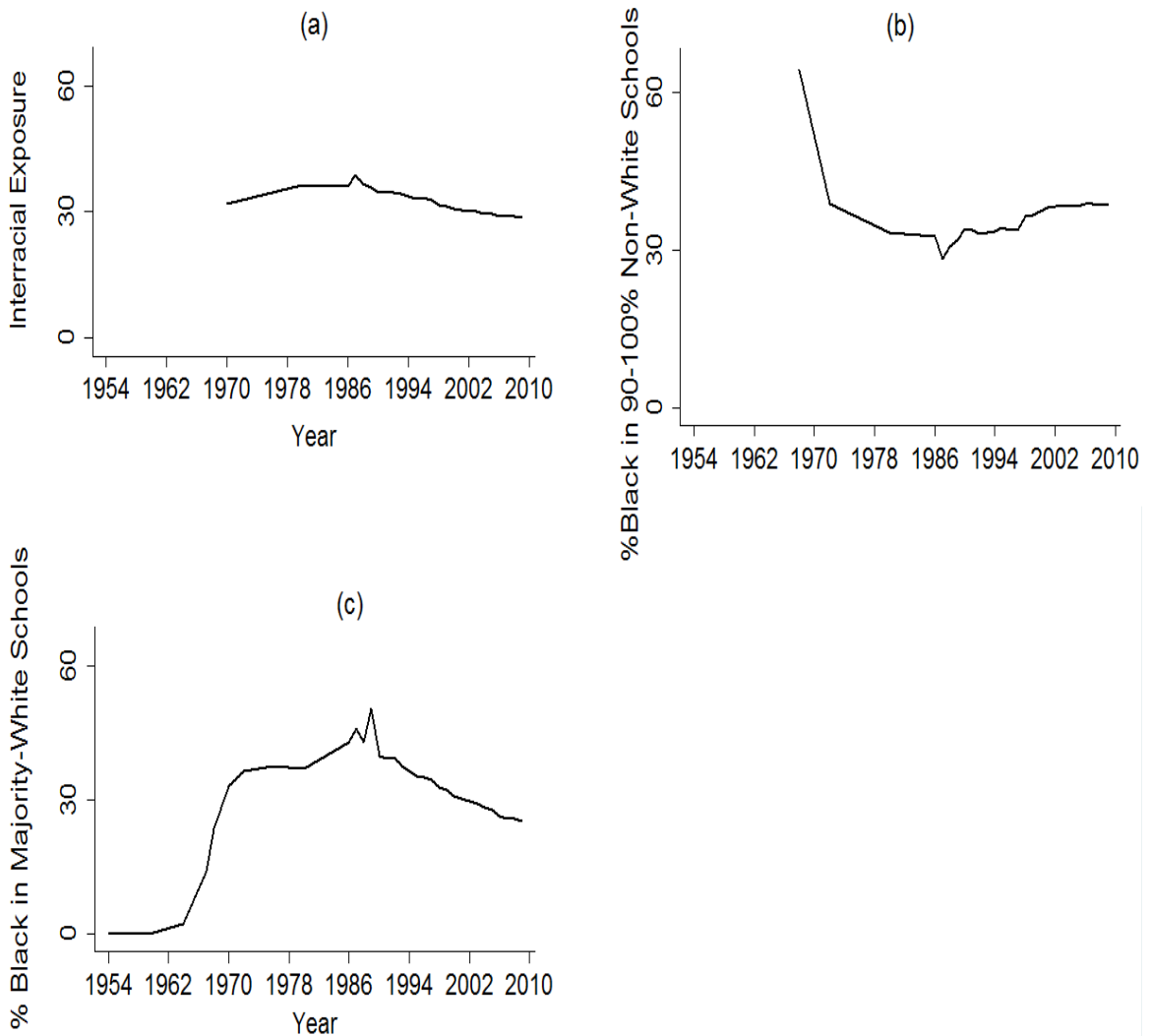
Note: Estimates for all measures from 1954 – 1986 are from Frankenberg, Lee, and Orfield (2003). Estimates from 1987 – 2009 were calculated by author and are derived from Common Core of Data at the National Center for Education Statistics.

Most striking about the segregation trajectories depicted in Figure 4.3, however, is their marked contrast with the trends in attitudes toward racial integration documented in the literature. Even with disagreement among scholars about the precise *levels* of racial segregation in schools (see, e.g., Rossell and Armor 1996; Logan, Oakley, and Stowell 2008; Orfield and Lee 2007) and support for racial integration (Berinsky 1999; Rossell 1995) at different historical moments, it is

clear that the *trend* in attitudes toward integration does not parallel the trend in segregation. Racial segregation in school districts has changed at an inconstant rate since *Brown*, while the trend in attitudes about integration has been consistently positive. The discrepancy between the decidedly monotonic trend in the attitudes toward integration on the one hand and the non-monotonic trend of different measures of racial segregation within school districts calls into question the explanatory power of attitudes about school desegregation. If attitudes *explained* institutional change in the area of school desegregation, we would expect considerably more synchronicity over time between the two. If the premise of this study is that civil rights institutions like *Brown* sometimes emerge and evolve despite prevailing political attitudes, we might be inclined to think that public opinion is immaterial to civil rights change.

Yet the wealth of empirical research establishing public opinion as a catalyst for institutional change in the United States suggests it would be highly problematic to discount public opinion altogether. As I noted in Chapter Two, decades of empirical research, including studies of Congress, the presidency, the Supreme Court, and numerous different policy arenas, demonstrate convincingly that public opinion affects how political institutions evolve (see especially Burstein 2003; Shapiro 2011). It is because of its role as a source of both longevity and legitimacy that public opinion cannot be discounted as a factor in school desegregation, even where there is evidence of incongruence between public opinion and institutional change.

Theoretically, discrepancies between policy outcomes and public opinion can reflect the imperfections of an institution (e.g. Henig et al. 2011; Steinmo and Watts 1995), characteristics of the measures of public opinion (e.g. Berinsky 1999; Brooks and Manza 2006), or exogenous factors like demographic change. One possible reason attitudes toward integration do not line up with outcomes on integration is that attitudes are a particular kind of opinion with inherent drawbacks. At the same time, as I noted I Chapter One, attitudes registered at any given time may be a consequence of "non-attitudes," low-information rationality, or reliance upon heuristics to

109

make decisions about school attendance. In this case, asking people in a survey whether they endorse certain the principle of integration might yield inaccuracy if people do not understand what integration means (see Converse 1964; Zaller 1992), if they rely upon heuristics like partisanship to formulate their responses (see Carsey and Layman 2006; Feldman and Zaller 1992; Jerit and Barabas 2012; Popkin 1991), or if prevailing social norms lead them to guard their true preferences (Berinsky 1999; see also Mendelberg 2001; Tesler and Sears 2010; White 2007). Similarly, the *trend* in these attitudes may reflect increased hesitance on the part of political leaders or lay citizens to express views publically that might conflict with the norm of racial equality (Berinsky 1999; Mendelberg 2001), increased attempts by lay citizens to align their true, but incongruous attitudes about school integration with the evolving positions of the major political parties and their candidates (Bartels 1988; Carmines and Stimson 1989), or unconscious and intransigent racial resentment (Tesler and Sears 2010; White 2007; see also Huddy and Feldman 2009; King and Smith 2005).

4.4 Liberalism and School Desegregation

For a number of reasons, then, we can accept that attitudes toward the principle of integration specifically do not affect school desegregation without dismissing the role of public opinion altogether. Rather than ask "what role does public opinion play in school desegregation," we can ask "*which* public opinion plays a role in school desegregation?"

Probing more deeply into the historical record reveals that despite the discrepancy between *attitudes* toward integration and de facto amounts of racial segregation, some form of public opinion may still be driving outcomes over time. Some studies suggests that early resistance to desegregation was driven in part by white parents' interest in securing a high quality education for their children or by concerns about particular mechanisms of desegregation (Gotham 2002; Rossell 1995; Schuman et al. 1997; Sears, Hensler, and Speer 1979). Though many believed that the government should do more to facilitate equality, a great number of elites

also believed that federal intervention to effectuate the *Brown* mandate was beyond the purview of the federal government. The 1956 "Southern Manifesto," a resolution written in response to the *Brown* decisions and endorsed by 19 US senators and 77 representatives, argued that "parents should not be deprived by Government of the right to direct the lives and education of their own children." In Mississippi, school desegregation decisions were reversed so often by higher courts that the Fifth Circuit Court of Appeals took direct control of school desegregation in the state. One judge attended a rally protesting the forced integration of the University of Mississippi and asked the gathered crowd, rhetorically, whether he was "right in standing up for [their] beliefs" (Parker 1990, 85). From one perspective, the *Brown* decisions were not solely about the issue of racial segregation, but about the proper relationship between individuals, the states, and the federal government. Over time, the balance between proponents of limited government and proponents of active government has vacillated (Stimson 1991, 2004). Consequently, I maintain that, as far as public opinion is concerned, what has influenced outcomes on school desegregation is the *set* of attitudes, including but not limited to those about integration and desegregation, that collectively define the extent to which Americans value limit government or demand an active federal government.[36]

The Supreme Court understood this when it decided *Brown.* The Court issued *two* verdicts, rather than one, out of uncertainty about how to reconcile its newfound concern with equality with the practical realities of operating a school district. On the one hand, the Warren Court was steadfast in its conviction that "*all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle* [that racial discrimination in public education is unconstitutional]" (*Brown v. Board of Education* 1955; emphasis added). The

---

[36] Of course, other factors not tied to public opinion may also drive policy outcomes in the area of school desegregation. This possibility is acknowledged in the standard representation equation I provided in Chapter One. In Chapter Four, I identify these other factors by name and construct a model that accounts for them alongside public opinion. The purpose of the present chapter is to establish whether public opinion should be a part of that equation at all.

Supreme Court had been reluctant to extend a federal enactment to localities in the Civil Rights Cases, but now it did not waver in doing so. Yet the Court also realized that it needed the "full assistance of the parties in formulating decrees" in order to resolve the "problems of considerable complexity" its sweeping declaration had introduced (*Brown v. Board of Education* 1954). Given the considerable variation between school districts, a uniform, top-down approach to desegregation might not be appropriate in light of these local differences. Instead, "[f]ull implementation of these constitutional principles may require solution of varied local school problems" (*Brown v. Board of Education* 1955). The Court struck a balance between its normative and practical considerations by dividing responsibility for the desegregation of schools between the federal district courts and school districts. School districts would be charged with developing plans for effectuating the *Brown* mandate, but federal district courts would be authorized to review, monitor, and ultimately approve these plans. This federal-local power sharing arrangement made sense for several reasons. School district leaders undoubtedly understood the realities of operating their own school districts best and judges may have been loath to educate themselves on the finer points of school superintendence. At the same time, district courts were close enough to school districts that they could take account of the "varied local school problems" that confronted implementation of the *Brown* mandate. Working at the lowest level of the federal judicial hierarchy, district courts only hear federal cases arising in the specific state in which they each reside. These courts also possess the power of the federal government to compel compliance where necessary. The special institutional arrangement between courts and school districts would thus ensure that important, but idiosyncratic issues would be addressed in the development and implementation of the *Brown* mandate while at the same time scraping the minutia of educational administration from the plate of the federal government.

112

The effect of this power-sharing arrangement was to heighten the significance of liberalism, or the ideal of limited government, in education. Before *Brown,* public schools had been a largely local matter: states provided the funding for school districts, but districts determined their enrollment policies independently. The federal government was merely an observer. As a result of the ruling *Brown,* however, districts placed under court order to desegregate were now directly subject to the authority of the federal government in determining enrollment rules. Through subsequent decisions like *Green v. New Kent County* (1968) and *Swann v. Charlotte-Mecklenburg* (1971), the Court imposed additional, unprecedented constraints on the authority of local and state officials to regulate the operation of school districts (Fiss 1971). Under *Green*, for example, school districts that had been ordered to desegregate needed to demonstrate that they had eliminated inequality in six different respects in order to be freed from federal supervision.[37]

Such impositions challenged the long-standing notion that education is a state matter. The Southern Manifesto rejected the idea that the federal government had authority to integrate schools and tried to remind the Supreme Court that "[t]he original Constitution does not mention education. Neither does the Fourteenth Amendment nor any other amendment." By the time *Brown* was decided, the concept of "separate but equal" had become "a part of the life of the people of many of the states and confirmed their habits, customs, traditions and way of life." Against a backdrop of purported federal absenteeism in the area of education and widespread popular acculturation to racial separation, the *Brown* decision could be cast as an attempt to "encroach upon the reserved rights of the states and the people."[38] For those already inclined to oppose it, *Brown* thus became a clarion call for efforts to salvage "state sovereignty," "local

---

[37] These "Green factors" were: (1) student assignment; (2) faculty assignment; (3) staff assignment; (4) transportation; (5) extracurricular activities; and (6) facilities.

[38] The resolution's official title, "*Declaration of Constitutional Principles,*" is itself an appeal to the value of limited government.

choice," and "neighborhood control" (Edsall and Edsall 1991; Gotham 2002; Fuller and Elmore 1996; Nicoletti and Patterson 1974; Ogletree 2004; Parker 1990).

Wariness of federal involvement in education is not limited to racial conservatives. Even among those who support desegregation on principle, the involvement of the federal government in the enterprise might be unpalatable. During the 1964 presidential election, Barry Goldwater came to prominence simultaneously endorsing the idea of racial equality in schools and opposing any government efforts to achieve that end (Carmines and Stimson 1989). In her study of black and white attitudes toward alternative school desegregation plans, Rossell (1995) found that blacks expressed the greatest support for voluntary reassignment plans, and were at best tepid on the subject of busing.[39] That opposition has generally been strongest and most widespread to busing, the mechanism that entails the greatest government intervention and oversight, comports with notion that beliefs about the proper role of the government are pervasive. With high and pervasive suspicion of federal government in the United States historically, the political wherewithal for integration—that is, the ideational opportunity structure conducive to integration—may be lacking even when support for the principle of integration is strong. The tension created by, on the one hand, the federal government's interventions in local education systems in order to effectuate the *Brown* mandate and, on the other hand, the prerogatives of local officials and parents with respect to where children attend school, makes it plausible that compliance with *Brown* would depend upon popular endorsement of the ideal of limited federal government.

---

[39] Notably, in his study of Kansas City, Gotham observes that "few blacks or whites protested against busing African American children during the 1930s and 1940s. Whites viewed busing as an easy way to segregate without maintaining a costly dual system while blacks saw it as the only available means of obtaining an education in an era of rampant racial exclusion" (2002, 12; *emphasis* added). If blacks and whites in some places viewed busing as compatible with their interests before it was adopted by the Supreme Court as a means for the federal government to enforce the *Brown* mandate, the opposition toward busing reflected in many desegregation studies, which typically focus on opinions *after Brown*, could be an artifact of increasing embrace of values like limited government.

What exactly should happen to racial segregation as support for federal government increases? Democratic theory suggests that desegregation would be most successful when the value of limited government is at its nadir and least successful when the value is at its apex. In other words, racial segregation should decrease as demand for government increases. The school district leaders and lower court judges who evaluate and implement school the *Brown* mandate should interpret increased demand for government as an exhortation to act, and out of concern for their legitimacy and longevity, act accordingly. There are reasons, however, to believe that the opposite would occur: segregation might increase at some point in time as demand for government increases. As I noted in Chapter Two, although concerns about legitimacy generally incentivize adherence to public opinion, political leaders may have good reasons to disregard or defy public opinion in certain cases. In particular, conviction, paternalism, and personal ambition might impel them to act against prevailing opinion at times, especially when they are constantly prodded to consider these other motivations by organized interests (Lowi 1969; Schattschneider 1960). The theory of representation outlined in Chapter Two suggests, in particular, that when leaders confront factions appealing to competing values, they will alternately reflect and diverge from public opinion at different points in time. In the case of school desegregation, political leaders must reconcile the appeals to the principle of equality made by supporters of integration with the appeals to the principle of limited government made by supports of segregation. The theory of dynamic counteraction suggests that political leaders will sometimes side with the egalitarians and sometimes side with the liberals, resulting in a non-linear relationship between desegregation and public opinion about government activity. Racial segregation is expected to decrease as public demand for government increases sometimes and increase as public demand for government increases other times.

4.5 The Role of Liberal Mood in School Desegregation

Anecdotal evidence from previous historical analyses supports the dynamic counteraction story. For example, Kevin Fox Gotham (2002) has done an excellent and thorough study of Kansas City, Missouri, which I describe at greater length in the Appendix to this chapter, and which illustrates What I believe are some telltale signs of dynamic counteraction, including contestation over liberalism and egalitarianism influences school desegregation. To what extent is Kansas City's experience with school desegregation generalizable to other school districts? Do changes in racial segregation within school districts in fact reflect changes in public demand for government?

To answer this question, I consulted the National Center for Education Statistics' (NCES) Common Core of Data, a database containing, among other things, racially disaggregated enrollment figures for all public schools in the United States. These school-level enrollment data were used to generate a district-level panel dataset representing all districts with complete black, white, and total enrollment data for all years 1987 through 2009 inclusive. With a "district" defined as any entity the NCES assigned a unique seven-digit district identification number, the resulting dataset comprised 19,992 districts and 346,972 total district-year observations.

Data

In the models that follow, I isolate the 879 districts that have been under a court order to desegregate at some point since *Brown*. To determine which school districts were ever placed under court order to desegregate, I examined nearly 300 pages of documents listing districts with a history of involvement in school desegregation lawsuits, which I obtained from the US Department of Justice through a public records request. In addition, I consulted a publicly available report on school desegregation from the United States Commission on Civil Rights; reports on school desegregation issued by the state civil rights commissions of Florida, Georgia, and Tennessee; a detailed school desegregation database maintained by Tulane University and covering school districts in Louisiana; and the school desegregation court case database

assembled by the American Communities Project at Brown University. Where discrepancies existed between these sources in their coding of districts as having been under court order to desegregate, I examined the relevant case history myself. The resulting dataset consists of 18,575 district-year observations, 879 unique school districts with an average of 20 years' worth of data on racial segregation.[40] Focusing on districts with a history of court involvement over school desegregation is valuable because past research suggests that they experience qualitatively significantly changes in their racial composition over time than districts that have never been involved with the courts over desegregation (Welch and Light 1987). A model of all school districts, even one with a control variable that identified districts with a history of court supervision, would invariably obscure the effects of exogenous factors like public opinion *within* these districts. Narrowing the dataset to districts with a history of court supervision also reduces the possibility that observed standard errors and significance levels are merely a function of sample size, though this dataset admittedly still has far more observations than typically needed to generate reliable estimates. Finally, focusing on districts with a history of court supervision obviates the need to conduct multiple imputation, which would be necessary in the larger dataset due to the high number of records in the NCES' Common Core of Data that are missing for some states and years.

I employ six different measures of segregation as dependent variables. The first two, ***desegregation plan*** and ***unitary status***, are measures of the legal status of school districts. The other four variables—***interracial exposure, percent black in majority-white schools, percent***

---

[40] With a dataset comprising 879 school districts and 23 school years, there should be a total of 20,217 district-year observations. The sample size reported above reflects attrition of approximately nine percent of these expected observations because of missing data on some variables. The number of observations reported above also reflects the exclusion of districts with a total enrollment of 0, as many of these "districts" are in fact alternative schools or juvenile detention centers with highly transient populations that may be reflected in other districts in other years. The loss of more than 10 percent of observations can significantly bias time series analysis (see Honaker and King 2010), but the proportion of missing data here (about 8 percent) is sufficiently small, and the size of the remaining sample sufficiently large, that I do not believe the absence of these observations seriously biases the results.

black in intensely segregated schools, and the ***index of dissimilarity***—measure the *de facto* amount of racial isolation or imbalance that exists among students. Examining these six different measures makes it possible to overcome concerns about measurement bias that have been raised in prior studies. As I noted In Chapter One, markedly different inferences can be drawn about the nature of institutional change when measures of legal status are used than when measures of policy outcomes are used. For example, scholars who have examined changes in rules governing welfare eligibility (Pierson 1996), an indicator of institutional identity, have concluded that tap welfare state has persisted unchanged, while those who have investigated changes in income inequality and the size of the labor force (Clayton and Pontusson 1998; Hacker 2004), both indicators of institutional output, have concluded that welfare state retrenchment has taken place.

In the case of school desegregation, the distinction between change in legal status and de facto racial segregation is also theoretically and methodologically meaningful. Only judges can change the institutional identity of school districts; hence, a change in institutional identity is tantamount to a change in legal status. By contrast, a change in policy outcomes is a change in the amount of racial isolation or imbalance among students, and a change of this kind could reflect the decisions of a federal court overseeing a school district, the behavior of families who reside within the boundaries of a school district, the policies and practices of school district leaders, or some combination thereof.

There has been virtually no research on changes in the legal status of school districts. Instead, studies of policy outcomes have predominated in the desegregation literature. These studies have come to different conclusions about the nature and extent of desegregation occurring over time using different measures of institutional output (e.g., Frankenberg, Lee, and Orfield 2003; Logan, Oakley, and Stowell 2006, 2008). As in the literature on the welfare state, part of the reason for the discrepancies in conclusions is studies have relied on measures that tap qualitatively different dimensions of the concept of racial segregation (Stearns and Logan 1986;

118

Massey, White, and Phua 1996; Reber 2005; Rossell and Armor 1996). The principal distinction among these alternative measures of institutional output is whether they tap racial *isolation* or racial *imbalance* in a school district. Interracial exposure is thought to capture the former, while the index of dissimilarity is thought to capture the latter. Of the four measures of racial segregation, interracial exposure is by far the one used in most studies (see Rossell 2003 for a list of studies using the measure). Some have argued that, as a measure of racial isolation, interracial exposure is superior to other measures because the Supreme Court intended to reduce isolation of black students, rather than imbalance between black and white students, when it decided *Brown* (Reber 2005). At the time *Brown* was decided, mandating racial balance would have been a far more radical step. Others contend that interracial exposure is a superior measure because its method of calculation inherently accounts for the availability of white students, and thus should be more conservative in the context of the demographic changes that have occurred in American school districts historically (Rossell 2003). This conclusion appears to be borne out by the descriptive data reported in panel (a) of Figure 4.3. The slope of interracial exposure is far less pronounced than those of the other two measures in the figure. Accordingly, though I construct and report models of all four measures of institutional output in order to provide the most robust hypothesis tests (Stearns and Logan 1986), I rely most strongly on the models in which interracial exposure is the dependent variable when drawing conclusions about the relationship between public opinion and school desegregation (Rossell 2003).

The first measure of school districts' legal status is ***desegregation plan***, which equals one for any case in which a court imposed a desegregation plan upon a school district, and zero otherwise. The source of the data used for the analysis is the school desegregation case database constructed by the American Communities Project at Brown University. The database includes comprehensive information about school desegregation cases decided between 1952 and 2002. Each row in the database represents a single school district implicated in each case. Hence, for the

models utilizing this variable, the unit of analysis is the district-case. Of the 3,088 cases involving school segregation that are included in the database, about 35 percent (1,066) resulted in the imposition of a school desegregation plan. When districts are placed under or released from court order, they assume a particular set of responsibilities and powers. A school district under court order to desegregate must make decisions about such things as student assignment, hiring, and facilities in accordance with the order under which it was placed, and often in advance consultation with the federal government, while one that has never been under such an order or no longer operates under such an order can function independently.

The second measure of school districts' legal status is ***unitary status***, a dichotomous categorical variable coded zero if a district has ever been placed under court order to desegregate and one if the district has been released from such an order. A declaration of unitary status can only be made by the federal district court in whose jurisdiction a school district falls, and only once the district meets standards outlined in the relevant case law (namely, *Green v. New Kent County*, *Freeman v. Pitts*, *Oklahoma City v. Dowell*, and *Missouri V. Jenkins*). For districts under court supervision following an order to desegregate, unitary status constitutes a change in institutional identity because a district's abilities to make enrollment policies, hire and fire teachers, and even construct and close schools, can be influenced by whether it has achieved this status (per *Green v. New Kent County*). A declaration of unitary status by a court typically represents a *permanent* change in the identity of an institution, since no district has ever been placed under a court order to desegregate after having already been declared unitary. For the models utilizing this variable, the unit of analysis is the district-year.

In addition to these two measures of school district institutional identity, I consider four measures of school district institutional output. The first is ***interracial exposure***, or the percentage of white students in the school of the average black student. The formula for this variable, which is described in Rossell and Armor (1996), can be found in the Figure 4.A.1 at the

120

end of this chapter. The second measure is the ***percentage of black students in majority-white schools***. Higher values of these first two measures signify greater racial *integration*. The third measure is the ***percentage of black students in "intensely segregated" schools***, or schools that are at least 90 percent non-white. On this measure, higher values indicate greater racial segregation. Along with percent black in majority-white schools, percent black in intensely segregated schools has been used most frequently in reports by the Civil Rights Project at UCLA (see, e.g., Frankenberg, Lee, and Orfield 2003; Orfield and Lee 2007). The fourth and final dependent variable is the ***index of dissimilarity***, which is defined here as the percentage of black students that would need to change schools in a district in order for all schools to be perfectly racially balanced (between blacks and whites). The formula for this variable is described in Rossell and Armor (1996) and can be found in Figure 4.A.1 at the end of this chapter.

Table 4.2, which presents descriptive statistics for the four measures of institutional output, confirms that they vary quite significantly over the period under examination. On average, interracial exposure varies about 11 percent; percent black in majority-white schools varies about 17 percent; percent black in intensely segregated schools varies about 11 percent; and the index of dissimilarity varies about 8 percent over time. Of the 879 school districts identified in the dataset as having been subject to a court order to desegregate previously, 338, or 38.5 percent, have been declared unitary as of 2009. On average, about 24 percent of districts subject to a court order to desegregate have been declared unitary.

Table 4.2. Unstandardized District-Level Descriptive Statistics, 1987 – 2009				
	Mean	Std. Dev.	Min	Max
Interracial Exposure	47.099	27.577	0	99.837
Percent Black in Majority-White Schools	50.717	42.872	0	100
Percent Black In Intensely Segregated Schools	84.218	29.570	0	100
Index of Dissimilarity	74.867	20.226	0	100
Unitary Status	.218	.413	0	1
Liberal Mood	57.963	3.023	52.64	62.641
Note: Unit of analysis is "district-year." Entries are for those districts that have ever been under court order to desegregate since 1954. The total number of observations is 18,575. The total number of districts is 879.				

The primary explanatory variable in this analysis is *liberal mood*, the public's level of demand for government or commitment to the value of limited government. We can think of liberalism as the inverse of public demand for government: the more the public demands in the way of government activity, the less it embraces the value of limited government; the more it embraces the value of limited government, the less it demands from the government. In his pioneering work on mass public opinion, Stimson (1991) developed an index that perfectly captures these concept with national-level survey data. P*ublic policy mood* (hereafter "*liberal mood*") is an index of nationally-averaged responses to survey questions about federal policy activity drawn from a large cross-section of national surveys dating to 1952. Questions comprising the index solicit preferences for such things as federal spending on education and for the federal government's involvement in school desegregation. All of the questions used in the index were asked at least twice in the same format in the different surveys included in the dataset. The original index was constructed using principle components factor analysis and *liberal mood* was the first dimension of the resulting factor solution, accounting for 38 percent of the common variance of its constituent items. The remaining 62 percent of the variance was divided among the

discrete questions, which at best cohere around a second dimension that is difficult to define substantively (Erikson, MacKuen, and Stimson 2002, 205-210). The index has been updated over time using the WCalc algorithm Stimson and colleagues developed. The specific values of the index used for this analysis are based on updates posted to Stimson's website in February 2012. As used here, higher values of *liberal mood* indicate greater public amenability to federal government activity and lower values indicate greater public support for limited government.

Stimson (1991, 2004) has argued persuasively that his measure taps into policy preferences distributed along a liberalism-conservatism ideological spectrum among the American people as a whole, since its highest values over time coincide reliably with periods commonly associated with liberal policy outcomes and political thought and its valleys coincide with periods widely believed to be dominated by conservatism. The fact that it encompasses such a broad range of questions, including preferences regarding the government's role in school desegregation, makes *liberal mood* particularly appropriate for this analysis. Mass views about the role of the government do not register dichotomously. Individuals do not decide that they categorically do or do not embrace federal activity. Rather, preferences are relative over both space and time: some individuals prefer *more* activity at any given time, some prefer less, and the balance between those who prefer more and those who prefer less changes over time (Stimson 1991, 2004). Consequently, two general propositions about the relationship between the concept of limited government and school desegregation should hold. First, the *extent* to which the public endorses the principle of limited government at any given time should influence the pace and scope of desegregation. Second, the prospects for successful desegregation of schools over time should rest with the *tides of* liberalism—that is, the change in the balance of supporters and opponents of federal activity. As I argued earlier, the power-sharing relationship between school districts and federal governments that began after *Brown* makes beliefs about the scope of

government activity particularly relevant to outcomes in this area. Therefore, *liberal mood* should have a statistically significant effect on school desegregation.

Figure 4.4. *Liberal Mood* in the United States, 1952 - 2009

Source: Stimson (1991)
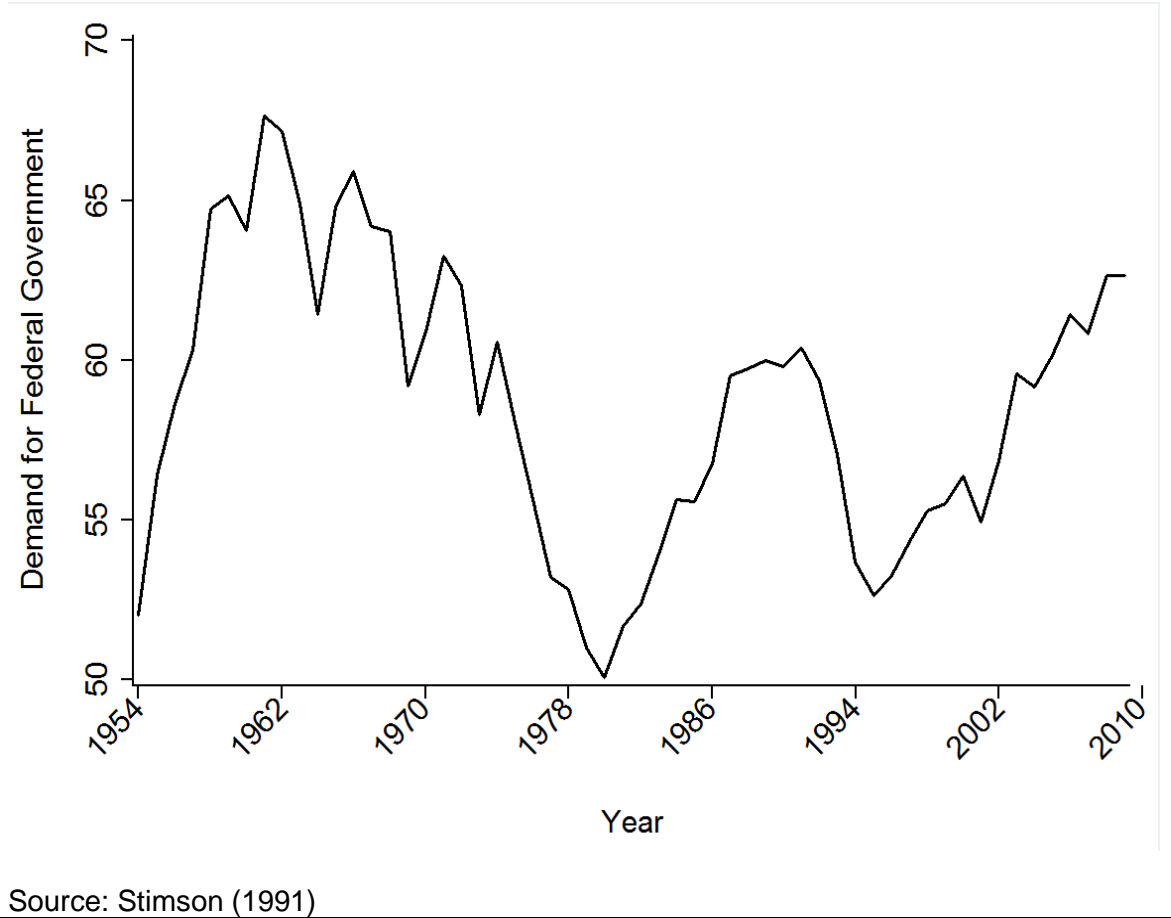
To understand the relationship between liberalism and school desegregation in school districts, one would ideally measure all variables at the district level. But while measures of school desegregation can be generated for school districts, current data availability all but forecloses the possibility of constructing measures of public opinion at this level of analysis. Previous studies have shown that it is possible to create state-level measures of public opinion when state public opinion data is not directly available using techniques like multilevel regression and poststratification (Enns and Koch forthcoming 2013; Erikson, Wright, and McIver 1984;

Berry et al. 1998),[41] but these procedures cannot be replicated to produce valid measures at the school district level. Political surveys in which identifying information for all or nearly all districts are attached to individual respondents are not available and there would likely be insufficient numbers of respondents at the level of school districts in existing surveys to generate statistically useful samples. Absent a measure of liberalism at the school district level, I rely upon Stimson's (1991) measure of liberalism, which denotes the extent to which people subscribe to the value of limited government or embrace government activism at the national level. Empirically, relying on a national-level measure of liberalism means that I am assessing the correlation of *ambient* liberalism—liberalism in the national environment within which schools are operating in a given year—with desegregation in school districts. Though not ideal, using a national measures is consistent with the notion that some forms of public opinion comprise part of the ideational order or political opportunity structure in which politics happens. Using a national-level measure of public opinion to predict racial segregation in school districts also has some basis in claims from prior scholars that national political opinion can influence local political change in the United States. For example, Hopkins' (2010) study of immigration policy shows that national attitudes about salient political issues can influence local institutional and attitudinal change. In addition, Myrdal informs us that the "American dilemma" inheres in the contradiction between "high *national* and moral precepts" and incontrovertible racial inequality (1944, *lxxi*; emphasis added).

Methods

With multiple different types of measures of school desegregation, I employ multiple statistical estimation procedures. In analyzing the probability that districts are released from their orders to desegregate—that is, whether they achieve unitary status—I employ event history

---

[41] Enns and Koch (forthcoming 2013) have an unpublished manuscript that introduces a dynamic measure of state liberalism. While these data are not yet publically available, I intend to use it once it becomes available to reassess the evidence provided here.

analysis. Event history or "survival" analysis uses maximum likelihood estimation to predict the time to some "event," where the event is a dichotomous categorical outcome like "death" or "heart attack." In this case, the event of interest is the attainment of unitary status. The dependent variable *unitary status* is coded zero for all years prior to that in which a given school district was declared unitary and one the year in which the district was declared unitary. Typically in event history analysis, each observation only exists in the dataset so long as it survives some terminal outcome. Once an observation experiences the event of interest, it drops from the dataset. Here, each district is dropped from the dataset once it is declared unitary, since I am only interested in the probability that a district is declared unitary in any given year and districts are never declared legally segregated again once they have been declared unitary. The resulting dataset contains 14,775 observations. Of the 879 school districts that have been subject to a court order to desegregate, only about 340 achieved unitary status by 2009, with the average time to unitary status among these districts being [ ] years.

For the four continuous measures of "policy outcomes" on school desegregation, I generate fixed-effects ordinary least squares estimates. The fixed effects specification has been used in prior research on school desegregation (e.g. Oakley, Stowell, and Logan 2009). The procedure is generally considered appropriate for analyzing relationships in a panel data set such as are used here because it treats each primary unit as having a separate intercept. By doing so, the procedure controls for the effects of time-invariant characteristics of the school districts, such as state or region. In Chapter Five, I show that the fixed-effects specification is superior to a random-effects specification that incorporates, rather than omits, time-invariant characteristics of the school districts.

Results

Table 4.3 presents the results of the models of change in the institutional identity of school districts, using *desegregation plan* and *unitary status* as dependent variables*.* The first

126

model predicts whether a court compels a school district to adopt a school desegregation plan. Here the unit of analysis is a case in a particular year. For each model, I report the odds ratios in addition to the logit coefficients in order to facilitate interpretation. These results support my claim that the federal-local power-sharing relationship the Supreme Court created in *Brown II* may have heightened the significance of changing popular demands for federal policy activity in this area with the result that outcomes in the area of school desegregation depend on the extent to which the public supports an active federal government.

Liberal mood, the measure of public demand for government, has a statistically significant relationship with court adoption of school desegregation plans. On average, each percentage increase in *liberal mood* decreases the probability that the court imposes a school desegregation plan about 16 percent (Column 2: $OR = 0.838$; $p = 0.049$). This result is somewhat counterintuitive from the perspective of democratic theory; courts should theoretically be more inclined to impose orders to desegregate as demand for government action increases. Yet, from the perspective of dynamic counteraction, the result is plausible. District courts may be confronting pressure from private interests invoking the concept of limited government even as the majority demands more from government. Coupled with judges' own concerns about the propriety of federal intervention in local educational matters, the activism of school desegregation opponents may persuade lower courts to exercise restraint—choosing *not* to impose a desegregation plan upon a school district—even as the majority of the public demands otherwise.

In the case of unitary status, the odds ratio on *liberal mood* signifies that the probability that a district is declared unitary increases approximately 23 percent for every increase in demand for government (Column 4: $OR = 1.228$; $p < 0.001$). In different ways, then, *liberal mood* impacts both the adoption and removal of school desegregation plans. Theoretically, federal judges may make decisions without regard for public opinion because they are not elected (see Barnum 1985; Mishler and Sheehan 1993). Yet federal judges may also calibrate their decisions to the nation's

policy mood out of concern with institutional legitimacy (Friedman 2009; see also Barnum 1985;

Mishler and Sheehan 1993, 1996). Table 4.3 affirms that, in the case of school desegregation,

national changes in preferences for government activity correlate with changes in the institutional

identity of school districts.

Table 4.3. Relationship between *Liberal Mood* and Legal Status, 1987 – 2009				
	Desegregation Plan		Unitary Status	
	B^a	OR	B^b	OR
Intercept			-14.941***	—
			(2.311)	—
Liberal Mood $_{t-1}$	-0.176*	0.838*	0.205***	1.228***
	(0.089)	(0.075)	(0.042)	(0.051)
Trend	-0.121**	0.886**	-0.029***	0.971***
	(0.045)	(0.040)	(0.004)	(0.004)
Observations	3,087	3,087	14,775	14,775
Pseudo R^2	0.093	0.093	0.028	0.028

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.
[a] Entries are unstandardized logit coefficients. Model also controls for "case." Standard errors are clustered by case. In this model, the trend is a linear year term.
[b] Entries are unstandardized logit coefficients obtained from event history analysis. Standard errors are in parentheses. In this model, "trend" denotes the squared distance from a given year to the year in which the greatest number of districts is declared unitary.

Table 4.4 presents the results of the fixed effects regressions of each alternative measure

of racial segregation at the school district level on Stimson's *liberal mood*. Again, the sample

represents the 879 school districts in the dataset that have been subject to a court order to

desegregate since *Brown*. All measures of segregation were calculated for schools years from

1987 to 2009, inclusive. The dependent variables have been recoded where necessary so that

higher values of all variables indicate greater integration. *Liberal mood* has been lagged by one

year to account for endogeneity, standard errors are clustered by district to account for heteroscedasticity, and an autoregressive term is included to account for autocorrelation.[42]

Table 4.4. Relationship between *Liberal Mood* and Racial Segregation, 1987 – 2009				
	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Intercept	65.96***	61.71***	32.70***	34.59***
	(2.561)	(3.241)	(2.791)	(1.794)
AR(1)	0.260***	0.396***	0.573***	0.381***
	(0.019)	(0.017)	(0.026)	(0.018)
Liberal Mood $_{t-1}$	-0.539***	-0.540***	0.053*	0.202***
	(0.036)	(0.049)	(0.026)	(0.025)
Observations	18,575	18,575	18,575	18,575
Districts	879	879	879	879
R^2 within	0.133	0.245	0.477	0.207
*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed. two-tailed. Entries are fixed-effects OLS coefficients and standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model, lagged by one year. Intercept represents the grand mean of all cases.				

As in Table 4.3, the results in Table 4.4 point to a systematic relationship between *liberal mood* and the degree of segregation within school districts over time. This systematic relationship is apparent in all four alternative measures of de facto racial segregation. On average, each increase in *liberal mood* is associated with an increase in the index of dissimilarity of about 0.20 percentage points and an increase in the percentage of black students attending intensely segregated schools of about 0.05 percentage points. Since these two variables have been recoded so that higher values signify increased integration, the positive sign on their coefficients are consistent with the expectations of democratic theory: as *liberal mood* moves in a direction that favors integration, school districts become more integrated by these measures. Yet *liberal mood*

---

[42] For a discussion of possible endogeneity between mood and policy, see Jacobs and Shapiro 1994. Methodologically, endogeneity is a concern because it produces inconsistent OLS estimates when present, while heteroscedasticity and autocorrelation are concerns because they both bias standard errors (i.e. yield inefficient estimates) when they are present.

is not in the expected direction in all four models, which is at the very least a testament to the different facets of racial segregation the dependent variables tap (Stearns and Logan 1986). Specifically, each increase in *liberal mood* at the national level is associated with a *decrease* of about half of a percentage point in both interracial exposure (Column 1) and percent black in majority-white schools (Column 2). The direction of the relationship between liberalism and desegregation suggested by the models of interracial exposure and percent black in majority-white schools raises some important questions. The negative relationship suggests that increased popular demand for government over time leads to greater racial segregation in schools, or, put another way, that school district officials systematically reduce their desegregation activity precisely when demand for such activity grows. This is highly counterintuitive from the perspective of democratic theory. If there is a strong incentive for school district officials to obey public opinion on school desegregation, as on other issues, school district officials risk their political longevity when they defy an upward trend in *liberal mood*.

One possible explanation for the negative relationship is measurement error. This could be the case if the demand for government were not in fact a demand for integration of school districts. I have argued that school desegregation primes considerations about the proper role of government because the federal government has been intimately involved with the enterprise since *Brown*, but school desegregation may also pique latent racial prejudice. Perhaps while the nation's growing liberalism pressures school districts to desegregate, an undercurrent of racial conservatism in the population influences school districts to do the opposite. Perhaps the language I treat as code for beliefs about the role of the federal government, including phrases like "neighborhood autonomy" and "neighborhood unity," is actually be code for racial conservatism. This kind of measurement error would mean that *liberal mood* is nothing more than a poor proxy for *racial conservatism* and the relationship observed between *liberal mood* and racial segregation spurious.

This seems an unlikely scenario for two reasons. First, racial resentment is likely to be only one among many considerations for school district leaders setting enrollment policies and for parents deciding where to send their children to school, and it may not even be the most significant consideration. Some have argued that parents are far more driven by concerns like logistical convenience, educational quality, or self-interest when selecting schools than by the racial composition of schools (Rossell 1995; Spears, Hensler and Speer 1979). These types of non-racial concerns are far more likely to be reflected in the set of preferences parents (and others) express about racial and non-racial policies, *liberal mood,* than by the set of preferences expressed about government action race-specific policies only.

Second, as described earlier, the trend in attitudes about the principle of integration has been continually positive. If the trend in attitudes toward integration is any indication of the trend in racial liberalism, actual segregation trends have also moved out of step with trends in racial liberalism. Of course, it could be the case that attitudes toward integration do *not* capture latent racial conservatism in the country, since racial prejudice is notoriously difficult to measure.[43] Berinsky (1999) contends that the levels of national support for integration at any given time suggested by surveys reflect disingenuous conformity by some with the norm of equality. He finds that those respondents who choose not to answer questions about their views on racial integration tend to have more conservative views about the issue. After accounting for these missing respondents, Berinsky subsequently shows that levels of support for integration are significantly lower. Still, I observe the same disjuncture between public opinion and desegregation when I turn to a measure of latent racial liberalism.

Table 4.5 reprises the models from Table 4.4, but it substitutes for Stimson's measure of general *liberal mood* Kellstedt's (2000) "racial policy liberalism," an index of mass preferences for more or less government action on race policy. Racial policy liberalism was constructed using

---

[43] See Huddy and Feldman (2009) for a discussion of the challenges of measuring racial prejudice.

a similar technique as Stimson's scale and it includes questions about affirmative action, segregation, and race spending. As a preliminary matter, Kellstedt (2000) himself provides evidence against the claim that racial policy liberalism better taps attitudes about segregation than general liberalism when he notes in his study introducing the variable that the correlation between the segregation questions that comprise the index is low by comparison to that of other questions having nothing to do with segregation. In fact, the segregation questions are the *least* correlated with the index of all constituent items, which suggests that views expressed about racial segregation do not reflect underlying racial conservatism and leaves open the possibility that beliefs about racial segregation reflect nonracial or general policy preferences like those Stimson's index captures. Equally important, Kellstedt's racial policy liberalism moves nearly in tandem with Stimson's mood throughout the period under examination (Figure 4.5), but is only moderately correlated with it ($r = 0.372$; $p = 0.012$). If the general liberalism embodied in Stimson's measure and the race-specific liberalism embodied in Kellstedt's measure increase and decrease in tandem over time, it is unlikely that they have different effects on school desegregation. The strongest evidence against the claim that views about race-specific governmental action captures the desire for change in segregation in ways views about general government involvement do not, and by extension that the former *explain* the negative coefficient on *liberal mood* in Table 4.4, emerges when we substitute Stimson's *liberal mood* with Kellstedt's measure of racial policy liberalism in Table 4.5. Just like *liberal mood*, racial policy liberalism has a statistically significant and negative relationship with interracial exposure and percent black in majority white schools. Additionally, the coefficients on racial policy liberalism in the models of percent black in intensely segregated schools and the index of dissimilarity are negative. These results provide more confidence that the negative relationship between *liberal mood* and racial segregation evident in Table 4.4 accurately captures how racial segregation in school districts responds to growing demand for government among the American people. Racial

132

segregation appears to increase in school districts as public demand for federal activity on race increases as well.

Figure 4.5. *Liberal Mood* and Racial Policy Liberalism in the United States
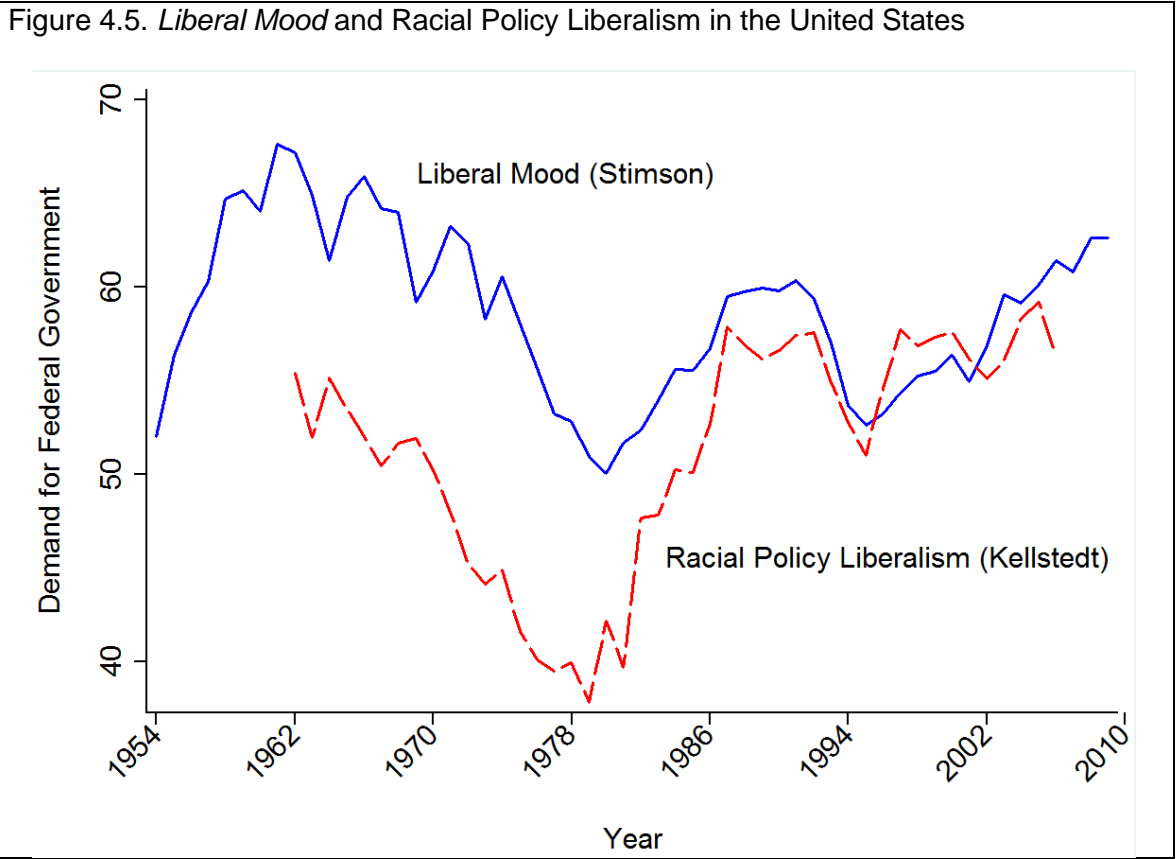
Table 4.5. Relationship between Racial Policy Liberalism and Racial Segregation, 1987 – 2006

	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Intercept	44.36***	36.43***	30.05***	48.32***
	(2.364)	(2.845)	(3.007)	(2.249)
AR(1)	0.300***	0.465***	0.731***	0.421***
	(0.025)	(0.023)	(0.0262)	(0.025)
Racial Policy Liberalism $_{t-1}$	-0.185***	-0.148***	-0.140***	-0.096***
	(0.031)	(0.044)	(0.025)	(0.026)
Observations	16,039	16,039	16,039	16,039
Districts	879	879	879	879
R^2 within	0.197	0.332	0.613	0.233

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed. two-tailed.
Entries are fixed-effects OLS coefficients and standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model, lagged by one year. Intercept represents the grand mean of all cases.

Another possible explanation for the negative relationship between *liberal mood* and some of the measures of racial segregation is the fact that the outcome and explanatory variables are measured at different levels. Since *liberal mood* is measured annually in this dataset, its variation may simply reflect variation in time. We already know from Figure 4.3 and Figure 4.4 that racial segregation and *liberal mood* vary considerably over time; perhaps, then, the findings in Table 4.4 are a function of regular temporal change in the two variables, not of any systematic relationship between them. Based on the evidence in Table 4.6, however, this alternative explanation is not substantiated.

Table 4.6 reports the change in the four measures of racial segregation after year fixed effects are added to each of the models.[44] We can see, for example, that while interracial exposure

---

[44] A linear time trend was also tested in lieu of fixed effects for year. However, AIC and BIC statistics calculated for the alternative functional forms of the time trend support the use of yearly fixed effects. These statistics can be found in Table 4.A.1 at the end of this chapter.

tends to decline within school districts between 1987 and 2009, the negative coefficient on *liberal mood* also remains after accounting for time. The direction of the coefficient on *liberal mood* is the same for all four models in Table 4.6 as it was in Table 4.4 Accounting for temporal fluctuations in the measures of *liberal mood* and racial segregation, such as they may be, does not alter the negative relationship between the two.

Table 4.6. Relationship between *Liberal Mood* and Racial Segregation after Controlling for Time

	(1) Interracial Exposure	(2) Percent Black in Majority- White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
AR(1)	0.283***	0.404***	0.542***	0.374***
	(0.018)	(0.015)	(0.024)	(0.018)
Liberal Mood $_{t-1}$	-6.108***	-7.338***	1.313**	2.180***
	(0.572)	(0.747)	(0.420)	(0.225)
Observations	18,575	18,575	18,575	18,575
Districts	879	879	879	879
R^2 within	0.280	0.334	0.510	0.252

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.* two-tailed.
Entries are fixed-effects OLS coefficients and standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model lagged by one year. Year fixed effects and intercept are excluded from table.

We can now see that whether we include a time trend or substitute racial policy liberalism for *liberal mood*, the coefficient on *liberal mood* is statistically significant and negative. The robustness of this finding to multiple alternative specifications offers convincing evidence that *liberal mood* has a negative relationship with segregation in school districts. Still, the unexpected direction of the coefficient on *liberal mood* merits further attention at a theoretical level. Democratic theory leads us to expect that increases in demand for government will lead to increases in integration as school districts, as political leaders will stake their legitimacy and longevity in public office on their compliance with public opinion (Dahl 1998; Maestas 2000,

2003). Yet the coefficient on *liberal mood* is negative here. This finding is particularly puzzling given that, as noted at the outset, attitudes toward integration also appear to move out of sync with school desegregation. Rather than resolve the puzzle of how public opinion affects school desegregation, the findings have complicated the puzzle further. The sensitivity checks have ruled out a number of methodological explanations for that might lead us to believe that the observed negative relationship between *liberal mood* and segregation is spurious, and thereby lend credence to the dynamic counteraction hypothesis. In the final section of this chapter, I test the dynamic counteraction hypothesis with a multivariate statistical model. The dynamic counteraction hypothesis suggests that the negative relationship between *liberal mood* and interracial exposure reflects a pattern of interaction between public opinion and institutions that has not been captured by the models presented thus far or addressed in previous work. I maintain that when it comes to school desegregation, opponents and proponents of civil rights are mobilized at different points in time by ambient opinion trends. The result is a dynamic relationship between popular demands for government and desegregation outcomes: desegregation moves out of step with *liberal mood* at some points and in-step with it at other points.

4.6 Dynamic Counteraction in School Desegregation

Why would racial segregation decline in school districts when trends in *liberal mood* suggest the opposite should happen? To answer this question, I return to the dynamic counteraction thesis, which predicts that civil rights outcomes alternately misalign and realign with public opinion over time as opponents and proponents of civil rights are moved to action.

This is the story that seems to have unfolded in the case of school desegregation (Gotham 2002; Ogletree 2004; Orfield 1996). We might think that when preferences shift in a direction that favors civil rights, *proponents* would be moved to action, but many supporters of school desegregation may not take immediate steps to effectuate integration. Charles Ogletree recalls

that in his hometown of Merced, California, neither of the Supreme Court's *Brown* rulings "generated much interest" initially, even though the community placed "a high value on education" (2004, 24 – 25). Agitation for integrated schools did not really emerge until the 1960s. Likewise, in Kansas City, Missouri, which was placed under a court order to desegregate in 1977 and became the subject of the 1995 Supreme Court case, *Missouri v. Jenkins,* proponents of racial integration only began to mobilize during the 1960s "in response to continued racial segregation both between and within schools" (Gotham 2002, 20). Racial segregation was equally "undesirable" in Hartford, Connecticut, schools, but few people did anything to stop it in the decades between *Brown* and *Sheff v. O'Neil* (1989), the case in which the district was deemed unconstitutionally segregated (Eaton 2007, 58). Inaction among civil rights proponents may reflect overly charitable views of local government and the probability of local compliance with federal mandates, acceptance of the status quo, or simply the classic collective action problem. At any rate, activism seems to be a defensive, rather than an offensive, tactic in the case of school desegregation. Since opponents of civil rights are put on the defensive by growing public demand for government, they are the ones most likely to be activated by increased *liberal mood*.

Citizen counteraction can play out through white flight from school districts or through pressure on political leaders to block integration. If enough parents opt to send their children to private schools or to move out of a district in response to shifts in public opinion, we might see the systematic declines in institutional "outputs" we have observed thus far, even as policies remain the same. Variation in the measures of policy outcomes—those in which the dependent variables are interracial exposure, percent black in intensely segregated schools, percent black in majority-white schools, and the dissimilarity index—may reflect the choices not only of the political leaders who draw attendance boundaries or enact policies related to school desegregation, but also of parents who decide where to send their children to school. (By contrast, the imposition and removal of court orders to desegregate can only be effectuated by political

137

leaders—namely, district court judges). Thus, the effects of citizens' response to *liberal mood* are particularly likely to be captured by the models of policy outcomes.

Democratic theory posits a positive and linear, if conditional, relationship between public opinion and political outcomes: even after accounting for the three other theoretically relevant types of factors, increased demand for government should trigger increased policy output. Based on the agenda setting literature, the theory of dynamic counteraction relaxes the positivity and linearity assumptions by allowing the effect of public opinion to vary over time. Testing this hypothesis methodologically requires a different kind of model than has been employed in the past, one in which public opinion assumes a non-linear functional form. Modeling the relationship between segregation and *liberal mood* as non-linear might seem like a fairly straightforward task on the surface: we simply need to construct and incorporate multiple lagged versions of public opinion into the standard representation model. One challenge involved in constructing such a model, however, is that there is no theoretical foundation for specifying the number of different lagged variables or the length of the lags on each lagged variable. It may be true that the effect of liberalism varies over time, but it is not clear from previous research exactly how long it would take for this dynamism to manifest. To determine the appropriate length and number of the lags on *liberal mood*, I therefore looked beyond the literature on school desegregation to work on substantive representation within the judiciary.

In their study of the Supreme Court's responsiveness to public opinion, which also relies upon Stimson's (1991) public opinion construct as an explanatory variable, Mishler and Sheehan (1993) consider lag lengths of between one and five years. They find statistically significant results on mood at both one- and five-year lags, and ultimately conclude that the model in which mood is lagged five years provides the best fit of the data. Following their example, I ran models with alternative lag lengths and compared the fit using Akaike (AIC) and Bayesian information criteria (BIC). The first step in this process was to identify the 15 different ways in which *liberal*

mood at a one year lag, *t -1*, could be combined with *liberal mood* lagged at least one other year

length (for example, *t -2,* or a two-year lag). Next, I ran models that included some combination

of *liberal mood* at different lag lengths alongside an autoregressive dependent variable and yearly

fixed effects. Finally, I calculated AIC and BIC statistics for these models and ranked them

according to the "smaller-is-better" criterion. Table 4.9 reports AIC and BIC statistics for the 15

different dynamic models of interracial exposure, as well as the rank of each model.

Unfortunately, no single model is incontrovertibly superior when ranked according to these fit

statistics. The model in which *liberal mood* is lagged at one, two, three, four, and five years is

ranked first according to AIC and third according to BIC. The model in which *liberal mood* is

lagged one, two, three, and five years is ranked second according to both statistics. These two

alternatives have the same average rank. Similar patterns are observed in the fit statistics of the

other three measures of policy outcomes. Since the model in which *liberal mood* enters with lags

of one, two, three, four, and five years ranks highest on AIC, and I can think of no sound reason

outside of these statistics to select the model in which *liberal mood* at a four-year lag is *excluded*

over that in which it is included, I report the model in which *liberal mood* is lagged one, two,

three, four, and five years in Table 4.8. It should nevertheless be noted that the findings from

Table 4.8 hold for all dependent variables when the combination of one, two, three, and five year

lags is used instead.

Table 4.7. Goodness-of-Fit Statistics for Dynamic Models of Interracial Exposure				
Lag Combinations	**AIC**	**Rank**	**BIC**	**Rank**
1,2	136055.3	15	136251.1	15
1,3	136024.2	14	136220	14
1,4	135931.6	7	136127.4	6
1,5	135939	12	136134.8	8
1,2,3	135999.9	13	136203.5	13
1,2,4	135931.7	8	136135.3	9
1,2,5	135932.7	10	136136.3	10
1,3,4	135933.6	11	136137.2	11
1,3,5	135925.3	6	136128.9	7
1,4,5	135899.1	4	136102.7	1
1,2,3,4	135931.9	9	136143.3	12
1,2,3,5	135891.8	2	136103.3	2
1,2,4,5	135895.3	3	136106.7	4
1,3,4,5	135900.2	5	136111.7	5
1,2,3,4,5	135885.9	1	136105.2	3

Models are ranked according to the "smaller-is-better" criterion on both AIC and BIC. Those with lower AIC and BIC statistics rank higher.

Table 4.8. Dynamic Effects of *Liberal Mood* in School Districts

	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
AR(1)	0.284***	0.406***	0.542***	0.375***
	(0.019)	(0.015)	(0.024)	(0.018)
Liberal Mood $_{t-1}$	-5.702***	-7.253***	1.270**	2.012***
	(0.642)	(0.876)	(0.478)	(0.306)
Liberal Mood $_{t-2}$	-0.284	0.110	-0.115	0.123
	(0.291)	(0.403)	(0.208)	(0.198)
Liberal Mood $_{t-3}$	0.152	0.386	-0.680***	-0.177
	(0.191)	(0.327)	(0.171)	(0.111)
Liberal Mood $_{t-4}$	0.625***	0.538*	0.149	-0.0476
	(0.143)	(0.227)	(0.109)	(0.125)
Liberal Mood $_{t-5}$	0.724***	0.625**	-0.435***	-0.273*
	(0.125)	(0.231)	(0.113)	(0.113)
Observations	18,575	18575	18,575	18,575
Districts	879	879	879	879
R^2 within	0.286	0.337	0.512	0.253

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.* two-tailed.
Entries are unstandardized fixed-effects OLS coefficients and standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model lagged by one year. Year fixed-effects are also included in the models, but not reported in the table.

Table 4.8 provides strong support for the dynamic counteraction thesis across the different measures of segregation. In the models of interracial exposure and percent black in majority-white schools, the coefficient on *liberal mood* at a one-year lag is statistically significant and negative, just as in the preliminary linear models. However, the direction and statistical significance of the coefficients on *liberal mood* vary at other lag lengths. In the case of interracial exposure, the coefficient on *liberal mood* continues to be negative at *t -2,* but its magnitude is much smaller and the coefficient is not statistically significant (Column 1: b = -0.284; p = 0.318). At lag lengths three through five, *liberal mood* has a positive coefficient. Note that the three lag lengths in which *liberal mood* is statistically significant in this model, *t-1, t-4,* and *t-5*, have different signs (negative, positive, and positive, respectively). The variation in the signs suggests

141

that even if we focused on the lag lengths of *liberal mood* that have a statistically significant coefficient, there would still be a dynamic relationship between *liberal mood* and interracial exposure. A similar pattern is visible in the dynamic model of percent black in majority-white schools. The coefficient on *liberal mood* is large and negative at *t-1*(Column 2: b = -7.253; p < 0.001), but small and positive at *t-2, t-3, t-4,* and *t-5.* In addition, *liberal mood* is not statistically significant at *t-2* or *t-3*.

A different, but still dynamic, pattern is evident in the models of percent black in intensely segregated schools and the index of dissimilarity. For the former, the coefficient on *liberal mood* is positive at *t-1* and *t-4,* and statistically significant at *t-1, t-3,* and *t-5* (Column 3). Meanwhile, in the index of dissimilarity model, the coefficient on *liberal mood* is positive at *t -1* and *t-2*, but statistically significant at *t-1* and *t-5*. In other words, the only two *liberal mood* entries in this model with significant coefficients have different signs. Notwithstanding the fact that the results point to initial congruence between opinions and outcomes on two measures of racial segregation (Columns 1 and 2) and initial incongruence on two others (Columns 3 and 4), all four models are inconsistent with the democratic representation hypothesis. In no case do we observe a positive linear relationship between *liberal mood* and racial segregation; rather, as the dynamic counteraction hypothesis predicts, the trends in racial segregation seem alternately to align and misalign with public demand for government over time.

By some measures, the extent of the short-term policy-opinion disjuncture is quite high. For all four measures, the coefficient on *liberal mood* is greatest when *liberal mood* is lagged one year. At a one-year lag, the absolute value of the coefficient on *liberal mood* is greater than five percentage points when the dependent variable is interracial exposure (Column 1: b = -5.702) or percent black in majority-white schools (Column 2: b = -7.253), but less than three percentage points when the dependent variable is percent black in intensely segregated schools (Column 3: b = 1.270) and the index of dissimilarity (Column 4: b = 2.012). The variation in the magnitude of

the coefficient on *liberal mood* at a one year lag suggests that the extent of the short-term disjuncture between *liberal mood* and segregation depends on the measure of segregation, which affirms the importance of examining multiple measures of segregation (Stearns and Logan 1986).

Despite the eventual realignment of outcomes and opinions, the long-term implications of the initial disjuncture can be quite significant. We can understand these implications by adding together the coefficients for mood at all of its lag lengths in each of the models in Table 4.8. The sum of the coefficients on *liberal mood* at its different lag lengths represents the *cumulative impact* of increased demands for government from five years ago. It is negative for all four measures of segregation, though its magnitude varies unsurprisingly by measure. The cumulative change is about five percentage points in the case of *interracial exposure* (Column 1: -4.485 = -5.702 – 0.284 + 0.152 + 0.625 + 0.724); about six percentage points in the case of *percent black in majority-white schools* (Column 2: -5.814 = -7.253 – 0.110 + 0.386 + 0.538 + 0.625); about .20 percentage points in the case of *percent black in "intensely segregated" schools* (Column 3: -0.189 = -1.270 – 0.115 + 0.680 – 0.149 – 0.435); and almost two percentage points in the case of the *index of dissimilarity* (Column 4: 1.637 = 2.012 + 0.123 – 0.177 – 0.048 – 0.273). These figures suggest that though policy outcomes may eventually realign with the trend in *liberal mood*, the realignment may not fully compensate for discrepancies between *liberal mood* and segregation at certain time periods. Even if they eventually fall in line, opponents can slow the progress of school desegregation quite substantially by rebelling.

Together, these results offer strong evidence for the dynamic counteraction thesis. Though the patterns of change vary in some ways across measures, which we can attributed to the fact that they capture different dimensions of segregation (Stearns and Logan 1986; Reber 2005; Rossell and Armor 1996), there is remarkable consistency in three respects: (1) the coefficient on *liberal mood* at *t-1* is statistically significant in all models; (2) the magnitude of the coefficient is greatest at *t -1* in all models, and (3) the direction of the coefficients on liberal after *t-1* varies in

143

all models. All of these features of the dynamic models are consistent with the claim that increased demand for government action mobilizes opponents of civil rights to act against prevailing opinion. Their opposition may at some points in time succeed in stalling or reversing integration but they may also be overcome by supporters of integration, allowing institutional output to realign with public demand. Armed with this evidence, we can begin to see how it is that peaks and valleys have emerged in school desegregation since *Brown.*

4.7 Conclusion

This chapter began with the goal of understanding how school desegregation could have evolved in peaks and valleys when attitudes toward the principle of integration have been continually positive over time. I argued that something other than the egalitarianism represented by attitudes toward the principle of integration must be affecting segregation. Specifically, I claimed that the power-sharing arrangement between federal courts and school districts that the Supreme Court devised in *Brown* heightened the significance of public perceptions about the proper role of government. Fixed effects models of school desegregation relying upon a national-level indicator of liberalism, Stimson's (1991, [1999]) "public policy mood" (hereinafter "*liberal mood*"), pointed to a systematic response in school districts to increased demands for government over time. *Liberal mood* is statistically significantly related to both measures of school district "institutional identity" and three of the four different measures of "policy outcomes," with its coefficient very close to conventional significance threshold in the fourth. These results begin to explain the incongruence between trends in school desegregation and attitudes toward integration over time described at the start of this chapter. The egalitarianism embodied in attitudes toward integration must contend with the liberalism embodied in *liberal mood*. When opponents of integration or of government involvement therein succeed in realizing their goals, districts begin to resegregate.

It should seem plausible that changes in support for "limited government" affect school desegregation when changes in support for the principle of racial integration do not if we recall the typological distinction between political values and political attitudes described in Chapter Two. Mass attitudes about integration may actually be changing more wildly and frequently than year-to-year polls suggest. Alternatively, these opinions may not be strongly held or they may reflect unobservable considerations. As a result, attitudes may not be able to send useful signals to legislators about what actions to take on school desegregation. By contrast, the ideal of limited government, embodied in *liberal mood,* is a widely held, deeply entrenched consideration, and relatively stable consideration political leaders and citizens can invoke to help them choose between alternative courses of political action.

At the same time, the negative coefficient on *liberal mood* in the preliminary institutional output models defies the expectation from democratic theory that the government generally does as the public dictates (Dahl 1998), which is borne out by a wealth of empirical research. The finding leads me to examine several plausible explanations for the result. These alternative explanations include mismeasurement of the independent variable and misspecification of the model. On the theory that racial conservatism is driving government to defy generalized demands for more government, I examine trends in racial policy liberalism (Kellstedt 2000) and find evidence against the measurement error argument. I show that the ebbs and flows of racial policy liberalism are largely in sync with those of general policy liberalism, suggesting that when school desegregation deviates from demands for general government activity, it deviates from demands for government activity on race as well (Figure 4.5). More critically, I find a statistically significant negative relationship between racial policy liberalism and all four measures of racial segregation (Table 4.5). If the negative coefficient on *liberal mood* in two of the four models means that trends in racial segregation defy demands for government to be more active in general,

the coefficient on racial liberalism in all four models affirms that trends in racial segregation defy demands for government to do more *on race* as well.

I also tackle the counterargument that the impact of *liberal mood* is due to the failure to control for time in the initial models (Table 4.6). The coefficient on *liberal mood* remains statistically significant and negative after adding yearly fixed effects, which suggests that the initial finding does not reflect omission of the underlying temporal trend in school segregation. Thus, after accounting for plausible alternative explanations for the apparent negative impact of *liberal mood*, there is more substantial evidence that greater demand for government activity yields more segregation in school districts. Racial segregation in schools has increased even while egalitarianism and demand for government grow. This finding both supports and challenges the prevailing wisdom on the link between public opinion and policy and policy outcomes. On the one hand, the finding is consistent with studies suggesting that democratic responsiveness depends on issue domain (e.g. Soroka and Wlezien 2010). There has been no research linking liberalism with school desegregation, but research concerning a host of other issue domains points to a positive pathway from opinion to policy outcome. For example, some studies suggest that changes in public demand for government positively influence government spending (Erikson, MacKuen, and Stimson 2002; Soroka and Wlezien 2010; Stimson, MacKuen, and Erikson 1995). Political leaders may only register demands for policy action in certain domains or they may register general demands for government action as demands for certain kinds of policy action, rather than for action across all policy domains. If school desegregation is excluded from political leaders' considerations when they take action, they may inadvertently take actions in the short term that increase segregation before correcting their behavior in the long term. I take up this point at greater length in Chapter Five.

On the other hand, the negative finding conflicts with the notion that policy outcomes usually follow the dictates of public opinion and thereby poses a challenge to democratic theory

that has not been raised in previous work. I offer two reasons policy outcomes may defy public opinion in the short term but align with it in the long term. A shift in policy preferences in favor of an outcome opposed by some political leaders or citizens may stimulate these opponents to rebel, while proponents of the political outcome implicated by the shift remain quiet. As a result, civil rights outcomes can move in the opposite direction from public opinion at times. Eventually, however, these political leaders should recognize the consequences of long-term defiance of the public's policy demands and fall in line, or else be overcome by proponents who tire of their recalcitrance. In other words, opponents of civil rights may succeed in pushing institutions in the opposite direction from that which public opinion favors sometimes, but policy outcomes will reflect majority opinion at other times. This phenomenon, dynamic counteraction, explains the seemingly counterintuitive negative relationship between *liberal mood* and both interracial exposure and percent black in majority-white schools that we observe throughout this chapter.

There is one remaining caveat to the models discussed here: while they each support the dynamic counteraction thesis, none of the models controls for exogenous characteristics of school districts. The literature on school desegregation points to a number of factors the inclusion of which might confound the results reported here. Without controlling for these variables, the models presented thus far may still suffer from omitted variable bias. We would therefore be right to doubt the dynamic counteraction thesis unless variations in the direction of the coefficients on *liberal mood* persist after controlling for other theoretically relevant factors. In the next chapter, I identify the variables previous research has linked to school desegregation and turn to multivariate models incorporating them alongside *liberal mood* in order to provide a more rigorous test of the dynamic counteraction thesis.

CHAPTER FOUR APPENDIX:
SCHOOL DESEGREGATION IN KANSAS CITY, MISSOURI

Prior to *Brown,* African Americans in the Kansas City metropolitan area began to integrate the center city. The black population in Kansas City increased from about nine percent in 1900 to 14 percent in 1954. The migration was motivated in part by a fervent desire among black parents to provide better educational opportunities for their children. In the rural areas where most blacks resided at the time, schools were "rudimentary at best and nonexistent at worst" (Gotham 2002, 8). At the same time, restrictive covenants kept blacks from attending more proximate white schools in the suburbs of the city. Notably, busing helped to maintain segregation at the time: black students were transported from rural areas lacking *any* schools *through* suburban areas with predominately white schools they could not access and into an integrated center city with schools that were somewhat integrated.

Brown marked an ironic turning point in Kansas City. Confronted with the obligation to desegregate "with all deliberate speed," the state of Missouri immediately devolved its authority over schools to local governments, in effect asserting the principle of limited government precisely when the Supreme Court was embracing the principle of equality. As in most school districts at the time, integration was not forthcoming in Kansas City during the first decade after *Brown.* Instead, buoyed by the school board's ostensibly race-neutral attendance policies that gradually divided the city along a major North-South thoroughfare: whites were concentrated in schools to the West of Troost Avenue, while blacks found themselves in isolated schools to East of Troost Avenue. Seventeen elementary schools East of Troost Avenue saw geometric increases in their black populations between 1955 and 1975. In the *best* case, Graceland Elementary, the black share of the student population rose from 28.8 percent during the 1955 school year to 99.6 during the 1974 school year. In the worst case, Kumpf Elementary, black students went from

being zero percent of the population during the 1955 school year to 100 percent of the population during the 1974 school year. Troost Avenue became "Troost Wall."

Nine years after the Supreme Court endorsed integration in principle, black and ideologically progressive white activists who realized that the *Brown* mandate remained unfulfilled began to protest in earnest. In June 1963, they accused the Kansas City school board of enforcing "the unwritten law of the Troost line" (quoted in Gotham 2002, 18). They also wrote letters to state legislators and lobbied city councilors. Local newspapers published editorials supporting integration, a group of private consultants developed a plan for the district to build integrated middle schools, and the district superintendent even proposed that the school implement a "comprehensive system of racially mixed schools" (Gotham 2002, 20). Momentum, it seemed, was shifting in favor of integration.

The sudden activism of proponents of school desegregation in Kansas City echoed nationwide shifts in public opinion and civil rights activism. The year the pro-integration protest at the school board took place, public demand for government, as measured by *liberal mood*, is estimated to have been at the fifth highest level at any point between 1946 and 2011 (Stimson 1991). Only two years earlier, *liberal mood* had reached its *highest* level ever. The second-highest level of *liberal mood* was registered in 1962, which was also the year before the school board protest. Meanwhile, civil rights protests were fomenting nationwide at this time. Only two months before the protest at the Kansas City school board meeting, Dr. Martin Luther King, Jr. had led a historic march from Montgomery to Selma, Alabama to protest racial segregation. Two months after the Kansas City protest, Dr. King delivered his "I Have a Dream" speech recalling the self-evident truth of equality.

Notwithstanding the growth in egalitarianism locally and nationally, the Kansas City school board initially held fast to its method of assigning students to schools in a way that effectively maintained racial segregation. Tellingly, "the school board repeatedly justified its

segregative school attendance boundaries policies on the grounds that 'neighborhood unity,' 'neighborhood autonomy,' and 'neighborhood stability' had to be preserved before school integration could go forward" (Gotham 2002, 20). On the school board's view, "integration is a factor to be taken into account within the school system *whenever it is possible to do so without destroying the fundamental principle of the school as a major service unit to the neighborhood of which it is part*" (quoted in Gotham 2002, 18; emphasis added). Terms like "neighborhood autonomy" and "neighborhood unity" are characteristic of the principle of limited government. Neighborhoods are not only small in size but their boundaries are often a matter of perception, both of which make it easy to define pro-integration actions taken by governments, which invariably encompass multiple neighborhoods, as coercive or supererogatory. To call them "fundamental" principles as the school board did is to elevate them at least to parity with values like equality. Here, however, the school board went a step further and privileged local control over egalitarianism.

As protests of racial segregation in Kansas City schools continued through the 1960s, some prominent political leaders even embraced the cause. One state representative introduced a bill to equalize school funding. Now, however, opponents of racial segregation were also mobilized. Opponents claimed that equalizing funding would "*exacerbate* inequalities between school districts, impoverish education in the *suburban* school districts," which were mostly white, "and lead to more harm than good" (Gotham 2002, 21; emphasis added). This rationale for opposing the equalization of funding invoked both the value of equality and the obligation to pursue public interest, but satisfying them meant in this case maintaining racial segregation in schools. Political leaders were, consequently, conflicted about what to do. The state legislator who had proposed the equal funding plan recalled that many of his colleagues worried that, if adopted, the new policy "would cause them to have to face up to the issue of integration and they

would just as soon not face up to that because to them it was a no-win issue" (quoted in Gotham 2002, 22).

The debate between opponents and proponents of desegregation in Kansas City came to a head in the 1970s, when the Southern Christian Leadership Conference sued the school district of Kansas City and the federal department of Health, Education, and Welfare found that the school district had illegally segregated black and white students. Confronted with the possibility of losing federal funding, in 1977 the school district voluntarily implemented a plan it claimed would eradicate the "Troost Wall." By this time, however, momentum had already shifted in favor of local control. Though *Swann v. Charlotte-Mecklenburg* (1971) had led some activists, including those in Kansas City, to believe that it was possible to implement a desegregation plan that encompassed both Kansas City and its surrounding suburbs, *Milliken v. Bradley* (1974) demonstrated that metropolitan plans were unlikely to pass constitutional muster. Bolstered by the growing conservatism of desegregation jurisprudence and ambient public opinion, the state passed a law prohibiting the annexation of school districts by cities that annexed neighboring localities. The district court's 1984 ruling offered some hope for desegregation: the court found the school district and state liable for maintaining racially segregated schools and ordered the latter to finance a plan designed to attract suburban white students to magnet schools in Kansas City. However, in the 1995 case, *Missouri v. Jenkins,* the Supreme Court invalidated the court-imposed requirement to finance a desegregation plan, arguing that it was an overreach of judicial authority. Together with two previous decisions also issued under the auspices of Justice Rehnquist, *Freeman v. Pitts* (1991) and *Oklahoma City v. Dowell,* the decision in *Missouri v. Jenkins* encouraged district courts to relinquish administrative control over school districts. In Kansas City, the triumph of limited government was finally complete.

In many respects, the experience of the Kansas City school district epitomizes the representation dilemma I described in Chapter Two. While national political leaders insisted upon

integration when *Brown* was decided, national public opinion and local leaders favored segregation. The decisions of the Supreme Court and lower federal courts did their best to eliminate longstanding discrimination that had become etched in the political culture of the nation. School district leaders did their best to perpetuate that culture. Sometimes districts struggled to satisfy the competing demands of public opinion and public interest. Throughout, proponents of a strict egalitarianism waged an ideological war against proponents of a strict liberalism. Pro-integration efforts proved most effective when and where they appealed to equality; anti-integration efforts proved most effective when and where they invoked the value of limited government.

Figure 4.A.1. Formulas for Select Measures of Racial Segregation

(a) Interracial Exposure

$$IE_D = 100\left(\frac{\sum_s^D B \times \frac{W}{T}}{B_D} \right)$$

(b) Dissimilarly Index

$$DI_D = \frac{\left(\frac{W_s}{W_D} - \frac{B_s}{B_D}\right)}{2}$$

Note: For each measure, *D* is the district, *s* is a school in district *D, B* is the number of Black students, *W* is the number of white students in school *s,* and *T* is the total enrollment in school *s.* These measures can be calculated for any two racial groups not represented in these formulas (e.g. Latinos, Asians) by substituting the enrollment figures corresponding to those groups for the enrollment figures of black and white students. Source: Rossell and Armor (1996)

Table 4.A.1. Goodness-of-Fit Statistics for Different Forms of Time Trend			
	Functional Form of Year	**AIC**	**BIC**
Interracial Exposure	Fixed Effects	136054.6	136242.5.
	Linear	139040	139063.5
Percent Black in Intensely Segregated Schools	Fixed Effects	129446.8	129634.7
	Linear	129584.6	129608.1
Percent Black in Majority-White Schools	Fixed Effects	150692.9	150880.8
	Linear	152671.8	152695.3
Index of Dissimilarity	Fixed Effects	126730.6	126918.5
	Linear	127356.6	127380.1

Superior model alternative for each dependent variable is highlighted, based on the "smaller-is-better" criterion.

CHAPTER FIVE
A MORE ROBUST TEST OF DYNAMIC COUNTERACTION

In Chapter Four we saw that racial segregation has moved in peaks and valleys at both the national and school district levels since the Supreme Court affirmed the right to attend racially integrated schools in *Brown v. Board of Education* (1954). We also saw in Chapter Four that, strangely, this trajectory has materialized in spite of increasing national support for the principle of integration. I developed an argument for how changes in the extent to which Americans value limited government correlate with changes in school desegregation over time. Chapter Four presented evidence of a systematic negative relationship between change in *liberal mood* and change in two measures racial segregation, including the one that is favored by school desegregation researchers. I noted that the findings are inconsistent with the expectation from democratic theory that public opinion positively affects policy and policy outcomes. I proposed, however, that when public opinion shifts in a direction that favors civil rights expansion, it might actually trigger institutional retrenchment by activating those opposed to civil rights. Opponents may be able to mobilize so strongly against civil rights that they are able to stall future progress or turn back previous gain, seven when trends in public opinion favor the continuance or expansion of civil rights. At other times, such opposition may retreat or be overcome by the prevailing desire for civil rights expansion. As *liberal mood* continues to move in a direction favoring civil rights, then, outcomes may realign with liberalism. This process, termed dynamic counteraction, would yield both incongruence and congruence between liberalism and school desegregation at different points over time.

In this chapter, I revisit the dynamic counteraction thesis using multivariate statistical models that incorporate control variables previous studies have linked to racial segregation in schools. The purpose of this chapter is to ascertain whether incorporating liberal mood into the conventional model of school desegregation helps to explain the trajectory of outcomes in this area better than institutional conditions, demographic conditions, and issue salience do alone.

The first set of models predicts changes in segregation at the district level as a function of district-level covariates and measures of political values at more distant levels. These models provide a more rigorous test of the claim that *liberal mood* correlates with civil rights policy outcomes, since the effects of liberalism must filter through a number of variables operating at a more proximate level of analysis. They are especially critical to establishing whether a *causal* relationship exists between public opinion and school desegregation, as the absence of important institutional controls has undermined the credibility of previous studies of opinion representation (Burstein 2003). As in the nested models presented in the previous chapter, the more comprehensive models presented in this chapter show a systematic variable relationship between *liberal mood* and- racial segregation in school districts, thereby lending additional support to the dynamic counteraction thesis. I conclude from the results that racial segregation in American schools tends to respond dynamically to increased popular demand for federal government.

5.2 Other Ways *Liberal mood* Can Shape Desegregation

Critically, the models presented at the end of Chapter Four did not account for any of the factors that have been the subject of most previous research on school desegregation. In the absence of these theoretically relevant variables, there is a strong possibility that the results presented in Chapter Four reflect omitted variable bias. Omitted variable bias is one of the most damning misspecification errors a statistical model can suffer. Omitted variable bias occurs when one or more theoretically relevant variables not accounted for in a statistical model affects both the dependent variable and one or more of the independent variables included in the model. The

exclusion of the theoretically relevant variable(s) causes the model to overestimate the coefficients and underestimate the standard errors of the variables that are included. The extent of the overestimation or underestimation should correspond to the size of the effect of the omitted variable(s), but if the bias is strong enough, it will lead to Type I error, or improper rejection of the null hypothesis for the included variables. In this study, the failure to account for one or more of the judicial or demographic variables that has been linked to school desegregation in previous scholarship might generate such bias. Consider, for example, how the omission of a measure of the ideological composition of the Supreme Court might explain the results observed. Growing conservatism in the Supreme Court may simultaneously diminish *liberal mood* in the nation *and* empower white parents to flee school districts in the short term. If so, we could observe exactly the relationship between *liberal mood* at a one-year lag and racial segregation that we see in several models: statistically significant and negative. Once a measure of the Court's ideological composition is included, the coefficient on *liberal mood* at a one-year lag might be smaller, positive, not statistically significant, or all three. We can therefore judge the dynamic counteraction hypothesis by how well *liberal mood* stands up to control variables suggested by the literature.

Once controls are incorporated into the model, there are four theoretical ways in which *liberal mood* could correlate with racial segregation over time. First and foremost, the premise of Chapter Four may be correct without the conclusion being correct. There may be a systematic relationship between *liberal mood* and racial segregation over time, but the relationship may not operate in exactly the manner suggested by the dynamic counteraction hypothesis. For example, once controls are included in the model, we may observe a positive coefficient on *liberal mood* at all of its lag lengths. If the government responds consistently to registered opinions, racial segregation should be consonant with *liberal mood* at all time periods. Such a result would signify that racial integration increases continually over time as *liberal mood* increases. For the

156

purposes of the analysis that follows, I term this the **democratic representation hypothesis,** since it proposes that institutional output increases as demand for such output increases. As I discussed in Chapter Four, democratic theory predicts that policies and policy outcomes generally shift in the same direction as *liberal mood* because democratic governments derive their legitimacy and longevity from their responsiveness to popular preferences about government activity (Soroka and Wlezien 2010). If the public sends a meaningful signal about its preferences, policy and institutional output should increase as demand for government grows and decline as demand for government declines. A positive linear relationship between public opinion and school desegregation would vindicate prior research on democratic representation against the challenge posed by the results in Chapter Four.

On the other hand, there may be a negative linear relationship between *liberal mood* and school desegregation once controls are included. Such a relationship would require continual policy-opinion mismatch of public opinion in policy and policy outcomes; hence, I term this prediction the **policy-opinion mismatch hypothesis**. Policies and policy outcomes may move out of step with public opinion for several reasons discussed in Chapter Four. First, political leaders who wary of the policy implications of a particular trend in public opinion may work to nullify or preempt the effects of public opinion on institutions, with the result that policy outcomes are usually the opposite of what public opinion dictates. In practice, this could mean that government generally curtails policies commensurate with desegregation when the people demand more government involvement. If the government regularly and systematically defied public opinion on school desegregation, what we would see is a negative linear relationship between opinions and policy outcomes over time. The policy-opinion mismatch hypothesis predicts that as *liberal mood* increases, racial segregation increases, regardless of the time period, or lag length.

The fourth possibility is no systematic relationship. Well-meaning democratic governments do not always behave exactly as the people dictate and non-democratic governments

157

do not always ignore the dictates of the people. Sometimes the departures from public opinion are accidental. If they are truly accidental, they should be randomly distributed over time, and thus cancel one another out and we will see no statistically significant coefficients on *liberal mood* at any of its lagged lengths in the multivariate models with control variables. This second possibility represents the **null hypothesis**. It is the primary alternative not only to the dynamic relationship between *liberal mood* and school desegregation that I test at the end of Chapter Four, but to the general proposition on which the models in Chapter Four are predicated, namely that public opinion has influenced school desegregation. A complete loss of statistical significance on *liberal mood* once controls are included would also constitute the most severe form of omitted variable bias. It would mean that the excluded variables have such a strong effect on both *liberal mood* and racial segregation that I have misinterpreted both the magnitude and the statistical significance of the effect of *liberal mood*.

It is not difficult to see at this point how the democratic representation, policy-opinion mismatch, and null effect hypotheses each strain credibility. Each in its own way requires a rigid conception of political representation. The null hypothesis is inconsistent with democratic theory and a great deal of corroborating evidence that public opinion shapes policy and policy outcomes. The democratic theory and policy-opinion mismatch hypotheses also presume a rigid temporal relationship between institutions and outcomes. The positive linear relationship suggested by the first hypothesis requires consistent and systematic congruence between opinions and outcomes, while the negative linear relationship requires consistent and systematic incongruence between the two. But theories of agenda setting suggest offer reason to believe that representation is really much messier. Competition between interest groups vying for attention in different arenas should yield alternating successes and losses for each on any given issue over time (Schattschneider 1960). Competing factions of political leaders and/or citizens should react to public demand for government in ways that trigger systematic changes in the direction of racial segregation over

time. By appealing to the principle of limited government, opponents of civil rights can persuade leaders to reduce or reverse policy outcomes even when public opinion favors the opposite. By appealing to egalitarian principles, proponents of civil rights can sustain or expand policy outcomes despite oppositional movements. Seen from the perspective of policy and institutional output, the alternating wins and losses of competing factions implies a non-linear relationship between public opinion and policy and institutional output: for any given issue on the public agenda, outcomes will sometime reflect, and other times defy, public opinion.

In this case, opponents of desegregation may respond to the initial upsurge in support for federal intervention by removing their students from public school districts, but then fall in line with trending liberalism in order not to dissociate themselves from prevailing norms. Meanwhile, obliviousness to changes in *liberal mood*, belief in the superiority of their own positions, or conviction that their actions are morally right may lead political leaders to enact policies, like rezoning or closing schools, that increase racial segregation. Whether political leaders or lay citizens alter their behavior in response to changes in *liberal mood*, these possibilities suggest that racial segregation would not respond in a straightforwardly negative or positive way to *liberal mood*, but would be dynamic. I term this fourth possible relationship between racial segregation and public opinion the **dynamic counteraction** hypothesis. The expected result of the sudden burst of oppositional activism and eventual conformity is a short-term increase in racial segregation, followed by either a plateau or an increase in the long-term.

Of course, there are other ways for racial segregation in school districts to respond dynamically to *liberal mood*. If, for example, political leaders do not respond to *liberal mood* immediately, but ultimately shift school district policies or outputs to meet (defy) popular demand, an increase in *liberal mood* should have no short-term effect on racial segregation and a significant positive (negative) effect on racial segregation in the long term. Alternatively, political leaders may be highly responsive to *liberal mood* in the short term and unresponsive in the long

term. In this case, the coefficient on *liberal mood* should be statistically significant at shorter lag lengths of *liberal mood* and statically insignificant at longer lag lengths. Based on the evidence presented in Chapter Four, I do not expect these patterns. Instead, I expect to see a shift in the direction of the coefficients on *liberal mood* from negative to positive as lag length increases.

5.3 Alternative Explanations: Courts and Demographics

Few studies have considered the link between public opinion and desegregation empirically. Instead, much of the research on school desegregation has focused on the roles played by judicial and demographic change. The evidence from these studies, as well as the incongruence of segregation trends with attitudes toward integration described in Chapter Four, casts doubt upon the significance of public opinion. The case for dynamic counteraction hinges on the extent to which these alternative variables correlate with trends in school desegregation.

Judicial Change

One major focus of the literature on school desegregation has been judicial change. Arguments about the impact of the federal judiciary on racial segregation in schools tend to focus on ideological shifts in the Supreme Court or on decisions by lower courts to impose desegregation plans or grant unitary status to school districts. For some normative analysts, the perception is that conservative Supreme Court justices have stymied progress toward integration (Gotham 2002; Moore 2002; Ogletree 2004; Orfield and Eaton 1997; Orfield and Lee 2007; Ryan 2009; Taylor 1978). Others contend that the machinations of the federal district courts have been dispositive. According to this view, district courts have fostered racial integration by ordering school districts to adopt desegregation plans and impeded it by lifting those districts' prior court orders to desegregate (Clotfelter, Ladd, and Vigdor 2006; Lutz 2005; *cf* Logan, Oakley, and Stowell 2008). These arguments have intuitive appeal because of the active role the Supreme Court has played in school desegregation since *Brown* (see Figure 3.1). But do ideological shifts

of the Supreme Court or machinations of lower courts actually affect the amount of racial segregation in school districts?

Normative claims notwithstanding, the empirical evidence is mixed. It is certainly true that the Supreme Court has been more ideologically conservative at some times than others (Figure 5.2). Still, it is not clear that the ideological ebbs and flows evident in, for example, Martin-Quinn ideological scores, correlate with changes in the amount of racial segregation in school districts over time. Some studies suggest that the shift from a more passive to a more active posture on school desegregation during the Warren-Burger years paid dividends in the form of increased court supervision of school districts and increased racial integration of students (Logan, Oakley, and Stowell 2008; Reber 2005; Rossell and Armor 1996). Lower courts seemed to follow suit when the Supreme Court issued its more liberal opinions. For example, two years after *Green* invalidated freedom of choice plans, an appeals court examining school desegregation in a Georgia school district held that "[d]ualism in student assignment [was] not removed by a freedom of choice plan which merely perpetuates the dual system previously in effect."[45]

However, the fact that lower courts typically impose school desegregation plans casts doubt upon the notion that the ideological changes within the Supreme Court affect racial segregation in school districts. In general, the Supreme Court is thought to have little to no impact on local institutions, in part because its decisions are often *calculated* to have as little short-term impact as possible (Rosenberg 1991 [2008]). Moreover, the impact of changes at the level of the Supreme Court is likely to be mediated by the dynamics of other institutions, including lower courts (Mishler and Sheehan 1993). In the case of school desegregation, ideological changes in the Supreme Court may only indirectly affect racial segregation at the level of school districts, if they have any impact at all, because the Supreme Court's involvement, while significant, has

---

[45] *US v. Board of Education of Webster County, GA* 431 F 2d 59 (1970)

been relatively infrequent by comparison to that of federal district courts. A far more likely scenario is that ideological changes in the Supreme Court are a response to outlying political changes (e.g. Brennan, Epstein, and Staudt 2009a, 2009b). In fact, a growing body of research indicates that the Supreme Court responds to shifts in public opinion in issuing decisions (Barnum 1985; Caldeira 1987; Mishler and Sheehan 1993; Casillas, Enns, and Wohlfarth 2011).

At the same time, it is not clear that lower courts' decisions to place school districts under court order systematically affect racial segregation within school districts over time. Some studies show a significant decline in racial segregation after districts are placed under court order (Denton and Massey 1991; Reber 2005; Rossell and Armor 1996) or a rise in racial segregation after districts are released from previous court orders (Baum-Snow and Lutz 2011; Logan, Oakley, and Stowell 2006; Orfield and Lee 2007). In her analysis of 108 school districts that had been subject to a prior court order to desegregate, for example, Reber (2005) found that the index of dissimilarity dropped about 22 percentage points two years after the school districts were forced to adopt desegregation plans. Yet other studies report no significant change in racial segregation after districts are placed under or released from court orders to desegregate (e.g. Coleman 1966; Coleman, Kelly and Moore 1975; Logan, Oakley, and Stowell 2008, 1632- 1635; Rossell 1975). The Coleman Report remains a stark testament to the impotence of the Court's unanimous call for change in *Brown* (Coleman 1966; see also Bickel 1964). The report showed that more than a decade after *Brown* less than one percent of African American students in the South were attending racially integrated schools. More recently, Logan, Oakley and Stowell's (2008) study found that the index of dissimilarity was significantly higher in districts the greater the share of children covered by court order in both 1970 and 2000. In other words, mandated racial desegregation increased racial segregation. Overall, then, the link between ideological change in the Supreme Court, the imposition and removal of orders to desegregate by federal district courts, and the amount of racial segregation in school districts remains unclear. The

multivariate models in this chapter include measures of ideological change in the Supreme Court and decision-making by district courts in order to assess the impact of the judiciary on school desegregation.

Demographic Change

Another set of explanations often cited in empirical studies of school desegregation focuses on the changing composition and distribution of the United States population. The demographic change account is typically rendered in one of two forms: (1) the continual increase in racial minorities in the American public school population inhibits integration (2) forced methods of desegregation induce white families to move their children out of racially integrated neighborhoods in order to avoid sending their children to racially integrated schools; therefore, changes in segregation are a function of white flight.

The first formulation of the demographic change explanation might seem counterintuitive at first glance. How could increasing racial diversity in schools compromise integration efforts? Since each of these measures focuses on black and white interaction exclusively, each is likely to be dependent in its own right upon the changes in white population share that have occurred over the last several decades. In fact, several studies have linked increasing racial diversity in the population with increasing residential segregation of neighborhoods and schools (e.g. Iceland 2004; Rossell and Armor 1996; Zhou and Logan 2003). For example, Orfield and Lee argued that "given this [demographic] transformation of the nation's public schools…most nonwhite groups experience less exposure to white students than one would expect given the racial composition of the nation's public schools" (2006, 8). [46]

---

[46] The positive relationship between racial diversity and racial segregation may reflect the way in which racial integration has been conceptualized and measured historically. *Brown* was concerned with the interaction of *black* and *white* students. The five cases comprising *Brown* were brought by black plaintiffs and they were contesting laws prohibiting the interaction of black students and white students specifically. Perhaps as a result, most scholarship on school desegregation has focused on black-white racial integration (Bowman 2001).[46] Of course, however, black students are not the only ones who have been subject to *de jure* or *de facto* racial segregation historically; numerous studies highlight the isolation of Latinos and

The second argument about the importance of demographic change has more intuitive resonance—it is clear that the white share of the U.S. and public school populations has continually declined (Logan, Stults, and Farley 2004; Orfield and Lee 2006; Rossell and Armor 1996). In addition, many school districts and communities have witnessed abrupt departures of white families after being ordered to desegregate by federal courts historically (Baum-Snow and Lutz 2011; Rossell 1975; Rossell and Armor 1996). Yet the impact of demographic change appears to depend on the measure of racial segregation employed. In a study of the effectiveness of alternative school desegregation plans, for example, Rossell and Armor (1996) found that increases in the white share of the population significantly decreased interracial exposure, the percentage of white students in the school of the average black child, between 1968 and 1991, but were not systematically connected to changes in the dissimilarity index, or racial balance between black and white students. These kinds of results reinforce the claim that the focus on the white population share is a general shortcoming of the conventional ways of understanding racial segregation in schools and school districts, but they do not necessarily mean that the decline of the white student population in the United States or the rise of ethnic minorities has hampered integration efforts. Indeed, some studies indicate a significant decline in racial segregation over time after controlling for changes in the white share of the student population. For example, Reber (2005) found that racial segregation declined in 108 school districts that were forced by courts to desegregate, even though they had experienced a substantial and contemporaneous decline in the white share of a their populations. This finding suggests that the impact of white flight on racial segregation can be offset or superseded by institutional changes such as the

Asians in the United States (e.g. Arias 2007; Bowman 2001; Iceland 2004; Denton and Massey 1987).[46] Furthermore, black students are often not simply isolated from white students, but from students of all other races as well (Orfield and Lee 2006). Yet measures of racial segregation are often defined solely in terms of black and white interaction. This is true of three of the four "institutional output" measures used in this study: interracial exposure denotes exposure of black students to white students, percent black in majority-white schools explicitly treats a white majority as the standard of integration, and the index of dissimilarity for each district represents the proportion of white students that need to switch schools in order for black and white students to attend all schools in equal numbers.

adoption of a school desegregation plan. The analyses undertaken in this chapter contribute to our understanding of the impact of demographic change on racial segregation in school districts by testing whether a systematic relationship exists after accounting for public opinion. Based on the mixed evidence around demographic change, I expect white flight and racial diversification to have a limited, if systematic, effect on school desegregation.

The literature thus points to three alternative hypotheses about the role of judicial and demographic change in school desegregation. If the claims about the effect of changes in the courts are true, we should observe the following: (1) *racial integration in schools should increase as ideological liberalism in the Supreme Court increases over time* and (2) *racial integration in school districts should increase after school districts are declared unitary*. I term these the **judicial effects** hypothesis. If arguments about demographic change in the United States are true, *racial segregation should increase as the proportion of racial minorities in school districts increases over time.* I term this the **demographic effects** hypothesis.

5.4 Data and Methods

In order to assess the role of *liberal mood* after accounting for other factors the literature suggest might (better) explain trends in school desegregation, I again rely upon data from the National Center for Education Statistics' (NCES) Common Core of Data to generate a district-level panel dataset representing all districts with complete black, white, and total enrollment data for all years 1987 through 2009 inclusive. The number of cross-sectional units in the dataset, combined with the length of the time series, makes it possible to assess for the first time a public opinion-centered hypothesis about school desegregation alongside conventional hypotheses about judicial and demographic change. As in the previous chapter, my analyses here focus on the 879

school districts that have ever been placed under a court order to desegregate, which results in models containing 18,089 district-year observations.[47]

As in Chapter Four, here I examine four different measures of policy outcomes as dependent variables: interracial exposure, percent black in intensely segregated schools, percent black in majority-white schools, and index of dissimilarity. These dependent variables measure the amount of actual contact between students of different races in a school district, which is distinct from whether a school district satisfies the legal definitions of segregation ("dual system") and integration ("unitary system"). All of these dependent variables are coded so that higher values indicate greater racial integration and lower values indicate greater racial segregation. Thus, the coefficient should be positive for any variable expected to increase racial integration and negative for any variable expected to increase racial segregation.

The primary explanatory variable is, again, James Stimson's (1991 [1999]) *liberal mood*, a measure of public demand for government activity, or the extent to which people embrace the value of limited government, at the national level. Higher values indicate greater public amenability to federal activity and lower values indicate greater support for limited federal government. The dynamic counteraction hypothesis predicts that all else equal, the relationship between *liberal mood* and segregation will be statistically significant, but the direction of the coefficient on *liberal mood* will be different at different lag lengths.

To assess whether, as the judicial effects hypothesis indicates, the involvement of the district courts (in removing prior court orders to desegregate) or the ideological evolution of the Supreme Court shapes school desegregation, I include two variables in the models. The first is the ideological composition of the Supreme Court. To capture this variable, I use the Martin-Quinn estimated ideological liberalism score for the median justice serving on the Court in any given year (Martin and Quinn 2002). On this measure of Court ideology, higher values signify greater

---

[47] Again, this figure reflects the exclusion of districts whose total enrollment was zero for any given year. See note 26 of Chapter Four for additional details on missing data.

liberalism and lower values signify greater conservatism. The second measure of judicial effects is a dichotomous variable, *unitary status*, which equals one if a school district has been declared legally unitary by a federal court and zero otherwise.[48] If, as some have suggested, the decision to grant unitary status to school districts licenses them to abandon certain mechanisms for ensuring contact between students of different races (Moore 2002), segregation should rise significantly after school districts are declared unitary.[49] By controlling for changes in the ideological composition of the Supreme Court and the legal status of school districts, this chapter sheds lights upon the nature and extent of the impact of the federal judiciary on desegregation over time. The judicial effects hypothesis predicts that, all else equal, racial integration in school districts increases (decreases) significantly as ideological liberalism (conservatism) in the Supreme Court increases and increases significantly after the release of a school district from a prior court order to desegregate.

The models test the demographic effect hypothesis by controlling for *change in percent non-white* in school districts. For any given district in any given year, the value of this variable is the difference between the percentage of the district that is non-white in the current year and the percentage of the district that was non-white in the preceding year. According to the demographic effect argument, changes in racial segregation within school districts reflect declines in the white share of the U.S. student population and the dispersion of whites from racially heterogeneous residential communities encompassing segregated school districts (see Frankenberg, Lee, and Orfield 2003; Orfield and Frankenberg 2008; Iceland 2004; Logan, Oakley, and Stowell 2006;

---

[48] My data indicate that as of 2009, 338 (38.45 percent) of the 850 school districts once ordered to desegregate have been declared at least partially unitary by a district court.

[49] To identify the year in which districts achieved unitary status, I consulted documents received in response to a public records request to the Civil Rights Division of the US Department of Justice; the American Communities Project at Brown University; a 2009 report by the US Commission on Civil Rights; and reports on desegregation in Alabama, Florida, Georgia, Louisiana, and Tennessee published by these states' Commissions on Civil Rights. Where these documents provided no information about unitary status or where the information provided was unclear, I examined the relevant case history. The coding was subsequently cross-checked with the school desegregation case database maintained by the American Communities Project at Brown University.

Rossell and Armor 1996). If the demographic effect hypothesis is true, racial segregation should increase the more the non-white population grows.

In addition to these three indicators of judicial and demographic effects, I control for the size of school districts and the national salience of the issue of school desegregation. To discern the extent to which changes in racial segregation over time are attributable to changes in district size, I include the variable *total district enrollment* in all models (see Logan, Oakley, and Stowell 2008). In some ways, this variable can also been seen as a proxy for urbanism. Earlier studies of school desegregation suggested that school districts were more likely to desegregate the more urban they were (Rossell and Armor 1996). More recent studies suggest that suburban and rural districts are rapidly desegregating as Americans of all backgrounds migrate from cities, while cities are resegregating as mostly people of color remain behind (Orfield and Frankenberg 2008). Consistent with the more recent work, I expect racial integration to increase as school district size increases, all else equal.

Previous studies of political representation also indicate that issue salience, or public attention to an issue, can affect the relationship between public opinion and public policy or institutional output (e.g. Burstein 2003; Hopkins 2010; Monroe 1998; Soroka and Wlezien 2010). If an issue is salient, public opinion is likely to change in meaningful ways, and institutions are likely to respond to public opinion in meaningful ways (Soroka and Wlezien 2010). Issue salience can be particularly important where the relationship between national and local politics is concerned. Hopkins (2010) showed that the impact of local demographic change on both local immigration attitudes and local adoption of anti-immigrant ordinances was greater when the issue of immigration was more salient nationally and lower when the issue received less attention nationally. National attention to the issue of immigration helped people link that issue to their quotidian experiences, and thus to adjust their attitudes or behavior in response at the local level. Hopkins' work suggests that inter-level affects are possible because of issue salience.

168

Consequently, although *liberal mood* is measured at the national level, while school desegregation is a political phenomenon that takes place at the local level, accounting for issue salience should make it possible to connect changes in *liberal mood* with changes in racial segregation. Based on Hopkins (2010) and Soroka and Wlezien (2010), I hypothesize that racial integration will increase as the salience of the issue of school desegregation increases, all else equal. Heightened attention to the issue of school desegregation signifies heightened public and elite awareness of the issue and political leaders should be more likely both to take the public's temperature on the issue seriously and to conduct policy activity in accordance with public preferences the more prominent the issue of desegregation is. In short, political representation should increase as issue salience increases.

How can issue salience be measured in the case of school desegregation? To assess whether the salience of the issue of school desegregation is associated with changes in racial segregation in school districts, I calculated the distance from each year in the dataset to the year in which the nearest Supreme Court case on school desegregation was decided. The resulting variable is called *proximity to SCOTUS* case and it makes sense an indicator of the national salience of school desegregation because elected officials, the media, and lay citizens all pay attention to the Court's rulings in order to discern what is and is not constitutionally permissible, not just on school desegregation, but on all public policy issues. Before the Supreme Court agrees to review any case, there is often intense speculation by lawyers, interest groups, and the media about whether the Court will in fact do so.[50] When the Court agrees to review a case, there is then often speculation about how the Court will decide the case. Finally, after the Court has decided a case, political leaders typically attempt to understand the decision and its implications. This

---

[50] Every year the Supreme Court receives hundreds of petitions for a writ of certiorari, or requests for the Court to hear argument on cases purported to raise questions of constitutionality. Every year the Court agrees to hear arguments, or grants certiorari, on a faction of those cases it reviews. Those cases selected for hearing comprise the Court's docket for the forthcoming term. The next year, the Court issues binding decisions on those cases on which it granted certiorari the previous year.

suggests that public attention to the issue of school desegregation would increase as the Supreme Court's deadline to release its docket approaches, reach is zenith during the period between the Supreme Court's announcement that it will review a desegregation case and the Supreme Court's announcement of its decision in that case, and decrease continually after the case is decided.

In the original construction of proximity to SCOTUS case, the lowest values occur in those years when a Supreme Court case is decided and the highest values are observed in those years that are farthest from any previous or future Supreme Court case. For example, the maximum value of the variable, six, occurs in 2001 because the nearest Supreme Court decided cases concerning school desegregation six years prior to 2001 (*Missouri v. Jenkins* 1995) and six years after 2001 (*Meredith v. Jefferson* and *Parents v. Seattle* 2007). Notably, this coding would mean that issue salience increases as the value of the variable decreases. In the models presented below, I have recoded the variable so that higher values signify greater issue salience in order to mitigate confusion.

Table 5.1 summarizes my hypotheses regarding the relationship between each independent variable and the measures of racial segregation. First, according to the dynamic counteraction hypothesis, the direction of the coefficient on *liberal mood* should vary at different lag lengths and be significant at one or more of these lag lengths. Second, based on the judicial effects hypothesis, the coefficient on Martin-Quinn score should be statistically significant and negative in all models, while the coefficient on unitary status should be statistically significant and negative in all models. Third, if the demographic change hypothesis is true, the coefficient on change in percent non-white should be statistically significant and negative in all models. Finally, the coefficient on total district enrollment should be positive and the coefficient on proximity to SCOTUS case should be positive in all multivariate models.

Table 5.1. Summary of Hypotheses		
Variable	Measure	Expected Direction
Demand for Government	*Liberal mood*	+/-
SCOTUS Liberalism	Martin Quinn-Scores	+
Becoming Unitary	Unitary Status	-
Racial Diversification	Change in Percent Non-White	-
School District Size	Total District Enrollment	-
Issue Salience	Proximity to SCOTUS case	+

+ Signifies an increase in racial integration; - signifies an increase in racial segregation.

As in Chapter Four, each model presented in this chapter was estimated using fixed-effects ordinary least squares. Fixed effects models are typically used with panel data like I have here because control for the effects of omitted time-invariant characteristics of the primary units of analysis by treating each as having a separate intercept, and therefore. In this case, the effect of treating each school district as if it had a separate intercept is to isolate the effects of the independent variables within school districts over time. This approach is ideal here given the focus on how school districts have *evolved* over time, rather than how they differ in any given year, with respect to school desegregation. By using fixed effects, I am able to show the average change in racial segregation *within school districts over time* given proportional changes in public opinion, judicial ideology and behavior, demographics, and issue salience.

An autoregressive term is included in each model to account for serial correlation and all of the control variables except *proximity to SCOTUS case* are lagged by one year to account for endogeneity. Standard errors are clustered by district for all estimates in order to account for heteroscedasticity. Fixed effects for year are also included in the models to capture any underlying temporal trend in the data. To facilitate comparison of the magnitude of the effect of different variables, all variables in the models have been standardized to range between zero and one. Standardization helps to address the concern raised by some scholars about the difficulty

understanding the substantive significance of public opinion in studies of representation (Burstein 2003). With this coding, the coefficient on each independent variable indicates elasticity; multiplying the coefficient by 100 gives the average percent change in racial segregation given a one percent increase in the corresponding independent variable.

5.5 Correlates of Racial Segregation in School Districts

Table 5.2 contains unstandardized descriptive statistics for all of the variables included in the multivariate models that follow. Martin-Quinn ideological scores for the Supreme Court range from 0.019 to 1.236, with a standard deviation of 0.285. The mean of these scores, 0.61 suggests that the median justice on the Supreme Court is on the liberal end of the ideological spectrum for most years between 1987 and 2009. The change in the proportion of racial minorities in school districts also varies greatly over time, though the average change is actually rather small, 0.515. There are also significant differences in the size of school districts in the United States. The average school district has about 16,000 students during this time period, with enrollment in the largest, New York City, reaching as high as one million students. Finally, the national salience of the issue of school desegregation averages 3.72, meaning that school districts are typically about four years removed from the last major Supreme Court decision about school desegregation. Note that in the models that follow, all variables are recoded so that they are on the same scale, in order to facilitate comparison of the magnitude of each variable's association with racial integration.

Table 5.2.Unstandardized Descriptive Statistics for All District Variables, 1987 – 2009				
	Mean	Standard Deviation	Minimum	Maximum
Interracial Exposure	47.099	27.577	0	99.837
Percent Black in Majority-White Schools	50.717	42.872	0	100
Percent Black In Intensely Segregated Schools	84.218	29.570	0	100
Index of Dissimilarity	74.867	20.226	0	100
Liberal mood	57.963	3.023	52.64	62.641
Martin-Quinn Score	0.611	0.285	0.019	1.236
Unitary Status	.218	0.413	0	1
Change in Percent Non-White	.472	13.675	-99.963	100
Total District Enrollment	15,606.63	49,333.93	14	1,074,175
Proximity to SCOTUS Case	3.722	1.732	0	6

Unit of analysis is "district-year." Entries are within-group statistics from 1987 to 2009 for districts that have ever been under court order to desegregate since 1954. The total number of observations is 18,575. The total number of districts is 879.

In Table 5.3, I present the results of multivariate models of the four different measures of school desegregation. The models in these tables include the controls variables suggested by the literature, but exclude *liberal mood*, so that we can better understand which variables are likely to be relevant even before account for public opinion. The results corroborate evidence from the literature linking racial segregation in school districts with ideological change in the Supreme Court, increased diversity in school districts, and overall population growth. The evidence from these baseline models is also consistent with previous studies of public opinion and institutional change that highlight the role of issue salience (Soroka and Wlezien 2010).

Table 5.3. Correlation of Control Variables with Different Measures of Racial Segregation

	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Intercept	0.731***	0.548***	0.201*	0.472***
	(0.095)	(0.123)	(0.082)	(0.046)
AR(1)	0.326***	0.473***	0.626***	0.430***
	(0.023)	(0.018)	(0.025)	(0.020)
Martin-Quinn Score $_{t-1}$	-0.490***	-0.414***	0.216***	0.154***
	(0.051)	(0.067)	(0.044)	(0.024)
Unitary Status $_{t-1}$	-0.001	-0.006	0.002	0.001
	(0.005)	(0.008)	(0.005)	(0.004)
Change in Percent Non-White $_{t-1}$	-0.085***	-0.121***	-0.006	0.028***
	(0.0043)	(0.007	(0.003)	(0.003)
Total District Enrollment $_{t-1}$	-0.479***	-0.309*	0.112	-0.076
	(0.110)	(0.145)	(0.094)	(0.052)
Proximity to SCOTUS Case	-0.569***	-0.410**	0.125	0.011
	(0.109)	(0.141)	(0.091)	(0.058)
Observations	18,089	18,089	18,089	18,089
School Districts	879	879	879	879
R^2 within	0.408	0.439	0.574	0.309

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.

Entries are unstandardized fixed-effects OLS coefficients with standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model lagged by one year. Year fixed-effects are also included in the models, but not reported in the table. Intercept represents the grand mean of all cases.

To begin, there is mixed support for the judicial effects hypothesis. On the one hand, the coefficient on the Martin-Quinn score is statistically significant and positive in all four models, as expected. All else equal, each one percent increases in liberalism in the nation's high court is

associated with a decrease in interracial exposure of about 49 percent (Column 1: b = -0.490; p < 0.001); a decrease in percent black in majority-white schools of about 41 percent (Column 2: b = -0.414; p < 0.001); an increase in percent black in intensely segregated schools of about 22 percent (Column 3: b = 0.216; p < 0.001); and an increase in the index of dissimilarity of about 15 percent (Column 4: b = 0.154; p < 0.001). These models also suggest that judicial ideological liberalism is more strongly linked to racial segregation in school districts than other factors. The magnitude of the coefficient on Martin-Quinn scores is typically far greater than that of the other control variables. For example, in the interracial exposure model, the magnitude of the coefficient on Martin-Quinn scores is second only to that of the issue salience measure, *proximity to SCOTUS case.*

On the other hand, the evidence for the other formulation of the judicial effects hypothesis, which predicts a relationship between the attainment of unitary status and racial segregation, is far weaker. Contrary to expectations, racial segregation does not seem to change significantly after school districts are declared unitary by courts. The coefficient on *unitary status* is not significantly different from zero in any of the four multivariate models in Table 5.3. When taken with the results on the Supreme Court ideology variable, this finding contradicts claims by some that actions by the federal courts have led to "resegregation." If increased racial segregation in schools were attributable to the decisions of lower courts to declare school districts unitary "prematurely," there would be a significant coefficient on *unitary status* in at least one of the four models.

Turning now to the two indicators of racial diversity in school districts, the results in Table 5.3 offer some support for the demographic change hypothesis. As expected, the coefficient on *change in percent non-white* is statistically significant and negative in all four models of racial segregation. Growth in racial minorities' share of the student population of school districts over time coincides with greater interracial exposure (Column 1) and percent black in majority-white

schools (Column 2), but a slightly lower share of black students attending intensely segregated schools (Column 3) and a slightly lower dissimilarity index (Column 4). Again, the variation is likely an artifact of the construction of the latter two measures of racial segregation. Likewise, the population size of school districts seems to be correlated with racial segregation by some measures. The coefficient on total district enrollment is not statistically significant in the models of percent black in intensely segregated schools or the index of dissimilarity. However, the coefficient is statistically significant and negative in the models of interracial exposure and percent black in majority-white schools, signifying that racial segregation increases as the total number of students in a district increases over time. This is consistent with previous research on the relationship between population growth, urbanization, and residential and school integration (e.g. Orfield and Frankenberg 2008). Yet these findings are noteworthy because most districts should grow in size as the population of the country grows over time. The finding implies that population growth does not necessarily bring about interracial mixing. That segregation is expected to persist and even worsen as the student population grows attests to the intransigence of problems like housing segregation.

Without accounting for public opinion, there is also evidence of a correlation between racial segregation and issue salience in two of four models of racial segregation, interracial exposure (Column 1) and percent black in majority-white schools (Column 2). In both of these models, the coefficient on proximity to SCOTUS case is positive. The finding must be qualified, however, because the variable is not statistically significant in the models of percent black in intensely segregated schools (Column 3) or the dissimilarity index (Column 4). Bearing in mind differences in the measures of racial segregation, the results in Table 5.3 indicate that issue salience and other factors previous research has linked to school desegregation may play a significant and substantively important role in some forms of racial segregation.

176

To what extent can accounting for public opinion enrich our understanding of school desegregation? Table 5.5 expands the baseline models from Table 5.4 to include *liberal mood* with a one-year lag. These models essentially test for the possibility that the negative coefficients on *liberal mood* observed before I introduced the dynamic counteraction hypothesis are the result of having omitted the control variables suggested by the literature. They are not. The results in Table 5.4 affirm that even with controls included, there is a statistically significant and negative relationship between *liberal mood* and both *interracial exposure* and *percent black in majority-white schools*. Although, as we might expect, the magnitude of the association between *liberal mood* and racial segregation declines once controls are added, we can conclude that the early results from Chapter Four were not biased by the omission of other theoretically relevant factors.

Table 5.4. Models of Racial Segregation with *Liberal Mood* at One-Year Lag	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Intercept	0.773***	0.652***	0.061	0.347***
	(0.105)	(0.136)	(0.096)	(0.050)
AR(1)	0.328***	0.474***	0.631***	0.433***
	(0.023)	(0.018)	(0.025)	(0.020)
Liberal Mood $_{t-1}$	-0.277***	-0.315***	0.232***	0.187***
	(0.058)	(0.074)	(0.048)	(0.029)
Martin-Quinn Score $_{t-1}$	-0.346***	-0.252***	0.0984**	0.0576**
	(0.038)	(0.051)	(0.031)	(0.020)
Unitary Status $_{t-1}$	0.001	-0.004	0.001	0.00001
	(0.005)	(0.008)	(0.005)	(0.004)
Change in Percent Non-White $_{t-1}$	-0.084***	-0.120***	-0.007*	0.027***
	(0.004)	(0.007)	(0.003)	(0.003)
Total District Enrollment $_{t-1}$	-0.479*	-0.509	0.136	0.002
	(0.206)	(0.303)	(0.210)	(0.182)
Proximity to SCOTUS Case	-0.213*	-0.169	0.185*	0.019
	(0.090)	(0.118)	(0.079)	(0.042)
Observations	18,089	18,089	18,089	18,089
Districts	879	879	879	879
R^2 within	0.413	0.442	0.576	0.312

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.

Entries are unstandardized fixed-effects OLS coefficients with standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model lagged by one year. Year fixed-effects are also included in the models, but not reported in the table. Intercept represents the grand mean of all cases.

We can now turn with confidence to the test of dynamic counteraction described at the end of Chapter Four. Table 5.5 reports the results of multivariate models in which *liberal mood* assumes a nonlinear functional form in order to illuminate how the direction of the relationship

178

between *liberal mood* and segregation measures varies over time in school districts. Specifically, as in Table 5.1 from the previous chapter, five separate lagged versions of *liberal mood* enter the model. We saw in Chapter Four that the lag combination that provided the best statistical fit for the models is that in which *liberal mood* is lagged simultaneously by one, two, three, four, and five years. That lagging scheme is therefore replicated in the full multivariate models. The results in Table 5.5 suggest that accounting for *liberal mood* does indeed enrich our understanding of racial segregation within school districts. There is at least one statistically significant *liberal mood* entry in each of the models. Moreover, F-tests for the joint significance of the five *liberal mood* variables in each model indicate that the additional of public opinion to the conventional institutional and demographic effects model provides significantly greater explanatory power.[51] *Liberal mood* thus plays a systematic role in school desegregation. While the judicial and demographic control variables that have been the focus of previous research are important, they tell only part of the story.

---

[51] *F*-statistics in each model are as follows: in the model of interracial exposure (Column 1), $F = 11.37$; p < 0.001; in the model of percent black in majority-white schools (Column 2), $F = 8.05$; $p < 0.001$; in the model of percent black in intensely segregated schools (Column 3), $F = 8.44$, $p < 0.001$; and in the model of the index of dissimilarity (Column 4), $F = 10.30$, $= p < 0.001$.

Table 5.5. Models of Racial Segregation with Dynamic *Liberal Mood*	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Intercept	0.729***	0.588***	0.116	0.366***
	(5.75)	(3.71)	(1.05)	(6.33)
AR(1)	0.335***	0.481***	0.631***	0.435***
	(14.67)	(27.59)	(25.70)	(21.71)
Liberal Mood $_{t-1}$	-0.332***	-0.407***	0.243***	0.195***
	(-4.82)	(-4.48)	(4.55)	(5.70)
Liberal Mood $_{t-2}$	0.081**	0.139**	-0.032	-0.016
	(2.97)	(3.27)	(-1.46)	(-0.79)
Liberal Mood $_{t-3}$	0.012	0.036	-0.047***	-0.019
	(0.67)	(1.23)	(-3.37)	(-1.65)
Liberal Mood $_{t-4}$	0.029**	0.018	0.019	0.007
	(2.94)	(0.77)	(1.92)	(0.62)
Liberal Mood $_{t-5}$	0.009	-0.007	-0.034***	-0.011
	(0.84)	(-0.30)	(-3.90)	(-1.05)
Martin-Quinn Score $_{t-1}$	-0.340***	-0.257***	0.095**	0.057**
	(-8.99)	(-5.04)	(3.16)	(2.82)
Unitary Status $_{t-1}$	0.001	-0.005	0.001	0.0001
	(0.16)	(-0.58)	(0.22)	(0.03)
Change in Percent Non-White $_{t-1}$	-0.084***	-0.120***	-0.008*	0.027***
	(-19.15)	(-17.51)	(-2.54)	(7.68)
Total District Enrollment $_{t-1}$	-0.487*	-0.529	0.153	0.012
	(2.36)	(1.74)	(0.73)	(0.07)
Proximity to SCOTUS Case	-0.315*	-0.228	0.235*	0.042
	(2.32)	(1.32)	(2.05)	(0.68)
Observations	18,089	18,089	18,089	18,089
Districts	879	879	879	879
R^2 within	0.416	0.444	0.578	0.313

*p ≤ 0 .05; **p ≤ 0.01; *** p ≤ 0.001, two-tailed.

Entries are unstandardized fixed-effects OLS coefficients with standard errors clustered by district in parentheses. AR(1) is the dependent variable in each model lagged by one year. Year fixed-effects are also included in the models, but not reported in the table. Intercept represents the grand mean of all cases.

For each measure, the patterns in the complete models are the same as those that manifest when control variables are excluded. *Liberal mood* at *t-1* remains statistically significant in all four models and the coefficient on the variable is in the same direction as in the model where only *liberal mood* at *t-1* is included. Thus, we can be more confident that the earlier models do not reflect specification error. More to the point of this chapter, the changing direction of the coefficient on *liberal mood* in each of the four models supports the dynamic counteraction hypothesis. In the interracial exposure (Column 1) and percent black in majority-white schools (Column 2) models, the sign on *liberal mood* changes from negative at *t -1* to positive at *t-5*. These changes signify an increase in racial segregation over the short term and an increase in racial integration over the long term as *liberal mood* increases. In other words, increased public demand for government, or a decline in the extent to which the public values limited government, is associated with greater racial segregation in the short term and greater racial integration in the long term. In the percent black in intensely segregated schools (Column 3) and index of dissimilarity (Column 4) models, the direction of the coefficients on *liberal mood* changes from positive at *t -1* to negative at *t -5*, which signifies a short-term increase in integration and a long-term increase in segregation. Notwithstanding the differences across measures, these results suggest that the relationship between *liberal mood* and racial desegregation does change over time in predictable ways.

In addition, the coefficient on *liberal mood* remains large enough to be substantively meaningful after accounting for control variables. In three of the four models, the coefficient on *liberal mood* at *t-1* is greater than the coefficient on every other variable except total district enrollment. In the percent black in intensely segregated schools model, *liberal mood* at *t-1* has the largest coefficient of any independent variable (Column 3: $b = 0.243$; $p < 0.001$). The size of the net impact of *liberal mood* on the four different measures of racial segregation is also noteworthy.

For example, the net impact of increased *liberal mood* after five years is a decrease in interracial exposure of about 20 percent ($20.2 = 100(-0.332_{t-1} + 0.081_{t-2} + 0.012_{t-3} + 0.029_{t-4} + 0.009_{t-5})$).

As a final check of the robustness of the dynamic counteraction hypothesis, I ran models with controls for two time-invariant characteristics of the school districts: (1) state and (2) region. The historical record attests that some states and regions have been more attuned to the issue of school desegregation than others. Including these variables helps to rule out the possibility that the results observed thus far reflect environmental conditions operating beyond the boundaries of school districts.[52] If it were the case that characteristics of school districts like *state* and *region* that are fixed over time influence racial segregation, a different estimation technique than fixed-effects would be required.[53] A Hausman test for specification error was used to ascertain whether the state and region dummies should be included in the model, and thus whether the fixed-effects procedure is the best for the data.

In Table 5.A.1., I have provided the Hausman statistics for the models in Table 5.5. Each entry is the statistic obtained when each fixed effects model is compared with a random-effects model that includes state and region dummies. If the Hausman statistic obtained is statistically significant, the fixed-effects model is superior and the random effects model is inefficient and inconsistent. Since all four fixed effects models in Table 5.5 have a statistically significant Hausman statistic, we can conclude that these models provide a superior fit of the data than random effects models with time-invariant measures added. We can be thus confident that the

---

[52] In the random effects model constructed for the Hausman test, I included a dummy variable for each state, leaving Alabama as the reference category, and created a dummy variable for region equal to one for each school district in one of the 11 states that seceded from the Union prior to the Civil War and zero otherwise.

[53] Unlike fixed effects, the random effects estimator can account for both time-variant and time-invariant characteristics. The random effects estimator has its own advantages and drawbacks. If the time-invariant variables systematically explain variance in the dependent variable, the fixed-effects estimator will be inefficient. Conversely, if the time-invariant variables do *not* explain variation in the dependent variable over and above that which the time-variant variables do, the random effects estimates will produce point estimates that are inconsistent (that is, do not converge toward the true mean) and standard errors that are inefficient.

observed thus are not biased by the exclusion of controls for state and region, which lends further credence to the dynamic counteraction hypothesis.

In the final analysis, the dynamic counteraction hypothesis developed in Chapter Four survives the addition of control variables suggested by the literature, as well as the addition of state and region dummies. Based on the analyses conducted in this chapter, we can be even more confident that the relationship between *liberal mood* and racial segregation is dynamic over time. All else equal, there appears to be no short-term link between liberalism and racial segregation in school districts, but there does appear to be a systematic link between the two over the long-time, with the direction of that link changing from negative to positive over time.

5.6 Conclusion

The purpose of this chapter was to provide a more rigorous test of the dynamic counteraction hypothesis developed in Chapter Four. While the models presented at the end of Chapter Four offer preliminary support for the dynamic counteraction hypothesis, those models did not account for variables previous research has linked to school desegregation. The analyses in this chapter enable us to assess the extent to which the exclusion of theoretically relevant control variables biases the evidence in favor of the dynamic counteraction hypothesis. After accounting for the impact of judicial ideology, machinations of the district court, racial diversification, population growth, and issue salience, *liberal mood* continues to have a significant and variable relationship with racial segregation.

Along with the evidence presented in Chapter Four, the comprehensive models presented here paint a novel portrait of political representation as a dynamic process that results from continuous contestation between factions with competing preferences. Representation is liable to be dynamic in this way in the United States because of the desire democratic political leaders have to represent public opinion, the centrality of the values of limited government and equality to American political culture, and the policy contradictions these values sometimes rise. The

183

values of equality and limited government mobilize different constituencies to act in ways that foster and hinder progress on civil rights, and because political leaders are receptive to both values, they sometimes obey and sometimes defy majority opinion at the prompting of those constituencies. In the case of school desegregation, the result of the contestation between factions with competing value commitments is that racial segregation within school districts does not always move in the direction public opinion favors. Instead, racial segregation may increase when public opinion seems to favor racial integration as political leaders grapple with the competing principles of equality and limited government invoked by alternative factions. In short, there is policy-opinion mismatch of public opinion in policy outcomes. The dynamic counteraction hypothesis illuminates the implications of the conflicts prompted by widespread commitment to the principle of equality and opposition to either the expansion of civil rights or to the intervention of the federal government in civil rights issues in the United States.

By corroborating the results from Chapter Four, this chapter bookends the exploration of the relationship between public opinion and school desegregation policy and policy outcomes. Yet I am interested in developing a theory of change applicable to civil rights issues in general, not merely to school desegregation, and it remains to be seen whether we can account for why civil rights policies and outputs persist or retrench. To fully understand how public opinion shapes civil rights, we need to look at other issue areas. Chapter Six takes up this charge by examining how voting rights policy outcomes have evolved following shifts in ambient public opinion.

Table 5.A.1. Hausman Statistics Comparing Fixed Effects and Random Effects Models				
	(1) Interracial Exposure	(2) Percent Black in Majority-White Schools	(3) Percent Black In Intensely Segregated Schools	(4) Index of Dissimilarity
Hausman F	6053.51***	6088.35***	4855.24***	5697.63***

***$p < 0.001$

The fixed effects models used for the Hausman test are the same as those in Table 5.5 The random Effects models include state and region dummies. A statistically significant Hausman statistic means we can reject the null hypothesis that the fixed effects and random effects models are substantively similar, and instead conclude that the two models differ systematically. In particular, a statistically significant Hausman statistic indicates that the fixed effects specification produces consistent coefficient estimates, while the random effects model does not. In all of the models presented here, the Hausman test statistics indicate that the fixed effects model is preferable. These statistics were computed using the *sigmamore* option in Stata.

CHAPTER SIX
THE PERSISTENCE OF VOTING RIGHTS POLICY OUTCOMES

African Americans political participation can be traced to the American Revolution, when ten of thirteen states permitted blacks to vote (Dinkin 1982). The number of states recognizing the right to vote for blacks dwindled to fewer than five by the Civil War as leaders frustrated by a burgeoning abolition movement retaliated against free blacks. But after the Civil War, Radical Republicans used the Fifteenth Amendment to entrench black suffrage within the federal Constitution, where presumably it would reside permanently. Instead, black political life under the Fifteenth Amendment, as well as the Fourteenth and Thirteenth amendments, turned out to be quite Hobbesian—nasty, brutish and short. Though states could no longer openly deny blacks the right to vote or hold elected office, opponents could make political participation inordinately difficult. Once Confederate sympathizers were allowed to reintegrate into southern political institutions, they conjured new laws, including property requirements, literacy tests, poll taxes, and other stringent prerequisites for running for and holding elected office, which rendered the Reconstruction amendments illusory. These Jim Crow laws were facially race-neutral—they applied to whites as well as blacks—but thanks to grandfather clauses, they disproportionately affected newly freed blacks, who had not been able to vote before Reconstruction. Buttressed by violence from white supremacists and discriminatory administration of the laws by local bureaucrats, the restrictions on the franchise that flourished in the Jim Crow era ensured that only a small fraction of African Americans registered to vote or cast ballots and virtually none held elected office in the South between Reconstruction and the Civil Rights Movement.

The 1965 Voting Rights Act (VRA) effectively removed Jim Crow barriers to voting for African Americans. Thereafter, opponents used a bevy of new legal tactics to inhibit blacks from making the electoral gains at different levels of government that might otherwise have been expected from three prevailing realities: (1) black suffrage was now enshrined in the Constitution, statutory law, and civil case law; (2) the black share of the voting-age population in many areas favored black participation; and (3) blacks tend to vote in cohesive blocks, thereby increasing the probability that black candidates win office in substantially black communities. Still, politicians and scholars alike agree that the Voting Rights Act has been eminently successful in advancing black political engagement beyond the frontier at which it resided prior to 1965. Indeed, the VRA is widely heralded as "*the* most successful civil rights law in history" (quoted in Bullock 2009, 3; emphasis added).[54]

Historical changes in black voter registration, turnout, and office holding strongly support this characterization. Black and white voter registration rates have continually converged at the national level, as well as in some states. During the 2012 presidential election, black voter turnout surpassed white voter turnout for the first time. Data from the 2008 presidential election initially suggested that African American turnout was higher than white turnout that year as well.[55] Meanwhile, the number of black elected officials has grown significantly at all levels of government since 1965. According to the Joint Center for Political and Economic Studies, there were about seven times as many black elected officials in 2012 as in 1965 overall. In federal offices, there were about 4.5 times as many black elected officials and in state offices there were about 3.8 times as many black elected officials. Certainly, black political participation and office

---

[54] Bullock also quotes Atlanta Mayor Maynard Jackson as saying that "[the Voting Rights Act] is the single most important piece of legislation, other than the constitutional amendments, in the history of the country" (2009, 3). Other paeans to the law can found elsewhere. For example, Parker, Colby and Morrison call the Voting Rights Act "the crowning achievement of the civil rights agitation and litigation campaign" (1994, 158).

[55] Black voter registration and turnout rates have surpassed those of white voters in some isolated cases at the state and local level (see, e.g., Persily 2007, 195 – 199).

holding are far from where we might expect them to be in the absence of state resistance and racial discrimination. Nevertheless, given where black registration, turnout, and office holding stood in 1964, there has clearly been both substantial growth in black empowerment and a continual narrowing of the black-white political engagement gap.

To what extent are voting rights policy outcomes attributable to institutional conditions, public demand for government, demographic changes, and issue salience? We have seen in previous chapters how changes in *liberal mood*, or public demand for government, have affected the pace and scope of school desegregation. In this chapter, however, I argue that the impact of *liberal mood* upon black voting rights outcomes should be minimal because institutional support for black suffrage is relatively strong. Consistent action on the part of the federal government to affirm black suffrage through statutory and case law clarifies the public interest for state and local actors. Greater clarity about which voting rights policies and outcomes are in the public interest not only obviates the need for political leaders to consult public opinion, but also reduces the probability that leaders wrestling with alternative voting rights policies either invoke or are influenced by appeals to competing political values or equality and limited government. In short, the degree of institutional support for black voting rights forecloses dynamic counteraction. Even amidst formidable resistance, political leaders have consistently taken steps to advance voting rights, and voting rights outcomes have progressed in more or less the way Congress intended when it passed the Voting Rights Act, because there has not been the same trenchant discourse over values.

Consistent with this argument, multivariate statistical models provide no evidence of a systematic connection between changes in *liberal mood* and changes in black registration, turnout, or office holding over time. Instead of the non-monotonic change in policy outcomes amidst monotonic change in public demand for government that we observed with school desegregation, we see fairly monotonic voting rights policy outcomes amidst non-monotonic

public demand for government. The fact that voting rights policy outcomes persist and that *liberal mood* is uncorrelated with them affirms the general proposition that representation, defined as policy-opinion congruence, will differ across civil rights issue domains. Additionally, the findings from this chapter point to an explanation for variation in outcomes across issue domains: public opinion shaped school desegregation, but not voting rights policy outcomes because there has been less institutional support for racial integration than for black voter registration, turnout, and office holding. In the final section of this chapter, I elaborate upon the way policy infrastructure influences the trajectories of school desegregation and voting rights policy outcomes. The thrust of my argument is that the codification of the right to vote in a feral statute and the revision of that statute over several subsequent decades helped to clarify for subnational elites what was expected and in the public interest.

6.2 State Resistance to the Voting Rights Act

While the Voting Rights Act was the first truly successful effort to enfranchise blacks since the American Revolution, its passage hardly quelled efforts to marginalize black voters. Some political elites were simply committed to white supremacy in government—and often not afraid to say so—while others felt that the federal government had once again overstepped its authority to govern the affairs or states and local governments.[56] South Carolina, the first state to secede from the Union prior to the Civil War, also led the charge in resistance to the voting rights act in 1966 by filing *South Carolina v. Katzenbach*.[57] Other states followed suit. After the Supreme Court held that the Voting Rights Act was constitutional, however, few states ventured to overturn the law wholesale. Instead, using increasingly sophisticated methods, states— especially those covered under Section 5—directed their attention to diluting the impact of the

---

[56] For examples of the racial and non-racial rhetoric used in debates over voting rights policy, see the state-specific chapters in Davidson and Grofman (1994).
[57] *South Carolina v. Katzenbach,* 383 U.S. 301 (1966)

law.[58] South Carolina itself would develop a reputation for "firm flexibility" or "calculated moderation" in its battles against black suffrage and other civil rights. In practice, this meant that the state allowed limited advances to be made in order to prevent larger changes (Burton et al. 1994).

States and localities adopted a range of vote dilution strategies, which have been catalogued and documented extensively in previous research on voting rights, local elections, and southern politics. These include reclassifying certain elected positions as appointments; creating multimember districts; requiring candidates to win by majority, rather than plurality, vote; restricting voters' abilities to allocate their votes in multi-member systems; increasing filing fees for prospective candidates; annexing majority-black jurisdictions into majority-white jurisdictions; reducing the size of the voter registration period; requiring voters to register to vote further from designated election days; adopting length-of-residency requirements for voter registration; allowing registered voters to challenge the eligibility of other registrants; and permanently disqualifying people convicted of certain felonies from voting (Table 6.1). If the Voting Rights Act was designed to test the creativity of civil rights opponents, opponents certainly rose to the challenge.

---

[58] For a discussion of the distinction between voter disfranchisement and vote dilution, see Davidson (1994, 22).

Table 6.1. Voter Disfranchisement and Dilution Tactics Used After Passage of the VRA

Type	Tactic	AL	GA	LA	MS	NC	SC	TX	VA
Redistricting	Cracking/Packing	X	X	X	X	X	X	X	X
	Municipal Annexation	X					X		
Registration	Residency Requirement	X	X		X		X		
	Short Registration Period						X	X	
	Early Registration Period						X	X	
	Registration by Race		X						
	Multiple Registration				X				
	In-Person Registration				X				
	Literacy Test					X			
Voting	Full-Slate Voting/Numbered Places	X	X			X		X	
	Win by Majority/Runoff	X	X				X		
	Restricted Voter Assistance	X						X	
	Selective Criminal Disfranchisement	X	X		X		X		
	Nonpartisan Ballot								X
Offices	At-Large Elections/Multi-Member Districts	X		X		X	X	X	
	High Candidate Fees				X				
	Reclassify Elected Positions as Appointments						X		

The table shows voter dilution laws that were in use after the Voting Rights Act was adopted in select southern states. The breadth and quantity of these laws illustrates the extent of states' efforts to circumvent the Voting Rights Act after it was passed. For example, North Carolina's literacy test existed until 1966. Although most of these laws were rescinded by the mid-1980s, some, like at-large and runoff elections, remain in use. See any of the chapters in Davidson and Grofman (1994) or Laney (2008) for details on the tactics described here.

The purpose of these new laws was twofold. First, states wanted to constrain black participation. They passed laws and engaged in administrative practices that prevented a large

number of African Americans from registering to vote or casting a ballot, even though the Voting Rights Act, the Constitution, and the Supreme Court all recognized a right for blacks to register and vote. Second, elites in some states wanted to minimize the impact of black participation. With black suffrage now entrenched in federal law after the Voting Rights Act, hurdles to registration and turnout states adopted likely would not have stopped black participation wholesale. Convinced as they were that *any* form of black participation was injurious, but recognizing that they could not outright repudiate federal voting rights law with impunity, some elites therefore contrived to minimize the political power and influence blacks who *did* register, vote, and win elected office could exercise in state and local politics.

One particularly popular mechanism for diluting minority voting strength after the VRA was enacted was the at-large election system. Under the purest version of this system, all members of some body of government are elected from a unitary political jurisdiction, voters are allowed to cast ballots for multiple candidates, and the candidates who earn the greatest number of votes are elected to the body. In theory, the at-large system is benign, race-neutral, and even pro-democratic: it forces voters with potentially disparate interests living in different parts of an urban area to form coalitions to elect the candidates they support. In turn, coalition-building helps to resolve sectarian conflicts and promote compromise. By doing so, at-large systems overcome certain problems that could materialize under a district-based system, the primary alternative. With residential segregation and racially polarized voting, district-based voting could stoke, rather than assuage, interracial conflict and polarization. Blacks could end up electing *fewer* candidates of their choice (i.e. black candidates) if dispersed between multiple racially segregated precincts than if incorporated into a unitary jurisdiction and allowed to vote for multiple candidates.[59]

---

[59] The Supreme Court acknowledged this point in *White v. Regester* (1973).

In practice, however, at-large elections disadvantage voters of color because of race-based residential segregation and racial bloc voting. A number of studies of local election systems suggests that black voters have a better chance of electing the candidates of their choice in district-based, rather than at-large, election schemes (e.g. Grofman and Davidson 1994; Scarrow 1999; Taebel 1978; Teasely 1987; Trebbi and Alesina 2008; Welch 1990). At-large election systems often pit a white majority concentrated in one portion of a jurisdiction against a non-white minority concentrated in some other portion and largely detached socially from its white counterparts, with the result that whites are often significantly overrepresented and voters of color significantly underrepresented in governmental bodies that employ at-large elections. By contrast, district-based elections usually increase the probability of African Americans electing the candidate(s) of their choice when there is residential segregation and blacks and whites vote as a bloc. Interracial electoral competition and racial threat are lower in racially homogeneous districts than in the racially heterogeneous unit they would share under an at-large system. Thus, what district-level elections systems cost blacks in terms of the *quantity* of descriptive representation, they often make up for through increased *probability* of descriptive representation.

The advantages and disadvantages of at-large and district-based systems were eminently clear to white elites who supported at-large election systems (Kousser 1984, 32 -33). Under the guise of "good-government," which harkened back to the Progressive Era movement to undo the party patronage system, states and localities most affected by the Voting Rights Act adopted at-large elections to minimize black representation in government. African American voters have also understood and embraced the tradeoff between quantity and probability of descriptive representation under at-large and district-based electoral arrangements. Frymer (1999) argues that blacks in the South consciously entered into an "unholy alliance" with the Republican Party in order to produce majority-black districts that would elect blacks Democrats but reduce the numerical competitiveness of the Democratic Party as a whole in the South.

As Table 6.1 above shows, the variety and volume of dilution tactics used varied significantly across states. The state that employed the greatest number of disfranchisement tactics was Mississippi. Among other things, Mississippi was fond of gerrymandering state legislative and congressional districts in blatantly discriminatory ways. But the state also adopted a number of takes not seen anywhere else, including the requirement of separate registration for state and local elections and the prohibition of registration outside of an official registration office (something the federal government would later promote through the Help America Vote Act of 2002). Not surprisingly, Mississippi's comprehensive disfranchisement apparatus was also more effective than that of any other state covered by Section 5 of the VRA (Morrison 1990; Parker 1990). By contrast, North Carolina, which has long enjoyed a reputation as a relatively progressive state on race relations, utilized the fewest dilution tools. There, at-large elections and multimember districts were the primary mechanism of vote dilution.[60]

The Supreme Court invalidated many dilution tactics in *Allen*. Since then, few of the other practices implemented after the VRA have survived judicial review, although at-large elections and gerrymandering remain in use in many jurisdictions.[61] Arguably, however, the judiciary's aversion to certain vote dilution practices has not stopped states from employing other mechanisms. In *Crawford v. Marion*,[62] the Supreme Court ruled that an Indiana state law requiring voter identification did not violate the Fourteenth Amendment. The ruling prompted a spate of new voter identification measures in states. According to the National Conference of State Legislatures, 33 states require prospective voters to present some form of identification in order to cast a ballot as of April 2013. The laws vary in their stringency, from requiring non-

---

[60] *Thornburg v. Giles* (487 US 30, 1986) raised questions about the use of multimember districts, after the Court found that a North Carolina redistricting plan would have exacerbated the deleterious effects of racially polarized voting on the ability of black voters to elect the candidates of their choice.

[61] *White v. Regester* (412 US 755, 1973) indicated that at-large elections were unconstitutional if, essentially, racially polarized voting existed. *Gomillion v. Lightfoot* established that racial gerrymandering was unconstitutional, but evidence for gerrymandering that is specifically racial is more difficult to produce in practice than in theory.

[62] *Crawford v. Marion,* 553 US 181 (2008)

photo identification at the time of voting to requiring photo identification in order to cast a ballot that will be counted. At this early stage in their existence, the extent to which these laws either hinder election fraud or contribute to inequality in voting strength remains unclear.

Historically, election fraud has been a problem in the United States, with both Democratic and Republican party officials abusing election law in order to secure and sustain control of elected offices (Fund 2004). *Plunkitt of Tammany Hall,* the candid first-person narrative account of a low-level Democratic Party leader in New York City, is a veritable catalogue of the nefarious tactics used to sustain urban machine politics (Riordan 1994). The transgressions Plunkitt details were commonplace not just in large urban centers like New York, but in various iterations around the country before the "good government" movement took hold at the turn of the twentieth century.

Some observers nevertheless argue that voter identification laws are part of a new cohort of voter disfranchisement and dilution efforts (Davidson 2009; Piven, Minnite, and Groarke 2008).[63] They contend, more precisely, that voter identification policies are predicated upon exaggerated, anachronistic and even fabricated threats to electoral integrity from voters (Minnite 2010; *cf* Fund 2004). The limited evidence available suggests that most federal election law violations are perpetuated not by lay citizens, but by elected officials, and to a lesser degree by party elites.[64] Opponents also contend that voter identification laws threaten political participation by African Americans, Latinos, students, and the elderly because these groups are the least likely

---

[63] The new cohort also includes changes to the locations of polling places. In oral arguments for *Shelby County v. Holder*, Solicitor General Donald Verrilli cited polling place changes the practice most likely to encounter a Section 5 objection from the Department of Justice today.

[64] For example, a 2007 *New York Times* analysis showed that 51 of 70 (73 percent) convictions for federal election law violations between 2002 and 2005 were obtained against party or campaign workers, election administrators, or government officials. At the same time, a majority of the crimes for which convictions have been obtained are crimes voters typically do not commit. There were 26 convictions (37 percent) for "voting by ineligible persons" and "multiple voting," the kind of crimes voter identification laws are designed to prevent. But 40 convictions (57 percent) were for vote buying or voter intimidation on the part of party elites and election officials.

to have identification in the first place or the resources, including birth certificates and money, to obtain proper identification (Barreto, Nuño, and Sanchez 2009; Sobel and Smith 2009).

Yet, the limited evidence currently available suggests that voter identification laws have not compromised participation among historically marginalized groups. Political participation among African Americans and other groups appears to have withstood not only voter identification laws (see e.g. Ansolahbere 2009), but the many dilution and disfranchisement techniques that preceded them (e.g. Davidson and Grofman 1994). Black voter registration, turnout, and office holding, in particular, appear to have grown in spite of antagonistic state election laws and practices, as well as seemingly inimical changes in judicial philosophy reflected in decisions like *Mobile v. Bolden* and *Crawford v. Marion*.[65] If trends in these measures are any indication, state and local resistance to the Voting Rights Act have not managed to stanch the flow of black political empowerment.

6.3 Black Registration, Turnout, and Office Holding Over Time

Fashioned as a reassertion of the Fifteenth Amendment,[66] the 1965 Voting Rights Act was the federal government's response to three broad miscarriages of justice that had been perpetuated against black voters since Reconstruction: (1) the deployment and discriminatory administration of certain prerequisites to registration, (2) the intimidation of racial minorities who attempted to vote and perpetuation of violence against those who did vote, and (3) the systematic obstruction of black candidates for elected office. The Act eradicated certain barriers to black voter registration, criminalized the coercion of black voters, and legally sanctioned the election of blacks to public office (Laney 2008, 1 – 4). Hence, three widely referenced indicators of minority voting rights are black voter registration, black voter turnout, and the number of black elected

---

[65] *Mobile v. Bolden,* 446 US 55 (1980); *Crawford v. Marion County Election Board,* 553 US 181 (2008)
[66] Indeed, the formal title of the House bill that eventually became the Voting Rights Act is "An Act to Enforce the Fifteenth Amendment to the Constitution of the United States, and for other Purposes" (Voting Rights Act 2006).

officials (see, e.g., Persily 2007).[67] Examining each of these measures longitudinally reveals increased black political engagement and declining racial inequality in elections.

Black voter registration rates have grown appreciably since 1964. Figure 6.1 plots the percentage of the black voting-age population that was registered to vote in federal elections held between 1966 and 2010, the earliest and latest election years for which such data were available from the US Census at the time of this research. Data are from the November supplements of the Current Population Survey, which is produced biennially. Panel (a) isolates presidential elections and panel (b) isolates congressional elections, as registration rates are on average approximately 4.5 percentage points lower during congressional elections than in presidential elections ($t = -4.087$; $p < 0.001$, one-tailed). (The separation produces a smoother trend line for each election type). The year after the Voting Rights Act was signed into law, 60.2 percent of blacks of voting age in the United States reported being registered to vote. By most accounts, this figure represents a 60 percentage percent increase over the national black registration rate of 1964, the year prior to the adoption of the VRA. The high point of black registration was the election of 1984, when Jesse Jackson first sought the Democratic Party's nomination for president. That year, 66.3 percent of African Americans reported being registered to vote. (The 2008 presidential campaign, which culminating in the election of the first black American president, ranks a close second in terms of black registration at 65.5 percent, and in 2010, 58.8 percent of African Americans of voting age were registered to vote).

---

[67] The focus on black office holding is especially relevant in the aftermath of the 2006 reauthorization of the Voting Rights Act, which set as a goal the removal barriers to racial minorities electing the candidates of their choice (Persily 2007).

Figure 6.1. Black and White Voter Registration, 1966 – 2010

(a) Presidential Elections, 1968 – 2008
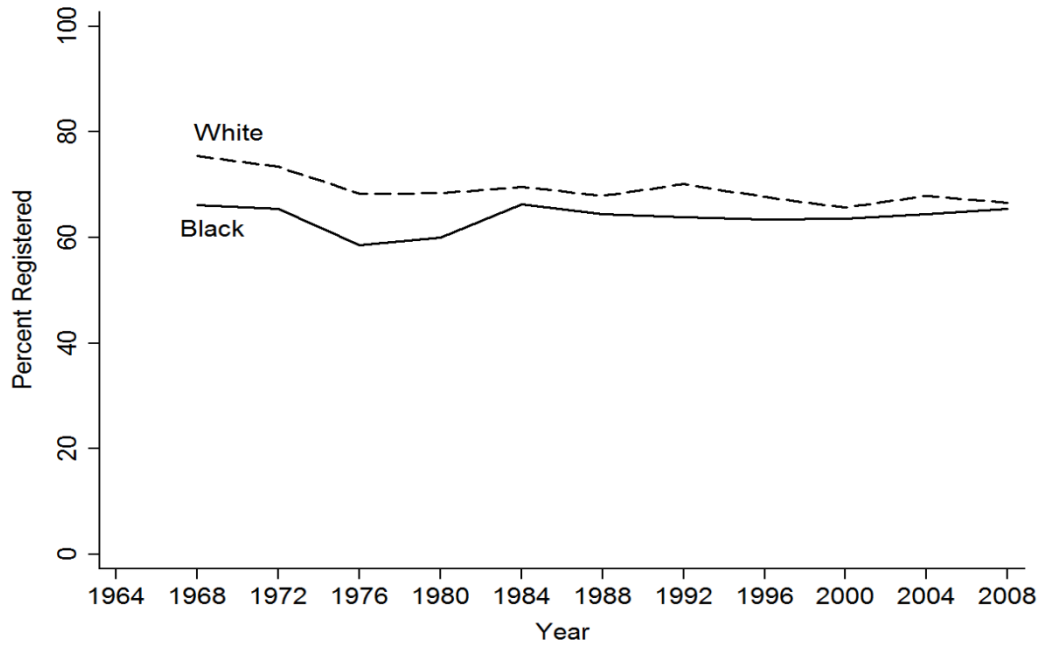
(b) Congressional Elections, 1966 – 2010
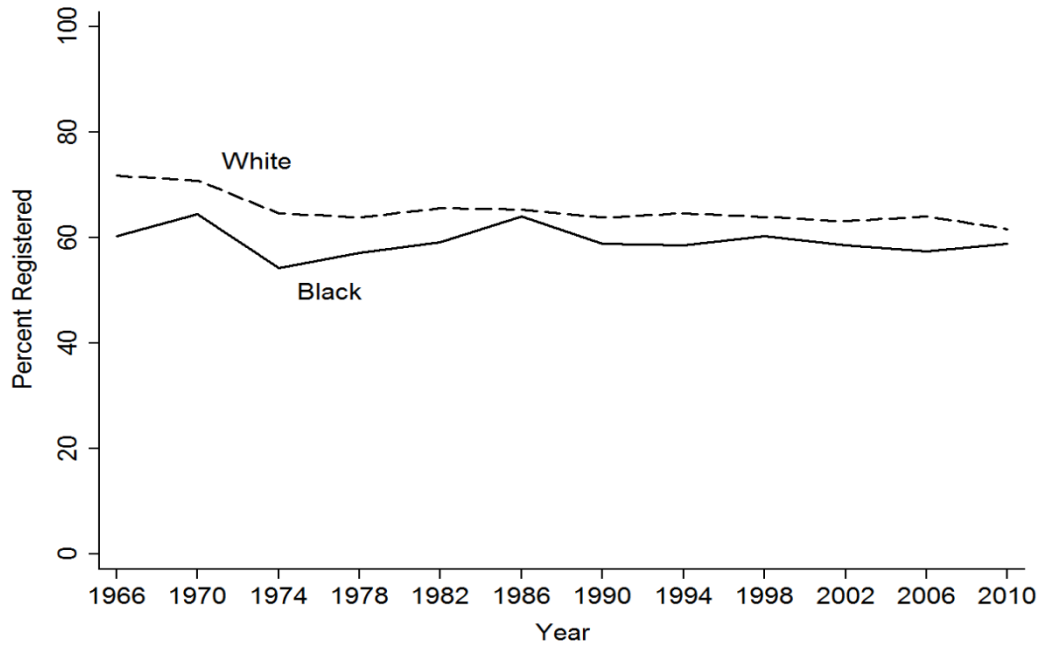
Figures reflect the percentage of the voting age population of each race that was registered to vote. Source: US Census Current Population Surveys.

Figure 6.2 plots black turnout, the percentage of the black voting age population that cast a ballot, in federal elections between 1964 and 2012. As in Figure 6.1 above, I have separated

presidential and congressional elections here, since turnout rates are also significantly higher in the former than in the latter (Δ = -15.217; t = -9.474; p < 0.001, two-tailed). In presidential elections (panel a), we can see marked growth in black voter turnout from 1964, when 58.5 percent of registered black voters are estimated to have cast a ballot, to 2012, when the latest Census data suggest that 66.2 percent of African American voters did (File 2013). In congressional elections between 1966 and 2010 (panel b), black voter registration rates have been largely stagnant, though these rates are undoubtedly much higher than they were in congressional elections that occurred prior to the adoption of the Voting Rights Act.

Figure 6.2. Black and White Voter Turnout, 1964 – 2010

(a) Presidential Elections, 1964 - 2008

(b) Congressional Elections, 1966 - 2010
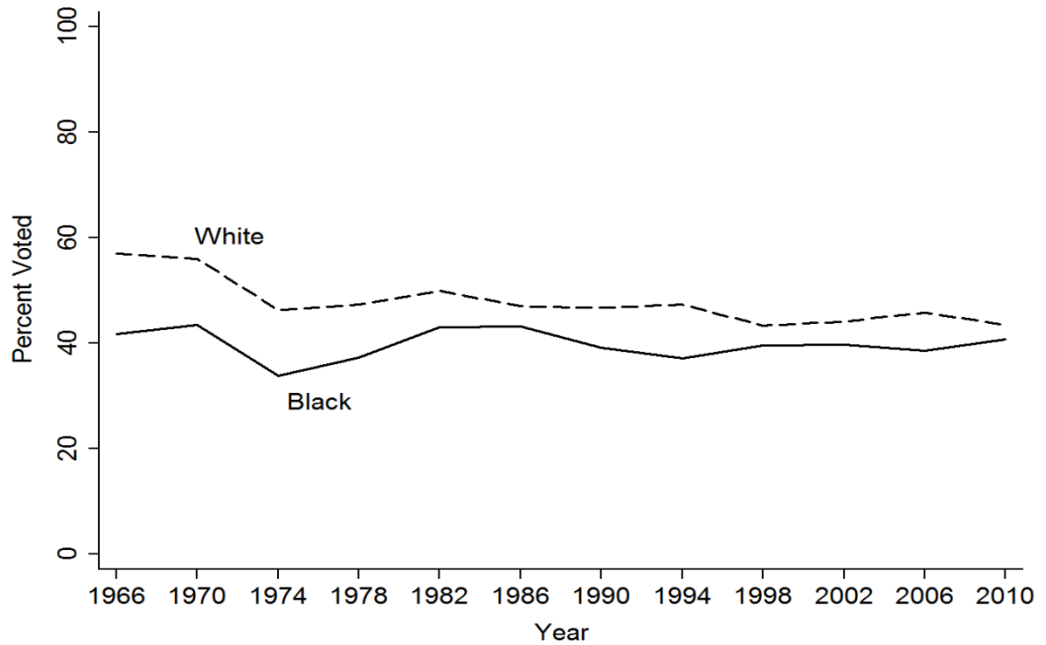
Figures reflect the percentage of the voting age population of each race that reported voting in the November elections of each year. Source: US Census Current Population Surveys.

Although blacks have typically registered and cast ballots at lower rates than whites in federal elections, racial disparities in voter registration and turnout have varied over time. Figure 6.3 plots the racial disparity i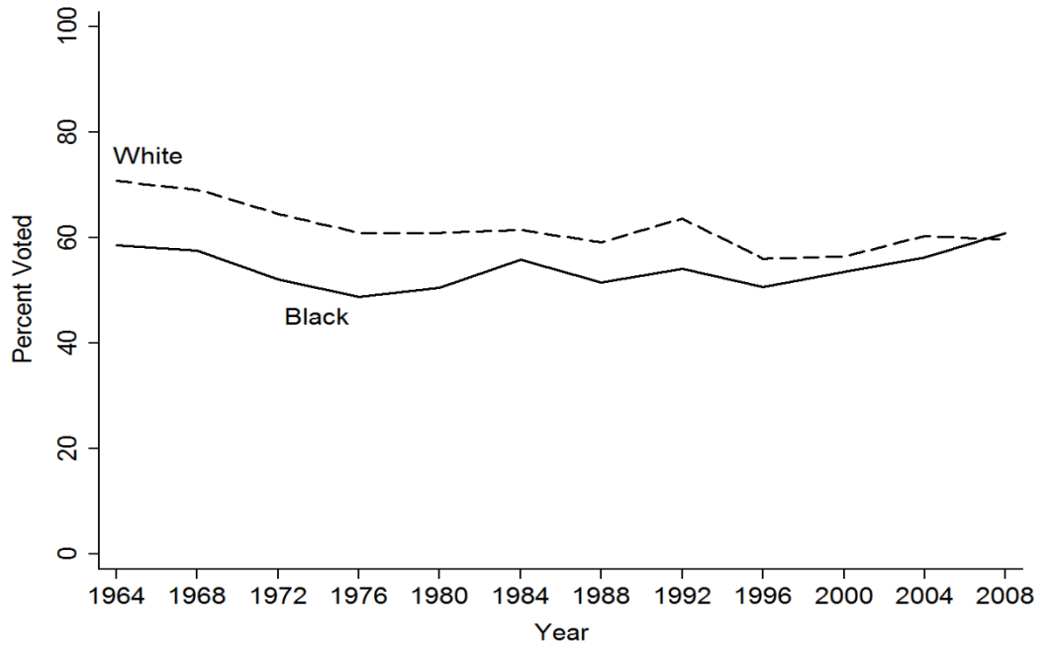n voter registration and turnout rates, defined as the difference in the white rate of participation of a given type in a given year and the black rate of participation in the same year, for all elections between 1964 and 2012. Black and white registration levels were farthest apart in 1966, the year after the Voting Rights Act was adopted. In midterm elections that year, 60.2 percent of blacks and 71.7 percent of whites reported being registered to vote. Conversely, black (65.5 percent) and white (66.6 percent) registration rates were closest in 2008, when a large number of African Americans were energized by the candidacy of Barack Obama.

A similar story emerges when we examine voter turnout by race. White voter turnout and black voter turnout rates were farthest apart in 1966, the congressional elections that followed the adoption of the Voting Rights Act. Approximately 57 percent of registered white voters cast ballots in the election, while only about 41.7 percent of black registrants did. The black-white disparity in voter turnout was smallest, 1.2 percentage points, during the historic election of 2008. In the last few presidential elections, there has been virtually no black-white gap in voter registration and turnout (File 2013). In 2013, the Census Bureau, the Pew Center, and several media outlets reported that black voter turnout exceeded white voter turnout during the 2012 presidential election, as African Americans were galvanized by the prospect of re-electing Barack Obama. (The apparent discrepancy may not be real, but a reflection of social desirability bias among blacks when asked whether they vote). Increased black political engagement has translated into increased political significance: according to the Pew Center, Barack Obama would have lost the election by a small margin if African Americans had voted at the same rate in 2012 as they did in 2008 (Taylor 2012).

Figure 6.3. Racial Disparities in Voter Registration and Turnout, 1964 – 2010

(a) Presidential Elections, 1964 – 2008
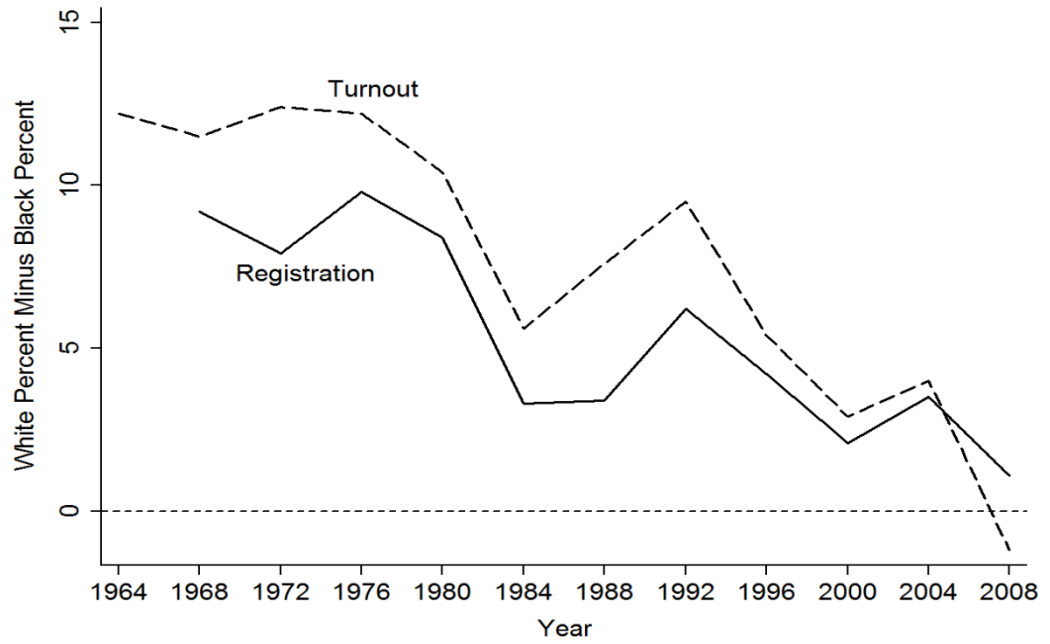
(b) Congressional Elections, 1966 – 2010
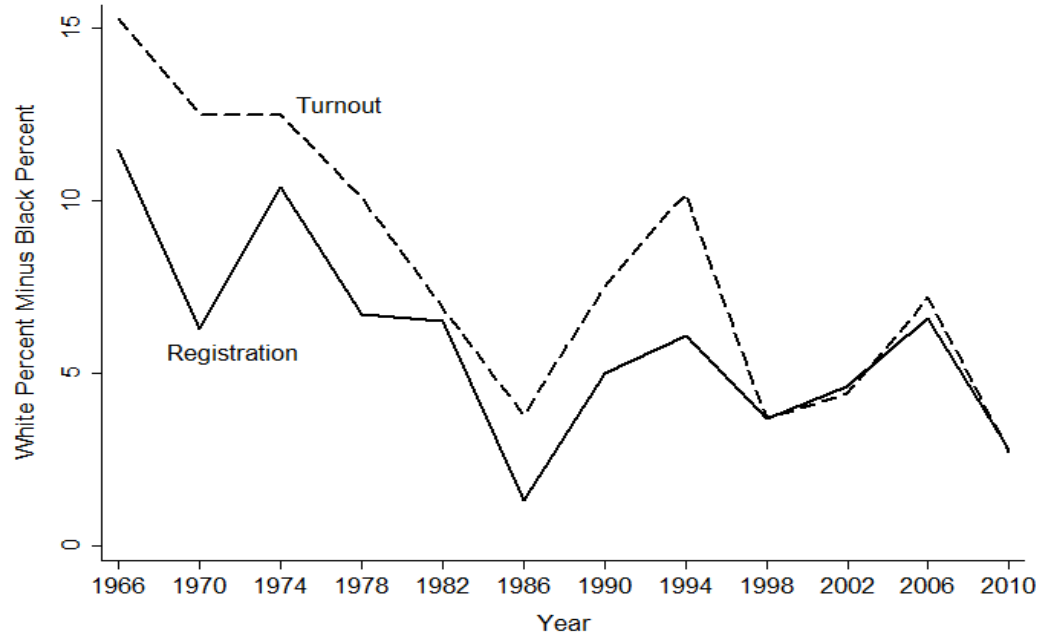
Disparities were calculated by subtracting the percentage of the black voting age

population that reported engaging in each activity in each election year from the

percentage of the white voting age population that reported engaging in each activity in the corresponding election year. Source: US Census Current Population Surveys. National trends in black office holding further attest to the increased engagement of the black electorate. These data in fact exhibit even more pronounced monotonicity than voter registration and turnout rates. According to data from the Joint Center for Political and Economic Studies, the total number of black elected officials has increased more than nine-fold, from 1,469 in 1970 to about 10,500 in 2012, equivalent to more than 700 percent growth (Figure 6.4). Disaggregating black office-holding figures by political jurisdiction reveals a pattern of more or less consistent growth at the federal, state, county, and local levels, as well as considerable variation in the magnitude of change across levels. The number of black officials elected to national offices, including the House of Representatives, the Senate, and the presidency quadrupled from 10 in 1970 to 45 in 2012. In statewide elected offices, including governorships, state assembly positions, and administrative offices such as state Secretary of State, the number of black officials increased from 169 in 1970 to 629 in 2012. By far, the growth in black office holding has been most pronounced at the local level, which includes offices like the mayoralty, city council, and school board. The number of blacks elected to municipal offices increased from 623 in 1970 to 4,665 in 2002, the latest year for which data are available. Most of the local growth is attributable to increased black representation on school boards: in 1970, only 362 African Americans served on school boards nationwide, but by 2002, 1,895 did. African Americans have also found success in mayoral elections. Just one year after the adoption of the Voting Rights Act, Robert C. Henry became the first African American mayor of any city when he was elected in Springfield, OH. In addition, since 1967, when Carl Stokes of Cleveland became the first black mayor of a large American city, more than 175 cities with populations greater than 50,000 have had black mayors (Table 6.2).

Figure 6.4. Mean Number of Black Elected Officials in the US by Office Level, 1970 – 2012

(a) States At least Partly Covered by VRA at Some Point
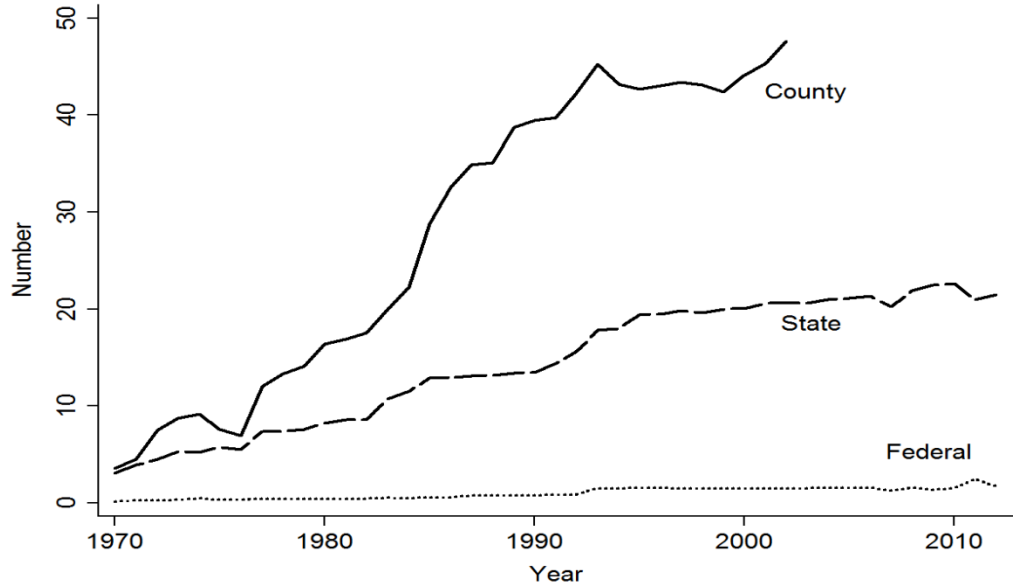
(b) States Never Covered by VRA
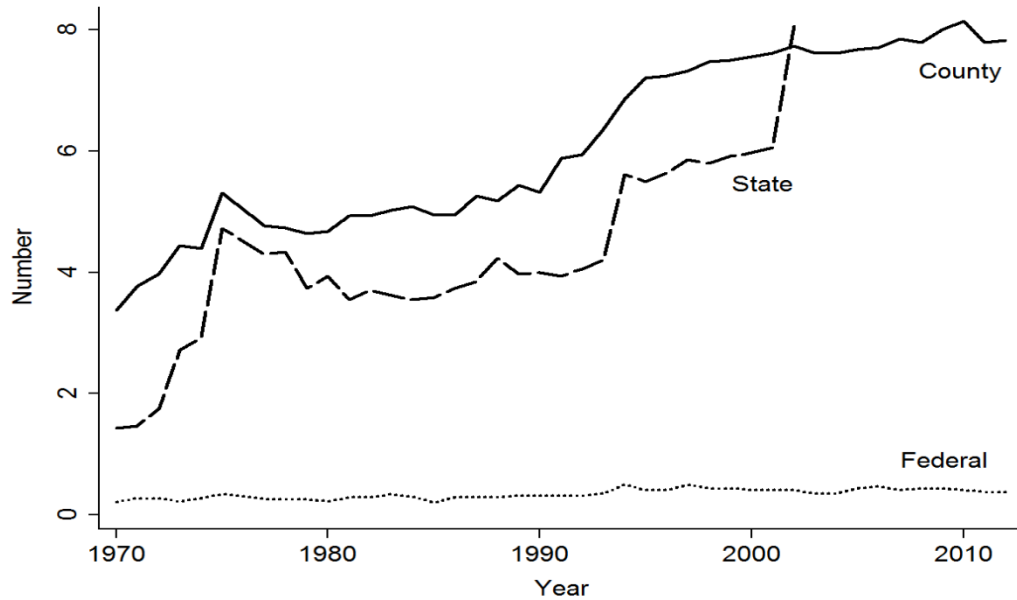
Data on the number of black elected officials was provided by the Joint Center for Political and Economic Studies. The trend lines are lower than trends in the absolute number of black elected officials would be because of the high number of stat-year observations with a value of zero, representing the absence of a black elected official. These cases depress the average across states.

Table 6.2. US Cities over 50,000 that Have Had Black Mayors Since 1966

Abilene, KS	Hamden, FL	Plainfield, NJ
Albany, GA	Hampton, VA	Pompano Beach, FL
Albion, MI	Hartford, CT	Pontiac, MI
Alexandria, VA	Hayti Heights, MO	Portsmouth, VA
Arcadia, FL	Hempstead Village, NY	Prairie View, TX
Arlington, TX	Highland Park, MI	Prichard, AL
Asheville, NC	Homestown, MO	Riceboro, GA
Atlanta, GA	Houston, TX	Richmond, CA
Augusta, GA	Howardville, MO	Richmond, VA
Baltimore, MD	Humnoke, AR	Riviera Beach, FL
Baton Rouge, LA	Huntington, AR	Roanoke, VA
Battle Creek, MI	Inglewood, CA	Rochester, NY
Beaumont, TX	Inskter, MI	Rock Island, IL
Benton Harbor, MI	Irvington, IL	Rockford, IL
Berkeley, CA	Jackson, MS	Roosevelt City, AL
Birmingham, AL	Jacksonville, FL	Rosedale, MS
Brighton, AL	Jersey City, NJ	Sacramento, CA
Buffalo, NY	Kalamazoo, MI	Saginaw, MI
Cambridge, MA	Kansas City, MO	Salisbury, NC
Camden, NJ	Kinloch, MO	San Francisco, CA
Carson, CA	Lake Alfred, FL	Sarasota, FL
Centreville, IL	Lancaster, CA	Savannah, GA
Chandler, AZ	Liberty, TX	Seat Pleasant, MD
Charlotte, NC	Lilbourn, MO	Seattle, WA
Chesapeake, VA	Lincoln Heights, OH	Shaw, MS
Chicago, IL	Little Rock, AR	Shelby, MS
Cincinnati, OH	Los Angeles, CA	Shreveport, LA
Cleveland, OH	Lynchburg, VA	Silverton, OH
Clifton Forge, VA	Lynwood, CA	Smyrna, DE
Columbia, SC	Macon, GA	Southfield, MI
Columbus, OH	Madison, AR	Spokane, WA
Compton, CA	Madison, IL	Springfield, OH
Cotton Plant, AR	Marshall, TX	St. Louis, MO
Dallas, TX	Memphis, TN	Tallahassee, FL
Danville, VA	Menlo Park, CA	Tallulah, LA
Dayton, OH	Miami Gardens, FL	Taylorsville, KY
Daytona Beach, FL	Middletown, OH	Thomasville, GA
Denver, CO	Minneapolis, MN	Toledo, OH
Des Moines, IA	Mitchellville, AR	Topeka, KS
Detroit, MI	Monroe, LA	Trenton, NJ
Drakesboro, KY	Mound Bayou, MS	Triana, AL
Durham, NC	Mt. Vernon, NY	Trinidad, TX
East Orange, NJ	New Haven, CT	Tuskegee, AL
East St. Louis, IL	New Orleans, LA	Uniontown, AL
Easton, TX	New York City, NY	Velda Village, MO
Eden Prairie, MN	Newark, NJ	Victorville, CA
El Reno, OK	Newport News, VA	Waco, TX
Eutaw, AL	Newport, AR	Wadley, GA
Evanston Township, IL	Newport, RI	Walthourville, GA
Evanston, IL	Newton, MA	Washington, DC
Fayetteville, NC	North Miami, FL	Wellston, MO
Flint, MI	Oakland, CA	West Palm Beach, FL
Fredricksburg, VA	Oceanside, CA	Wichita, KS
Garland, NY	Opa-Locka, FL	Wilmington, DE
Gary, IN	Pasadena, CA	Wyatt, MO
Gary, WV	Paterson, NJ	Youngstown, OH
Gastonia, NC	Philadelphia, PA	Ypsilanti, MI
Glasgow, KY	Pine Bluff, AR	
Greenville, GA	Pinelawn, MO	

Source: Joint Center for Political and Economic Studies.

A positive trend in black office holding is readily apparent at the state level as well. Figures 6.5, 6.6, and 6.7 display the trend in the average number of black elected officials in each state after 1970 at the federal, state, and county levels, respectively.[68] We can conclude from these figures that the number of black elected officials has tended to increase over time at all levels of government and within virtually all states. The only state that has never elected a black person at any level of government is North Dakota; hence it is excluded from the three plots. Despite significant variation in the size of their black populations, every other state in the union has elected at least one black person to local, state, or federal office since 1970. The greatest growth has occurred in county government positions, with less pronounced growth at the state and federal levels of government.

---

[68] While sporadic data on black office holding prior to 1970 is available for some political jurisdictions (see e.g. USCCR 1975), 1970 is the earliest year for which I believe nationwide data on black office holding is available.

Figure 6.5. Mean Number of Federal Black Elected Officials in States, 1970 – 2012
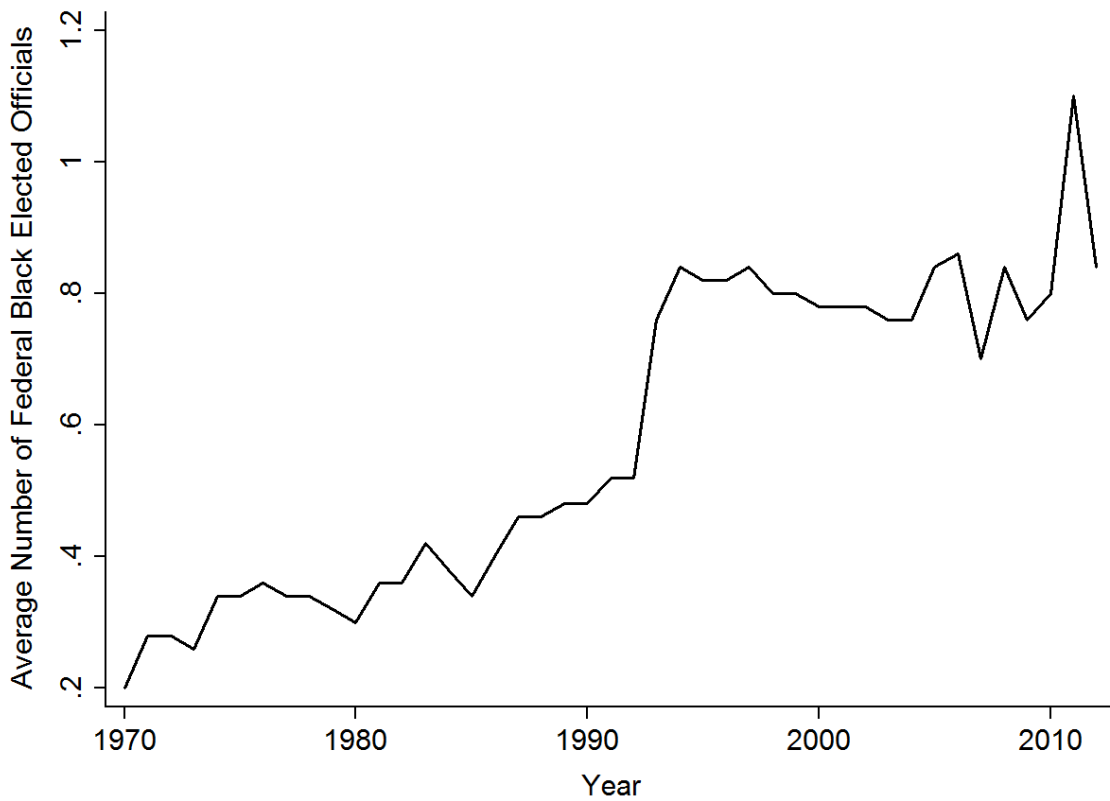
This figure displays the trend in the average number of blacks elected to federal offices, such as the senator or representative, for each state except North Dakota. It illustrates that while the average number of blacks elected to federal offices has varied significantly over time, it has generally increased. The average is typically less than one because most states did not have any black elected officials in any given year.

Figure 6.6. Number of State-Level Black Elected Officials in States, 1970 – 2012
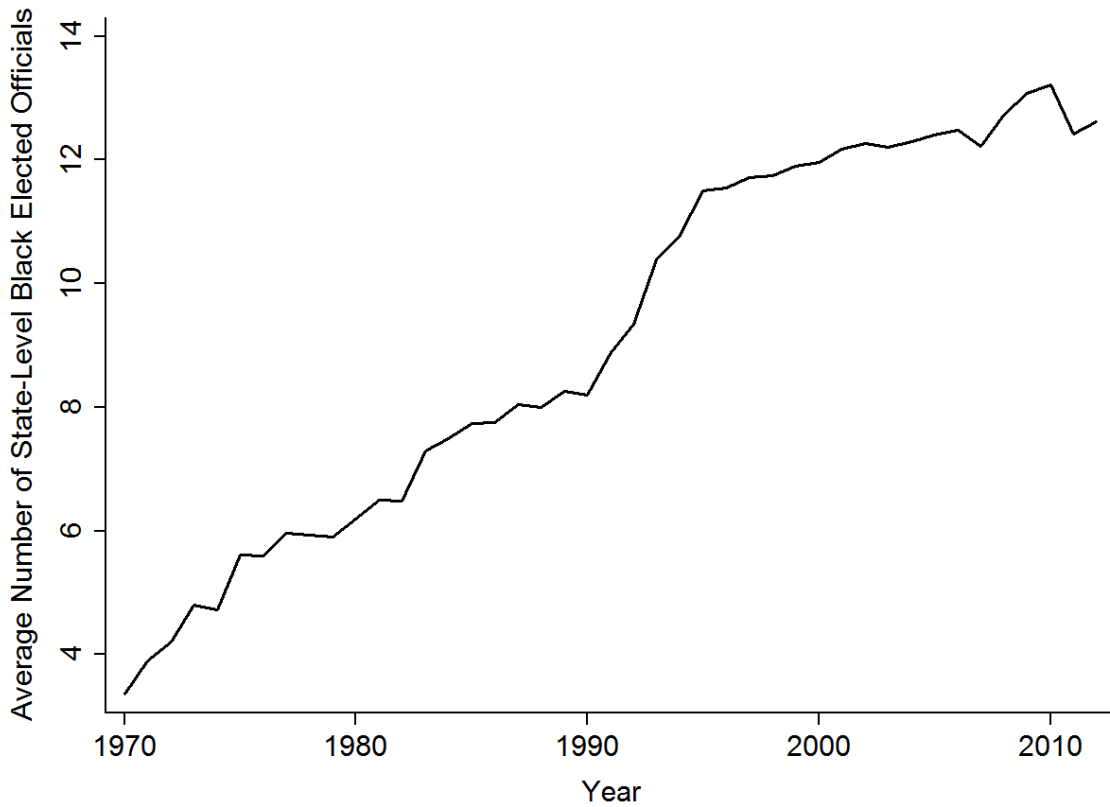
This figure displays the trend in the average number of blacks elected to state offices, such as governor or state assemblyman, for each state except North Dakota. It illustrates that the number of blacks elected to state-level offices has grown significantly since 1970.

Figure 6.7. Mean Number of County-Level Black Elected Officials in States, 1970 – 2002
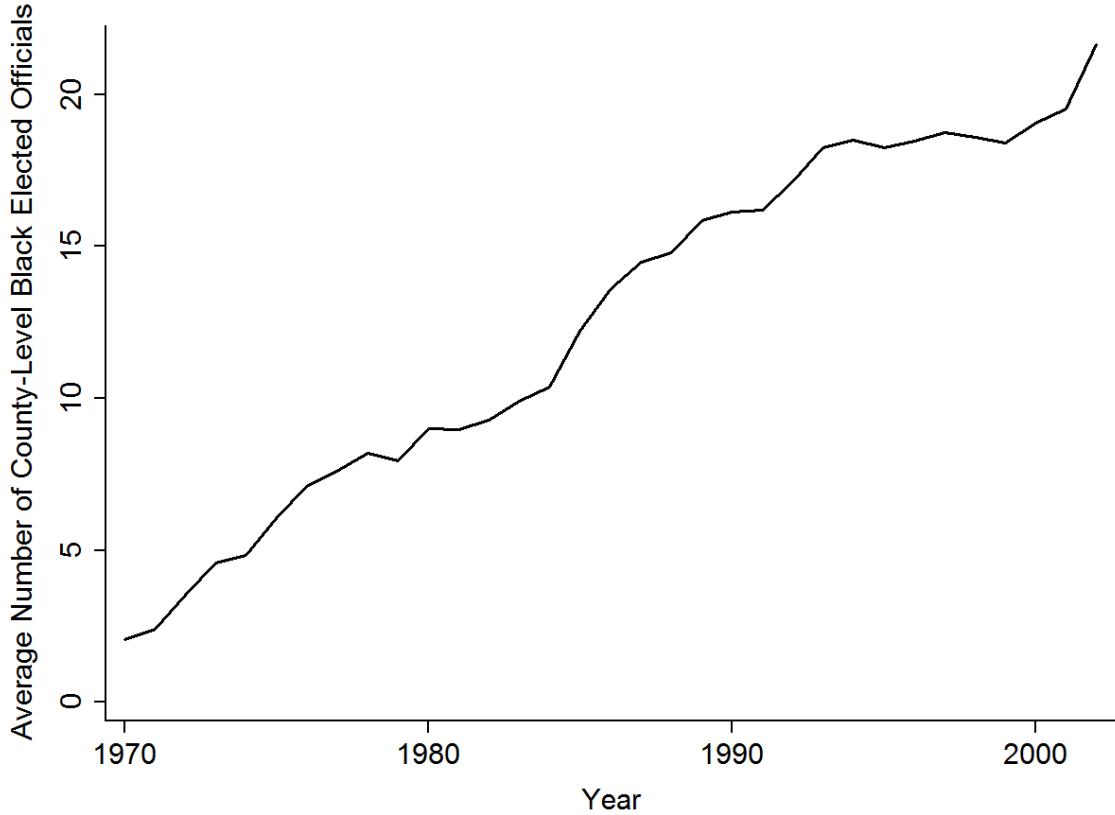
This figure displays the trend in the average number of blacks elected to state offices, such as governor or assemblyman, for each state except North Dakota. It illustrates a sharp increase in the number of blacks elected to county-level offices since 1970.

As many other analysts have acknowledged, African Americans might have made even more progress after the Civil Rights Movement than these trends indicate if state and local election rules were different (e.g. Davidson and Grofman 1994; Guinier 1994). Yet, seen from the perspective at which black registration, turnout, and the number of black elected officials stood prior to the adoption of the Voting Rights Act, these gains over time are quite impressive. Even in periods of high state resistance to federal civil rights policy, the number of black elected officials grew considerably. Moreover, notwithstanding the controversy many regressive state voting laws have generated, their actual impact upon the voting strength of African Americans seems minimal at best. Combined with the election and re-election of the nation's first black president, and the relatively high turnout of African Americans in the 2008 and 2012 presidential elections, the persistent increases in black registration, turnout, and office holding strongly suggest that African Americans have been able to overcome many of the institutional barriers placed before them in exercising the right to vote and to participate in politics.

Analysts have interpreted the substantial gains in black registration, turnout, and office holding in two distinct ways. One set of scholars adopts what might be called an *ontological* or historical perspective, which focuses on the distance current levels of political engagement have travelled from their starting point prior to the adoption of the Voting Rights Act.[69] They cite the increases in registration, turnout, and office holding as evidence that the VRA is now obsolete. Some are concerned that provisions like Section 5 are counterproductive at this point because they unduly burden state and local governments and foment racial division at a time when the nation appears to be moving beyond race as a barrier to political access and social interaction. Others worry that, given the current state of black political engagement, the continued existence of the VRA may provide an unfair advantage to minority voters. Consequently, some historical

---

[69] The Supreme Court itself has appeared to take this approach in some of its decisions. For example, in *Beer v. US* (425 US 130, 1976) the court upheld a New Orleans redistricting plan that some alleged represented "cracking" on the grounds that it would improve the electoral chances of African Americans beyond where they stood prior to the change.

analysts have advocated the repeal of the law, or certain sections thereof (e.g. Bullock 2009; Thernstrom 1987, 2009; see also Persily 2007).

A second set of scholars propounds what might be termed a *deontological*, or duty-based, interpretation of these voting rights policy outcomes. This view is less concerned with the progress made than with "whether the promise of full participation has been fulfilled," as the US Commission on Civil Rights (1975) put it in its decennial report on the Voting Rights Act. Deontologists assume that there are specific levels of registration, turnout, and office holding that would exist under a completely nondiscriminatory electoral system. The strongest evidence for this claim is that the growth in black participation and office holding has typically been more substantial in places that did *not* employ certain dilution tactics than in places that did (see, e.g. Keech and Sistrom 1994, 178 – 179). Usually, the standard to which voting rights policy outcomes are held is roughly equivalent to the black share of the population of a given political jurisdiction (e.g. Davidson and Grofman 1994; Guinier 1994; Morrison 1987; Parker 1990). For example, in a city that was 45 percent black, deontologists expect that blacks would constitute 45 percent of registered voters, voters who cast ballots in an election, and officials elected to public office. Since current levels of black engagement have not reached this putative ideal in most places in the United States, many deontologists temper applause for the growth in black registration, turnout, and office holding since the Civil Rights Movement by acknowledging the *distance from* that ideal. Although they contend that voting rights policy outcomes have not reached the levels they would under a completely nondiscriminatory system, many deontologists agree that the Voting Rights Act was essential to achieving extant levels of black participation and representation in most places, and consequently conclude that the Voting Rights Act is still necessary. Deontologists worry that the repeal of the law would yield the kind of stagnation or decline in black participation that some have suggested materialized in the area of school desegregation following certain conservative Supreme Court decisions.

Before we can say with certainty which of the two schools of thought on the Voting Rights Act is correct—that is, whether or not the law is necessary today—we need to understand better the etiology of voting rights policy outcomes. Why have rates and levels of black registration, turnout, and office holding increased? One thing seems likely at the outset whether we interpret changes in black political participation from an ontological or deontological vantage point: the VRA itself is only part of the story. As the VRA has undergone its own trials, public opinion, state election laws, racial demographics, and the salience of the issue of voting rights have also been evolving. The real question, then, is what role the Voting Rights Act has played in black political engagement over time *vis-à-vis* the other factors theories of representation have linked to policy outcomes: institutional conditions, public opinion, demographic conditions, and issue salience.

6.4 Congressional Support for Minority Voting Rights

The classic political representation equation suggests that there are four major alternative explanations for the voting rights policy outcomes observed since 1965. The first is that certain institutional factors, including the Voting Rights Act itself, have fostered and sustained black political engagement in the form of increased black registration, turnout, and office holding. The second possible explanation is that public opinion has continually shifted in a direction that favors these outcomes. The third possibility is that demographic conditions have facilitated these outcomes. The fourth explanation is that these outcomes reflect the growing issue salience of minority voting rights. A sound empirical model of representation must account for all four of these categories, and I do so in the statistical analyses presented later in this chapter. Nevertheless, I hypothesize that the *most* significant of these four categories of factors has been the first: consistent and substantial institutional support for minority voting rates, particularly from Congress, has had a range of direct and indirect effects on black political engagement.

The power of the Voting Rights Act as an instrument for the security of the franchise inheres in its comprehensiveness, specificity, and flexibility. Having perhaps learned from both the failure of Reconstruction and the "massive resistance" to *Brown* over the previous decade, the architects of the law did their best to anticipate the responses states might have, and included mechanisms for addressing those responses without compromising the law. Sections 2, 4, and 5, both as originally written, and as subsequently amended, create a latticework of electoral restrictions, incentives, and accountability mechanisms that have collectively contributed to the persistence of black registration, turnout, and election to public office despite formidable resistance by interest groups, subnational governments, and other branches of the federal government.

As the Supreme Court wrote in *Allen*, "the VRA was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote." Through the combination of Section 5 and Section 2, the law effectively forecloses both procedural and substantive resistance to black suffrage. The preclearance provision (Section 5) compels states to abide by certain procedures in order to enact any change, while the outright prohibition of election practices that have racially discriminatory effects (Section 2) ensures that such practices cannot be used even if somehow generated through fair procedures.

The genius of Section 5 is that it not only prescribes certain steps covered states must take to amend their voting laws, but authorizes two separate federal branches to assess proposed election law changes for their impact on minority voting strength. The Department of Justice can bring suits against states and localities suspected of violating the Act, but the courts can also sanction states and localities without any initiatory action by the Department of Justice. This sharing of authority across branches of the federal government has had important implications. For example, in Louisiana, the Department of Justice and federal courts were each responsible for about half of shifts from at-large elections to alternative systems in cities over 10,000 between

1974 and 1989 (Engstrom et al. 1994, 133). By authorizing both the executive and judicial branches to serve as veto points against states under an arrangement endorsed by Congress, Section 5 positions the federal government as a unitary enforcer of the Act and decreases the incentive for states to resist. For many covered jurisdictions, in particular, the possibility that any branch of the government can challenge an election law has been both a deterrent against implementing regressive election policies and an inducement to adopt progressive election practices.[70] This was plainly evident in Alabama, where at least 11 cities voluntarily switched from at-large to district-based elections after several dozen others were sued by the Department of Justice (McCrary et al. 1994). As a result of Section 5, many other covered jurisdictions have voluntarily adopted election reforms that increase the probability of black representation, like single-member districts, over the last five decades (McCrary et al. 1994; Parker, Colby, and Morrison 1994).

Contrast this with *Brown v. Board of Education*, where enforcement capacity rests almost exclusively with the courts (though executive branch agencies like the Department of Justice and the former Department of Health, Education, and Welfare have in the past engaged in tactics that incentivized local compliance). Together, the substantive and procedural restrictions codified in the Voting Rights Act protect black registration, turnout, and office holding from efforts on the part of some state and local governments to undermine minority political participation.

Another important feature of the Voting Rights Act is the flexibility of its scope. Section 4 defines the scope of the Act's application by delineating the criteria for jurisdictions to be subject to (or "covered" under) Section 5 of the Act. The criteria in Section 4 have been revised on two occasions, in 1970 and 1975, to accommodate practices and encompass jurisdictions not anticipated by the original law. Although not officially covered by VRA, some "pockets" of

---

[70] Georgia became an exception to this pattern of deterrence after it was ordered in *Gray v. Sanders,* 372 US 368 (1963) to reform its malapportioned county-unit election system. The state responded by instituting at-large elections, which only exacerbated the challenges African Americans confronted in pursuing elected office (see also McCrary and Lawson 2000).

discrimination may be required to have their proposed election law changes pre-approved like covered jurisdictions if the DOJ pursues the issue. In addition, as a result of the 1982 reauthorization, Section 4(a) of the VRA permits jurisdictions that meet certain criteria to "bail out" of federal supervision. As a result, the geographic impact of the Voting Rights Act is always subject to change. The law can be extended to or retracted from different areas as circumstances dictate, creating both a disincentive for jurisdictions to adopt discriminatory election policies and an incentive to remedy existing such policies.

The provisions of the Voting Rights Act itself, comprehensive and complementary as they are, thus create a political climate conducive to minority political participation and empowerment. Even more critical to the growth and longevity of black voting rights policy outcomes than the language of the Voting Rights Act itself has been Congress' willingness to intervene over the last fifty years to clarify, defend, and reinforce the law against challenges by interest groups, states, and other branches of the federal government. The Voting Rights Act has been reauthorized on four different occasions, in 1970, 1975, 1982, and 2006. Each of these reauthorizations was a direct response to perceived ongoing racial discrimination against blacks and other racial minorities. The legislative history of the different reauthorizations includes extensive findings about efforts either to deprive members of these groups of the right vote or to dilute the effects of political participation by members of these groups. Through each reauthorization, Congress affirmed its commitment to the principle of equality on which the original Voting Rights Act rested, even as that principle continued to be challenged by interest groups, states, and other branches of government.

Two of the reauthorizations, 1970 and 1975, involved amendments to the coverage formula delineated in Section 4, so that Section 5 could reach jurisdictions not covered under the extant formula. Specifically, the 1970 and 1975 reauthorizations expanded the number of geographic areas covered by Section 5 to include ones where evidence suggested that Asians,

Latinos, and Native Americans were being deprived of their right to vote and of equal protection of the laws by election officials who refused to provide assistance to non-native English speakers (Brischetto et al. 1994; Garcia 1986). The 1970 and 1975 revisions brought these other racial minorities out of the shadows of citizenship in Alaska, Arizona, California, Connecticut, Florida, Idaho, Maine, Massachusetts, Michigan, New Hampshire, New York, North Carolina, California, Florida, Michigan, New York, North Carolina, and South Dakota, and Wyoming. Before these jurisdictions were brought under federal protection, registration and turnout rates of less than 50 percent were de riguer among Latino voters, and significantly lower than corresponding rates among white and black voters (Brischetto et al. 1994, 241 – 248). As a result of the 1970 and 1975 reauthorizations, registration, turnout, and office holding among the largest Latino subgroups increased substantially (see Garcia 1986).

Congress also strengthened its commitment to minority voting rights through the addition of a private right of action in 1975. This provision allows individuals and private organizations that suspect a violation of the VRA has occurred to file their own lawsuits against the government. In other words, citizens do not have to rely upon the federal government to enforce the law. Direct citizen recourse to the courts is particularly important since enforcement of the Voting Rights Act, and other federal civil rights laws, has varied significantly over the course of history (King-Meadows 2011; Orfield and Lee 2007; Walton 1988). Parker writes: "The passage of the Voting Rights Act triggered a new era of voting rights litigation designed to overcome the barriers that diluted the voting strength of the newly enfranchised black voters. Although this litigation was in reaction to initiatives taken by state and local officials, it was also proactive in the sense that it involved minority plaintiffs aggressively filing lawsuits that mounted direct challenges to barriers to minority political participation" (1990, 9). Evidence suggests that the added threat of litigation from non-government sources compelled many state and local governments to settle voting rights lawsuits quickly, deterred some from adopting practices

216

inimical to minority voting rights in the first place, and even enticed some to enact laws *conducive* to minority participation and electoral success. For example, in North Carolina, "most of the changes from at-large to single-member districts or mixed systems…involved litigation or the threat thereof under Section 2 as amended in 1982" (Keech and Sistrom 1994, 171). Simply put, "many of the changes regarding voting rights would not have been made without the reality or threat of litigation" (Keech and Sistrom 1994, 174).

The private right of action on voting rights was buoyed in no small measure by the Civil Rights Attorneys Fees Act of 1976 (§1988 of the US Code), which permits plaintiffs in civil suits to recoup reasonable litigation costs from the government if they win.[71] Civil rights cases are notoriously lengthy and evidence-intensive, so potential challengers to election laws must have substantial financial resources, personnel, expertise and tolerance for obfuscation and delay if they even hope to be heard on the merits.[72] Few organizations possess such wherewithal. By virtue of their longevity, wealth, expansiveness, prestige, and expertise in civil rights law, organizations like the ACLU, the NAACP, and the Lawyers' Committee for Civil Rights under Law are equipped to undertake long-term battles against recalcitrant governments over civil rights law.

---

[71] In addition, Section 6 of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 includes language that authorizes the recovery of "a reasonable attorney's fee, reasonable expert fees, and other reasonable litigation expenses as part of the costs."

[72] The Supreme Court acknowledged the challenges of litigating voting rights cases in *South Carolina v. Katzenbach*: "Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay afforded voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the federal decrees, or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls."

The Civil Rights Attorneys' Fees Act became a powerful tool of voting rights advocacy for these organizations in its own right.[73] Confronted with both the Voting Rights Act itself and the Civil Rights Attorneys Fees Act, states and localities that attempted to abridge the right to vote or weaken the minority franchise risked loss of *both* political *and* financial capital. One Texas city wrestling with whether to maintain an at-large election system or shift to a single-member district system two years after the 1982 reauthorization of the VRA concluded that "because of recent changes in law…a voluntary move to single member districts [would] be more efficient from an economic and political standpoint" (Brischetto et al. 1994, 255). Here, the choice between a system that, while advantageous to white voters and elected officials and a more equitable system ultimately turned on concerns about financial and temporal costs.

Another direct and effective response to intransigence within the other branches of the federal government took place in 1982, when the Voting Rights Act was revised and reauthorized a third time. Two years before, the Supreme Court had ruled in *Mobile v. Bolden* that litigants needed to prove that election dilution laws were intended to discriminate in order for challenges to election laws to succeed. Since some savvy state and local politicians were beginning to figure out how to mask their intentions with race-neutral rhetoric,[74] the Supreme Court's shift from a "results" standard to an "intentionality" standard nearly rendered the Voting Rights Act symbolic. Indeed, shortly after *Mobile* was decided, district courts cited it to thwart challenges to local at-large voting schemes in Mississippi (Parker, Colby and Morrison, 141 – 142). In 1982, Congress revised Section 2 of the VRA to clarify that the law meant to proscribe election laws and practices that the purpose or *effect* of disadvantaging minorities at the polls. As a direct result of the 1982 reauthorization, the Supreme Court was forced to modify its own approach to voting

---

[73] For a discussion of the role these and other civil rights organizations have played in voting rights litigation, see the various chapters in Davidson in Grofman (1994).

[74] For example, some politicians cited concerns about "bloc voting" or "special interests" as their motivation for proposed election law changes (see, e.g., McDonald, Binford, and Johnson 1994, 76; McCrary and Peyton 2000, 297).

rights case law that same year. In *Rogers v. Lodge*,[75] the Court effectively reverted back to an effects standard when it determined that discriminatory intent could be established without the kind of direct evidence *Mobile* had implied was necessary to substantiate a claim of racial discrimination in elections. The *Rogers* decision signaled that the courts would determine whether a proposed election law reflected discriminatory intent based on the "totality of circumstances" (see McDonald, Binford, and Johnson 1994).[76] Buttressed by this new jurisprudence, the amended Section 2 deterred states and localities from implementing new election measures whose discriminatory purpose could easily be obscured by savvy politicians.

With its four reauthorizations and extensions of the Voting Rights Act, Congress has met the intransigence and equivocation of interest groups, states, cities, and other branches of the federal government with steady resolve. Combined with the statutory bulwarks embedded within and around the Voting Rights Act, what amounts to repeated congressional expressions of support for minority voting rights have functioned as both a constraint on nefarious practices and an inducement to adopt practices that facilitate minority empowerment.

Collateral Consequences of Congressional Support

Beyond their immediate effects on state election policies, the five iterations of the Voting Rights Act have had collateral consequences on elite behavior at the federal and local level. At the federal level, Congress' support effectively counteracted actions by the Courts that might otherwise have sabotaged the law.

---

[75] *Rogers v. Lodge,* 458 US 613 (1982)

[76] Later that year, in *Zimmer v. McKeithen* (485 F2d 1297, 1973), the Court of Appeals for the Fifth Circuit delineated three different ways litigants could satisfy the *Rogers* "results" standard (see also McCrary et al. 1994, 49 – 52). Those challenging an election law could demonstrate a "protracted history" of racial discrimination, "debilitating effects of the proposed possibility," or a "firmly entrenched state policy" that disadvantages minority voters. Importantly, the revision of voting rights case law reflected in *Rogers* and *Zimmer* also suggests that congressional interventions succeeded because of judicial deference to Congress. The Supreme Court often obeyed Congress when chastised over voting rights decisions, even while trying to save its own reputation and authority. One wonders how whether the major provisions of the Voting Rights Act would remain if the Court were more resistant.

In addition, the consistent bicameral and bipartisan support for the Voting Rights Act within Congress likely made presidential support a foregone conclusion, despite the personal policy inclinations of certain presidents. Four different presidents have signed extensions of the VRA since 1965: Richard Nixon in 1970; Gerald Ford in 1975; Ronald Reagan in 1982; and George W. Bush in 2007. Each of those presidents was a conservative Republican with a weak record on and at best tepid personal attitude toward black civil rights.[77] Although there is evidence that bureaucratic enforcement of the VRA was less aggressive under some of these Republican presidents than under their Democratic counterparts, none of these presidents overtly challenged the letter of the law (King-Meadows 2011; Walton 1988). Their decisions to sign, rather than veto or even pocket veto, each iteration of the law gave it the veneer of support from the executive branch, and helped to sustain it.

The most significant collateral consequences of congressional support for voting rights, however, has been to obviate *liberal mood*, or public demand for government, in voting rights policy debates might otherwise have played in voting rights policy debates. In Chapter Two, I argued that public opinion about the proper role of government is a means for political elites in a representative government to discern the right course of action from a set of reasonable alternatives when the public interest—that is, the consummate benefits and consequences likely to accrue from a given course of action—is not clear. Since democratic governments can derive their legitimacy from their achievement of the public interest or their adherence to public opinion, the latter may substitute for the former when the former cannot be discerned.

On the subject of minority voting rights, the public interest has always been clear. The comprehensiveness and detail of the provisions of the Voting Rights Act remove much of the ambiguity that might otherwise arise in subnational debates about what constitutes the public

---

[77] Walton (1988) documents reductions in federal agency staffing and funding, especially during the Nixon and Reagan administrations, and argues that such changes impeded enforcement of established civil rights policies.

interest on election policy and guide state and local elites toward a very narrow set of policies whose superiority to alternatives is clear.[78] Because minority voting rights enjoy such strong and consistent institutional support, elites do not *need* to consult public opinion to ascertain the public interest or otherwise validate their actions. Without the need to consult public opinion, elites are in turn less susceptible to the phenomenon of dynamic counteraction that occurs amidst the United States' backdrop of value pluralism. Appeals by self-interested interest groups to the values of equality and limited government, with their incompatible policy implications, are more likely to fall on deaf ears when the public interest is as well-defined as it is in the case of minority voting rights.

This is not to say that public opinion about the role of government has played no role in this issue area whatsoever. Some key historical developments in voting rights policies and outcomes seem to coincide with changes in demands for government. The original Voting Rights Act emerged at a time when demand for government intervention, as measured by *liberal mood* (Stimson 1991), was high. In addition, as would be expected, the period of massive resistance to the federal civil rights agenda took shape during the late 1960s and early 1970s, when public demand for government was in decline. Most recently, black voter registration and turnout rates have reached their apex and converged with those of whites just as demand for government has hewed toward the liberal end of the spectrum. In some isolated cases, increased public demand for government action also seems to have affected voting rights policy outcomes. For example, protestors from SCLC, SNCC, and CORE who had organized in response to the shooting of University of Mississippi's first black student, James Meredith, at an earlier civil rights protest, "succeeded in getting between 3,000 and 5,500 black voters registered to vote, and local officials

---

[78] Furthermore, where ambiguity about the public interest *may have* existed, such as in *South Carolina v. Katzenbach* and *Mobile v. Bolden*, Congress' reauthorizations and revisions of the Voting Rights Act have served to renew elite perspective. *South Carolina v. Katzenbach* dampened resistance to the Voting Rights Act by making clear that the law was within the authority of the federal government, and could not be superseded by the rights of the states under the Tenth Amendment.

began making long-neglected improvements in black neighborhoods *in response to black demands*" (Parker 1990, 68; emphasis added). Anecdotal connections between public opinion and voting rights developments like this one help to fuel suspicion that the democratic representation hypothesis might hold in the case of voting rights policy outcomes.

Yet I am not convinced. If the democratic representation hypothesis were correct, changes in black voter registration, turnout, and office holding would correspond with periods of growth in the number of black elected officials. Just as we would expect more synchronicity between opinions and outcomes if a causal relationship existed in school desegregation, we would expect synchronicity between *liberal mood* and black registration, turnout, and office holding over time if opinions about government involvement have driven policy outcomes in the area of voting rights. This conclusion seems dubious from the outset when we examine both *liberal mood* and voting rights policy outcomes at the national level, where the former has vacillated historically, and the latter have been more monotonic. Recall from Chapter Three, as well, that ideologically progressive changes in federal voting rights policy have emerged at times we would not expect based on the trend or state of *liberal mood*. Just as in the case of school desegregation, then, the *absence* of synchronicity between public opinion about the role of government and voting rights policy outcomes suggests that the democratic representation hypothesis does not capture the role of public opinion in voting rights policy outcomes.

Of course, as I have sought to demonstrate throughout this dissertation, public demand for government need not have a positive linear relationship with civil rights policy outcomes. The dynamic counteraction hypothesis predicts that civil rights outcomes systematically move in line with public demand for government at some points in time and out of step with public demand for government at other points in time, as activists with different political agendas appeal to widely held, but potentially conflicting political values to sway elites to act for or against civil rights.

There are reasons to suspect that dynamic counteraction has occurred in the case of voting rights policy outcomes.

Some hallmarks of dynamic counteraction have clearly materialized since the Voting Rights Act was enacted. First, just as in the case of school desegregation, there has been contestation over alternative voting rights policies between interest groups with compelling arguments for and against the outcomes portended by the Voting Rights Act. Second, as with school desegregation, political mobilization around voting rights policy outcomes has been largely defensive rather than offensive, allowing for the possibility that policy outcomes would occasionally defy majority opinion. Parker explains that

> …beginning about 1960, the civil rights movement switched its emphasis from a litigation strategy to a mass-based protest to overcome the remaining franchise restrictions. In this political organizing and protest phase, the primary role of civil rights attorneys was defensive: to protect the political organizing and protest efforts of the civil rights workers by contesting police harassment, by challenging the anti-protest laws that curtailed these activities, and by getting the civil rights works out of jail when they were arrested. This protest effort succeeded in accomplishing what case-by-case litigation against registration restrictions failed to do. It produced the 1965 Voting Rights Act that struck down the primary restrictions on the right to vote" (1990, 9)

The tactics civil rights advocates used prior to the passage of the Voting Rights Act also succeeded in awakening massive resistance on the part of Southern whites, leading to further battles among opponents and proponents of alternative voting rights policies and policy outcomes.

Nevertheless, I am equally skeptical that the dynamic relationship observed between school desegregation and public opinion in chapters Four and Five also exists in the case of voting rights policy outcomes because the institutional and sociological conditions necessary for such a relationship have not existed in the case of voting rights policy. In the case of school desegregation, a dynamic relationship existed because opponents of school desegregation were successfully able to appeal to the value of limited government. However, institutional conditions around black voting rights have made it difficult for opponents of black voting rights to invoke

the concept of limited government. In *South Carolina v. Katzenbach,* the Supreme Court rejected the contention that the Voting Rights Act exceeded Congress' authority under the Fifteenth Amendment when it upheld the 1965 Voting Rights Act. In doing so, the Court signaled that appeals to the concept of limited government would be ineffective. The likelihood of appealing to liberalism successfully has grown increasingly remote as Congress has continued to layer new regulations upon the tenets of the original Voting Rights Act, largely without objection from the states. If federal voting rights policies more amenable to appeals to the value of limited government, opponents of black political engagement might be able to use such appeals to dampen or reverse the pace of black registration, turnout, and office holding, just as in the case of school desegregation. That the institutional conditions around voting rights instead foreclose appeals to the value of limited government minimizes the likelihood of dynamic counteraction.

Demographic conditions have also favored black political participation and empowerment. Decades of *de jure* racial segregation had the unintended consequence of placing blacks in communities where they comprised a majority of the electorate. In racially homogeneous political units, blacks were well positioned to elect the candidates of their choice. The fact that black participation and office holding often grew in places that did *not* adopt dilution measures as well in as in those that did (e.g. Keech and Sistrom 1994, 178 – 179; Parker, Colby and Morrison 1994) suggests that African Americans would eventually have secured political representation if state and local governments had not intervened after the VRA was adopted. With racial segregation entrenched across the United States, the initial "outside interference" in the form of the Voting Rights Act was sufficient to stimulate black registration, voting, and office holding (Engstrom et al. 1994, 104). Without any institutional barriers to voting, black political participation and empowerment were ineluctable.

To maintain low levels of black participation and turnout, states and localities needed to craft new election practices and create new political institutions that would overcome the

224

demographic and institutional conditions favoring black empowerment. It was not racial equality, but *inequality*, in voting that required government intervention after the Voting Rights Act was adopted. Consequently, when state and local governments revised election laws, they did so not to protect minority rights, or to facilitate black political engagement, but to abrogate rights and stall black participation. While in the case of school desegregation, government intervention was a means to alter the status quo of racial segregation, government intervention in the case of election law was more often than not a means to delay an outcome that was ineluctable, given existing demographic and structural conditions. Under these circumstances, appeals to the ideal of limited government would be specious at best. Insofar as dynamic counteraction requires opponents of civil rights to be able to appeal to the concept of limited government to advance their cause, the inability of such appeals to resonate likely inhibits dynamic counteraction. Appeals to equality by pro-civil rights interests should be more successful, leading to the positive linear relationship suggested by conventional democratic theory.

As it turns out, those seeking to forestall black political empowerment have rarely cast the discourse in terms of federal government imperatives. In one notable exception, Georgia Senator Eugene Talmadge decried the prospect of "federal judges appointed for life becoming the arbiters of the political affairs of each state" before the Supreme Court invalidated the state's legislative apportionment scheme, known as the "county-unit" system, in *Gray v. Sanders* (McCrary and Lawson 2000, 299). But such invocations have been few by comparison to the number made in debates over school desegregation. In the debate over voting laws, invocations of "state's rights" and "local control" have been outweighed by references to "bloc voting," "pressure groups," and "special interests" (Key 1949; see also McCrary and Lawson 2000, 297; McDonald, Binford, and Johnson 1994, 76). Racial appeals such as these, and even more explicit

ones, are far more prevalent in the historical record on voting rights policy.[79] The paucity of invocations of the concept of limited government in public discourse casts further doubt on the notion that shifts in public preferences for government have played a significant role in the evolution of voting rights policy outcomes.

Yet another reason to doubt that the dynamic counteraction thesis holds in the case of voting rights policy outcomes is that despite interest group involvement in general, changes in black political participation and office holding have materialized even in places with little interest group presence or contestation around this issue. In Virginia, for example, the number of black elected officials has continually grown despite the fact that relatively few voting rights cases have been filed (Morris and Bradley 1994; *cf* ACLU of Virginia 2011). The paucity of voting rights cases may owe in part to the fact that civil rights cases are fact-intensive and the data needed to substantiate legal claims is not always available. For example, unlike other southern states, Virginia does not maintain racially disaggregated voter registration or turnout records, which means it is difficult for an individual or group wishing to challenge the state's laws to quantify the extent of racial disparities in these two areas. Another possibility is that the few interest groups in Virginia with the capacity to bring civil suits related to voting rights have been enmeshed in lawsuits over school desegregation for decades (Morris and Bradley 1994, 287). Even so, there has been significantly more progress in Virginia in the way of black empowerment than in the way of racial integration of schools. The growth of black office holding amidst a dearth of competing interest groups suggests that interest group contestation is a sufficient, but not a necessary, predictor of voting rights policy outcomes.

All of the foregoing suggests that public demand for action by the federal government— that is, mass commitment to liberalism—has not played the same important role in voting rights policy outcomes as it has in school desegregation. Not only is it plausible that we will not observe

---

[79] Each of the chapters in Davidson and Grofman (1994) provides examples of the racial, and racist, anti-voting rights rhetoric that has been deployed.

the positive linear relationship suggested by orthodox democratic theory, but we also might not see the results the dynamic counteraction hypothesis predicts. The multivariate statistical analyses in the next section shed light on whether, and to what extent, changes in voting rights policy outcomes over time systematically reflect changes in mass embrace of the value of limited government (i.e. public demand for government). Recalling the conventional representation equation from Chapter One, I also account for the potential roles of institutions, public opinion, demographic conditions, and issue salience in all of the statistical models. Including these variables allows me to assess the effects of both the Voting Rights Act itself and Congress' repeated renewals of the law net of those other broad categories of factors likely to influence civil rights policy outcomes.

6.5 Multivariate Analyses of Registration, Turnout, and Office Holding

We can now begin to evaluate the different predictors of voting rights policy outcomes quantitatively. As in the case of school desegregation, voting rights policy outcomes can be operationalized in several different ways. I construct separate models with three alternative measures specified as dependent variables in order to provide a more comprehensive and robust analysis. Aside from the reauthorizations of the law, the three most frequently discussed indicators of the vitality of the Voting Rights Act are the share of African Americans registered to vote, the share of registered black voters who cast a ballot, and the number of African Americans elected to public office at different levels of government (see e.g. Davidson and Grofman 1994; Persily 2007). This gives us three categories of policy outcomes: voter registration, voter turnout, and office holding.

In addition to the dependent variable, I vary the estimation procedure. Changes in the estimation procedure reflect differences in the dependent variables. While measures of registration and turnout typically take the form of percentages or ratios, measures of black office holding typically take the form of counts. As a result, no single statistical technique can be

counted upon to generate valid estimates of all of the dependent variables of interest here. To estimate the registration and turnout variables, I am generally able to rely upon time series techniques, but with the office holding variables, count models are necessary. Since all of the models are longitudinal, I include some indicator of time in each.

Finally, the exact measures of each type of independent variable and the unit of analysis specified in each model also vary. These variations preemptively increase the robustness of the results. Wherever possible, I construct models at both the national and state level. There are tradeoffs to both the subnational and national level analyses in this case, and I identify and address these when reporting the modeling results. In general, since some data are only available at the national level, national level analysis makes it possible to address methodological challenges such as missing data and ecological inference. However, state-level analysis of voting rights policy outcomes is preferable at a theoretical level because states have been the primary sites of contestation over voting rights policy. By focusing on states, I can incorporate into each policy outcomes model structural factors that are endemic to states specifically. Methodologically, analyzing outcomes at the state level also makes it possible to take advantage of larger samples and greater variation in key measures. Moreover, by folding national-level indicators into a model that includes state-level covariates, it is possible to assess intergovernmental effects, just as in some of the models of school desegregation discussed in Chapters Four and Five. The details of each methodological approach are elaborated in the subsections that follow, which are divided according to the category of policy outcome.

Black Voter Registration

I begin by examining changes in black voter registration over time at the national level. The dependent variable is the percentage of African Americans of voting age who reported being registered to vote prior to each November election occurring between 1966 and 2010. These data derive from the November supplements of the Current Population Survey conducted by the US

Census. The start and end years of the time series represent the earliest and latest years available. The equation for the black voter registration model is:

$$\textit{Percent Registered}_t = \textit{Liberal mood}_{t-1} + \textit{SCOTUS Ideology}_t + \textit{Distance to VRA Renewal}_t +$$

$$\textit{Percent Black}_t + \textit{Change in Percent Non-White} + \textit{Presidential Election Year} + \varepsilon$$

This model captures the role of institutions primarily through Martin and Quinn's (2002) Supreme Court ideology scores, represented by the variable *SCOTUS Ideology,* which measures the ideological position of the median justice on the Court in any given year. Higher values of this variable indicate greater ideological liberalism on the Court, while lower values indicate greater ideological conservatism. As in the analyses of school desegregation, I generally expect greater liberalism in the Supreme Court to yield more progressive civil rights policy outcomes. Conversely, greater conservatism in the Court should correlate with more conservative civil rights policy outcomes. If these hypotheses are true, the coefficient on *SCOTUS ideology* should be statistically significant and positive, all else equal.

To test the hypothesis that public opinion about the proper role of government has influenced changes in voter registration, I again rely upon *liberal mood*, Stimson's (1991) index derived from factor analysis of mean responses to questions about policy preferences included in several national surveys conducted over several decades. Since one of the purposes of the Voting Rights Act was to increase black registration, and since the Voting Rights Act is a federal intervention, an increase in *liberal mood*, or demand for federal intervention, would imply an increase in support for black registration. Thus, democratic theory would suggest that black registration rates would increase as *liberal mood* increase. In other words, a positive and statistically significant coefficient on *liberal mood* would provide evidence for the democratic theory hypothesis. In the registration model, *liberal mood* is lagged to account for endogeneity

with the dependent variable (increased black registration rates might actually increase *liberal mood*) and thus clarify claims about the direction of causality.[80]

On the other hand, the theory of dynamic counteraction suggests that a negative relationship could exist between *liberal mood* and civil rights policy outcomes because increased support for government could spur action among those opposed to black registration, voting, or office holding, or at least government efforts to effectuate those ends. This is precisely what I argued occurred with school desegregation, and what I concede above is a reasonable possibility in the case of voting rights. A statistically significant and negative coefficient on *liberal mood* would provide at least a basis for investigating the democratic counteraction hypothesis further. Yet, as stated earlier, I do not expect such investigation to be warranted. The relatively strong statutory language and congressional support for voting rights obviates the need for elected officials to consult public opinion as they wrestles with the issue of voting rights. In turn, the obsolescence of public opinion should foreclose dynamic counteraction.

Aside from public demand for government, *issue salience* is likely to be a predictor of policy outcomes (Soroka and Wlezien 2010). We saw this to be the case in some models of racial segregation, where the coefficient on *distance to nearest school desegregation case* was statistically significant. I also expect issue salience to affect policy outcomes in the case of voting rights. To measure the salience of the issue of minority voting rights, I calculated the distance from each year in each dataset to the year of the nearest Voting Rights Act reauthorization. This variable is labeled *Distance to VRA Renewal* in the results table. Note that the variable is reverse-coded so that higher values signify greater proximity to a VRA renewal, or greater issue salience. The assumption here is that awareness of and attention to the issue of minority voting rights are greater the closer we are in time to any renewal, and greatest in those years when the Voting

---

[80] I use the term causality loosely here, not just because it might be hard to sustain methodologically, but because, as I describe in Section 5.3, the *theoretical* basis for such a claim is not as strong in the case of voting rights policy outcomes as in the case of school desegregation.

Rights Act is renewed by Congress. I predict that greater attention to the issue of voting rights, particularly from the federal government, inspires African Americans to become more politically active. Consequently, the coefficient on *Distance to nearest VRA renewal* should be positive.

To capture the effects of demographic change, I generate two different measures of racial diversity: *percent black* and *change in percent non-white*. These variables were calculated using decennial estimates of the total, black, and white populations of the United States for the five census conducted between 1960 and 2010, as well as yearly population interpolations provided by the US Census Bureau for years between censuses.[81] I expect that a larger share of African Americans registers to vote as the black share of the US population increases. Since Bobo and Gilliam (1990) published their seminal study, research on black political empowerment has repeatedly linked political participation to the relative size of the black population. The evidence suggests, specifically, that as African Americans increase as a share of the population in a community, African Americans' sense of external political efficacy increases and black voters become more politically active.

At the same time, the literature on racial threat and competition suggests that sudden growth in minority populations can spark a backlash from white voters (e.g Hopkins 2010; Morrison 1987; Parker 1990; Rocha and Espino 2009). The backlash can take the form of a downturn in whites' attitudes, mobilization of white voters, or the use of intimidation or violence against those who attempt to register to vote by white voters and civic associations (Burton et al. 1994, 198 – 200; McDonald, Binford, and Johnson 1994, 73). All of these responses create a hostile political environment that can dissuade many African Americans, and voters of other racial and ethnic minority groups, from participating in politics. Thus, even as the numerical strength of racial minorities grows, increased mobilization on the part of whites may mediate the effects such strength might otherwise have on political outcomes. White counter mobilization is

---

[81] For the years 1981 – 1989, I interpolated the black and white population values myself because no estimates were available from the Census.

likely to be even more virulent the more sudden and substantial the growth in racial minorities. All else equal, then, larger increases in the non-white share of the population should be associated with a decline in black voter registration rates. That is to say, I expect the coefficient on *change in percent non-white* to be negative.

The final control variable included in the registration model is *presidential election year,* a dummy variable that is coded one in the affirmative condition, and zero for midterm election years.[82] This variable is necessary in order to account for the general disparity in that exists between voter turnout rates in presidential elections and midterm elections. I expect the same disparity to exist in black voter registration rates across the two election cycles. The coefficient on this variable should therefore be positive and statistically significant. Descriptive statistics for all model covariates can be found in Table 6.A.1.

Column (1) of Table 6.3 reports the results of the model predicting black voter registration rates. Because this is a time series model with demonstrable serial correlation,[83] I estimate it with feasible generalized least squares (FGLS).[84] In addition, I use the Prais-Winsten transformation with the Theil-Nagar formula for calculating the coefficient of autocorrelation (usually denoted by the Greek letter ρ in the econometrics literature) in order to correct for autocorrelation.[85]

---

[82] I have deliberately excluded an autoregressive term, since I expect registration rates to vary systematically depending on whether a presidential or only congressional election is occurring.

[83] In the untransformed model, *Durbin Watson* $d_{[7,\ 22]} = 1.046$. In the transformed model, *Durbin-Watson* $d_{[7,21]} = 1.908$.

[84] Feasible generalized least squares is also referred to as estimated generalized least squares, or EGLS, in the econometrics literature.

[85] In the presence of serial autocorrelation, ordinary least squares provides unbiased and consistent estimates, but does not provide the most efficient standard errors. Estimating an autocorrelated time series model with ordinary least squares could therefore lead to erroneous conclusions about the statistical significance of some independent variables. FGLS and EGLS provide more efficient standard errors in the presence of serial autocorrelation than ordinary least squares. The Prais-Winsten transformation is an iterative procedure for estimating the magnitude of autocorrelation in a model and adjusting the model results based on the estimated level of autocorrelation. The Prais-Winsten procedure is preferable to other methods of adjusting for autocorrelation, such as the Cochrane-Orcutt procedure, because it preserves observations, while other methods require the removal of one observation. That relative computational efficiency is critical when the sample size is small, as is the case here ($n = 22$). Similarly, the Theil-Nagar

Table 6.3. Predictors of Black Voter Registration and Turnout at the National Level	(1) Registration	(2) Turnout
Liberal Mood $_{t-1}$	-0.337	0.124
	(0.229)	(0.147)
SCOTUS Ideology	-1.089	-1.527
	(1.585)	(1.387)
Distance to VRA Renewal	-0.749	0.397
	(0.379)	(0.197)
Percent Black	-8.815	2.525
	(4.777)	(1.252)
Change in Percent Non-White	-1.127**	0.214
	(0.361)	(0.373)
Presidential Election Year	5.078***	8.795***
	(0.613)	(1.228)
Percent Black Registered		1.123***
		(0.203)
Constant	187.8*	-66.87*
	(65.13)	(23.77)
N	21	22
Adjusted R^2	0.787	0.972

*p ≤ 0.05, p ≤ 0.01, *** p ≤ 0.001, two-tailed.

Entries are feasible generalized least squares estimates derived from a Prais-Winsten transformation. Standard errors are in parentheses. The unit of analysis is a national election. The sample size for the turnout model reflects all elections between 1964 and 2010; the sample for the registration model includes elections between 1966 and 2010 because 1964 racially disaggregated voter registration data are unavailable at the national level.

Turning to the model results, the first thing to note is that few variables are statistically significant. The paucity of statistically significant variables may very well be a function of the limited sample size (again, *n* = 22). Even in a parsimonious model such as I have constructed, the paucity of total observations and the low ratio of observations to independent variables might

---

method for calculating the coefficient of autocorrelation ρ is designed to improve upon the more conventional Durbin-Watson formula when samples are small. Thus, it, too, is preferable in light of the limited number of observations available for this analysis. The Thiel-Nagar formula for ρ is $[n^2(1 - d/2) + k^2] / (n^2 - k^2)$, where *n* is the number of observations, *d* is the Durbin-Watson statistic, and *k* is the number of parameters, including the intercept, to be estimated.

obscure some systematic relationships.[86] Nevertheless, what we observe from the model is informative.

Changes in black voter registration seem to be a function of structural and demographic conditions. As expected, the coefficient on *presidential election year* is statistically significant and positive ($b = 5.078$; $p < 0.001$). On average, black voter registration rates are about five percentage points higher in presidential elections than in midterm elections. Also as expected, the coefficient on *change in percent non-white* is statistically significant and negative ($b = -1.127$; $p = 0.007$). All else equal, black registration rates decrease about one percentage point on average for each additional percentage point of annual growth in the non-white share of the population. This comports with prior studies showing backlash from white voters when the population of racial minorities grows significantly in a short period of time (e.g. Hopkins 2010; Parker 1990).

Liberal mood is not a statistically significant predictor of black voter registration rates. This result means that, contrary to democratic theory, black voter registration rates do not respond systematically to increases in public demand for government after accounting for other plausible covariates. The fact that the coefficient on *liberal mood* is not statistically significant also casts doubt upon the dynamic counteraction hypothesis. It is still possible that the direction of the relationship between *liberal mood* and black registration rates is variable, as the dynamic counteraction hypothesis holds, but assessing this possibility requires a model with *liberal mood* entering at lag lengths greater than one.

Also insignificant in the voter registration model is *SCOTUS Ideology,* which represents the Martin-Quinn score for the justice estimated to be at the ideological median of the court each year. Contrary to expectations, increased liberalism among Supreme Court justices does not significantly increase or decrease black voter registration rates. The impact of ideological change

---

[86] To be clear, I am not implying that there is omitted variable bias in this model. Prior to transforming the model to correct the autocorrelation, I tested for omitted variable bias, as well as multicollinearity and heteroscedasticity. The results suggest the model does not suffer from any of these specification errors. The test results are available from the author.

in the courts may simply be negated by other factors, as prior research suggests (Rosenberg 2008).

Overall, the results suggest that black voter registration rates reflect a combination of changing demographic conditions and the disparity in levels of political engagement that exists between presidential and midterm elections.[87] Of course, notwithstanding the methodological adjustments made to the model, the small sample size on which the model relies means caution must be used when interpreting the results. A more ideal model of black voter registration would use state- or county-level registration data to increase the sample size. Unfortunately, however, such data are only available in some states and for some election years, so generalizability would be severely limited. The statistical approach I adopt provides a better portrait of changes in black voter registration under the circumstances. This approach also provides a foundation for future analyses with larger time series or lower levels of cross-sectional aggregation, such as states or counties.

Black Voter Turnout

Column (2) of Table 6.3 replicates the black voter registration model with a new dependent variable, *black voter turnout* rate. Values of this variable signify the percentage of registered African American voters who reported casting a ballot in each November election occurring between 1964 and 2012. [88] The values of this variable are also taken from supplements to the Current Population Surveys of the US Census Bureau. The start and end years of the analysis are again the earliest and latest election years for which such data were available at the time of analysis. The equation for the turnout model is:

---

[87] The measures of issue salience, *distance to VRA renewal* ($b = -0.749$; $p = 0.068$), and demographic change, *percent black* ($b = -8.815$; p = 0.093) *approached* conventional levels of statistical significance in the registration model, though their coefficients were in the opposite direction than what was expected.
[88] As in the voter registration model, the existence of the *presidential election year* dummy variable obviates the need for an autoregressive term in this model.

$$Black\ Percent\ Turnout_t = Liberal\ mood_{t-1} + SCOTUS\ Ideology_t + Distance\ to\ VRA\ Renewal_t +$$

$$Percent\ Black_t + Change\ in\ Percent\ Non\text{-}White + Presidential\ Election\ Year + Black\ Percent$$

$$Registered_t + \varepsilon$$

The independent variables in the turnout model are the same as those in the voter registration model, with one notable addition: *black registration rate*.[89] As is well established in the voter turnout literature, aggregate voter turnout rates correspond directly to aggregate voter registration rates (e.g. Highton 2004; Mitchell and Wlezien 1995; Nagler 1991; Rosenstone and Wolfinger 1978; Wolfinger and Rosenstone 1980). This is in large part because registration is a prerequisite for voting in virtually all elections in the United States. Voters who endure the "costs" associated with registering tend to be those with the motivation and wherewithal to cast a ballot ultimately; hence, many studies of voter turnout indicate that modifying voter registration laws to increase opportunity and access would not significantly alter the composition of the electorate (Mitchell and Wlezien 1995; Wolfinger and Rosenstone 1980).

Even with the addition of *black registration rate*, the results in Column (2) largely mirror those in Column (1). Once again, the coefficients on *liberal mood, SCOTUS Ideology, distance to VRA renewal,* and *percent black* are not statistically significant. In addition, while *change in percent non-white* was statistically significant in the registration model, it is not statistically significant in the turnout model. This leaves *presidential election year* as the only variable significant across both models of black political engagement.[90] The relative paucity of significant variables in the turnout model likely owes to the addition of *percent black registered* as an independent variable. Other than the dummy variable for presidential election years, *percent black registered* is the only variable with a statistically significant coefficient (b = 1.123; $p <$ 0.001). Consistent with previous research on voter turnout, the coefficient on *percent black*

---

[89] Descriptive statistics for the variables used in this analysis can be found in Table 5.A.1.
[90] Two additional variables approach conventional levels of statistical significance: *distance to nearest VRA renewal* (b = -0.795; p = *0.*095) and *percent black* (b = -9.732; p = 0.093). But I am cautious about making too much of this marginal significance, since the signs on both variables are not in the expected direction.

registered indicates that higher rates of registration among African Americans are associated with significantly higher rates of black voter turnout on average, all else equal.

The findings in Table 6.3 hold under a range alternative specifications detailed in the Appendix to this chapter. Nevertheless, we must be careful not to treat the results from either of these single models of black voter registration and turnout as definitive, given the relatively small sample sizes used. Instead, we should regard the results as a stronger empirical foundation for future research on black voter registration and turnout. The model results strongly suggest that those variables that are statistically significant should be included in future studies, which will be able to take advantage of newer election observations and larger sample sizes. But those variables that are not statistically significant here should not necessarily be discounted when larger sample sizes become available. Only when we have enough longitudinal data to confidently meet the assumptions of a multivariate model will we be able to draw more definitive conclusions about contributors to black voter registration and turnout.

Black Elected Officials

I expect the same factors to contribute to black office holding in the United States in the following ways. A more liberal Supreme Court should adopt or endorse election policies that favor black office holding, leading to increased numbers of black in government. In other words, as Martin-Quinn Supreme Court ideological scores increase, the number of black elected officials should also increase at all levels of government. Similarly, increased attention to the issue of minority voting rights should increase the number of black elected officials. That is to say, the number of black elected officials should increase as the measure of issue salience, *distance to VRA renewal,* increases. According to conventional democratic theory, *liberal mood* should have a significant positive linear relationship with the number of black elected officials. A significant negative relationship could indicate that dynamic counteraction is at play, however, and warrant further investigation. Previous research on black empowerment suggests that black elected

officials are more likely to emerge where blacks comprise a substantial proportion of the population in some jurisdiction—and especially where they represent a majority. Increases in the black share of the population should therefore yield increases in the number of black elected officials. On the other hand, per the racial threat literature, increased *change in percent non-white* should be correlated with lower numbers of black elected officials, as whites mobilize in response to surges in minority populations. Finally, the number of black elected officials may differ in presidential and mid-term election years, particularly if, as we have seen, levels of black participation differ systematically across the two election cycles. Hence, I include the dummy variable *presidential election year.* Descriptive statistics for all model variables can be found in Table 6.A.2.

Table 6.4 reports the results of negative binomial regression models predicting the number of federal, state, and municipal officials in the United States. Column (1) isolates blacks elected to federal bodies, including the Senate and House of Representatives. Column (2) isolates blacks elected to state-level elected offices, including governor, state assemblyman, and in some cases executive offices like State Secretary of State. Column (3) isolates blacks elected to county-level governments, including commissions. The source of the black office holding data used to generate these measures is the Joint Center for Political and Economic Studies, which culled yearly total numbers of black elected officials in each state from its Black Roster of Elected Officials. The federal and state models include all years between 1970 and 2011, while the county model includes only the years 1970 through 2002. In all analyses, the end year is the latest for which complete data were available at the time of analysis.

The models are estimated using negative binomial regression, for two main reasons. First, the number of elected officials takes the form of a count (i.e. positive integers only). Ordinary least squares can produce impossible estimates when data assume the form of a count, because ordinary least squares assumes that data can take on negative and fractional values, *as well as*

238

positive and integer values. Second, there is evidence of overdispersion, a condition in which the variance of the data exceed the mean of the data. In the presence of overdispersion, negative binomial regression better estimates the outcomes of interest than alternatives, including Poisson models. Since these are also time series models, I calculate robust standard errors to minimize any possible bias in the standard errors that might result from serial autocorrelation.[91]

---

[91] For ease of interpretation, the coefficient on each independent variable is reported in the results tables as an incidence-rate ratio (IRR) instead of the standard negative binomial regression metric. For a continuous variable, the IRR is the amount by which the expected count of elected officials is *multiplied* when the independent variable increases by one unit. If we multiply the IRR by 100, we can obtain the *percentage* by which the dependent variable would increase or decrease with each one-unit increase in a continuous independent variable (i.e. an IRR of 8.44 translates to "an 844 percent increase"). In reporting some results, I sometimes refer to percent increases or decreases. For a dichotomous independent variable, the IRR is the factor by which the expected count of elected officials differs when the variable equals one (i.e. the affirmative condition) and when the variable equals zero (i.e. the reference category). Note that because an IRR can only be positive, we cannot use its sign to figure out the direction of the relationship between two variables. Instead, an IRR greater than one signifies a positive relationship, while an IRR less than one signifies a negative relationship. Wherever I expect there to be a positive relationship with black office holding, then, I essentially expect to see an incidence-rate ratio greater than one, and wherever I expect a negative relationship with black office holding, I expect to see an incidence-rate ratio less than one.

Table 6.4. Predictors of Black Elected Officials in US by Office Level, 1970 – 2011

	(1) Federal	(2) State	(3) County[a]
Liberal Mood $_{t-1}$	1.028	1.017	0.938***
	(0.019)	(0.016)	(0.018)
SCOTUS Ideology	0.986	1.006	1.011
	(0.188)	(0.160)	(0.357)
Distance to VRA Renewal	0.954***	0.964***	0.890***
	(0.013)	(0.011)	(0.015)
Percent Black	1.000	1.001	0.997
	(0.003)	(0.003)	(0.004)
Change in Percent Non-White	1.081	1.056	0.948
	(0.130)	(0.093)	(0.070)
Presidential Election Year	0.912	0.946	1.006
	(0.127)	(0.114)	(0.116)
N	41	41	32
-2 Log Pseudolikelihood	301.190	519.353	420.083

*p ≤ 0.05, p ≤ 0.01, *** p ≤ 0.001, two-tailed.
[a] Time series extends from 1970 – 2002 in this model
Entries are negative binomial regression estimates, expressed as an incidence-rate ratio (IRR). For the continuous variables, the IRR is the amount by which the expected count of elected officials is *multiplied* when the independent variable increases by one unit. For the dichotomous variables, the IRR is the factor by which the expected count of elected officials differs when the variable equals one and when the variable equals zero. Robust standard errors are in parentheses. The unit of analysis is the year; hence, *N* is equal to the total number of years in each time series.

In these models, the only consistently significant predictor is issue salience, represented by the variable *distance to VRA Renewal*. Contrary to expectations, a one-unit increase in my measure of the salience of the issue of minority voting rights, d*istance to VRA renewal,* is associated with a very slight decline in the number of federal-, state-, and county-level black elected officials. In federal offices, the number of blacks decreases by a factor of 0.95 for each additional year of proximity to one of the reauthorizations (Column 1: *IRR* = 0.954 *to*; p < 0.001). In the case of state offices, the number of black elected officials is about .96 times lower for each additional year we are closer to a renewal (Column 2: *IRR* = 0.996; p = 0.329). And in the case of county elected offices, the number of black officials is about .90 times as high for each additional year we are closer to a renewal of the VRA (Column 3: *IRR* = 0.890; p < 0.001). To put these

results in context, let us examine the number of African Americans in office in 2011 at the federal (45) and state (629) levels. Based on the coefficients observed, the passage of one more year would be associated with a nationwide decline of about one black federal elected officials ($1 \approx 45 - 0.954$ x 45) and about three black state elected officials ($3 \approx 629 - 0.996$ x 629). In sum, the closer we are to reauthorization of the Voting Rights Act, the fewer the number of blacks there are in government on average, all else equal.

This finding might seem counterintuitive at first glance. Why would greater attention to the issue of minority voting rights decrease the number of African Americans elected to public office at all levels of government? One possibility is that increased issue salience actually deters some black candidates from running or else mobilizes whites to run and/or vote against black candidates. If increased public attention makes black candidates more fearful of running, fewer may do so, resulting in lower numbers of black elected official. Alternatively, if increased attention to minority voting rights makes white candidates and voters more eager to participate, the ensuing interracial competition may decrease black candidates' chances of winning. This possibility seems plausible in light of previous evidence of white political backlash (insert citations). The coefficients could also indicate that the number of black elected officials invariably *increases* over time, since the coding of this variable does not make it possible to distinguish between distance to a future VRA renewal and distance from a past VRA renewal. At any rate, future research should continue to investigate the extent to which issue salience influences the both the motivation to run and the outcome of elections for candidates of different races.

Most of the other independent variables are not statistically significant in any of the three models. In fact, the lone exception is *liberal mood,* which is statistically significant in the model predicting the number of African Americans elected to public office at the county level (Column 3: $b = 0.938$; $p = 0.001$). Each increase in *liberal mood* is associated with approximately .94

fewer African Americans in county-level elected offices. This result also contravenes democratic theory, which would predict a positive linear relationship with the number of black elected officials. Since increased black office holding is what would be expected under a more active federal government, or a more robust civil rights state that includes protections for black voters and candidates. The fact that the coefficient on *liberal mood* is less than one indicates a negative relationship and leaves open the possibility that dynamic counteraction in influencing the election of blacks at the county level. I investigate this possibility later.

Do these findings hold when we examine black office holding within the states, where other factors might come into play? In Table 6.5, I report the results of models of black office holding at the state level between 1970 and 2011 (or 1970 and 2002 in the case of county-level office holding).[92] Note that here "state level" refers to the unit of analysis, *not* the level of the elected office. These models predict the number of blacks elected to federal, state, and county positions *from different states over time*, not the total number of blacks elected to *state offices nationwide*, as the models reported in Table 6.3 did. State-level models are arguably more useful than national-level models in an analysis of black office holding since they significantly increase the size of the sample available for analysis. These models also make it possible to account for variation in outcomes between and within states over time, and to introduce theoretically relevant variables that are only measurable at the state level. In particular, these models allow us to directly assess the impact of Section 5 of the Voting Rights Act, as well as the four reauthorizations of the Act, on black office holding. I am aware of no other analysis that has examined the impact of Section 5 or reauthorizations of the Voting Rights Act in this way.

---

[92] The models reported in this table include North Dakota, which did not elect a black person to any public office during the time period under examination. Excluding North Dakota does not alter the results.

Table 6.5. Predictors of Black Elected Officials in the States, 1970 – 2011	(1) Federal	(2) State	(3) County[a]
Liberal Mood $_{t-1}$	0.991	0.991*	0.993
	(0.008)	(0.004)	(0.010)
SCOTUS Ideology	0.986	0.934*	0.680
	(0.072)	(0.025)	(0.189)
Covered State	2.671*	2.201**	5.831***
	(1.122)	(0.560)	(2.680)
Post-1975 Renewal	0.694*	0.840*	0.934
	(0.121)	(0.074)	(0.169)
Post-1982 Renewal	1.055	1.184***	1.409***
	(0.104)	(0.052)	(0.110)
Post-2006 Renewal	0.871	1.031	
	(0.076)	(0.033)	
Distance to VRA Renewal	0.984*	0.996	0.985***
	(0.007)	(0.004)	(0.004)
Percent Black	2.129***	1.656***	1.581*
	(0.419)	(0.088)	(0.314)
Change in Percent Non-White	0.986**	0.990***	0.981**
	(0.005)	(0.002)	(0.006)
Presidential Election Year	0.890***	0.928***	0.821***
	(0.027)	(0.016)	(0.041)
Jackson/Obama Campaigns	1.190	1.084	1.288***
	(0.047)	(0.022)	(0.100)
N	2040	1836	1632
-2 Log Pseudolikelihood	3867.761	11686.326	8714.615

*p ≤ 0.05, p ≤ 0.01, *** p ≤ 0.001, two-tailed.
[a] Time series extends from 1970 – 2002 in this model
Entries are negative binomial regression estimates, expressed as an incidence-rate ratio (IRR). For the continuous variables, the IRR is the amount by which the expected count of elected officials is *multiplied* when the independent variable increases by one unit. For the dichotomous variables, the IRR is the factor by which the expected count of elected officials differs when the variable equals one and when the variable equals zero. Standard errors, clustered by state, are in parentheses. The unit of analysis is the state-year; hence, *N* is the product of the total number of states and the total number of years applicable to each model.

As in the national-level models, estimates for these state-year models are generated using negative binomial regression. Negative binomial regression is again appropriate because the dependent variables are counts and because there is overdispersion in the data, which in this case owes to the large number of states where the number of black elected officials was zero in a given year. Also as in the national-level models, the negative binomial regression estimates are

expressed as incidence-rate ratios, so they signify the amount by which the expected count would be multiplied given a one-unit increase in a continuous independent variable. In lieu of reporting robust standard errors, as I did in the national-level models, here I cluster standard errors by state in these models because I suspect differences between states.

These models incorporate all of the independent variables used in the national-level model, with three additions. First, to assess the impact of Section 5 of the Voting Rights Act on the number of black elected officials, I added a dichotomous variable, *covered state*. *Covered state* equals one for any state that was covered in whole or in part by Section 5 in a given year and zero otherwise. Twenty-three states have operated under the auspices of Section 5 at some point since 1970. Of these, eight have been completely "bailed out," or released from the preclearance requirement. States covered by Section 5 of the VRA should be more conducive to black office holding than their black counterparts at any given time, in which case the relationship between this variable and the number of black elected officials of each type should be positive. In other words, its coefficient should be greater than one in all models.

Three additional dummy variables allow me to assess how the reauthorizations of the VRA have affected black office holding: *Post-1975 Reauthorization, Post-1982 Reauthorization,* and *Post-2006 Reauthorization*.[93] These variables equal one for all years after that in which a particular reauthorization occurred (i.e. *Post-1975 Reauthorization* equals one for 1976 through 2011). The coefficients on the dummy variables thus compare the number of black elected officials of each type before and after each VRA reauthorization, all else equal. Finally, I include the dummy variable *Jackson/Obama Elections* in order to capture any possible coattail effects the historic presidential candidacies of Jesse Jackson and Barack Obama might have had. The variable equals one in 1984, 1988, and 2008, the years in which Jackson and Obama ran for

---

[93] Since the 1970 reauthorization of the VRA occurred in the same year that the time series for these models begins, I did not construct a dummy for it.

president. Descriptive statistics for these and all variables in these models can be found in Table 6.A.3.

The results show that the Voting Rights Act has had a strong impact on the number of blacks holding elected office historically. States covered by Section 5 elect significantly more African Americans to federal, state, and county offices than states not covered. Controlling for other factors, the number of African Americans holding federal elected offices is nearly three times as high in covered states as in those not covered (Column 1: *IRR* = 2.671; p < 0.001), about twice as high at the state level (Column 2: *IRR* = 2.201 *p* = 0.002), and more than five times as high at the county level on average (Column 3: *IRR* = 5.831; *p* < 0.001).

There is also evidence from these models that congressional reauthorizations of the Voting Rights Act are related to the number of black elected officials. The 1975 reauthorization was followed by significant decreases in the number of black elected officials at the federal (Column 1: *IRR* = 0.694; *p* = 0.036) and state (Column 2: *IRR* = 0.84; *p* = 0.049) levels after controlling for other factors. By contrast, the 1982 reauthorization was followed by significant *increases* in the number of blacks elected to state (Column 2: *IRR* = 1.184; p < 0.001) and county-level offices (Column 3: *IRR* = 1.409; p < 0.001). The incidence-rate ratio on the *Post-1982 Renewal* dummy variable indicates that there are about 18 percent more blacks in state-level elected offices after 1982 and approximately 41 percent more blacks in county-level elected offices after 2007. The 1982 reauthorization of the Voting Rights Act had both the broadest and most significant impact on black office holding of the three captured in these models. Thus far, the 2006 reauthorization has not yielded statistically significant changes in the number of black elected officials at the county level, but this may well change after more time has passed. Together with the data provided by *covered state* dummy variable, the findings from the reauthorization dummy variables provide what is arguably the clearest quantitative evidence to date of the impact of the Voting Rights Act on black office holding.

245

At the same time, the models in Table 6.4 suggest that changes in mass liberalism, or public demand for government, have had little effect on black office holding. *Liberal mood* is statistically significant in the model estimating the number of black elected officials in state-level positions (Column 3: *IRR* = 0.991; p = 0.032), but not in the two other models. All else equal, each increase in *liberal mood* decreased the number of black elected officials in county positions by a factor of 0.991 on average, equivalent to a decline of less than 10 percent.[94] This negative impact is inconsistent with conventional democratic theories of the relationship between public opinion and policy outcomes, but may indicate that dynamic counteraction has been at play in black office holding in the states. In sensitivity analyses reported in the Appendix to this chapter, however, I find no evidence to support the dynamic counteraction hypothesis.

Similarly, the results indicate that changes in the ideological composition of the Supreme Court are weakly correlated with changes in black office holding in the states. Like *liberal mood, SCOTUS ideology* is statistically significant in the multivariate model of black office holding at the state level, all else equal (Column 2: *IRR*= 0.934; *p* = 0.013). The fact that its coefficient in less than one indicates that increased progressivism among Supreme Court justices is typically associated with a decline in the number of black elected to state-level offices. Given both the number of blacks that have been elected to state offices, and the number of statewide elected offices that exist in some states, the loss of even the 6.6 percent (100 – 0.934 x 100) of black elected officials indicated by the coefficient on *SCOTUS Ideology* could dramatically alter black political power in some places. More critically, though, the implication that ideological liberalism hinders black office holding is worth investigating further in future research.

Demographic factors are also clearly linked to changes in the number of black elected officials. The incidence-rate ratios on *percent black* indicate significant increases in the number

---

[94] When I substitute *liberal mood* with *racial policy liberalism* (results not shown)*,* the latter is also statistically significant in the county-level model only, suggesting that racial conservatism influences black office holding at the county level in the same way as general preferences for government activity.

of blacks elected at the federal (Column 1: *IRR* = 2.129; *p* < 0.001), state (Column 2: *IRR* = 1.656; *p* < 0.001), and local levels (Column 3: *IRR* = 1.581; p = 0.021). This significant positive relationship between black population share and black office holding aligns completely with previous findings from studies of black political empowerment (e.g. Bobo and Gilliam 1990). The consistent positive relationship is testament to the double-edged sword of racial segregation. While in many respects, segregation contributes to and exacerbates inequality, it is also the primary vehicle of black political empowerment in the United States.

As expected, *change in percent non-white* is significantly and negatively associated with the number of black elected officials at all three levels of government examined. Though the incidence-rate ratios on the variable signify that growth in the share of non-white residents of a state are typically associated with very small changes in black office holding (*IRR* = 0.984 in the federal model, 0.996 in the state model, and 0.932 in the county model), the fact that this demographic measure is significant across all three levels of government allows us to infer with considerable confidence that racial diversity can hamper black office holding. According to the literature on racial threat, white voters interpret racial diversification as a threat to their own sociopolitical status, especially when such diversification occurs rapidly within a community. Consequently, when non-white groups increase as a share of a community's population, white voters assume a defensive posture of racially polarized political participation. This kind of counter mobilization, in turn, reduces the chances non-white candidates winning electoral office, ultimately resulting in a lower number of non-white officials in elected positions than would exist absent racial threat. The findings from *percent black* and *change in percent non-white* thus reinforce much of what we already know about racial diversity and political behavior.

Much more surprising is the conclusion implied by the coefficients on *distance to VRA renewal* in Table 6.4. Contrary to expectations, the results indicate that fewer blacks are elected to public office as the proximity to a VRA reauthorization increases. In other words, the more

247

salient the issue of minority voting rights becomes nationally, the less successful blacks are at achieving descriptive representation in government. *Distance to VRA renewal* is statistically significant in both the federal (Column 1: *IRR* = 0.984; *p* = 0.028) and county office holding models (Column 3: *IRR* = 0.985; *p* < 0.001). In both the federal and state office holding models, the coefficient on *distance to VRA Renewal* indicates a decline of about 6.5 percent in the number of black elected officials. These results mirror those obtained from the national-level models above. Together, then, the national and state-level models lend credence to the possibility that increased issue salience deters blacks from running for office or else increases competition and participation from candidates and voters of other races, to the detriment of black candidates.

Meanwhile, as expected, the *presidential election year* dummy variable is statistically significant in all three models in Table 6.4. The number of black elected officials is significantly lower in presidential election years than in midterm election years. While we might think that the higher levels of black political participation typically observed in presidential elections would yield more black elected officials, the reality is that increased black participation might be cancelled out by increased white participation. In midterm elections, on the other hand, black candidates might benefit from lower levels of white turnout, decreased interracial competition, and the popularity of black incumbents elected in the previous presidential election cycle. Hajnal's (2007) work on racial crossover voting in cities suggests that while white voters may resist the ascendance of black candidates initially, they "learn" to accept black leadership once they have experienced it. If this is true, white voters may also be more inclined to endorse new black candidates, or at least less inclined to *resist* new black candidates, if they can point to some familiar black incumbents. Either way, increased comfort with black leadership on the part of whites should increase the prospects of black office holding. Together with the results on *covered, percent black,* and *change in percent non-white*, the significant coefficients on

presidential election year suggest that demographic and structural conditions play the most significant role in black office holding at the state level.

The final result to note in Table 6.4 is the coefficient on the *Jackson/Obama campaigns* dummy variable. The variable is statistically significant and greater than one in the county model (Column 3: *IRR* = 1.288; p < 0.001), indicating that the number of black elected officials at the count level was significantly higher during the elections in which Jesse Jackson and Barack Obama ran for president than in any others. To be more precise, the incidence-rate ratio indicates that about 32 percent more blacks served in county-level elected offices during the Jackson and Obama campaigns than during any other years between 1970 and 2011. Unclear from these results is the direction of causality, to that extent that the result implies causality. Future research would do well to investigate whether and to what extent the candidacies of Jackson and Obama triggered systematic changes in black office holding at different levels of government, or whether a heightened presence of black elected officials at the national and local level contributed to the outcomes of their respective election campaigns. The literature on presidential coattails lends credence to the first possibility (e.g. Campbell and Sumners 1990), but it remains to be seen whether the presence of African Americans in low-level offices has collateral effects on African Americans pursuing higher offices.

6.5 Conclusion

The goal of this extensive investigation into black voter registration, turnout, and office holding in the states and at the national level was to understand why black voting rights policy outcomes have persisted. After finding a significant, but variable relationship between *liberal mood* and different measures of racial segregation in public schools, the hope *here* was to begin to shed light on the role public demand for government plays in the evolution of civil rights policy outcomes *in general*, by analyzing a "most similar" civil rights policy domain.

Several commonalities are evident from analyses of the three voting rights policy indicators. First, the demographic variables are consistently significant and in the directions expected. Second, the role of issue salience seems to vary according to the type of dependent variable specified. Third, contrary to what conventional democratic theory might suggest, *liberal mood* is consistently uncorrelated with changes in black voter registration, turnout, and office holding. In some cases, *liberal mood* appears to have no effect upon voting rights policy outcomes, even as *racial policy liberalism* is statistically significant. Together, these findings lend credence to the claim that the institutional supports Congress provided to minority voting rights clarified the terms of elite debates over policy alternatives With such clarity, not just in the form of the Voting Rights Act, but in the form of four subsequent renewals of the Act that addressed perceived judicial misinterpretations, state legislative legerdemain, and previously unrecognized vulnerability among racial minorities, state elites had no need to consult public opinion (and derived little value from it); they could justify their actions by reference to the public interest, which had been clearly and repeatedly defined by the people's chosen national representatives. The findings about *liberal mood* directly challenge the positive policy-opinion relationship postulated by democratic theory.

At the same time, the findings affirm my suspicion that the insignificance of *liberal mood* owes to the comparatively high level of statutory and institutional support for minority voting rights. These factors are ultimately what distinguish the Voting Rights Act from *Brown* as instruments for protecting civil rights. Figure 6.8 below depicts the relationship observed between liberal mood and voting rights policy outcomes in this chapter alongside the relationship between liberal mood and racial segregation observed in Chapters Four and Five. Here, we can see the distinct consequences strong statutory language and congressional support for minority voting rights have had on the relationship between liberal mood and policy outcomes in this area. In the case of school desegregation, political elites were unable to discern for themselves which actions

on the issue of school desegregation were consistent with the public interest because *Brown* was vague on this point and Congress was comparatively silent. Leaders relied upon signals outside of government to do so, and were consequently vulnerable to appeals to universal, but competing political values of equality and limited government made by proponents and opponents, respectively, of racial integration in schools. The principle of "limited government" assumed an outsized role in a context where federal and local authority was intertwined, leaving public officials susceptible to adopting the alternative conceptions of the public interest proposed by interest groups with their own agendas. As they alternately sided with egalitarian and liberal appeals, local leaders acted in ways that alternately advanced and undermined school desegregation. Per the theory of dynamic counteraction, I hypothesized in Chapter Four that there would be a systematic non-linear relationship between *liberal mood* and school desegregation. Consistent with the theory, statistical models in Chapter Four and Chapter Five showed that racial segregation in school districts has responded in a systematic, but non-linear way to shifts in *liberal mood*. The results affirmed that the pace and scope of school desegregation since *Brown* reflects ongoing elite attempts to reconcile the principles of equality and limited government.

Figure 6.8 The Role of Liberal Mood in School Desegregation and Voting Rights Policy Outcomes

Racial Segregation	**Voting Rights Policy Outcomes**
No statute / congressional support	Strong statute/ repeated congressional support
⬇	⬇
Subnational elites consult public opinion to guide policy	No need for subnational elites to consult public opinion
⬇	⬇
Elites more susceptible to appeals to limited government	Less susceptible to limited government argument
⬇	⬇
Liberal mood has dynamic effect on policy outcomes	Liberal mood has no effect on policy outcomes

Congress made a choice to support the Voting Rights Act in ways it clearly did not see fit to support *Brown v. Board of Education.* In the final analysis, this difference in institutional support on the part of Congress explains the different trajectories school desegregation and the voting rights policy outcomes have followed since the Civil Rights Movement. The question future scholars must answer is why Congress deigned to defend the Voting Rights Act, but not *Brown*, against its numerous assailants in the states. In the next and final chapter, I explore this question at length.

CHAPTER SIX APPENDIX A: DESCRIPTIVE STATISTICS

Table 6.A.1. Descriptive Statistics for National Voter Registration and Turnout Models					
	N	Mean	Standard Deviation	Minimum	Maximum
Black Registration Rate	23	61.443	3.479	54.2	66.3
Black Turnout Rate	25	47.74	8.754	33.8	66.2
Racial Disparity, Registration	25	5.224	3.196	0	11.5
Racial Disparity, Turnout	25	7.488	4.528	-2.1	15.3
Liberal Mood $_{t-1}$	24	58.127	4.031	50.084	65.899
Racial Policy Liberalism $_{t-1}$	22	51.589	5.846	39.953	58.359
SCOTUS Ideology	23	0.435	0.473	-0.78	1.028
Distance to VRA Renewal	25	8.12	3.468	0	12
Percent Black	24	12.041	0.712	10.807	13.045
Change in Percent Non-White	23	0.433	1.367	-4.033	3.691
Presidential Election Year	25	0.52	0.510	0	1

Table 6.A.2. Descriptive Statistics for National-Level Black Elected Officials Models					
	N	Mean	Standard Deviation	Minimum	Maximum
Federal BEOs	43	29.163	11.389	10	45
State BEOs	43	461.209	151.853	169	650
County BEOs	33	623.364	292.993	92	1084
Liberal Mood $_{t-1}$	42	57.250	3.524	50.084	63.256
SCOTUS Ideology	42	0.615	0.344	0.019	1.521
Distance to VRA Renewal	43	7.744	3.472	0	12
Percent Black	42	13.708	9.504	11.120	73.722
Change in Percent Non-White	41	0.231	0.597	-0.715	3.526
Presidential Election Year	43	0.255	0.441	0	1

Table 6.A.3. Descriptive Statistics for State-Level Black Elected Officials Models

	N	Mean	Standard Deviation	Minimum	Maximum
Federal BEOs	2193	0.566	1.037	0	13
State BEOs	2193	8.934	10.596	0	58
County BEOs	1683	12.234	27.345	0	197
Liberal Mood $_{t-1}$	2142	57.250	3.483	50.084	63.256
SCOTUS Ideology	2142	0.615	0.341	0.019	1.521
Covered State	2193	0.319	0.466	0	1
Post-1975 Renewal	2193	0.860	0.347	0	1
Post-1982 Renewal	2193	0.698	0.459	0	1
Post-2006 Renewal	2193	0.140	0.347	0	1
Distance to VRA Renewal	2193	7.744	3.431	0	12
Percent Black	2091	12.176	0.596	11.112	13.037
Change in Percent Non-White	2040	0.228	1.677	-9.160	5.083
Presidential Election Year	2193	0.256	0.436	0	1
Jackson/Obama Campaigns	2193	0.093	0.291	0	1

CHAPTER SIX APPENDIX B: SENSITIVITY ANALYSES

Voter Registration and Turnout Models

The models of voter registration and turnout contained in Table 6.3 of this chapter point to *percent black* and *presidential election year* as predictors of black political participation. As measured by *liberal mood*, popular demand for government seems uncorrelated with both registration and turnout rates. I presented theoretical arguments for and against the claim that *liberal mood* would be statistically significant even before the empirical results were presented, but the insignificance of *liberal mood* is still striking given the evidence of its significance in the models of school desegregation. These results propel us back to the question of whether public opinion broadly understood has any role in civil rights policy outcomes over time. Here, I consider whether methodological flaws might be responsible in some way for the results with *liberal mood*.

Aside from the limited sample size of both models, one reason *liberal mood* might appear insignificant is that the functional form of the relationship between *liberal mood* and the two dependent variables is different than that assumed in the models above. Table 6.3 contains models that are consistent with the assumptions of democratic theory of policy-opinion congruence: they test whether *liberal mood* has a positive linear effect on policy outcomes, specifically. In the models of voter registration and turnout, we saw statistically insignificant and positive coefficients on *liberal mood* This suggests that registration and turnout rates still loosely track *liberal mood*, which is more consistent with democratic theory than with the dynamic counteraction hypothesis. Still, because *liberal mood* entered these models in linear form, we cannot yet reject the dynamic counteraction hypothesis with confidence. I opted not to create models of voter registration and turnout rates to test the dynamic counteraction hypothesis. Because of the paucity of observations in these models already, there would likely have been few statistically significant covariates for reasons having nothing to do with the existence or non-

existence of systematic relationships. Any conclusions about the applicability of the dynamic counteraction hypothesis should therefore be reserved for future analysis with larger samples.

Another possible explanation for the insignificance of *liberal mood* is measurement error in the dependent variables. Registration and turnout may not be the most informative dependent variables. Since the VRA was designed to eliminate barriers to black political participation, it anticipated eventual convergence of black and white voter registration and turnout rates. Indeed, even if *liberal mood* has not influenced absolute differences in political participation among blacks, it might have helped to narrow the black-white participation gap by dissuading some whites from voting. Whether or not black registration and turnout rates increase, the racial disparity in both may decline if white registration and turnout levels decline.

To examine the possibility that *liberal mood* is correlated with the racial disparity in voter registration and/or turnout rather than with absolute shares of blacks who register to vote or cast ballots, I specify two dependent variables: *black-white disparity in registration* and *black-white disparity in registration turnout*. The results of these models are reported in Table 6.B.1. In essence, we observe the same results in these electoral disparity models as in the absolute participation models presented in Table 6.2. The coefficient on *liberal mood* is not significantly different from zero after controlling for institutional and structural factors, demographic variables, and issue salience.

Table 6.B.1. Predictors of Racial Disparities in Registration and Turnout at the National Level

	(1) Registration	(2) Turnout
Liberal Mood $_{t-1}$	0.077	0.150
	(0.162)	(0.166)
SCOTUS Ideology	0.126	0.319
	(1.423)	(1.751)
Distance to VRA Renewal	0.138	-0.246
	(0.227)	(0.206)
Percent Black	-2.929	-5.590***
	(1.535)	(1.268)
Change in Percent Non-White	0.684	0.270
	(0.323)	(0.457)
Presidential Election Year	-1.056	-1.007
	(0.598)	(0.924)
Constant	35.56	68.79**
	(22.89)	(20.54)
N	22	22
Adjusted R^2	0.427	0.587

*p ≤ 0.05, p ≤ 0.01, *** p ≤ 0.001, two-tailed.

The dependent variables are the difference in the share of the white voting age population that registered or voted and the share of the black voting age population that engaged in the same activity. Entries are feasible generalized least squares estimates derived from a Prais-Winsten transformation. Standard errors are in parentheses. The unit of analysis is the election year.

As a final robustness check, I substituted *racial policy liberalism,* Kellstedt's (2000) indicator of national demand for action on race-specific policy, for *liberal mood*, Stimson's (1991) indicator of demand for government action in general. As in the case of school desegregation, one might argue that demands for government action with respect to *race-based* public policies influence voting rights policy outcomes even if demands for government with respect to policy are not influential. This claim makes sense in light of the earlier observation that implicit and explicit racial appeals (using language like "bloc voting") have been far more prevalent in the debate around voting rights than in the debate around school desegregation. Dialogue around voting rights often does not center on the propriety of federal intervention, but

on fears about black political insurgency. If racial policy views *are* connected to voting rights policy outcomes, the link is most likely positive—that is to say, as racial policy liberalism, or demand for government action on race, increases, black registration and turnout rates should also increase. Conversely, increased conservatism on racial policy should be associated with reduced black registration and turnout. From Table 6.B.2, however, we can see that racial policy liberalism is also not statistically significant for the most part. This null finding is consistent with the argument and findings presented in the first chapter on school desegregation. The conceptual similarities between general demands for government, or general liberalism, and demands for government with respect to racial policy specifically, or racial policy liberalism, augur against the two opinion constructs having different effects on policy outcomes.

Table 6.B.2. Racial Policy Liberalism, Registration and Turnout at the National Level

	(1) Black Turnout	(2) Racial Disparity in Registration	(3) Racial Disparity in Turnout
Racial Policy Liberalism $_{t-1}$	-0.027	0.104	0.154
	(0.124)	(0.154)	(0.163)
SCOTUS Ideology	-1.631	-0.113	0.393
	(1.386)	(1.427)	(1.829)
Distance to VRA Renewal	0.375	0.219	-0.163
	(0.190)	(0.256)	(0.265)
Percent Black	2.327	-3.170	-6.605**
	(1.231)	(1.960)	(1.718)
Change in Percent Non-White	0.199	0.671*	0.226
	(0.385)	(0.313)	(0.434)
Black Registration Rate	1.123***		
	(0.213)		
Presidential Election Year	8.791***	-0.963	-0.798
	(1.314)	(0.579)	(0.833)
Constant	-55.70*	36.83	80.86**
	(19.56)	(24.75)	(20.54)
N	22	22	22
Adjusted R^2	0.966	0.374	0.490

*p ≤ 0.05, p ≤ 0.01, *** p ≤ 0.001, two-tailed.

Entries are feasible generalized least squares estimates derived from a Prais-Winsten transformation. Standard errors are in parentheses. The sample size for the turnout model reflects all elections between 1964 and 2010; the sample for the registration model includes elections between 1966 and 2010 because 1964 racially disaggregated voter registration data are unavailable at the national level. Black registration model excluded for failure to converge.

Thus, it seems that neither substituting disparity measures for absolute participation measure nor replacing *liberal mood* with a race-specific opinion measure changes the results in Table 6.3. These sensitivity analyses cast even stronger doubt upon the notion that public opinion affects voting rights policy outcomes. The greatest predictive capacity seems to lie instead with demographic and structural conditions.

Black Elected Officials

As in the voter registration and turnout models, I assessed the robustness of the black office holding models by (1) substituting *racial policy liberalism* for *liberal mood* and (2) inserting *liberal mood* at multiple different lag lengths. These alternative models were constructed with data at both the national and state levels.

The first sensitivity check allows us to assess the extent to which the conclusions drawn about the impact of public demand for government might reflect an overly broad definition of public demand (racial policy liberalism is a much narrower construct). The results (not shown) suggest that this concern is warranted. In federal-, state-, and county-level black elected official models constructed from the national dataset, *racial policy liberalism* has a statistically significant coefficient greater than one. While *liberal mood* was statistically significant in only the county-level black elected official models, *racial policy liberalism* seems to have explanatory power in all three contexts. The fact that the coefficient on *racial policy liberalism* is consistently greater than one indicates that race-specific policy preferences, rather than general policy preferences, help to account for the growth in black elected officials nationwide. Importantly, though, when I substituted *racial policy liberalism* for *liberal mood* in the black office holding models that used state-level data, racial policy liberalism was only statistically significant in the county-level black elected officials model, just like *liberal mood*. While it is not clear why the significance of *racial policy liberalism* varies by level of analysis, these results do point to a role for public opinion about race policy in the evolution of the black franchise separate and apart from the role general demands for government appear to play.

In the second sensitivity analysis, I essentially considered whether the models in Tables 6.4 and 6.5 rely upon an overly rigid conception of the relationship between *liberal mood* and voting rights policy outcomes. The theory of dynamic counteraction suggests that the effects of *liberal mood* on policy outcomes is non-linear because of contestation between interest groups

who effectively draw upon widely held principals to persuade political elites to act for or against civil rights. As they trade successes, opponents will systematically push policy outcomes in the opposite direction from public demands for government while proponents will push policy outcomes in the direction suggested by public demand for government. The result will be a systematic relationship between *liberal mood* and policy outcomes that varies in direction over time. To assess the dynamic counteraction hypothesis directly, I constructed models of office holding with multiple entries of *liberal mood* at different lag lengths. Based on Akaike and Bayesian information criteria (and a "lower is better" selection rule), I determined that the best dynamic specification of the national-level data was that in which *liberal mood* was lagged by a combination of one and five years. When I modeled *liberal mood* in this way, however, the results did not comport with the dynamic counteraction hypothesis. In no case were both entries of *liberal mood* (t-1 and t-5) statistically significant, although the direction of the coefficients did vary in all models.

Based on Akaike and Bayesian information criteria, the model specification that provided the best fit of the state-level data was that in which *liberal mood* was lagged by a combination of one, two, three, four, and five years. When I modeled *liberal mood* in this way, *none* of the entries had a statistically significant coefficient in the model of federal offices; four of five entries had a statistically significant coefficient in the model of state offices; and all five entries had a statistically significant coefficient in the model of county offices. In the latter two models, there was also variation in the direction of the coefficients, consistent with the dynamic counteraction hypothesis. The relatively high degree of statistical significance observed as the level of office decreases likely reflects the relatively high degree of variation in the total number of elected officials as the level of office decreases. The range and standard deviation in the county-level models are far greater than in the state or federal models. At any rate, these models with the state-year as the unit of analysis comport with the dynamic counteraction hypothesis.

Based on the results of both national and state dynamic models of black office holding, I am reluctant to conclude that dynamic counteraction explains voting rights policy outcomes. At best these results appear to support the *possibility* that dynamic counteraction explains black office holding. More research using other dependent variables at the same level of analysis could help resolve the ambiguity of these results by providing more consistent evidence for or argument the dynamic counteraction hypothesis.

CHAPTER SEVEN
TOWARD A GENERAL THEORY

During the 2012 – 2013 term, the Supreme Court heard two important cases concerning racial integration and voting rights. Although both questions were ones the Supreme Court had considered on several previous occasions, the Court's earlier rulings on each had disappointed parties on both sides and failed to mollify disagreements about the proper scope of the American civil rights state.

The first case, *Shelby County v. Holder*, considered whether the preclearance provision of the Voting Rights Act (Section 5) was unconstitutional based on the coverage formula adopted as part of the 2006 reauthorization (Section 4b).[95] Congress adopted the same formula that had been used in previous iterations of the VRA, in part because that formula had been upheld in previous Supreme Court decisions. In addition, congressional leaders believed maintaining this formula allowed the federal government to continue to monitor jurisdictions that continued to discriminate against racial minorities through their election practices (see Persily 2007). However, Shelby County, Alabama and the city of Kinston, North Carolina claimed that by 2006 the formula relied upon definitions of racial discrimination that had been eradicated in covered jurisdictions decades ago. Indeed, many covered jurisdictions were experiencing more racially equitable electoral outcomes than their uncovered counterparts by the time of the 2006 reauthorization of the Voting Rights Act. If Section 5 of the VRA was now based on outdated constitutional violations, did it exceed the authority of the federal government vis-à-vis the states?

---

[95] *Shelby v. Holder,* No. 12 – 96. The case was brought by Shelby County, AL in response to the Supreme Court's ruling in *Northwest v.* Holder (557 U.S. 193, 2009). The case is consolidated with *Nix v. Holder,* which was brought by the city of Kinston, North Carolina after DOJ objected to the city's proposal to adopt nonpartisan elections.

The other case, *Fisher v. UT Austin*, considered whether race could be a factor in admitting students to institutions of higher education.[96] Abigail Fisher applied to the University of Texas at Austin in 2008 and was denied admission under the admission system Texas implemented in the wake of the Supreme Court's 2003 decisions in *Grutter* and *Gratz*.[97] Under this two-tiered system, the University of Texas students guaranteed admission to any student who ranked in the top ten percent of his or her class at any Texas high school and filled its remaining seats through a holistic evaluation that took account of students' racial backgrounds. The University claimed that considering race after applying race-neutral criteria furthered its goal of student diversity, but Fisher claimed that the use of race in the second stage of the admissions process meant that more qualified white applicants were frequently denied admission in favor of less qualified black and Latino applicants.[98] Sixty years after *Brown* mandated racial integration in schools, would American colleges and universities now be prohibited from considering applicants'' racial backgrounds at all in their efforts to achieve diversity?

The fact that questions over the need for civil rights laws persist well into the twenty-first century affirms the premise of this dissertation: civil rights are not inveterate fixtures of the American political landscape, but living entities subject to the inclinations of people and history. Americans have been debating whether and how to allow African Americans to vote and attend school alongside their white counterparts since the first Constitutional Convention. Neither the liberation of blacks from chattel slavery, nor the conclusion of the Civil War; the integration of the armed services; the rejection of "separate but equal" by the Supreme Court; the codification

---

[96] *Fisher v. UT Austin,* No. 11 – 345.

[97] *Grutter v. Bollinger and Gratz v. Bollinger* , 539 US 6 (2003)

[98] Fisher argued that several African American students with inferior grade point averages and standardized test scores had been admitted to the university. Although the University of Texas never explained why it denied admission to Fisher herself, it was later revealed that numerous black and Latino students with stronger qualifications than Fisher had also been rejected, while many white students with inferior grade point averages and standardized test scores had been admitted the year Fisher was rejected. Further, black and Latino students remained underrepresented at the university. These facts suggest that Fisher's rejection was not predicated on racial bias and that the Texas admission policy did not disadvantage white applicants per se.

of black citizenship in the Fourteenth Amendment to the Constitution; the extension of the franchise to African Americans; the affirmation of that right in the VRA; the proliferation of blacks in prominent local, state, and national elected offices; nor even the re-election of the first black president have muffled these vociferous debates. On the contrary, nearly every major step in the direction of black social and political incorporation seems to herald a new round of national rumination on the need for measures designed to facilitate black social and political incorporation. A similar historical narrative exists for other groups protected by civil rights law.

Curiously, contestation over civil rights for African Americans has occurred against a backdrop of dramatic growth in egalitarianism. Today more Americans favor racial equality than ever before, and that support traverses the racial and geographic cleavages along which it divided in the past. North and South, black and white, the demand for racial equality seems to be growing. The importance of this continued, widespread shift in egalitarianism in the United States cannot be understated. It portends a society with more equal and just social and political outcomes. Yet that world clearly resides somewhere along the horizon, rather than in our midst, as the United States continues to struggle to bring policy outcomes in a host of civil rights domains in line with public opinion. Though a majority of Americans profess to support racial integration, abortion in limited circumstances, and gun control, many states and localities are experiencing the opposite: an increase in racial segregation, anti-immigration ordinances, stricter abortion laws, and liberal gun laws.

As this dissertation affirms, not all issue domains have evolved in the same way in recent history. Before the Civil Rights Movement, outcomes in different civil rights domains seemed to move along parallel tracks: when blacks could not vote, they generally also could not eat in the same restaurants, sit in the same theater pews, or drink at the same water fountains as whites. Indeed, for much of the time blacks and other racial minorities lacked social and political rights, groups that confronted marginalization for reasons other than race, from people with disabilities

266

to women, lacked rights as well. In the last half-century, however, the trends in different issue domains have not aligned with one another quite as well. In areas like school desegregation, there is evidence of retrenchment in policy outcomes, while in other civil rights domains, like voting, there is evidence that policies have achieved their "basic promised goals amid the inevitable vicissitudes of politics" (Patashnik 2003, 207). The twin realities of (1) policy-opinion incongruence within the areas of school desegregation and voting rights and (2) variation in policy outcomes across policy domains are the impetus for the empirical questions that are at the heart of this dissertation. Under what conditions do civil rights policy outcomes defy, rather than reflect, public opinion? Why do policy outcomes in different domains evolve differently?

In this dissertation, I approach these questions through the lens of democratic "representation," or public opinion-public policy congruence. According to conventional democratic theory, public opinion about the level of the government's policy activity should have a positive and linear impact upon public policy and policy outcomes over time. That is to say, barring some change in public opinion, the government should continually do more as the public demands more. This positive linear relationship between public opinion and policy outcomes is the essence of "representation" in democratic societies, according to conventional democratic theories (see, e.g., Soroka and Wlexien 2010). At the same time, however, the positive linear link between opinion and policy presumed by democratic theory is wholly inconsistent with the countermajoritarianism described in seminal work on agenda setting and interest groups (Elder and Cobb 1983; Lowi 1969; Schattschneider 1960). Research in this area suggests that small, well-organized, and unrepresentative groups can dictate policy outcomes in spite of what the majority of the public wants by (1) controlling which items receive attention from the government and the public and (2) shepherding agenda items into certain arenas of contestation. The far less idealistic rendering of the relationship between public opinion and policy outcomes that emerges

267

from the agenda setting literature leads to the dynamic counteraction hypothesis I develop as an alternative to conventional democratic theory.

Dynamic counteraction refers to a process in which organized interests in the United States that have opposing policy preferences and aims appeal to certain widely held political values with competing political implications in order to advance those groups' own aims. For issues like school desegregation and voting rights, both opponents and proponents appeal to core political values in order to frame debates in ways that advance their particularistic ends. Proponents appeal to "equality," while opponents appeal to "limited government." Since there is value pluralism—both values are widely and strongly held—when either value is invoked, it can be effective in convincing elites to act in certain ways at a given time. Absent any countervailing forces, an increase in egalitarianism, or the commitment to the value of equality, should yield more progressive civil rights policies and policy outcomes. Conversely, absent any countervailing forces, an increase in liberalism, or the commitment to the value of limited government, should produce more conservative civil rights policies and policy outcomes. The problem with this value pluralism, then, is that equality and limited government often have competing civil rights policy implications.

As I argued in Chapter Four, school desegregation proponents and opponents generally mobilized when ambient policy and public opinion changed in ways they opposed; consequently, for a group that has mobilized on a civil rights issue, success may mean realizing their policy interests in spite of how the majority of the public feels, bringing to fruition Schattschneider's (1960) conception of a "semisovereign" public. Furthermore, the constant appeals to equality and limited government by proponents and opponents of civil rights yield alternating wins and losses. Over time, the result of the alternating wins and losses of organized interest is relationship between public opinion about government and policy outcomes that is dynamic, or nonlinear: sometimes policy outcomes move in line with public opinion, reflecting the activism of certain

268

interest groups and relative dormancy of the majority, and sometimes policy outcomes move out of step with public opinion, reflecting the relative dormancy of certain interest groups or the mobilization of the majority. In other words, because of dynamic counteraction, the direction of the relationship between public opinion about the role of government and policy outcomes should vary.

7.2 Key Findings

I find strong support for the dynamic counteraction hypothesis in Chapters Four and Five, where I estimate changes in school desegregation policy outcomes with multivariate fixed effects models that account for four categories of factors likely to play a role: institutional conditions, public opinion, demographic conditions, and issue salience. I find that the relationship between *liberal mood,* a well-established indicator of public demand for government (Erikson, Mackuen, and Stimson 2002; Stimson 1991, 2004; Stimson, Mackuen, and Erikson 1995), or the extent to which Americans embrace the value of "limited government," is systematically associated with racial segregation in school districts in a way that is nonlinear over time. For all four measures of racial segregation used, *liberal mood* has a statistically significant relationship at several different lagged points in time. However, the direction of this relationship varies from negative to positive as lag length increases. The results indicate that racial segregation moves out of step with demand for government early on, but realigns with demand for government eventually. I also furnish evidence against the possibility that the dynamic relationship reflects misspecification of the dependent variable, the public opinion indicator, or the estimation procedure. Thus, there is strong evidence that dynamic counteraction is really at play in the history of school desegregation since *Brown.*

The findings from the analysis of school desegregation lend credence preliminarily to the possibility that dynamic counteraction shapes civil rights policy outcomes in general. To better assess the generalizability of the dynamic counteraction phenomenon, though, in Chapter Six I

tested the hypothesis in a different civil rights policy domain: minority voting rights. Despite having emerged under very similar conditions as school desegregation, the issue of minority voting rights has undergone a markedly different evolution in terms of policy outcomes. Both civil rights issues reemerged after a period of dormancy, received the bulk of their institutional support from the federal government, and confronted vociferous public opposition at the state and local level. Yet while success has been fleeting and difficult for school desegregation, it has been manifest and durable in the case of voting rights.

Based in part on these differences, I hypothesized that the dynamic counteraction hypothesis would not hold for voting rights policy outcomes. The results of multivariate models of black voter registration, turnout, and office holding strongly suggest as much. Unlike in the analyses of school desegregation, *liberal mood* is rarely significant in the models of voting rights policy outcomes. Moreover, where it is statistically significant (the county level), *liberal mood* has a positive association with voting rights policy outcomes, which is more consistent with conventional democratic theory than with dynamic counteraction. Meanwhile, I find that the institutional supports afforded by (1) the language of the 1965 Voting Rights Act of 1965 and its four congressional renewals and (2) the racial demographic shifts occurring around the country are systematically correlated with voting rights policy outcomes. These findings not only defy the expectation set by democratic theory, but also those set by my dynamic counteraction hypothesis. Chapter Six thus not only suggests a limit to the generalizability of the dynamic counteraction phenomenon, but points to a new question about the role of mass demand for government in civil rights policy outcomes over time, namely: Why does *liberal mood* correlate with the outcomes of *Brown v. Board of Education* (albeit in a nonlinear way), but not with those of the Voting Rights Act? And more broadly: why might *liberal mood* correlate differently with policy outcomes in different civil rights domains?

In Chapter Six, I suggested that differences in the institutional supports for *Brown v. Board of Education* and the Voting Rights Act might explain the different trajectories of school desegregation and voting rights policy outcomes. The "policy infrastructure" refers to the statutory language defining a policy and the institutional support provided for a policy. While *Brown v. Board of Education* suffered from ambiguous language and lackluster congressional support, the Voting Rights Act benefitted from strong language and consistent congressional support. Not only were the mandates and goals of the Voting Rights Act comprehensive and clear from the outset, but that language (and the political aims undergirding it) was reaffirmed and even elaborated by Congress on four separate occasions after the VRA was first codified. As a result, unlike their counterparts debating school desegregation policies, subnational elites reckoning with alternative election policies were keenly aware of their imperatives and interests on the issue. With such clarity among subnational elites, there was little to be gained from consulting public opinion. In turn, the de-emphasis of public opinion as a source of legitimacy militated against dynamic counteraction. Even though opponents and proponents have actively competed to shape the voting rights policy agenda for decades, just as they have school desegregation policy, their efforts have fallen on deaf elite ears.

By contrast, opponents and proponents have played an important role in school desegregation policy outcomes. With interests and imperatives less clearly defined for elites reckoning with alternative school desegregation policies, public opinion has greater value. The collateral consequence of consulting public opinion is being subject to influence by non-governmental groups with their own political aims. Civil rights proponents and opponents try to, and often do, persuade elites to see issues in the way that serves their own interests best, regardless of what the majority of the public might feel, by appealing to universally embraced values like equality and limited government. Neither group is successful all the time, but the alternating successes and losses of school desegregation proponents and opponents means that

school desegregation itself moves at an inconstant rate and sometimes defies public opinion. Racial segregation in schools, I contend, has been affected to a great degree by the contestation among interest groups.

7.3 Implications and Future Research

To what extent can the arguments about policy infrastructure and dynamic counteraction be extended beyond the issues of school desegregation and voting rights? For example, should we expect to see non-linear representation on issues like same-sex marriage, abortion, or access to education for children of undocumented immigrants? Are policy outcomes in issue domains that have nothing to do with civil rights, like transportation, also subject to the collateral consequences of policy infrastructure identified in this study?

At a broader level, my findings suggest that policy outcomes are more likely to progress as intended by a civil rights statute when the "policy infrastructure" is strong. If voting rights is representative of other civil rights domains with a strong policy infrastructure, my findings suggest that public opinion becomes less relevant to civil rights policy outcomes when there is a strong policy infrastructure in general. The evidence for this claim appears in Chapter Six, where we see that neither *liberal mood* nor *racial policy liberalism* have a systematic effect on changes in black voter registration, turnout, or office holding at most levels of government. Instead, variation in demographic conditions, namely the black proportion of the population, and in institutional support, such as the coverage of certain political jurisdictions by the VRA, systematically and substantially affected these voting rights policy outcomes. Unlike the local leaders reckoning with the issue of school desegregation, subnational elites weighing their policy alternatives on voting rights had no need to consult public opinion because their imperatives and interests were clearly defined by Congress through both the Voting Rights Act itself and the four reauthorizations of the law. A strong policy infrastructure obviated the role public opinion about

government might otherwise have played and foreclosed the possibility of dynamic counteraction among opponents and proponents of voting rights for African Americans.
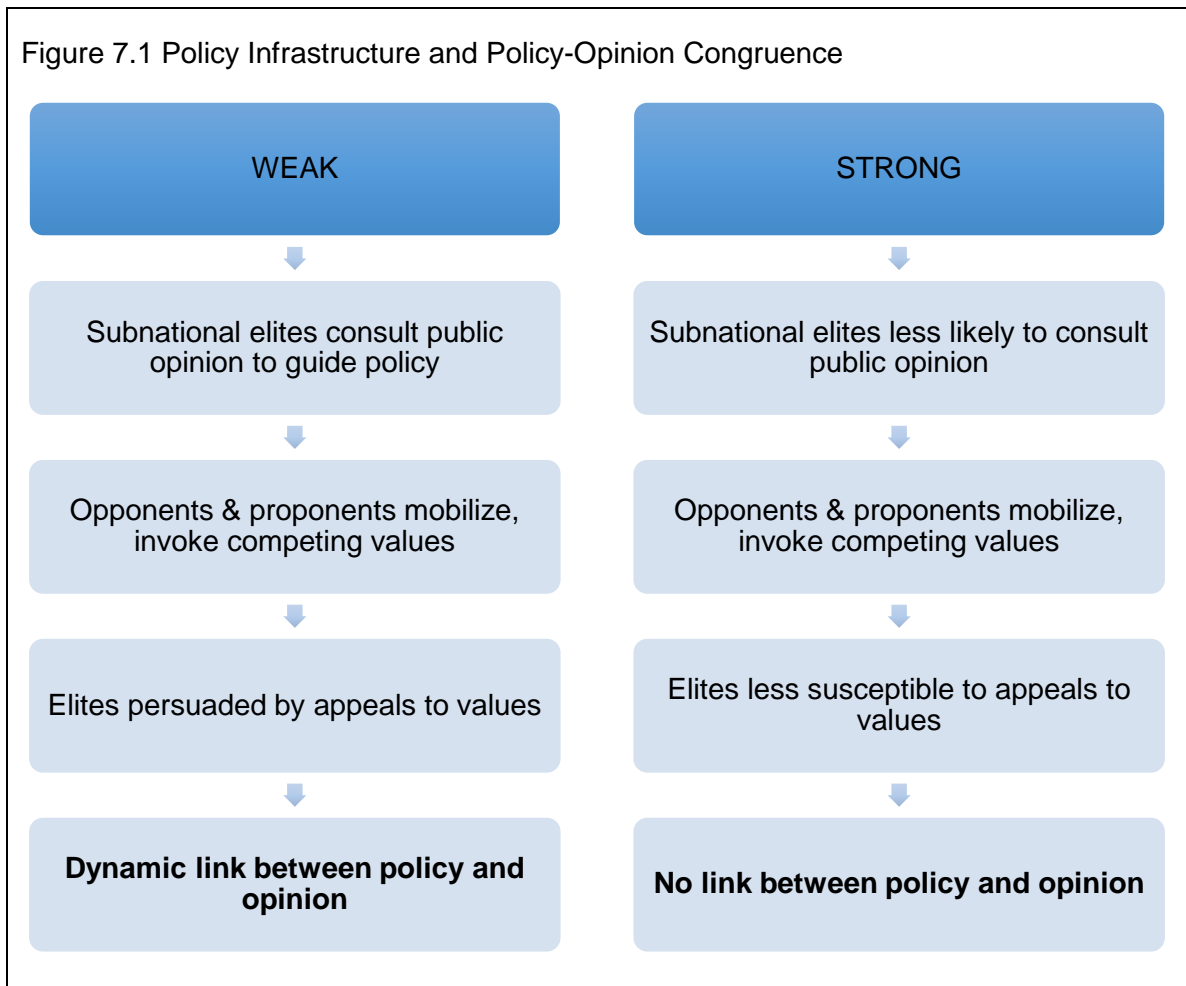
On the other hand, the findings from this dissertation suggest that where there is a weak policy infrastructure, changes in public opinion will play a systematic role in policy outcomes. At the same time, when elites must avail themselves of public opinion, civil rights policy outcomes may become subject to the process I term dynamic counteraction, in which groups with competing aims appeal to the widely-held political values of egalitarianism or liberalism to shape policy outcomes. By appealing to the value of limited government, groups favoring a minimal civil rights state can bring about stagnation or retrenchment of policy outcomes. Conversely, by appealing to the value of equality, groups favoring a robust civil rights state can bring about the growth or expansion of civil rights policy outcomes. If groups are most strongly mobilized when ambient public opinion shifts in a direction that favors the policy outcomes they *oppose*, success will often require defying majority opinion. Neither opponents nor proponents will be successful all the time. The evidence from the analyses presented here confirm that a highly mobilized oppositional force will only be able to defy the trend in majority opinion for a short period of time; the majority that is driving the opinion trend should either reassert itself or groups that share the majority's disposition should mobilize once they observe outcomes inconsonant with their aims and preferences. In this way, opponents and proponents on any given civil rights issue should trade successes and failures over time. The alternating wins and losses of civil rights opponents and proponents should take the form of a dynamic relationship between public opinion and policy outcomes over time. Thus, the findings from this study suggest that a weak policy infrastructure will eventually yield a nonlinear relationship between public opinion and civil rights policy outcomes.

The possibility of this kind of relationship is made clear by the analyses of school desegregation detailed in Chapters Four and Five on school desegregation. In the absence of clear

institutional carrots and sticks, political leaders weighing alternative options on desegregation were forced to heed changes in demand for federal government activity. Changes in this particular indicator (measured by the variable *liberal mood,* a factor analytic index comprised of nationally-averaged responses to survey questions about the role of government in different policy domains) should have influenced whether schools became more or less segregated because school desegregation depended to a great deal on a power-sharing arrangement between the federal government and school districts. According to democratic theory, increased demand for government, or increased *liberal mood*, should have increased racial integration in school districts, while growing adherence to the principle of limited government, or decreased *liberal mood*, should have decreased racial integration. Yet with public opinion assuming such a prominent role, school desegregation became subject to a process I termed dynamic counteraction, in which opponents and proponents of racially integrated schools appealed to the widely-held political values of egalitarianism and liberalism to thwart and delay, respectively, school desegregation. *Liberal mood* thus affected desegregation in ways that were surprising from the perspective of democratic theory. Contrary to democratic theory, racial segregation initially increased in school districts as demand for government increased.

Figure 7.1 synthesizes these points of about the effect of policy infrastructure on the relationship between public opinion and policy outcomes. In sum, the analyses of school desegregation and voting rights policy outcomes suggest that, in general, policy infrastructure creates the conditions for congruence or incongruence between public opinion and civil rights policy and policy outcomes. The link between opinion and policy will be *strongest* (i.e. more systematic) where policy infrastructure is weakest and the link will be *weakest* where the policy infrastructure is strongest. The positive linear relationship between public opinion and policy outcomes envisaged by democratic theory should materialize when policy infrastructure is weak, while the nonlinear relationship suggested by my envisaged by the dynamic counteraction thesis

should materialize when policy infrastructure is strong. To put this in the framework of representation, the consistent policy-opinion congruence suggested by democratic theory will likely only materialize when policy infrastructure is weak, while the occasional policy-opinion mismatches suggested by the dynamic counteraction hypothesis should materialize when the policy infrastructure is strong.

Figure 7.1 Policy Infrastructure and Policy-Opinion Congruence

WEAK	STRONG
Subnational elites consult public opinion to guide policy	Subnational elites less likely to consult public opinion
Opponents & proponents mobilize, invoke competing values	Opponents & proponents mobilize, invoke competing values
Elites persuaded by appeals to values	Elites less susceptible to appeals to values
Dynamic link between policy and opinion	**No link between policy and opinion**

Analyses of other civil rights policy domains would need to be done to confirm whether policy infrastructure has the kind of impact this analysis suggests, but future studies can look to the findings herein for insight into how the nature of policy infrastructure might impact other civil rights policy domains. The principle contribution this dissertation makes to the study of American

politics is thus the beginning of a theory of sustainability and retrenchment in civil rights broadly understood.

Of course, the policy infrastructure explanation raises a host of new normative and empirical questions. For example, what exactly *should* a civil rights statute say to ensure persistence? How and how often should Congress intervene to support a policy in order to yield the kind of persistence evident in the area of voting rights? These normative questions are beyond the scope of the present study, but are nevertheless worth investigating in the future. Meanwhile, one empirical question that emerges from the policy infrastructure argument is: why has Congress been so much more involved in voting rights policy than in school desegregation? A satisfactory answer to this question would require a far more thorough study, including of the legislative record of the two issue domains that are the subject of this dissertation, than I can provide.

Nevertheless, I would venture that the issue of voting rights resonates more strongly for American elites than does the issue of school desegregation. The federal government ascribes superlative significance to the right to vote. As the Supreme Court put it in *Wesberry v. Sanders*: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." The value accorded the franchise may be the reason the Voting Rights Act was written in such comprehensive, unequivocal language, the reason Congress has renewed and even expanded the law despite internal dissension, the reason the Court has continually upheld the provisions of the Act despite visible reservations, and the reason every president given an opportunity to veto the law nevertheless signed it. Indeed, Congress' failure to intervene on school desegregation may reflect a broader consensus in the United States over the value of the franchise.

Comparable veneration for racial integration seems to be lacking in the United States. The Court's decision in *Brown* followed in part from the value it placed on *education* (which is,

incidentally, not a civil right the Constitution recognizes), and to a lesser degree on the adolescent psychological harms several studies the Court cited had linked to racial segregation. The decision did *not* reflect any affirmative value the Court ascribed to diversity itself. Indeed, it was not until *Bakke v. Regents* (1978), in which the Supreme Court struck down the use of racial quotas in college admissions, that the concept of diversity really even entered into the Court's calculus. Perhaps, then, the differences in the policy infrastructure of *Brown* and the VRA reflect a tacit consensus among elites exemplified by a famous excerpt from Booker T. Washington: "we can be as one as the hands in all things essential to mutual progress, and as separate as the fingers in all things purely social." Maybe we are all Washingtonians: we recognize that voting is "essential to our mutual progress," and we believe that racial integration of schools is not. This possibility is certainly worth further, more systematic study.

Other Implications

This dissertation's findings about policy outcomes in the areas of school desegregation and voting rights also further our understanding of the significance of public opinion in civil rights history. Previous studies of civil rights have tended to exclude public opinion, but democratic theory reminds us that in a governing system like that of the United States, policy outcomes should depend in large part upon public demand for government. When democratic theory is brought to bear upon the subject of civil rights, it leads to the hypothesis that the civil rights state should expand when people embrace the value of limited government and contract when people demand a more limited government. By accounting for public opinion alongside the kinds of variables cited more often in prior studies of civil rights and democratic representation, this dissertation reveals much about the marginal contribution public opinion makes to civil rights policy outcomes.

The focus was on how public demand for government shaped civil rights policy outcomes in the aftermath of some initial policy propounding of civil rights. Public opinion

doubtless also plays a role in the emergence of civil rights policies, even controversial ones. For example, while judicial decisions issued prior to the adoption of the VRA that were in favor of black enfranchisement may have done little to advance black voting power, they may have acculturated white Americans to the *possibility* of black political participation in ways so small and subtle that when major initiatives like *Brown* and the VRA did emerge, whites were less disposed toward resistance than the might otherwise have been (bearing in mind, of course, that resistance to black suffrage turned out to be quite high after the 1965 VRA was passed). Cultural change, then, may have helped to pave the way for progress on black political participation. As important as public opinion might be to the emergence of civil rights policies, this dissertation suggests it is critical to the *evolution* of civil rights policies and policy outcomes when the policy infrastructure is weak. More research should be directed to understanding whether and to what extent *liberal mood* accounts for the emergence of new civil rights policies.

Apropos of questions about the role of public opinion is the distinction between political attitudes and political values discussed briefly in Chapters III and IV. I argue that civil rights policy outcomes can partly be explained as the product of competing political values in the United States. By invoking the political value of limited government in the name of the public interest, for example, interest groups can persuade political leaders to turn back the tide of civil rights progress.

I should note that I do not see that conflicts between egalitarianism and liberalism that have materialized in the struggle for civil rights as racial conflicts *per se*. It is tempting to view the successes and failures of *Brown v. Board of Education* and the Voting Rights Act as indicative of persistent racism in the US. After all, as Gunnar Myrdal wrote in his important book on American race relations, *An American Dilemma*: "The subordinate position of Negroes is perhaps the most glaring conflict in the American conscience and the greatest unsolved task for American democracy" (1944, 21). If some subset of the white American majority has always

believed and will always believe that black Americans are inferior, it would be no stretch to say that historical racial inequalities issue from that conviction. However, this explanation is, at the very least, at variance with the growing racial egalitarianism white Americans profess in an increasing number of national surveys.[99] True, as I have maintained throughout this dissertation, the increasingly egalitarian proclivities of the nation do not seem to explain the continual contestation over civil rights policy and the peculiar evolution of civil rights policy outcomes. But the implausibility of egalitarianism as an explanation for civil rights outcomes does not require us to accept racism as an explanation.

Even if one doubts the authenticity of American racial egalitarianism (see, e.g., Berinsky 1999; Schuman et al. 1997), the racism explanation would still be overly simplistic, and thus woefully unsatisfying, because it fails to account for the numerous progressive racial policies enacted nationwide and the progressive policy outcomes since the Civil Rights Movement, for the way in which civil rights debates lend themselves to nonracial arguments, and for the fact that nonracial civil rights issues are often contested on the same terms and according to the same competing principles as race-specific civil rights issues. On the point about nonracial arguments, consider the example of the anti-civil rights laws passed in the wake of Reconstruction. They clearly targeted African Americans, and clearly sought not merely to exclude them from the American body politic, but to relegate them to a lower stratum of biological existence. Yet racial superiority was not the *only way* the laws could have been justified rhetorically. The laws could also have been sustained using the classical liberal argument that the federal government ought to exercise restraint in its dealings with states and citizens. In fact, the Supreme Court used this line of reasoning when it signaled that Congress could only impose black sociopolitical integration on the federal government, not on the entire country, as it had tried to.

---

[99]As I discussed in Chapter Four, white respondents could, of course, be lying or demurring when asked questions about their racial views (see Berinsky 1999). For the reasons outlined in that chapter, however, I am skeptical that respondents' honest makes any difference in the *trend* in racially egalitarian views.

More careful attention to other kinds of discrimination in American history helps us appreciate both the limits of the racism argument and the generalizability of the liberalism argument. Policies that seem at first blush to be strictly racist, sexist, homophobic, xenophobic or biased toward some other minority community, actually share an important commonality: they emerged under the pretense of, or have been sustained by, appeals to limited government. In contemporary battles over same-sex marriage, abortion, and other rights, liberalism seems to serve at the foil to popular egalitarianism, just as my findings suggest it does with the issue of school desegregation. In other words, when we extrapolate beyond racial policies, we begin to see that the most prominent counterarguments are liberal, rather than specifically racist. In general, conversations over rights in in the United States are egalitarian in theory and liberal in fact.

The "liberal in fact" argument provides, in some respects, a more charitable view of political psychology and behavior than the racism argument, and in other respects, a much less charitable view. On the one hand, because liberalism transcend issues and groups, the contention that adherence to liberalism affects civil rights outcomes suggests that people need not be wedded to any particular illiberal ideologies, like racism or misogyny, to arrive at ostensibly illiberal outcomes, like racial or gender inequality. On the other hand, the liberalism is fact argument does not presume that individuals have the same degree of control over illiberal policy outcomes that, for example, rational choice theorists would suggest. I posit values as components of human psychology that operate beneath the veil of human consciousness; values may dictate our behavior without our even realizing either that we possess them or that they operate in quite the way they do. Rational though we may be, we are not omniscient, or even cognizant of all of our own political machinations. In this way, the liberal in fact argument acknowledges certain cognitive limitations when it comes to civil rights. People will not necessarily have the capacity to produce the outcomes they claim to endorse, no matter how sincere their beliefs, because other unconscious beliefs and imperatives also structure political behavior. In pushing beyond the

simplistic presumption that racism in public opinion influences civil rights outcomes, the liberal in fact argument adds nuance to our understanding of the role public opinion plays in civil rights policy outcomes.

In addition to civil rights and public opinion, the third area of inquiry to which this dissertation may contribute in important ways is the literature on institutional change and retrenchment. This dissertation can be thought of as an attempt to ascertain the impact of political values on civil rights policy outcomes, where the "policy outcomes" are the individual indicators of policy success used as dependent variables in the multivariate models presented in Chapters Four, Five, and Six. Furthermore, the dissertation can be said to reveal how two civil rights "institutions" that emerged amidst public opposition, *Brown* and the Voting Rights Act, have responded to changes in public opinion, congressional support, demographic conditions, and issue salience over time.

Both of these descriptions presume a particular meaning of the term "institution" that may not be intuitive. In the social sciences, institutions are often defined in shorthand as "the rules of the game." The definition seems clear enough on its face, but it actually obscures a great deal of the complexity that is at the heart of ongoing scholarly debates over institutional change. What counts as a rule in politics? What differentiates political rules from, say, social norms? In what ways are the things political scientists commonly term institutions, like courts or school districts, *rules of the game* in themselves? Is there a difference between a "rule of the game" and a political environment, like the presidency or the courts, that is *governed by* rules or that *creates* rules? Clearly if the phrase "rules of the game" can refer to anything, then the term institution has no definitional bounds—it is infinitely pliable. If an institution can be anything, it is too conceptually pliable to be useful.

These are not low-stakes conceptual problems. A great deal of the debate over the primacy of institutions and culture that has divided political scientists in some discourses can be

attributed to uncertainty over the meaning of the concept of an institution. For example, Paul Pierson inaugurated a major debate in the welfare state literature when he concluded that there had been no retrenchment of western welfare states, despite efforts to the contrary by staunch neoconservative political leaders. Pierson's claim was predicated upon a particular definition of retrenchment: change in the policies or spending levels that characterize the welfare state. Confronted with Pierson's conclusion, a number of scholars set out to show that incremental changes over time to such things as income inequality and job security had amounted to institutional retrenchment (e.g. Clayton and Pontusson 1998; Hacker 2004; Starke 2006; Streeck and Thelen 2005).

Clayton and Pontusson (1998) took umbrage with Pierson's focus on "efforts by politicians to enact entitlement change or, more precisely, on the significance of the enticement changes that have been enacted" as "too narrow" (1998, 69). They instead analyzed changes to macroeconomic indicators and bureaucratic practices tangential to the functioning of welfare policy, including rising social inequality; declining job and income security; a declining public sector labor force; and declining service provision. While conceding that major policy and funding changes had not taken place, the authors nevertheless concluded that there had been identifiable patterns of "retrenchment and restructuring" of welfare states (1998, 96).[100] Though he also conceded that radical changes in welfare policy had not occurred in the United States, Hacker (2004) reinforced Clayton and Pontusson's perspective on welfare state retrenchment in his own analysis of the American welfare state. Citing widening income disparities and rising bankruptcy rates, Hacker argued that the American welfare state was producing qualitatively different outcomes than in the past, even without corresponding changes in entitlement policy.[101]

---

[100] Although Clayton and Pontusson do not use the term, the kinds of changes they describe are probably consistent with what scholars now call "drift" (Schickler 2001; see also Hacker 2004; Streeck and Thelen 2005).

[101] The debate over radical and incremental change may be beside the point of the discussion about retrenchment specifically. Scholars who argue for the presence of incremental change almost always

Studies focused on indicators like economic inequality and job security thus pointed to a need to look beyond overt policy and funding changes as *the* measures of welfare state retrenchment.

What has emerged from the debate between the two schools of thought on welfare state change is a far more nuanced understanding of the ways institutions evolve over time. With the addition of the five kinds of institutional change scholars in the Clayton and Pontusson school of thought have uncovered—(1) conversion; (2) displacement; (3) drift; (4) exhaustion; and (5) layering—there are now *six* plausible ways of defining institutions and institutional change.[102] More recent research on welfare state retrenchment has continued to distinguish between radical and incremental change (Starke 2006).

It may not be axiomatic that *Brown v. Board of Education* and the Voting Rights Act are "institutions." Likewise, referring to civil rights as "institutions" might also seem odd in light of the usual application of the term "institution" to policy instruments, like laws, policy arenas, like the welfare state, and branches of government, like the judiciary. Yet there are number of ways in which the study of civil rights and civil rights change is the study of institutions and institutional change. Civil rights are the specific types of rule democratic states use to demarcate the boundaries of government action *vis-a-vis* citizen action and define the norms of interaction between citizens. They are literally the rules of citizenship. To speak of changes in civil rights can be to speak of changes in the language constituting the rules themselves (such as an executive order or municipal ordinance), the places where citizens enforce those rules (such as schools), or

---

concede the absence of radical change (see e.g., Clayton and Pontusson 1998; Hacker 2004; Streeck and Thelen 2005). But perhaps the incremental changes they observe are evidence against the *entrenchment* of certain institutional arrangements, rather than evidence of the retrenchment of such arrangements. If the debate is really one of semantics, there is not much disagreement between the incremental and radical change theorists; we could resolve the apparent disagreement simply by, for example, defining radical change as *retrenchment* and incremental change as erosion (or something similar).

[102] For a full explication of these five kinds of institutional change, see Streeck and Thelen (2005). Curiously, no name has yet been given to that holy grail of institutional change—radical, abrupt discontinuity—by which Baumgartner and Jones (1991, 1993) and Pierson (1996) suggested retrenchment should be defined. Tentatively, though, we may call the type Baumgartner and Jones and Pierson envision "exit." Here, change is defined by a manifest departure from the existing institutional arrangement. Exit is distinct from the many kinds of incremental changes insofar as they do not imply complete severance from the prevailing institutional arrangement.

the government entities or actors that are expected to abide those rules (such as legislators or courts). These are all clearly institutions in the conventional sense of that term.

The different ways of conceptualizing institutional change that have emerged from political science research on the welfare state are very instructive for this dissertation. Changes in the areas of school desegregation and voting rights have manifest in many ways. Moreover, experts on these two issues have had the same kinds of debates over operationalization of concepts that welfare state scholars have had (e.g. Stearns and Logan 1986). Studies of welfare state retrenchment are a reminder to look beyond policy or funding changes as *the* measures of civil rights change. Being attentive to the many different kinds of change documented in prior research on other institutions promises richer, more defensible conclusions about civil rights.

At the same time, this dissertation suggests that institutional scholars who study domains other than civil rights can learn a great deal from research on civil rights. My findings regarding changes in school desegregation and voting rights over the last six decades may be regarded as both a challenge to and an extension of the institutional literature. Institutional change scholarship has centered on two competing claims: the first is that institutions generally resist abrupt, fundamental change (Pierson 1996; Steinmo and Watts 1995); the second is that institutions experience small changes that can add up, in the long run, to major "discontinuities" (Clayton and Pontusson 1998; Hacker 2004; Streeck and Thelen 2005). These claims have not emerged from studies of civil rights, but of the welfare state (Hacker 2004), tax policy (Patashnik 2008), and governing institutions like Congress and the judiciary (Rosenberg 2008 [1991]; Schickler 2001). My findings affirm that civil rights can experience both dramatic and subtle changes. Insofar as the presence of radical, fundamental change in civil rights institutions defies the conventional wisdom on institutional change, this dissertation suggests a need for further research on the kinds of institutions that susceptible to radical change.

In sum, this dissertation makes three contributions to the empirical study of democratic representation, or the link between public opinion and public policy. First, it draws attention to public opinion as an underappreciated predictor of change in school desegregation. Second, it suggests that political values (or moods) and political attitudes can impact civil rights policy outcomes differently. Third, it reveals the preconditions for public opinion to assume a role in civil rights policy and policy outcomes. The evidence that *liberal mood* has a dynamic effect upon school desegregation policy outcomes affirms that the link between opinion and policy is not positive and linear for all issue domains. The evidence also indicates that political moods, or values, can influence civil rights policy outcomes; can do so in ways that political *attitudes* may not; and can do so in an altogether different fashion that conventional democratic theories of representation, the link between public opinion and public policy, would lead us to expect. The evidence that *liberal mood* plays no role in voting rights policy outcomes suggests that the significance of public opinion about government activity in civil rights policy outcomes depends at least partly upon the institutional supports, or "policy infrastructure," provided by Congress. Both the dissertation findings themselves and the new hypotheses they portend should be of great interest to scholars who wish to understand the etiology of civil rights policy outcomes, the relationship between public policy and public opinion, and the nature of institutional change in the United States.

REFERENCES

American Civil Liberties Union of Virginia and Virginia State Conference NAACP. 2011. *Understanding and Advocating for Racial Fair Election Plans in Virginia's Cities, Counties, and Towns.* Richmond, VA: American Civil Liberties Union of Virginia.

Ansolabehere, Stephen. 2009. "Effects of Identification Requirements on Voting: Evidence from the Experiences of Voters on Election Day." *PS: Political Science and Politics* 42 (January): 127 – 130.

Arceneaux, Kevin. 2002. "Direct Democracy and the Link between Public Opinion and State Abortion Policy." *State Politics and Policy Quarterly* 2 (December): 372 – 387.

Barnum, David G. 1985. "The Supreme Court and Public Opinion: Judicial Decision Making in the Post-New Deal Period." *Journal of Politics* 47 (May): 652 – 666.

Barreto, Matt A., Stephen A. Nuño Gabriel R. Sanchez. 2009. "The Disproportionate Impact of Voter ID Requirements on the Electorate: Evidence from Indiana." *PS: Political Science and Politics* 42 (January): 111 – 116.

Baumgartner, Frank R., Suzanne L. De Boef, and Amber E. Boydstun. 2008. *The Decline of the Death Penalty and the Discovery of Innocence.* New York: Cambridge University Press.

Baumgartner, Frank R., and Bryan D. Jones. 1993. *Agendas and Instability in American Politics.* Chicago: University of Chicago Press.

Baumgartner, Frank R., and Bryan D. Jones. 1991. "Agenda Dynamics and Policy Subsystems." *Journal of Politics* 53 (November): 1044 – 1074.

Baum-Snow, Nathaniel and Byron Lutz. 2011. "School Desegregation, School Choice, and Changes in Residential Location Patterns by Race." Forthcoming in *American Economic Review.*

Berkman, Michael and Eric Plutzer. 2005. *Ten Thousand Democracies.* Washington, DC: Georgetown University Press.

Bell, Jr., Derrick A. 1980. "Brown v. Board of Education and the Interest-Convergence Dilemma." *Harvard Law Review* 93 (January): 518 – 533.

Bickel, Alexander. 1964. "The Decade of School Desegregation Progress and Prospects." *Columbia Law Review* 64 (February): 193 – 223.

Binder, Sarah. 2001. "Congress, the Executive, and the Production of Public Policy: United We Govern?" In *Congress Reconsidered*, eds. Lawrence C. Dodd and Bruce I. Oppenheimer. 7th Edition. Washington, DC: CQ Press.

Bishop, Cortlandt F. 1968. *History of Elections in the American Colonies.* New York: Burt Franklin.

Blum, Edward. 2007. *The Unintended Consequences of Section 5 of the Voting Rights Act.* Washington, DC: AEI Press.

Bobo, Lawrence and Franklin Gilliam. 1990. "Race, Sociopolitical Participation, and Black Empowerment." *American Political Science Review* 84 (June): 377 – 393.

Bositis, David A. 2006. "Impact of the 'Core' Voting Rights Act on Voting and Officeholding." In *The Voting Rights Act: Securing the Ballot*, ed. Richard Valelly. Washington, DC: CQ Press.

Brace, Paul and Brent D. Boyea. 2008. "State Public Opinion, the Death Penalty, and the Practice of Electing Judges." *American Journal of Political Science* 52 (April): 360 – 372.

Brischetto, Robert, David R. Richards, Chandler Davidson, and Bernard Grofman. 1994. "Texas." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Bullock, Charles S. 2009. *The Triumph of the Voting Rights Act in the South.* Norman, OK: University of Oklahoma Press.

Burstein, Paul. 2003. "The Impact of Public Opinion on Public Policy." *Political Research Quarterly* 56 (March): 29 – 40.

Burton, Orville Vernon, Terrance E. Finnegan, Peyton McCrary, and James E. Loewen. 1994. "South Carolina." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Campbell, Angus, Philip E. Converse, Warren E. Miller, and Donald E. Stokes. 1960. *The American Voter.* New York: John Wiley and Sons.

Campbell, James E., and Joe E. Sumners. 1990. "Presidential Coattails in Senate Elections." *American Political Science Review* 84 (June): 513 – 524.

Canes-Wrone, Brandice and Kenneth W. Schotts. 2004. "The Conditional Nature of Presidential Responsiveness to Public Opinion." *American Journal of Political Science* 48 (October): 690 – 716.

Casillas, Christopher J., Peter K. Enns, and Patrick C. Wohlfarth. 2011. "How Public Opinion Constrains the U.S. Supreme Court." *American Journal of Political Science* 55 (January): 74 – 88.

Chemerinsky, Erwin. 2009. *Constitutional Law.* 3rd Edition. New York: Aspen.

Clayton, Richard, and Jonas Pontusson. 1998. "Welfare-State Retrenchment Revisited: Entitlement Cuts, Public Sector Restructuring, and Inegalitarian Trends in Advanced Capitalist Societies." *World Politics* 51 (October): 67 – 98.

Clotfleter, Charles T. and Jacob L. Vigdor. 2006. "Federal Oversight, Local Control, and the Specter of 'Resegregation' in Southern Schools." *American Law and Economic Review* 48 (2): 347 – 389.

Cobb, Roger W. and Charles D. Elder. 1975 [1983]. *Participation in American Politics: The Dynamics of Agenda-Building.* 2nd edition. Baltimore, MD: Johns Hopkins University Press.

Coleman, James S. 1966. *Equality of Educational Opportunity.* Washington, DC: US Commission on Civil Rights.

Coleman, James S., Sara D. Kelly, and John A. Moore 1975. *Trends in School Segregation, 1968-73.* Washington, DC: Urban Institute.

Converse, Philip E. 1964. "The Nature of Belief Systems in Mass Publics," in *Ideology and Discontent*. ed. David Apter. New York: The Free Press of Glencoe

Dahl, Robert. A. 2006. *On Political Equality.* New Haven, CT: Yale University Press.

Dahl, Robert A. 1998. *On Democracy.* New Haven, CT: Yale University Press.

Dahl, Robert A. 1967. *Pluralist Democracy in the United States: Conflict and Consent.* Chicago: Rand McNally and Company.

Davidson, Chandler. 1994. "The Recent Evolution of Voting Rights Law Affecting Racial and Language Minorities." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Davidson, Chandler. 2009. "The Historical Context of Voter Photo-ID Laws." *PS: Political Science and Politics* 42 (January): 93 – 96.

Dinkin, Robert J. 1982. *Voting in Revolutionary America: A Study of Elections in the Original Thirteen States, 1776-1789.* Westwood, CT: Greenwood Press.

Dinkin, Robert J. 1982. *Voting in Revolutionary America: A Study of Elections in the Original Thirteen States, 1776-1789.* Westport, CT: Greenwood Press.

Dinkin, Robert J. 1977. *Voting in Provincial America: A Study of Elections in the Thirteen Colonies, 1689 - 1776.* Westport, CT: Greenwood Press.

Donnelly, Jack. 2003. "Chapter 11: Human Rights, Democracy, and Development." In *Universal Human Rights in Theory & Practice*, 2nd Edition. Ithaca, NY: Cornell University Press.

Du Bois, W.E.B. 2007 (1956). *Black Reconstruction in America: An Essay toward a History of the Party Which Black Folk Played in the Attempt to Reconstruct Democracy in America, 1860 – 1890.* New York: Oxford University Press.

Eaton, Susan. 2007. *The Children in Room E4: American Education on Trial.* Chapel Hill, NC: Algonquin Books of Chapel Hill.

Edsall, Thomas B. and Mary D. Edsall.1991. *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics.* New York: W.W. Norton.

Engstrom, Richard L., Stanley A. Halpin, Jr., Jean A. Hill, and Victoria M. Caridas-Buttersworth. 1994. "Louisiana." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Enns, Peter and Koch. 2013. "Public Opinion in the US States: 1956 – 2010." Unpublished manuscript.

Enns, Peter and Paul M. Kellstedt. 2008. "Policy Mood and Political Sophistication: Why Everybody Moves Mood." *British Journal of Political Science* 38 (July): 433 – 454.

Epstein, Lee and Andrew D. Martin. 2011. "Does Public Opinion Influence the Supreme Court? Probably Yes (But We're Not Sure Why*)." University of Pennsylvania Journal of Constitutional Law* 13: 263 – 281.

Erikson, Robert S., Michael B. MacKuen, and James A. Stimson. 2002. *The Macro Polity.* New York: Cambridge University Press.

Feldman, Stanley, and John Zaller. 1992. "A Simple Theory of the Survey Response: Answering Questions Versus Revealing Preferences." *American Journal of Political Science* 36 (August): 579 – 616.

File, Thom. 2013. *The Diversifying Electorate: Voting Rates by Race and Hispanic Origin in 2012 (and other Recent Elections).* Washington, DC: United States Census Bureau.

Fiorina, Morris P. 2009. *Disconnect: The Breakdown of Representation in American Politics.* Norman, OK: University of Oklahoma Press.

Fiss, Owen. 1971. "The Charlotte-Mecklenburg Case: Its Significance for Northern School Desegregation." *University of Chicago Law Review* 38 (Summer): 697 – 709.

Foner, Eric. 1988. *Reconstruction: America's Unfinished Revolution, 1863 – 1877.* New York: Harper and Row.

Frankenberg, Erica, Chungmei Lee, and Gary Orfield. 2003. *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* Cambridge, MA: The Civil Rights Project at Harvard University.

Frymer, Paul. 2010. *Uneasy Alliances: Race and Party Competition in America.* Princeton, NJ: Princeton University Press.

Fuller, Bruce, and Richard F. Elmore. 1996. *Who Chooses? Who Loses? Culture, Institutions, and the Unequal Effects of School Choice*, eds. Bruce Fuller and Richard F. Elmore. New York: Teachers College Press.

Fund, John H. 2004. *Stealing Elections: How Voter Fraud Threatens Our Democracy.* New York: Encounter Books.

Garcia, John A. 1986. "The Voting Rights Act and Hispanic Political Representation in the Southwest." *Publius: The Journal of Federalism* 16 (Autumn): 49 – 66.

Gotham, Kevin Fox. 2002. "Missed Opportunities, Enduring Legacies: School Segregation and Desegregation in Kansas City, Missouri." *American Studies* 43 (Summer): 5 – 42.

Grofman, Bernard, and Chandler Davidson. 1994. "The Effect of Municipal Election Structure on Black Representation in Eight Southern States." In *Quiet Revolution in the South: The*

Impact of the Voting Rights Act, 1965 – 1990, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Guinier, Lani. 1994. *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy.* New York: Free Press.

Hacker, Jacob S. 2004. "Privatizing Risk without Privatizing the Welfare State: The Hidden Politics of Social Policy Retrenchment in the United States." *American Political Science Review* 98 (May): 243 – 254.

Hajnal, Zoltan. 2007. *Changing White Attitudes toward Black Political Leadership.* New York: Cambridge University Press.

Hartz, Louis. 1955. *The Liberal Tradition in America.* New York: Harcourt.

Highton, Benjamin. 2004. "Voter Registration and Turnout in the United States." *Perspectives on Politics* 2 (September): 597 – 515.

Hochschild, Jennifer. 1984. *The New American Dilemma: Liberal Democracy and School Desegregation.* New Haven, CT: Yale University Press.

Hochschild, Jennifer. 1981. *What's Fair? American Beliefs about Distributive Justice.* Cambridge, MA: Harvard University Press.

Hochschild, Jennifer, and Nathan Scrovronick. 2003. "School Desegregation and the American Dream," in *The End of Desegregation?* eds. Stephen J. Caldas and Carl L. Bankston III. New York: Nova Science Publishers.

Hopkins, Daniel J. 2010. "Politicized Places: Explaining Where and When Immigrants Provoke Local Opposition." *American Political Science Review* 104 (February): 40 – 60.

Huddy, Leonie, and Stanley Feldman. 2009. "On Assessing the Political Effects of Racial Prejudice." *Annual Review of Political Science* 12: 423 – 447.

Keech, William R., and Michael P. Sistrom. 1994. "North Carolina." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Kellstedt, Paul M. 2003. *The Mass Media and the Dynamics of American Racial Attitudes.* New York: Cambridge University Press.

Kellstedt, Paul. 2000. "Media Framing and the Dynamics of Racial Policy Preferences." *American Journal of Political Science* 44 (April): 245 – 260.

Kernell, Samuel. 1986 (1997). *Going Public: New Strategies of Presidential Leadership*. 4th Edition. Washington, DC: CQ Press.

Key, V.O. 1961. *Public Opinion and American Democracy.* New York: Knopf.

King, Desmond S., and Rogers M. Smith. 2005. "Racial Orders in American Political Development." *American Political Science Review* 99 (February): 75 – 92.

King, Richard H. 1992. *Civil Rights and the Idea of Freedom.* New York: Oxford University Press.

King-Meadows, Tyson. 2011. *When the Letter Betrays the Spirit:* Voting Rights Enforcement and African American Participation from Lyndon Johnson to Barack Obama. Lexington, KY: Lexington Books.

Kousser, J. Morgan. 1984. "The Undermining of the First Reconstruction, Lessons for the Second." In *Minority Vote Dilution,* ed. Chandler Davidson. Washington, DC: Howard University Press.

Kramer, Larry. 1997. "Same-Sex Marriage, Conflict of Laws, and the Unconstitutional Public Policy Exception." *Yale Law Journal* 106 (May): 1965 – 2008.

Laney, Garrine P. 2008. "The Voting Rights Act of 1965, As Amended: Its History and Current Issues." Washington, DC: Congressional Research Service.

Lieberman, Robert. 2002. "Ideas, Institutions, and Political Order: Explaining Political Change." *American Political Science Review* 96 (December): 697 – 712.

Logan, John R., Deidre Oakley, and Jacob Stowell. 2008. "School Desegregation in Metropolitan Regions, 1970 – 2000: The Impacts of Policy Choices and Public Education." *American Journal of Sociology* 113 (May): 1611 – 1644.

Logan, John R., Deidre Oakley, and Jacob Stowell. 2006. "Resegregation in U.S. Public Schools or White Decline? A Closer Look at Trends in the 1990s." *Children, Youth, and Environments* 16(1): 49 – 70.

Logan, John R., Brian J. Stults, and Reynolds Farley. 2004. "Segregation of Minorities in the Metropolis: Two Decades of Change." *Demography* 41 (February): 1 – 22.

Lowi, Theodore. 1969. *The End of Liberalism: The Second Republic of the United States.* New York: WW Norton.

Maetas, Cherie. 2003. "The Incentive to Listen: Progressive Ambition, Resources, and Opinion Monitoring among State Legislators." *Journal of Politics* 65 (March): 439 – 456.

Maestas, Cherie. 2000. "Professional Legislatures and Ambitious Politicians: Policy Responsiveness of Individuals and Institutions." *Legislative Studies Quarterly* 25 (4): 663 – 690.

Massey, Douglas S., Michael J. White, and Voon-Chin Phua. 1996. "The Dimensions of Segregation Revisited." *Sociological Methods and Research* 25 (November): 172 – 206.

McCrary, Peyton, and Steven F. Lawson. 2000. "Race and Reapportionment, 1962: The Case of Georgia Senate Redistricting." *Journal of Policy History* 12 (3): 293 – 320.

McCrary, Peyton, Jerome A. Gray, Edward Still, and Huey L. Perry. 1994. "Alabama." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

McDonald, Laughlin, Michael B. Binford, and Ken Johnson. 1994. "Georgia." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Mendelberg, Tali. 2001. *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality.* Princeton, NJ: Princeton University Press.

Minnite, Lorraine C. 2010. *The Myth of Voter Fraud.* Ithaca, NY: Cornell University Press.

Mishler, William and Reginald S. Sheehan. 1996. "Public Opinion, the Attitudinal Model, and Supreme Court Decision Making: A Micro-Analytic Perspective." *Journal of Politics* 58 (February): 169 – 200.

Mishler, William and Reginald S. Sheehan. 1993. "The Supreme Court as Countermajoritarian Institution: the Impact of Public Opinion on Supreme Court Decisions." *American Political Science Review* 87 (March): 87 – 101.

Mitchell, Glenn E. and Christopher Wlezien. 1995. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate." *Political Behavior* 17 (June): 179 – 202.

Monroe, Alan D. 1998. "Public Opinion and Public Policy, 1980 – 1993." *Public Opinion Quarterly* 62 (Spring): 6 – 28.

Mooney, Christopher Z., and Mei-Hsien Lee. 2000. "The Influence of Values on Consensus and Contentious Morality Policy: US Death Penalty Reform, 1956 – 1982." *Journal of Politics* 62 (February): 223 – 229.

Morone, James A. *Hellfire Nation: The Politics of Sin in American History.* New Haven, CT: Yale University Press.

Morone, James A. 1990 [1998]. *The Democratic Wish: Popular Participation and the Limits of American Government.* Revised edition. New Haven, CT: Yale University Press.

Morris, Thomas R., and Neil Bradley. 1994. "Virginia." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Morrison, Minion K.C. 1987. *Black Political Mobilization: Leadership, Power, and Mass Behavior.* Albany: State University of New York Press.

Myrdal, Gunnar. 1944. *An American Dilemma: The Negro Problem and Modern Democracy.* New York: Harper and Row.

Nagler, Jonathan. 1991. "The Effect of Registration Laws and Education on US Voter Turnout." *American Political Science Review* 85 (December): 1393 – 1405.

Neustadt, Richard. 1990 (1960). *Presidential Power and the Modern Presidents.* New York: The Free Press.

Nicoletti, John A., and Tom W. Patterson. 1974. "Attitudes toward Busing as a Means of Desegregation." *Psychological Reports* 35 (August): 371 – 376.

Norrander, Barbara, and Clyde Wilcox. 1999. "Public Opinion and Policymaking in the States: The Case of Post-Roe Abortion Policy." *Policy Studies Journal* 27 (November): 707 – 722.

North, Douglass C. 1990. *Institutions, Institutional Change, and Economic Performance.* New York: Cambridge University Press.

Oakley, Diedre, Jacob Stowell, and John R Logan. 2009. "The Impact of Mandated School Desegregation on Black Teachers in the Metropolis: 1970 – 2000: An Empirical Analysis." *Ethnic and Racial Studies.* 32 (9): 1576 – 1598.

Ogletree, Charles J. 2004. *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education.* New York: W.W. Norton & Co.

Orfield, Gary. 1996. "Turning Back to Segregation." In *Dismantling Desegregation: The Quiet Reversal of Brown v. Board of Education,* eds. Gary Orfield and Susan Eaton. New York: The New Press.

Orfield, Gary and Erika Frankenberg. 2008. *The Last Have Become First:* Rural and Small Town America Lead the Way on Desegregation. Los Angeles: The Civil Rights Project at UCLA.

Orfield, Gary and Chungmei Lee. 2007. *Historic Reversal, Accelerating Resegregation, and the Need for New Integration Strategies.* Los Angeles: The Civil Rights Project at UCLA.

Orfield, Gary and Chungmei Lee. 2006. *Racial Transformation and the Changing Nature of Segregation.* Cambridge, MA: The Civil Rights Project at Harvard University.

Page, Benjamin I., and Robert Y. Shapiro. 1983. "Effects of Public Opinion on Policy." *American Political Science Review* 77 (March): 175 – 190.

Parker, Frank R. 1990. *Black Votes Count: Political Empowerment in Mississippi after 1965.* Chapel Hill, NC: University of North Carolina Press.

Parker, Frank R., David C. Colby, and Minion K.C. Morrison. 1994. "Mississippi." In *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965 – 1990*, eds. Chandler Davidson and Bernard Grofman. Princeton, NJ: Princeton University Press.

Patashnik, Eric M. 2008. *Reforms at Risk: What Happens After Major Policy Reforms Are Enacted?* Princeton, NJ: Princeton University Press.

Patashnik, Eric M. 2003. "After the Public Interest Prevails: The Political Sustainability of Policy Reform." *Governance: An International Journal of Policy, Administration, and Institutions,* 16 (April): 203 – 234.

Pierson, Paul. 1996. "The New Politics of the Welfare State." *World Politics* 48 (January): 143 – 179.

Piven, Frances Fox, Lorraine C. Minnite, and Margaret Groarke. 2008. *Keeping down the Black Vote.* New York: The New Press.

Popkin, Samuel. 1991. *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns.* Chicago, IL: University of Chicago Press.

Rivers, Douglas, and Nancy L. Rose. 1985. "Passing the President's Program: Public Opinion and Presidential Influence in Congress." *American Journal of Political Science* 29 (May): 183 – 96.

Rocha, Rene R. and Rodolfo Espino. 2009. "Racial Threat, Residential Segregation, and the Policy Attitudes of Anglos." *Political Research Quarterly* 62 (June): 415 – 426.

Rosenberg, Gerald N. 2008 [1991]. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: University of Chicago Press.

Rosenstone, Steven J. and Raymond E. Wolfinger 1978. "The Effect of Registration Laws on Voter Turnout." *American Political Science Review* 72 (March): 22 – 45.

Rossell, Christine. 2003. "The Desegregation Efficiency of Magnet Schools." *Urban Affairs Review* 38 (May): 697 – 725.

Rossell, Christine H. 1996. "The Effectiveness of School Desegregation Plans, 1968-1991." *American Politics Quarterly* 24 (July): 267 – 302.

Rossell, Christine H. 1995. "The Convergence of Black and White Attitudes on School Desegregation during the Four Decade Evolution of the Plans." *William and Mary Law Review* 36 (January): 613 – 663.

Rossell, Christine H. 1975-6. "School Desegregation and White Flight." *Political Science Quarterly* 90 (4): 675 – 695.

Rossell, Christine H. and David J. Armor. 2002. "Attitudes on Race and Desegregation." In *School Desegregation in the 21st Century*, eds. Christine H. Rossell, David J. Armor, and Herbert J. Walberg. Westport, CT: Praeger.

Ryan, James E. 2009. "The Real Lessons of School Desegregation." In *From Schoolhouse to Courthouse: The Judiciary's Role in American Education*, eds. Joshua M. Dunn and Martin R. West. Washington, DC: Brookings.

Salvatore, Susan Cianci. 2004. *Civil Rights in America: Racial Desegregation of Public Accommodations.* Washington, DC: National Park Service.

Scarrow, Howard A. 1999. "The Impact of At-large Elections: Vote Dilution or Choice Dilution?" *Electoral Studies* 18 (4): 557 – 567.

Schattschneider, E.E. 1960. *The Semisovereign People: A Realist's View of Democracy in America.* New York: Holt, Rhinehart, and Winston.

Schickler, Eric. 2001. *Disjointed Pluralism: Institutional Innovation and Development of the US Congress.* Princeton, NJ: Princeton University Press.

Schuman, Howard, Charlotte Steeh, and Lawrence Bobo. 1985 (1997). *Racial Attitudes in America: Trends and Interpretations*. Cambridge, MA: Harvard University Press.

Shapiro, Robert Y. 2011. "Public Opinion and American Democracy." *Public Opinion Quarterly* 75 (5): 982 – 1017.

Skocpol, Theda. 1992. *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States*. Cambridge, MA: Harvard University Press.

Smith, Rogers M. 1999. "Toward a More Perfect Union: Beyond Old Liberalism and Neoliberalism." In *Without Justice for All: The New Liberalism and Our Retreat from Racial Equality,* ed. Adolph Reed, Jr. Boulder, CO: Westview Press.

Smith, Rogers M. 1997. *Civil Ideals: Conflicting Visions of Citizenship in US History.* New Haven, CT: Yale University Press.

Soroka, Stuart N., and Christopher Wlezien. 2010. *Degrees of Democracy: Politics, Public Opinion, and Policy.* New York: Cambridge University Press.

Spann, Girardeau A. 2000. *The Law of Affirmative Action: Twenty-Five Years of Supreme Court Decisions on Race and Remedies.* New York: New York University Press.

Sears, David O., Carl P. Hensler, and Leslie K. Speer. 1979. "Whites' Opposition to 'Busing': Self-Interest or Symbolic Politics?" *American Political Science Review* 73 (June): 369 – 384.

Sobel, Richard, and Smith, Robert Ellis. 2009. "Voter-ID Laws Discourage Participation, Particularly Among Minorities, and Trigger a Constitutional Remedy in Lost Representation." *PS: Political Science and Politics* 42 (January): 107 – 110.

Stanley, Harold W. 1987. *Voter Mobilization and the Politics of Race: The South and Universal Suffrage, 1952 – 1984*. New York: Praeger.

Starke, Peter. 2006. "The Politics of Welfare State Retrenchment: A Literature Review." *Social Policy and Administration* 40 (February): 104 – 120.

Stearns, Linda Brewster, and John R. Logan 1986. "Measuring Trends in Segregation: The Dimensions, Three Measures." *Urban Affairs Quarterly* 22 (September): 124 – 150.

Steinmo, Sven and Jon Watts. 1995. "It's the Institutions, Stupid! Why Comprehensive National Health Insurance Always Fails in America." *Journal of Health Politics, Policy, and Law* 20 (Summer): 329 – 372.

Stimson, James A. 2004. *Tides of Consent: How Public Opinion Shapes American Politics.* New York: Cambridge University Press.

Stimson, James A. 1991. *Public Opinion in America: Moods, Cycles, and Swings*. Boulder, CO: Westview Press.

Stimson, James A., Michael B. MacKuen, and Robert S. Erikson. 1995. "Dynamic Representation." *American Political Science Review* 89 (September): 543 – 565.

Stone, Deborah. 1997. *Policy Paradox: The Art of Political Decision Making*, Revised edition. New York: WW Norton and Co.

Streeck, Wolfgang and Kathleen Thelen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, eds. Wolfgang Streeck and Kathleen Thelen. New York: Oxford University Press.

Taebel, Delbert. 1978. "Minority Representation on City Councils: the Impact of Structure on Blacks and Hispanics." *Social Science Quarterly* 59 (June): 143 – 152.

Taylor, Paul. 2012. *The Growing Electoral Clout of Blacks is Driven by Turnout, Not Demographics.* Washington, DC: Pew Research Center for the People and Press.

Taylor, William. 1978. "The Supreme Court and Recent School Desegregation Cases: the Role of Social Science in a Period of Judicial Retrenchment." *Law and Contemporary Problems* 42 (Autumn): 37 – 56.

Teasely III, C.E. 1987. "Minority Vote Dilution: the Impact of Election System and Past Discrimination on Minority Representation." *State and Local Government Review* 19 (Autumn): 95 – 100.

Thernstrom, Abigail. 2009. *Voting Rights—and Wrongs: The Elusive Quest for Racially Fair Elections.* Washington, DC: AEI Press.

—1987. *Whose Votes Count? Affirmative Action and Minority Voting Rights.* Cambridge, MA: Harvard University Press.

de Tocqueville, Alexis. 1835 (2000). *Democracy in America.* Trans. Harvey C. Mansfield and Delba Winthrop. Chicago: University of Chicago Press.

Trebbi, Francesco, Philippe Aghion and Alberto Alesina. 2008. "Electoral Rules and Minority Representation in U.S. Cities." *The Quarterly Journal of Economics* 123 (January): 325 – 357.

United States Commission on Civil Rights. 1975. "The Voting Rights Act: Ten Years After." Washington, DC: United States Commission on Civil Rights.

Valelly, Richard M. 2004. *The Two Reconstructions: The Struggle for Black Enfranchisement.* Chicago: University of Chicago Press.

Van Deth, Jan W. and Elinor Scarborough. 1995. "Introduction: The Impact of Values." In *The Impact of Values*, eds. Jan W. Van Deth and Elinor Scarborough. New York: Oxford University Press.

Verba, Sidney, Kay Lehman Schlozman, and Henry E. Brady. 1995. *Voice and Equality: Civic Voluntarism in American Politics.* Cambridge, MA: Harvard University Press.

Walton, Jr., Hanes. 1988. *When the Marching Stopped: The Politics of Civil Rights Regulatory Agencies.* Albany, NY: The State University of New York Press.

Weissberg, Robert. 1976. *Public Opinion and Popular Government.* Englewood Cliffs, NJ: Prentice-Hall.

Welch, Susan. 1990. "The Impact of At-Large Elections on the Representation of Blacks and Hispanics." *Journal of Politics* 52 (November): 1050 – 1076.

Winkler, Adam. 2006. "Fatal in Theory and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts." *Vanderbilt Law Review* 59 (3): 793 – 871.

Wolfinger, Raymond E. and Steven J. Rosenstone 1980. *Who Votes?* New Haven, CT: Yale University Press.

Yoshino, Kenji. 2011. "The New Equal Protection." *Harvard Law Review* 124 (January): 747 – 803.

Zaller, John. 1992. *The Nature and Origins of Mass Opinion.* New York: Cambridge University Press.

Zhou, Min, and John R. Logan. 2003. "Increasing Diversity and Persistent Segregation: Challenges of Educating Minority and Immigrant Children in Urban America." In *The End of Desegregation*? eds. Stephen J. Caldas and Carl L. Bankston. Hauppauge, New York: Nova Science Publishers.