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Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity[1]

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This article attempts to establish theoretical and methodological links between work on social movements and work on the mobilization of law by analyzing legal mobilization as a social movement tactic—the pursuit of movement goals through "proper channels." Focusing on the movement for equal employment opportunity (EEO), the article considers how often minorities and women mobilize federal EEO laws in their fight for equal treatment in the marketplace, how often they win their cases, and how victory is related to their ability to organize and to get help from the federal government. Analysis of one aspect of the mobilization of EEO laws—in the federal appellate courts—leads to some conclusions very much in keeping with recent work on social movements. They are that the relationship between grievances and mobilization is problematic, that blacks remain central to the struggle for equality in the United States, that resources matter for challengers of the status quo, and that the federal government can be extremely important when it chooses to intervene on the side of women and minorities.

INTRODUCTION

The struggle for equal opportunity—for equal access to the ballot box, to education, to jobs, and to justice—has long been a central focus of American sociology. Sociologists have been especially concerned about

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how opportunities are influenced by race, sex, ethnicity, and other ascribed characteristics. Two streams of research have been particularly important. The first focuses on economic outcomes—why whites earn more than blacks, men more than women, or one ethnic group more than another. Much of our most important work in stratification has been motivated partly by the desire to understand and ultimately to reduce economic inequality among groups (e.g., Blau and Duncan 1967; Lieberson 1980; England and Farkas 1986). The second stream of research focuses on what disadvantaged groups do to reduce economic and other forms of inequality—how they organize, what tactics they adopt, and what obstacles they face as they try to achieve equal opportunity. The civil rights movement, in particular, helped spark a revolution in the study of social movements that has greatly increased our understanding of the political struggles of relatively powerless groups in the United States (see Gamson 1975; Jenkins 1983; McAdam 1983; Morris 1984).

This article links these two streams of research by examining one means used by minorities and women in their struggle for equality: the mobilization of the federal equal employment opportunity (EEO) laws. Recent work on social movements can provide the basis for analyzing how groups fight for EEO; but to be most useful, the customary focus of such work should be (1) narrowed to EEO specifically; (2) shifted to an activity seldom formally analyzed as a movement tactic, litigation in the federal courts; and (3) broadened to consider ethnic and religious minorities as well as blacks and women. In this article I consider how often minorities and women have mobilized federal EEO laws in their fight for equal treatment in the marketplace, how often they have won their cases, and how victory has been related to their ability to organize and to get help from the federal government.

Narrowing the Focus to EEO

Both social movement analysts and stratification researchers would like to know how movement activities influence labor-market outcomes for minorities and women—movement analysts because EEO has long been a central goal of the civil rights and women's movements and stratification researchers because they often hypothesize that labor-market outcomes have been affected by the civil rights and women's movements and by antidiscrimination legislation (e.g., DiPrete and Soule 1986). Unfortunately, little progress has been made in showing how the two are connected; there have been few, if any, attempts to show precisely how particular movement activities have led to particular changes in labor-market outcomes for minorities or women.

This lack reflects a general problem in studies of social movements.

We have made great progress in measuring and explaining changes in movement activity (e.g., McAdam 1983; Jenkins and Eckert 1986) but have devoted relatively little attention to showing how specific activities lead to specific consequences. This is partly because particular activities are generally seen in terms of their relationship to the overall organization and goals of the movement rather than in terms of their contribution to the attainment of particular goals. McAdam's (1983) approach to bus boycotts, for example, is typical; he views them as a tactical innovation in the civil rights movement and not in terms of their success in achieving their manifest goal of equal treatment for blacks and whites on buses.

The struggle for EEO is of course part of a broader battle for equal opportunity. Yet it is also a struggle in its own right—with its own organizations, influenced by particular laws and administrative and judicial decisions, and affected by the specific nature of interactions in the workplace. It seems essential, if we are to understand how movement activity influences economic outcomes, to examine activity directed specifically toward that end. This means focusing at least part of our attention on actions intended specifically to improve employment opportunities for minorities and women.

Litigation

What types of actions should we examine? For most sociologists, and for many political scientists studying social movements, the distinction between political action "inside the system" and that taking place "outside" is critical. They see groups resorting to a "politics of protest" when they are not allowed to use institutionalized channels to express their political demands or when such channels prove ineffective. Those interested in social movements see themselves as examining political behavior not directed into "proper channels"—that is, demonstrations, strikes, and boycotts, as opposed to election campaigns, lobbying, or legal proceedings.

This distinction is often useful, but at times it impedes progress in understanding political change. Those using outsider tactics are often trying, first, to gain access to power holders and, then, to influence their decisions. By defining their interests in terms of particular tactics, those studying social movements virtually force themselves to abandon the field of inquiry when the groups they are interested in begin to have influence—when they gain access to proper channels.

I suggest that successful movements generally utilize proper channels as well as outsider tactics and that an adequate understanding of movements must therefore consider both. In fact, social movement analysts seem to recognize this, even if only implicitly. This implicit recognition

takes two forms: in definitions of social movement and in analyses of particular movements. As for definitions, consider one of Tilly's recent attempts to define social movement (1984, p. 305; italics in original): "The term *social movement* applies most usefully to a sustained *interaction* between a specific set of authorities and various spokespersons for a given challenge to these authorities. The interaction is a coherent, bounded unit in roughly the same sense that a war or political campaign is a unit." Tilly struggles to limit the definition to outsider groups, but nothing in it excludes the legal tactics often employed by the civil rights movement, even though such tactics involved going through proper channels.

In fact, analysts of American social movements frequently ascribe importance to court cases. McAdam, for example, shows that a Supreme Court decision on segregation had a critical effect on the bus boycotts (1983, p. 741), while Harding (1984, pp. 393–95) argues that the decisions of a federal judge undermined the hegemony of white-supremacist ideology in Mississippi (also see Jenkins and Eckert 1986, p. 827). The role of the courts is seldom the subject of theorizing because so much emphasis is placed on demonstrating the importance of outsider tactics. Yet deep historical knowledge of particular movements consistently forces social movement analysts to report how critical court decisions are.

It is, in fact, impossible to understand the American struggle for equal opportunity without focusing on the courts and on activities intended to influence judicial decisions. The long campaign of the National Association for the Advancement of Colored People (NAACP) leading to the Supreme Court's decision in *Brown v. Board of Education* is especially well known (see Pole 1978, pp. 265–67), but other judicial decisions were also critical, including those on freedom of association that facilitated organizing in the South, those on economic regulation that paved the way for EEO legislation, and those that interpreted EEO broadly rather than narrowly (Gunther 1975, chaps. 13–14; Burstein 1985; Schlei and Grossman 1983; cf. Collins 1979, p. 198). In Tilly's language (1984), litigation has been an important part of the repertoire of those seeking equal opportunity, at least since the NAACP began its campaign against segregation during the 1930s.

This is not a new point. Indeed, some political scientists and legal scholars have long argued that the mobilization of law should be considered a form of political participation potentially useful to the disadvantaged in their struggles for rights and benefits (Zemans 1983; see the development of the term in Black [1973]). Using arguments similar to those made by students of social movements, those studying legal mobilization have been concerned about how difficult it is for outsider groups to gather resources, how the rules for participation may be weighted

against them, and how they confront adversaries who control greater resources.[2]

Conceptually, the study of legal mobilization strongly resembles the study of social movements, but methodologically they differ substantially. The great advances in sampling, measurement, and statistical analysis made by social movement analysts (e.g., Gamson 1975; Tilley 1978; McAdam 1983; Jenkins and Eckert 1986) have not been matched by those studying legal mobilization. This situation is beginning to change (e.g., Galanter 1983, 1990; Wheeler et al. 1987; Burstein and Monaghan 1986), but much would be gained if quantitative analysts of social movements and legal mobilization scholars would adopt each other's approaches and techniques. That is what I propose to do in this article.

Minorities and Women

Americans normally think of the civil rights movement as a movement for the rights of blacks. But all 20th-century federal civil rights laws prohibit discrimination on the basis of religion and national origin as well as race, and some provisions, including Title VII of the Civil Rights Act of 1964, the most important EEO law, also forbid discrimination on the basis of sex. This was hardly a happenstance. Racial, religious, and national-origin minorities and women have all been the victims of discrimination, and all brought pressure to bear on Congress when it was considering civil rights legislation (Bergmann 1986; Burstein 1985; Lieberson 1980).

Title VII thus gave women and a variety of minorities, not just blacks, a resource to use in their struggle for EEO. In fact, the law made them allies, in that usually a victory for one group was a victory for all. For example, the logic of the law quickly turned a ban on one kind of exclusionary want ad ("whites only") into a ban on all (including "help wanted—male"); successful challenges to racially segregated seniority lines wound up eliminating sexually segregated seniority lines as well. (Of course, the various groups are not equally concerned about all issues, and there have even been conflicts among them, but on the whole there is great commonality of interest.) To determine how social movement activity influences labor-market outcomes, it is necessary, therefore, to

[2] See Galanter 1974; Sabatier 1975; Handler 1978; Zemans 1983. Of course, the law has often been mobilized by the advantaged against the disadvantaged; the movements for civil rights in general and EEO in particular have at times involved legal mobilization and countermobilization by competing groups struggling for support at the highest levels of the legal system; see, e.g., Barkan 1984; Burstein 1991.

consider the activities of all groups covered by Title VII. This means, in turn, having to move beyond the customary focus of movements research on blacks or women to a consideration of the activities of racial, religious, and national-origin minorities and women. Only by doing so is it possible to get a realistic picture of the scope and nature of activities devoted to the achievement of EEO.

The Questions

This article is the first to examine systematically how the EEO laws have been mobilized by women and by minorities as defined by race, religion, and national origin, comparing the groups with each other and describing how their experiences have changed. It differs from previous work on the civil rights and women's movements by focusing on EEO, on litigation, and on several groups simultaneously; from conventional legal scholarship by going beyond the customary focus on leading cases to the quantitative analysis of an entire population of cases; and from previous work on the mobilization of EEO law (Burstein and Monaghan 1986; Burstein 1989) by systematically analyzing changes in the activities of different groups over time.

The article addresses three questions about the mobilization of the EEO laws, questions analogous to those asked about the use of outsider tactics by social movements. First, to what extent have the groups mobilized, and how has the degree of mobilization changed? We cannot even begin to understand the struggle for equal opportunity until we can describe it.

Second, how often do minorities and women win their EEO cases? This question addresses three concerns—that the legal process is somehow rigged against minorities and women so that they seldom win, that the courts might favor some groups over others, and that perceived changes in the political climate may have reduced minorities' and women's chances of winning.

Third, is victory in court related to organization? Is it true for minority and female litigants, as it is for groups using outsider tactics, that, as Gamson has written (1975, p. 108), there are "definite advantages for a challenging group . . . to organize itself for facility in political combat"?

DATA

The ideal study of the struggle for EEO would begin by analyzing individuals' grievances over their treatment in the labor market, including both the objective conditions associated with grievances and the social and psychological forces affecting how people respond (see Snow et al.

1986). It would then analyze how those with grievances assess their options (possibly including individual action, collective action, and doing nothing), examine what options they choose, and trace what they do if initial attempts to resolve their grievances fail. Unfortunately, the ideal design is not practical; no one studying any movement has data on all the relevant actions and sequences of events.

What should a practical study of EEO litigation focus on? Arguments can be made for various designs, but the lack of previous quantitative work on legal mobilization means there are few models. This article is based primarily on an analysis of virtually all published decisions in EEO cases concerning discrimination on the basis of race, religion, sex, and national origin decided by the federal appellate courts from the adoption of the Equal Pay Act of 1963 to early 1985. The focus is on appellate courts (including the Supreme Court) because their decisions are the most important; their decisions become the leading cases and establish the critical precedents (Howard 1981; Priest 1980), and it is widely believed that what happens in the appellate courts will be critical for women and minorities in their battle against discriminatory employment practices (Belton 1981; Bergmann 1986; Glazer 1978).

The method employed is content analysis, which has been at the center of quantitative work on social movements ever since the pioneering work of Gamson (1975) and Tilly (1978). Systematic content analysis is becoming more important in the social scientific study of law as well, but few studies thus far employ multiple coders and utilize conservative measures of reliability to gauge data quality (Johnson 1987). This study does both.

The cases include those based on Title VII, the most comprehensive EEO law, and those based on other laws prohibiting some forms of discrimination in employment, including the Equal Pay Act of 1963 (29 U.S.C. sec. 206[d]), which prohibited paying men and women different wages for the same work; the Civil Rights Acts of 1866 and 1871 (42 U.S.C. sec. 1981 and 42 U.S.C. sec. 1983, respectively), which prohibited racial discrimination in various contexts; the United States Constitution; and the Railway Labor Act of 1926 (45 U.S.C. secs. 151–88) and the Labor Management Relations Act of 1947 (29 U.S.C. sec. 151 and following), which banned certain forms of racial discrimination by treating it as an unfair labor practice.

The focus is on the ultimate court resolution of EEO disputes; the unit of analysis is therefore the case, not the decision; cases heard more than once were coded as of the final decision (as of the cutoff of data collection). Cases were included if they were published in volumes 1–36 of *Fair Employment Practice Cases* (Bureau of National Affairs 1969–86), if they were either based on the Equal Pay Act of 1963 or decided after July 2, 1965 (the effective date of Title VII), if they were decided during

or before February 1985 (the cutoff date of vol. 36, the last volume available when data collection was completed), and if the report of the case was at least one page long (shorter opinions provide too little information to be useful). So-called reverse discrimination cases were not analyzed. The total number of cases analyzed was 2,081 (Burstein 1988). Further description of the data, data collection, and reliabilities may be found in Burstein and Monaghan (1986).

Three other aspects of the research design require explanation. First, the cases include those brought by individuals acting on their own as well as those involving groups or organizations. Tilly (1978, p. 85) would not consider such cases collective actions, so he might exclude them from a study of mobilization. Many laws, however, and particularly Title VII, are intentionally structured so that individuals acting on their own are also effectively acting on behalf of others—the legal phrase is that they are acting as "private attorneys-general" (Zemans 1983). Particularly with regard to published appellate court decisions, which may influence vast numbers of workers and employers, it is essential to include cases brought by individuals in any meaningful study of legal mobilization as a social movement tactic.

Second, appellate decisions are not a random sample of disputes about allegedly discriminatory employment practices; they are produced through a complex and little-understood process in which many initial complaints about employment practices are winnowed down to the few leading to appellate decisions. But the justification for studying appellate cases is not in their being a random sample but rather in their great importance; they influence the judgments of employees (and their lawyers) about whether particular disputes are worth pursuing and set the terms within which employees bargain with employers or unions in the hope of settling out of court.[3] The approach I take here is essentially that adopted in all studies of politics in which social scientists focus on the especially important (major revolutions, protests deemed newsworthy by the *New York Times* or worth describing by historians) or the especially accessible (public protests rather than private discussions). This may not be ideal, but it is practical and useful.

[3] See Priest (1980) and Eisenberg (1988) for a discussion of these issues. Kuhn (1987) briefly analyzes the possible relationship between the experience of employment discrimination and the perception of it; Donohue and Siegelman (1989) analyze changes in the EEO caseload in the district courts; and Eisenberg and Schwab (1987) and Eisenberg (1988) discuss trends in outcomes in EEO cases in the district courts. None of these formally link what happens at one stage of the mobilization process to what happens at other stages; none distinguish among different minorities and women, and, with the exception of federal involvement in the cases (to be discussed below), none provide data on the role of organizational involvement in the cases.

Third, and finally, although this article is justified in part by the desire to show how social movement activity ultimately affects labor-market outcomes, it does not actually do so; it does not show how judicial decisions have influenced employers. But, again, the contrast should be not with an ideal design but with designs that are practical and conventional. To the extent that studies of social movements are about politics, as opposed to being organizational studies that happen to focus on organizations involved in politics, they must be concerned ultimately with the achievement of political goals (Gamson 1975). Yet most studies of movements focus on their actions and organization, neglecting to show how action and organization affect the attainment of particular goals (presumably because of the difficulty of doing so). Here the focus is on a particular goal: the winning of court cases. The goal is an intermediate one, not the ultimate goal of improving labor-market outcomes for minorities and women, but it is a meaningful one nevertheless.

MOBILIZING THE EEO LAWS

How often will laws be mobilized by those they are intended to protect? Two hypotheses are especially important. The first, which Galanter calls the "underlying activity" hypothesis (1990), is that mobilization will be a function of the incidence of activities prohibited by the law—in this case, discrimination in employment; the number of complaints initiated by members of a group will depend on the size of the group and the pervasiveness of discrimination its members face. The second is that the relationship between being treated badly and taking legal action is problematic—a group's mobilization of the EEO laws may depend on how it is organized, its members' perceptions of their circumstances, economic conditions, and the political climate, and on some objective measure of what happens to its members (Galanter 1983, p. 61; 1990; Stinchcombe 1978, p. 40; Jenkins 1983, p. 530; Zemans 1983, p. 697). If the underlying-activity hypothesis is correct, the mobilization of EEO laws should have been very frequent initially (perhaps allowing for a delay while people learned about them), in line with the high levels of discrimination existing in the 1960s, and should then have gradually declined, in line with the decline in discrimination widely believed to have occurred. If, in contrast, the relationship between discrimination and legal mobilization is problematic, mobilization could occur in any pattern; if the climate for enforcement were relatively favorable, as many believed it to be in the 1960s and at least the early 1970s, mobilization might have increased as groups learned to use the laws and saw themselves winning cases, while mobilization may have declined in the 1980s as the political climate changed.

What proportion of disputes should be expected to revolve around each basis of discrimination (that is, race, religion, sex, and national origin)? If mobilization were simply a function of the incidence of discrimination, then the larger a group, and the more pervasive the discrimination against it, the greater the proportion of all disputes it would initiate. Estimates of the pervasiveness of discrimination against various groups suffer from considerable uncertainty, but enough is known to permit some conclusions about relative victimization and hence about the plausibility of seeing mobilization as primarily a function of victimization.

Women are the largest group to suffer from employment discrimination, and studies that gauge discrimination in the usual social scientific way, by measuring intergroup income differences with indicators of human capital controlled for, suggest that women also suffer more from discrimination than racial, religious, or national-origin minorities (Cain 1986; admittedly, not everyone agrees). They should therefore initiate the highest proportion of EEO disputes. Blacks might be responsible for the next highest proportion of disputes; they are a much smaller group but have suffered greatly from discrimination. (Under the law, black women may complain of discrimination as blacks, or as women, or as both; the data do not identify black women specifically.) The proportion of cases initiated by national-origin and religious minorities is difficult to predict; many Americans are members of ethnic and religious minorities (including Catholics, the victims of much discrimination in the past), but they are believed to suffer little discrimination these days.

Trends in mobilization and the proportion of EEO disputes involving each basis—race, sex, national origin, and religion—are shown in table 1, which presents data on both complaints to the Equal Employment Opportunity Commission (EEOC) and appellate court decisions.

The data are consistent in one way with the underlying-activity hypothesis. Over 80% of EEO disputes involve claims of racial or sexual discrimination, while only about 10%–12% have been based on national origin (with two-thirds of those cases involving Hispanics) and 2%–3% on religion (with about half of those claims involving Jews). The data thus conform to contemporary notions that discrimination on the basis of national origin and religion is less pervasive than that on the basis of race or sex. (The decline in discrimination against national-origin and religious minorities is a worthy subject in its own right. But the small percentages represent thousands of changes per year, so these kinds of discrimination must be seen as still of some importance.)

The data are more consistent with the alternative hypothesis, however—that mobilization depends on ideas, organization, economic conditions, and political climate as well as victimization. Complaints and cases have increased rather than declined, a result more explicable in terms

TABLE 1

CHARGES AND COURT CASES, BY BASIS

	TOTAL		% RACE		% SEX		% NATIONAL ORIGIN		% RELIGION	
YEAR	Charges	Cases	Charges	Cases	Charges	Cases	Charges	Cases	Charges	Cases
1965.....	. . .	1	. . .	100	. . .	0	. . .	0	. . .	0
1966.....	5,522	7	59	100	37	0	2.4	0	1.6	0
1967.....	7,449	5	64	80	27	0	6.4	20	2.3	0
1968.....	10,072	11	66	82	24	18	7.2	0	2.9	0
1969.....	13,674	17	70	65	20	29	8.0	6	2.4	0
1970.....	16,802	24	70	83	21	8.7	6.1	8.7	2.3	0
1971.....	24,934	63	62	72	23	21	12	3.3	2.7	3.3
1972.....	44,401	81	62	63	24	31	12	3.8	2.6	2.6
1973.....	103,700*	77	53	60	33	36	12	2.7	2.2	1.4
1974.....	118,561	87	55	61	33	29	10	6.7	2.3	3.4
1975.....	62,507	122	55	57	32	36	10	2.5	2.3	4.2
1976.....	100,463	110	56	63	31	27	11	4.9	2.4	4.9
1977.....	84,027	177	57	47	30	43	11	6.1	2.3	3.7
1978.....	67,403	131	57	46	30	45	11	7.8	2.1	1.4
1979.....	74,838	126	53	42	30	48	11	4.8	6.3	4.8
1980.....	84,351	190	54	50	33	39	10	8.7	2.2	2.0
1981.....	87,506	216	52	52	35	36	11	7.5	2.3	3.7
1982.....	83,120	204	51	51	36	44	10	2.8	2.3	1.9
1983.....	99,093	209	49	49	36	45	11	4.5	2.5	.9
1984.....		198		46		43		8.4		2.5
1985.....		25		48		43		4.3		4.3

NOTE.—Charges include only Title VII; data are available on Equal Pay Act complaints from the late 1970s on, and inclusion of such complaints would increase somewhat the percentage involving women. Charges included above are those listed under race, religion, national origin, and sex only, other bases, including retaliation, are ignored. No data are available on charges for 1984 and 1985. Cases brought under all relevant laws, including secs 1981 and 1983, used mostly by blacks, are included. In the EEOC Annual Reports, cases with multiple bases are apparently counted separately under each; to conform with this, court cases involving allegations of both race and sex discrimination were also double counted, but the bases in cases coded originally as "other combination" could not be disentangled, so such cases, amounting to 6 2% of the total, were excluded from this table. "Reverse discrimination" cases were also excluded The 1985 total extends through end of data collection only.

* Coverage of Title VII expanded to include state and local governments.

of group perceptions and organization than in terms of victimization (Donohue and Siegelman [1989] reach analogous conclusions for cases at the district level).

Comparing the different groups gives this interpretation greater force. Immediately after Title VII was adopted, blacks initiated far more EEO disputes than any other group—through 1970, about two-thirds of the official charges and three-fourths of the appellate cases—even though women were arguably even more disadvantaged in the labor market. The most plausible reason for this is that blacks were far better organized to take advantage of Title VII. They were highly conscious of discrimination and were widely perceived as its victims, they were relatively well organized, and they had long used litigation to attack discrimination.

The proportion of disputes involving blacks has slowly declined, however (to a degree statistically significant at the .01 level), because sex-discrimination claims have increased—recently almost as many appellate cases concern discrimination based on sex as on race. This increase must be partly due to women's increasing participation in the labor force, but that cannot be the whole explanation because women have long outnumbered blacks in the labor force. Much of the increase is probably due to increases in both the prevalence of the belief that women deserve to be treated as well as men and the organizational strength of women's organizations (see Bergmann 1986). The mobilization of EEO laws must depend on more than victimization.

WINNING AND LOSING

"Success," Gamson has noted (1975, p. 28), "is an elusive idea" when one studies social movements, difficult to define and measure. One advantage of studying court cases is that it is relatively clear who has won and who has lost (albeit with regard to small skirmishes in a much larger conflict). Even so, questions may be raised about how much plaintiffs have to gain to be declared winners—Must they get everything asked for? Half? Anything?—and whether plaintiffs might be deluded into thinking they have achieved a meaningful victory when they have only been co-opted.

The approach I adopt here parallels Gamson's. I count all victories as being for the plaintiffs, even if they did not get all they asked for and even if an outside observer might not interpret the result the same way as the participants. The victories are analogous to what Gamson calls "new advantages," as opposed to "acceptance," which, by his definition, is gained by any group that has gotten to court (for further discussion of the problems involved in measuring success in litigation, see

Eisenberg and Schwab [1987, pp. 676–77] and Burstein and Monaghan [1986]).

What proportion of cases might plaintiffs be expected to win? Previous work on social movements makes no specific predictions about the likelihood of victory for challenging groups, for the overall cause they represent, or for specific conflicts that might be part of a larger struggle. The implicit message of most such work, however, is that it is very difficult for outsider groups to organize and succeed (Gamson 1975); victories are likely to be the exception rather than the rule.

Much work in the sociology of law reaches the same conclusion; the poor or disadvantaged are seen as likely to lose in court, especially when confronting employers (e.g., Galanter 1974; Wheeler et al. 1987).

There is a competing point of view, however. Priest and others (Priest 1980; Priest and Klein 1984; cf. Galanter 1974) suggest that the decision to go to court is the product of a careful consideration of likely costs and benefits. It makes no sense to predict that plaintiffs will generally lose because, if plaintiffs see they are likely to do so, they will try to settle out of court or even decide not to pursue the case in the first place. (McAdam [1983] makes a similar argument when discussing why protesters would abandon a tactic once their opponents had developed an effective countertactic.) Potential defendants would make similar calculations. The cases fought out to a judicial decision would be those whose outcome is most uncertain. Over time one would expect plaintiffs to win roughly half the time, and defendants the other half. Large departures from such a division would cause cases whose characteristics are associated with losses to be brought less frequently, with the result that, in the long run, plaintiffs would win about half the time.

From this point of view, if the legal system were working against EEO plaintiffs, the result would be seen not in consistent losses but in initial losses leading to the realization that the odds are against them and in their ceasing to bring as many cases. As we have already seen, however, both complaints and appellate cases continue to increase.

Predicting the likelihood of victory is further complicated by the possibility that not all groups win equally often. Some scholars argue that the courts are more sympathetic to blacks than to women, while others have claimed the reverse; it has also been suggested that plaintiffs whose cases are based on national origin are especially unlikely to win (O'Connor and Epstein 1983; Stidman, Carp, and Rowland 1983; Keotahian 1986).

In addition, the likelihood of victory may change. Some have argued that EEO cases may generally become more difficult to win over time, as the relatively easy cases involving blantant discrimination are resolved and are succeeded by more difficult, second-generation cases in which

the issues are subtler and discrimination harder to prove (Blumrosen 1984). Or changes in the political climate may affect how sympathetic federal agencies or judges are to EEO plaintiffs.

Data on plaintiff victories, the relative success of different groups, and change over time are presented in table 2, which is derived from a log-linear analysis of a three-way cross-tabulation of case outcomes (victory vs. defeat) by basis and by presidential administration (using the program described in Norusis [1986, chap. 7]). The data are divided by administration because, although no theory predicts how the proportion of victories might change over time, many observers argue that the enforcement of EEO legislation has changed from administration to administration, with Presidents Johnson and Carter being more sympathetic to plaintiffs than Nixon, Ford (included with Nixon in the tables), and, especially, Reagan. Because appellate cases take considerable time to come to fruition and presidential influence takes time to make itself felt, the periods are lagged by a year, so cases included as President Johnson's run through the end of 1969, Nixon's and Ford's from 1970 through 1977, Carter's from 1978 through 1981, and Reagan's from 1982 on. (Other lags and periodizations, including dividing the cases into those decided before and after the 1972 amendments to Title VII and dividing them into periods each containing roughly a fourth of the cases, produce substantively identical results. Changes occurring after 1985, the most recent data included, could not be taken into account.)

Contrary to what one might expect from previous work, plaintiffs do not lose most of their cases, or even half—they win 58% for the whole period. Over time, the likelihood of plaintiff victory does decline but very slowly; the correlation with year is $-.085$. This trend is the same for all groups; blacks register the greatest decline ($-.11$), but it is still small.[4]

Although groups share a trend, they are not all equally likely to win. Blacks and women do equally well (both separately and in suits involving both), but they are significantly more likely to win than either national-origin or religious minorities. This runs counter to claims that judges are more favorable to blacks than to women, or vice versa, but supports the suspicions of some that national-origin and religious minorities are not treated as well. Most likely to win are plaintiffs in cases involving other combinations of bases—meaning, most often, allegations of discrimination on the basis of race, sex, and national origin.

Some groups may do better than others for various reasons. Judges may be more sympathetic to blacks and women than to national-origin

[4] Plaintiffs appear to do better at the appellate level than at the district court level; neither this difference nor some variations among subsets of cases can be explained very well at the current stage of theoretical development (see Eisenberg 1988).

TABLE 2

PERCENTAGE OF CASES WON BY PLAINTIFFS, BY BASIS AND ADMINISTRATION

Basis	Johnson	Nixon	Carter	Reagan	1965–85
Race (n = 969)	77	62	53	54	58
Sex (n = 675)	67	61	59	55	58
National origin (n = 119)	0	58	38	53	47
Religion (n = 58)	. . .	42	60	25	45
Race and sex (n = 132)	100	62	55	57	58
Other combination (n = 128)	100	76	62	55	67
All groups	73	62	55	54	58
N	41	740	658	633	2,081

NOTE.—Relationship between basis and victory significant at .01; between victory and administration at 002, among all three variables, N.S. Ellipses indicate that there were no cases in original tables (see text)

or religious minorities, feeling that the discrimination blacks and women face is more serious. Differences in how the groups are treated in the statutes and by administrative agencies may be important; for example, employers can treat sex, national origin, and religion, but not race, as bona fide occupational qualifications, and employers are required to keep more detailed records about the race and sex of their employees than about their national origin or religion. Or some groups may have more resources or be better organized than others. It is to this last possibility that I now turn.

ORGANIZATIONAL MOBILIZATION AND PLAINTIFF VICTORY

Central to current work on both social movements and legal mobilization is the idea that resources matter, that individuals and groups challenging the status quo are likely to lose unless they acquire more than their original resources—by organizing, gaining assistance from powerful organizations, acquiring the help of experts (including good lawyers), and so forth (Gamson 1975; McCarthy and Zald 1977; Jenkins 1983; Jenkins and Eckert 1986; Galanter 1974; Lempert and Sanders 1986, pp. 396–97; Wheeler et al. 1987).

The EEO and other laws provide four ways for potential EEO plaintiffs to overcome initial disadvantages by pooling resources—that is, by turning individual suits into collective actions (see Tilly [1978] on collective action). Multiple plaintiffs may join in a class action; the federal government may become a plaintiff with or on behalf of alleged victims of discrimination; the federal government may file an amicus curiae brief on behalf of the plaintiffs; and other individuals and organizations (in-

cluding civil rights and women's organizations) may act as amici curiae and provide legal assistance.

How often do EEO plaintiffs utilize these modes of collective action? Do all the groups take equal advantage of them? Is the likelihood of engaging in collective action changing over time? And, most critically, is collective action related to victory?

Table 3 shows how often each group has been involved in each type of collective action. The most common form of collective action—used in 45% of the cases—is class action (table 3, pt. D). Help from the federal government is much less frequent; it is a party in 16% of the cases and acts as amicus in 8%. Nonfederal organizations participate infrequently—acting as amicus in just 7% of the cases—as might be anticipated from previous work on the difficulties faced by reform organizations trying to participate in the judicial process (e.g., Handler 1978, chap. 4).

Table 3 also shows who gets the available help. All groups are equally likely to get help from a federal or nonfederal amicus. But federal involvement as a party and class actions are a different matter. Cases involving combinations of bases—of both race and sex and of other combinations—are especially likely to involve class action or the federal government as a party. Many such combination cases are "pattern or practice" suits brought against large employers, challenging a wide range of employment practices affecting most or all employees. It is easy to see why such cases would be organized on a class basis and why there would be federal involvement.

In cases involving complaints about only one type of discrimination—race, sex, religion, or national origin—race and sex cases are significantly more likely to involve a federal party or class action than cases involving national origin. Plaintiffs alleging religious discrimination are really on their own, compared with members of other protected groups; very few religion cases involve federal plaintiffs or class action. The few legal scholars writing on national-origin EEO cases complain that such cases are not taken as seriously as race and sex cases (e.g., Keotahian 1986); they do get less help than blacks or women, but those bringing religion cases are even less likely to be aided by the federal government or even by other individuals in the same minority.

From one perspective, EEO plaintiffs are increasingly well organized over time, because the number of cases involving collective action has increased. Before 1975, for example, the federal government was a party in roughly 10 cases per year; in the 1980s, however, the number rose to about 23. Similarly, federal participation as amicus rose from five cases per year to 12 or so, nonfederal amici from 2.5 to 16, and class actions from 25 to 75 (in the face of a substantial decline in the total number of

TABLE 3

PERCENTAGE OF ORGANIZATIONAL MOBILIZATION BY BASIS AND ADMINISTRATION

Basis	Johnson	Nixon	Carter	Reagan	1965–85
A. Cases in which federal government was party on side alleging discrimination:*					
Race (n = 969)	32	19	9	8	13
Sex (n = 674)	17	22	16	15	17
National origin (n = 119)	0	18	6	9	10
Religion (n = 58)	. . .	4	5	8	5
Race and sex (n = 131)	100	15	33	14	22
Other combination (n = 128)	100	49	28	9	34
All groups	32	21	14	11	16
N	41	741	662	635	2,079
B. Cases with federal amicus on side alleging discrimination:†					
Race (n = 956)	10	11	6	4	8
Sex (n = 667)	50	12	9	5	9
National origin (n = 118)	0	6	14	6	9
Religion (n = 58)	. .	20	25	0	17
Race and sex (n = 131)	. .	12	8	5	8
Other combination (n = 128)	0	5	8	12	8
All groups	12	11	9	5	8
N	25	736	662	635	2,058
C. Cases with nonfederal amicus on side alleging discrimination:‡					
Race (n = 955)	0	6	7	8	6
Sex (n = 669)	50	6	6	8	7
National origin (n = 117)	0	6	10	6	8
Religion (n = 58)	. . .	12	5	0	7
Race and sex (n = 131)	. . .	12	6	9	8
Other combination (n = 128)	0	10	8	22	12
All groups	4	7	7	8	7
N	25	735	662	636	2,058
D. Cases that are class actions:§					
Race (n = 962)	52	56	43	38	47
Sex (n = 671)	33	52	40	36	42
National origin (n = 118)	0	25	34	24	28
Religion (n = 58)	. . .	4	5	8	5
Race and sex (n = 129)	0	58	63	55	58
Other combination (n = 127)	100	90	51	53	70
All groups	46	54	42	38	45
N	41	734	656	634	2,065

NOTE —Ellipses indicate that there were no cases

* Relationships between basis and federal party, basis and administration, and federal party and administration all significant at < 001; relationship among all three variables significant at 05 by log-linear analysis, likelihood ratio χ^2

† Relationship between federal amicus and administration statistically significant at 001, between basis and federal amicus, and among all three variables, N S.

‡ Relationships between basis and amicus, amicus and administration, and among all three variables, N S.

§ Relationship between basis and class action, and between class action and administration, significant at < 001, among all three variables, N S

class actions pursued in federal court; see Martin 1988). The number of cases has grown even faster, however, so the proportion involving a federal party, federal amicus, or class action has declined (there is no statistically significant trend for nonfederal amici). Despite the increase in organizational resources devoted to EEO cases, therefore, the average plaintiff is more likely to be proceeding on his or her own in the 1980s than he or she was earlier.

In general, the trend has been the same for all groups—the proportion of cases involving federal amici or class action has declined, while the proportion involving nonfederal amici has remained constant (i.e., there are no three-way interactions of basis and administration with federal amici, nonfederal amici, and class actions; it must also be noted that the percentages for the Johnson administration have to be viewed especially cautiously because the numbers involved are small). The story is a bit different for the participation of the federal government as a party, however. Here the three-way interaction among basis, administration, and federal involvement is statistically significant. No particular cell parameter reaches statistical significance, but the most notable changes in table 3 may be the decline of federal participation over time in race-discrimination cases and other combination cases. Perhaps the federal government focused special efforts in the early years on race-discrimination cases and major "pattern or practice" cases, as some scholars have surmised (see Freeman 1975; O'Connor and Epstein 1982) but has shifted its focus in recent years.

The data lead to four especially important conclusions about the organization of EEO cases. First, collective action is very common at the appellate level. Second, groups must rely primarily on themselves for help and only secondarily on the federal government; nonfederal organizations help infrequently. Third, the number of cases involving collective action has continued to grow (including those involving federal participation) under the Reagan administration, but total cases have grown even faster, so EEO plaintiffs increasingly proceed on their own. And fourth, even beyond the fact that most complaints involve race or sex discrimination, a disproportionate share of the resources devoted to the struggle for EEO is used to attack discrimination on the basis of race and sex.

Is all this collective action associated with plaintiff victory? Does it make more difference for some groups than others? And has the relationship between collective action and victory changed over time?

The relationship of organizational mobilization, basis, and administration to victory is described in table 4. Plaintiffs are much more likely to win when the federal government is a party than when it is not—74% of the time as opposed to 54% (statistically significant at less than .001). In table 4, part A, the positive numbers are for those bases and periods

TABLE 4

ORGANIZATIONAL MOBILIZATION AND PLAINTIFF VICTORY (%)

Basis	Johnson	Nixon	Carter	Reagan
A. Plaintiffs' success when federal government was party, compared with cases when it was not:				
Race	33	24	3	18
Sex	−80	21	6	6
National origin	. . .	52	31	52
Religion	. . .	−44	42	82
Race and sex	. . .	46	39	7
Other combination	. . .	6	−3	13
All groups	28	24	11	13
B. Plaintiffs' success with federal amicus on the side alleging discrimination, compared with cases without:				
Race	−26	9	31	22
Sex	−100	7	8	28
National origin	. . .	−8	6	50
Religion	. . .	−3	0	. . .
Race and sex	. . .	7	22	10
Other combination	. . .	25	5	−17
All groups	−32	6	15	21
C. Plaintiffs' success with nonfederal amicus on the side alleging discrimination, compared with cases without:				
Race	. . .	1	2	12
Sex	100	9	2	15
National origin	. . .	−60	−20	−56
Religion	. . .	−12	42	. . .
Race and sex	. . .	44	48	25
Other combination	. . .	−30	41	15
All groups	29	−1	4	13
D. Plaintiffs' success in class actions, compared with other cases:				
Race	21	17	14	13
Sex	50	23	9	11
National origin	. . .	−25	−4	13
Religion	. . .	60	42	−27
Race and sex	. . .	12	27	16
Other combination	. . .	29	16	16
All groups	30	20	11	13

NOTE.—Ellipses indicate that there were no cases.

in which plaintiffs are more likely to win when the federal government is a party than when it is not. Thus, for example, the number 33 in the upper left cell is derived by subtracting the 67% of race cases won during the Johnson administration when the federal government was not a party from the 100% of cases won when it was. Negative numbers mean association with a federal party is linked to a reduced likelihood of victory,

and ellipses mean that there were no cases on which a comparison could be based.

We see in part A of table 4 that groups associated with a federal party do better during almost all periods, as predicted in previous work (Handler 1978, chaps. 4 and 6). Log-linear analysis shows that gaining federal help as a party helps all groups roughly equally, and its effect has remained constant over time (the four-way interaction among all variables is not statistically significant at .05, and there are no statistically significant three-way interactions with the likelihood of victory).

We cannot be sure, of course, that federal participation was the cause of victory.[5] Nevertheless, when trying to understand why plaintiffs in cases involving national origin and religion are less likely to win than others, it is worth knowing that federal participation is associated with victory for all groups. What distinguishes cases involving national origin and religion from others is the fact that the federal government is a party significantly less often (see table 3, pt. A).

Federal amici and class actions are also associated with plaintiff victory. Seventy percent of cases with federal amici (present in 8.4% of all cases) lead to plaintiff victory, compared with 56% of cases without; 66% of class actions (which constituted 45% of all cases) lead to plaintiff victory as compared with 50% of cases involving individuals or small groups (both significant at less than .001). Participation by nonfederal amici is also associated with victory, but the numbers of cases are so small that the relationship is not statistically significant ($P = .24$). These relationships hold for all groups and time periods.

Thus, federal participation and class actions are associated with plaintiff victory. Differences among protected groups in the likelihood of victory are associated with differential participation in collective action, not differential effectiveness of whatever collective action there is. Cases with multiple bases for the complaint (race and sex, race and national origin, etc.) are the most likely to involve collective action and the most likely to lead to plaintiff victory; race and sex cases are next in both categories; and national origin and religion cases are least likely to involve collective action and least likely to lead to victory. The data provide some basis for arguing that organizational resources have been concentrated on ending discrimination against the most victimized groups—blacks and women—and that this concentration of resources has had the intended effect

[5] For example, federal attorneys might choose to pursue only especially strong cases. The federal government is more likely to lose than nonfederal parties, however, when it is a defendant. This suggests that the findings are probably not simply the consequence of federal attorneys' choosing cases that will be easy to win (see Eisenberg 1988).

of increasing the number of victories such groups win. But it may be that there has been a price to be paid by national-origin and religious minorities.[6]

CONCLUSIONS

In this article, I have analyzed the mobilization of EEO laws in the context of work on social movements. I have shown that the mobilization of EEO laws has increased since the mid-1960s, that collective action has become more frequent, that collective action is associated with victory, that there are some significant differences among protected groups, with blacks most central to the struggle for EEO and women's cases gaining in importance, and that there has been no dramatic decline in the help available to EEO plaintiffs or in their likelihood of victory.

I have argued that it is useful to analyze legal mobilization as a social movement tactic—the pursuit of movement goals through one sort of proper channel. Analysis of one aspect of the mobilization of EEO laws—federal appellate court cases—leads to some conclusions very much in keeping with recent work on social movements. They are that the relationship between grievances and mobilization is problematic, that blacks remain central to the struggle for equality in the United States, that resources matter for challengers of the status quo, and that the federal government may be extremely important when it chooses to intervene on the side of women and minorities. I have also tried to demonstrate that legal mobilization can be gauged quantitatively in ways similar to those employed to examine actions more often seen as associated with social movements; in fact, it could be worthwhile to link the time-series data collected for this paper with that gathered by others tracing the rise and decline of other forms of movement activity (e.g., McAdam 1983; Jenkins and Eckert 1986).

From the point of view of studies of legal change, Galanter (1983) has observed that there is much speculation but little knowledge about many important issues, and when data on case populations are brought to bear,

[6] For those involved in EEO suits, the penalties imposed on discriminators will often be of great concern; victory may mean little if only token penalties are imposed. Space limitations preclude a detailed analysis of penalties, but three points are worth making. First, just under a third of penalties imposed required employers to both change practices and compensate individual victims, just over half required compensation only, and the remainder required only changes in practices. An increasing proportion of penalties require only compensation of victims. Blacks are more likely to win changes in practices than members of other groups; this may indicate that judges see the elimination of racial discrimination as requiring more fundamental changes in personnel practices than the elimination of other types of discrimination might require.

many of the speculations prove to be wrong. If more social scientists and lawyers were to analyze populations of cases in the ways suggested here, they could begin to put speculation to rest. In addition, as we have seen, their answers to some questions would raise other questions in turn—for EEO, for instance, there would be questions about why some groups get more help than others and win more often and why some phenomena (such as the proportion of victories) change so little and others so much. Such a reorientation of thinking in the study of law would improve our understanding of the legal system and our ability to relate what happens there to other institutions in the larger society.

More broadly, the article is intended to contribute to narrowing a gap almost as broad now as when Jo Freeman wrote (1975, p. 4) that "the study of social movements and that of public policy are two fields that have heretofore been treated primarily as distinct and unrelated areas in the scholarly literature." Despite the recent upsurge of interest in the state among sociologists, including those who study social movements, most of their effort is still devoted to the study of outsider tactics and relatively little to government institutions, particularly legal institutions. Yet, as Freeman pointed out (1975, p. 2), "political change does not involve isolated efforts either within or without the system. . . . Rather it involves a dynamic system of reciprocal influences whose effects are determined by their mutual relationships." McAdam is right when he writes (1983, p. 752) that, "to succeed over time, then, a challenger must continue its search for new and effective tactical forms," but I claim he is wrong when he goes on to say that "with the abandonment of the riots in the late 1960s, insurgents were left without the tactical vehicles needed to sustain the movement. . . . By decades end the movement had not so much died as been rendered tactically impotent." He should have considered the possibility that part of the movement was able to innovate by turning to legal channels and developing new approaches to legal doctrine. Here I would agree with Jenkins and Eckert, whose view seems more in line with Freeman's when they write (1986, p. 827) that, "as the women's and environmental movements have demonstrated, litigation, close monitoring of government agencies and professional lobbying can be quite effective if allied with an indigenous movement and if there is a clear statutory and administrative basis for implementation."

In trying to bridge the gap between the study of social movements and that of public policy, I have presented data that implicitly raise a number of questions about the struggle for equal opportunity in the United States. Why do EEO complaints and cases continue to increase in number? Why is the federal government so important and why are nonfederal organizations so rarely participants in EEO cases? Why do national-origin and religious minorities seem to have greater difficulty winning

their cases than blacks or women (an issue of potentially great significance as the number of Hispanics, Muslims, and other groups increases)? And, not least, how might we explain the unexpectedly high rate of victory for black and female plaintiffs? Questions may also be raised about the relationship between legal mobilization and the substantive content of the judicial decisions and between what the judges say and what actually occurs in the workplace. To the extent that these questions are taken seriously, I will have succeeded in bringing social movements and the mobilization of law together in this article.

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