Weak State, Strong Policy:

Paradoxes of Race Policy in the United States,

Great Britain, and France

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Race, in particular the peculiarly American embrace of political race-consciousness, is often portrayed as an important source of limitations on American political development. Although the color line has undergirded some of the most notorious instances of state repression in American history — the pre-civil rights South most notably, but also race-based immigration and citizenship restrictions and the FBI’s COINTELPRO operations of the Cold War era, to name a few — race is most commonly associated with state weakness through its effects on such processes as regional differentiation, class formation, and welfare state building.¹ These accounts fit nicely into conventional approaches to American political development, which similarly emphasize the peculiar weakness and fragmentation of the American state.²

One of the fundamental paradoxes of race in American politics, however, is that the same race-consciousness that has inhibited state development has also enabled the United States to take a distinctively energetic policy approach to the problems of racial inequality that has evolved in large measure despite the deeply historically embedded constraints on the American state’s capacity to protect civil rights. In particular, the United States has pursued a race-conscious approach to attacking racial discrimination, developing policies such as affirmative action that offer compensatory advantages to members of historically or currently disadvantaged groups.³ The American approach involves directing benefits and opportunities toward individuals who belong to discrete, identifiable groups within society. This sort of targeting, in turn, presupposes that these groups — African-Americans, Latinos, and women, principally — constitute legitimate political categories and that those who fall into these categories are due special consideration in certain social, political, and economic contexts.
In comparative context, this paradox appears even more puzzling. Great Britain and France, among other countries, have faced similar problems of racial conflict and inequality since World War II but have taken rather different approaches to addressing them. In the 1960s and 1970s, American, British, and French policymakers all enacted major policies that sought to define and outlaw discrimination. These national policies, however, diverge in two crucial respects. First, they embody starkly different conceptions of race policy, spanning a spectrum from race-consciousness to color-blindness. Second, they mobilize state power very differently to protect minorities from discrimination. In both of these respects, the comparative context reveals ironies in the development of American race policy.

In the United States, race-conscious practices evolved out of a resolutely color-blind law, the Civil Rights Act of 1964, which was a compromise product of the fragmented and decentralized structure of American policymaking. The compromise also produced a fragmented and individualistic enforcement regime that frustrated the more comprehensive designs of civil-rights advocates who sought more active race-conscious policy. The “weak” American state, however, not only produced more active and extensive enforcement of antidiscrimination law; it also managed to challenge the color-blind presumptions of its own law and to forge an extensive network of race-conscious policies and practices that have proven strikingly resilient in the face of political and legal challenges.

French antidiscrimination policy, like American policy on paper, is color-blind. It does not recognize racial or ethnic groups either as legitimate social or political categories or as targets for policy. Like the United States, France outlaws active, intentional discrimination on the grounds that treating individuals differently on the basis of race or ethnicity (among other categories) violates basic norms of equality and fairness. Similarly, neither France nor the United States vests power in a concentrated, unified arm of the state to enforce antidiscrimination law (although they in fact took quite different
in institutional approaches). Despite the centralization and coercive capacity of the French state, however, the enforcement of French antidiscrimination law has been relatively anemic. Unlike the United States, moreover, France has not gone beyond the color-blind frame and the model of individual discrimination to embrace a more collective approach that attempts to compensate for inequalities between groups.

British policy not only mirrors the American approach in its acceptance of race-consciousness but appears even to go beyond the American model, explicitly inviting race-conscious, group-level remedies for employment discrimination. The British law, moreover, created a single state agency to oversee antidiscrimination enforcement. But the British state has been reluctant to take up its explicit authority to pursue these more collective approaches. Neither the French nor the British state has followed the United States down the race-conscious path, with the result that these “strong” states have generated less enforcement activity — and proven less successful at shaping their societies — than the administratively “weak” American state.

At the most general level, these policy differences reflect underlying differences in the political cultures of the three countries, which shape the rationales by which citizens and policymakers interpret racial divisions in their societies and connect problems and solutions. These countries share a tradition of political liberalism, rooted in ideas of individual rights and political equality, and consequently all of them share to some degree the basic presumption of color-blindness. Nevertheless, within the broad confines of liberalism they start from different cultural presumptions to arrive at different approaches to race as a political problem. Britain and the United States, although shaped by different racial histories, share a common approach toward defining race as a political category and framing issues of race policy, one that accepts the political legitimacy of racial and ethnic group identities and aims at managing race relations in a multicultural context. France, by contrast, has explicitly rejected a race-relations approach, emphasizing instead the absorption and assimilation of minorities into a common civic and cultural model of
And yet these national cultural dispositions do not map cleanly onto patterns and outcomes of antidiscrimination policy, especially the American decision first to adopt a color-blind policy and then, having adopted it, to pursue a race-conscious course. At the same time, neither do general accounts of national state structure and power account fully for patterns of policy, particular the peculiar strength of American antidiscrimination policy. Rather, cultural and institutional factors combine to create strategic political contexts that constrain and enable the actions of policymakers, the evolution of ideas about policy, and the mobilization and expression of social interests. Resolving the paradoxes of American race policy requires attention to all of these factors — policymaking institutions, political opportunity structures and patterns of linkage between racial groups and the state, and the cultural repertoires on which political actors in each country draw to understand the status of racial groups in their societies and to define what constitutes rational solutions to problems of racial conflict and inequality. The comparative accounts of the making of antidiscrimination policy in the three countries will consider the ways these factors combined to produce policy in particular historical contexts.

In the United States, conflict and ambivalence over color-blind and race-conscious visions of antidiscrimination policy were played out in congressional deliberations over the Civil Rights Act of 1964 and were resolved, or so it seemed, in favor of color-blindness. But the institutional form of the law and the enforcement mechanism that the law created — rooted in the same patterns of institutional fragmentation and decentralization that gave rise to the color-blind law — provided unexpected openings for advocates of race-conscious policy to press their case and push the state toward a set of enforcement practices that went beyond the initial color-blind policy settlement. In Britain and France, greater centralization of policymaking allowed policymakers to adopt strongly worded antidiscrimination laws with less contention and compromise, seeming to mobilize the formidable power of the British and French Frenchness.
states behind antidiscrimination efforts. But the same factors that produced these laws also tended to foreclose the possibility of positive race-conscious enforcement on the part of these states by limiting the avenues available for proponents of stronger enforcement to press their cause. In France this pattern reinforced a single conception of race policy that, once enshrined in policy, proved hard to dislodge; in Britain, a potentially more capacious conception of race policy was undermined because the political conditions that nurtured it proved too elusive and transitory to sustain it.

The Development of Employment Discrimination Policy

In the comparative histories of employment discrimination policy evolution in the three countries, we can trace the consequences of different configurations of race, politics, and culture in which relationships and patterns among causal factors are not stable across time and space. In particular, political differences led the United States, Britain, and France to diverge on two institutional dimensions of antidiscrimination policy. The first is the centralization and coordination of antidiscrimination policy: is policy streamlined and is power vested in a single agency, or is it fragmented and dispersed among several state organs? The fragmentation of policy and power might indicate coordination problems that could lead to weak enforcement, with important racial consequences. The second aspect of institutional context is the individual or collective nature of the enforcement power. Is the state's enforcement role to resolve individual claims of discrimination, or is it empowered to regulate employment practices more generally through collective powers of coercion?

Together, these dimensions of antidiscrimination institutions have shaped the implementation of policy and the development (or nondevelopment) of affirmative action or other practices that entail some form of race-conscious classification. Once they were established, these antidiscrimination policies
interacted with the political and institutional configurations in which they were forged to produce often unintended and unexpected results. To highlight these processes, the comparative narratives focus on three political factors that shaped policy developments: the politics of legislative coalition formation; the nature of the administrative state and its potential independence from political control; and the existence of independent courts and other avenues for political influence outside regular legislative policymaking channels. In the United States, the fragmented and individualistic enforcement regime established in 1964 created the arena in which battles over enforcement would be carried out by the same institutional and political forces responsible for its creation. Those battles involved many of the same political imperatives (and many of the same actors) that had driven the politics of the Civil Rights Act — the building and maintenance of party and legislative coalitions, movement pressures, and legal strategies in federal courts. But these imperatives were now filtered through a new legal and institutional prism that reconfigured antidiscrimination politics. In Britain and France, by contrast, the structure of party and parliamentary politics and social movements and the absence of independent courts provided fewer openings for pressures toward alternative interpretations and practices based on the law. By tracing these processes, I begin to sketch out an institutionally grounded approach to the comparative politics of race policy.

The United States

The struggle for passage of the Civil Rights Act of 1964 reflected the United States’s distinctive, race-laden institutional configuration. The fundamental problem facing President Lyndon Johnson and his lieutenants in Congress was assembling a supportive coalition that would pass a bill in both houses of Congress, over the absolute objections of most Southern Democrats and the ambivalence of many Republicans. The challenge was particularly acute in the Senate, where a filibuster was all but certain.
At the same time, the political imperative for Northern Democrats to pass serious civil rights legislation was growing stronger, due largely to African-American pressure applied through both protest and politics. The peaking civil rights movement was of course the major impetus behind the drive for a new civil rights law and the growing strength of African-American voters within the Democratic party also made civil rights an increasingly important issue for Democratic politicians at all levels. At the same time, however, the Democratic party’s tightening embrace of civil rights was already threatening to erode the party’s fragile coalition and to isolate African-American voters.  

The imperatives of coalition formation in Congress clearly shaped the formation of antidiscrimination law. Title VII of the Civil Rights Act of 1964, which outlawed racial discrimination in employment and created the Equal Employment Opportunity Commission (EEOC) to enforce the new law, joined the two issues — civil rights and labor — on which Southern Democrats reliably formed a cohesive bloc and often combined with Republicans to form a conservative blocking coalition. As Congress debated Title VII, many civil rights advocates envisioned the creation of a new agency that would wield powerful and concentrated enforcement authority. In passing a civil rights act in 1957, Congress rejected a similar approach, deleting a provision proposed by the Eisenhower administration that would have authorized the Justice Department to file civil suits to combat discrimination across a wide range of areas, including education, employment, and public accommodations (foreshadowing the scope of the 1964 act). By the early 1960s, civil rights proponents favored a similarly concentrated enforcement approach, but one that relied on executive, regulatory power rather than litigation. Such an agency, backed by statute and appropriated funds, would wield powerful and comprehensive authority over job discrimination, including the power to conduct investigations and impose sanctions on employers. This vision of administrative power involved both a streamlined structure, in which a newly constituted agency would consolidate the functions that were scattered throughout the federal and state governments, and a
strong agency, empowered not merely to mediate individual disputes but to identify and regulate broader, collective patterns of discrimination. Both of these institutional paths were frustrated by the compromise that broke the logjam in Congress and allowed the civil rights act to become law.

The EEOC began its gestation as a full-fledged regulatory agency, modeled on bodies such as the powerful National Labor Relations Board — an independent board, whose members were not subject to presidential removal, with the power to issue blanket regulations and enforce them by ordering noncompliant employers to cease and desist their discriminatory activities. A subcommittee of the House Judiciary Committee approved a bill creating such an agency in the fall of 1963, but Attorney General Robert Kennedy and his deputy, Nicholas Katzenbach, fearful that such a strong measure would sink the bill, orchestrated a compromise that dropped the EEOC’s cease-and-desist authority and gave it instead the prosecutorial authority to file lawsuits against recalcitrant employers.¹³

Although as late as January 1964, White House vote counts suggested that there was majority support in the House for a civil rights bill containing a strong agency provision, it was clear that the prospects for passage in the Senate were remote.¹⁴ The Senate rules, which required a two-thirds vote to end debate, further empowered Southerners to stall legislation; the filibuster had long been a formidable tool for Southerners in blocking civil rights bills.¹⁵ With twenty-one Southern Democrats nearly unanimously opposed to any civil rights legislation and forty-six Northern Democrats nearly unanimously in favor, support of a substantial majority of the thirty-three Republican senators was necessary to achieve the sixty-seven votes necessary to end the inevitable Southern filibuster.¹⁶ Indeed, the Senate debate on the Civil Rights Act of 1964 famously lasted three months and filled more than 60,000 pages of the Congressional Record.¹⁷

Republicans, in the tradition of the party of Lincoln, had long been more liberal on racial issues than Democrats, but that pattern was beginning to change in the early 1960s and was, at the very moment
of the civil rights debate, under conspicuous challenge in the presidential candidacy of Senator Barry Goldwater, a civil rights opponent who was one of the leading Republican strategists seeking to turn the Republican party toward a Southern strategy for contesting national elections. Nevertheless, Republicans and nonsouthern Democrats in the Senate were ideologically indistinguishable on civil rights issues as measured by Keith Poole and Howard Rosenthal’s NOMINATE scores. On Poole and Rosenthal’s second dimension, which denotes a scale of liberalism to conservatism on racial and sectional issues, the mean scores of Republican and nonsouthern Democratic senators in the 88th Congress (1963-64) are identical (-0.182 for the former and -0.183 for the latter; a one-tailed t-test shows that the slight difference is statistically insignificant). On the first dimension — corresponding to a basic liberal-conservative scale on economic and regulatory issues — however, Republicans and nonsouthern Democrats were quite far apart (means of 0.305 and -0.367, respectively). Thus the key to obtaining Republican votes for civil rights was not principally swaying them towards civil rights protection but rather moderating the bill’s economic and regulatory impact.

The bill’s most vehement Republican opponents — a small group of extreme conservatives — objected precisely to the bill’s supposed creation of excessive federal power. Goldwater, the most prominent among them, had supported local integration efforts in Arizona and never disavowed the principle of integration. But, bolstered by the advice of constitutional experts William Rehnquist (then a Phoenix lawyer and Republican activist) and Professor Robert Bork of Yale Law School, he opposed the bill on constitutional grounds. Title VII in particular amounted to “the loss of our God-given liberties,” he said on the Senate floor in the closing days of the debate, and would “require the creation of a Federal police force of mammoth proportions” as well as fostering an “informer psychology” among Americans — “the hallmarks of the police state and landmarks in the destruction of a free society.” With Goldwater and his cohorts securely in the opposition, the focus of negotiations was on a slightly larger
group of conservative Republican senators with moderate civil rights leanings, who might, it seemed, be
induced to accept the bill were it shorn of its more egregious expansions of state power, among whom
was Everett Dirksen of Illinois, the minority leader. These senators occupied the pivotal point in the
strategic legislative setting with the power to grant or withhold the critical votes for passage and thus to
control the terms of a compromise.\textsuperscript{22}

It was Dirksen, negotiating with Senate Democrats and the administration, who brokered the
compromise that finally ended the filibuster. The Dirksen compromise included important language in Title
VII to ensure that only intentional discrimination would be a violation of the act, “to make it clear that it is
not an unlawful employment practice to discriminate inadvertently or without knowledge of the pertinent
facts,” as a White House report on the compromise put it.\textsuperscript{23} The amended bill also stated that

nothing contained in [Title VII] shall be interpreted to require any employer . . . to grant
preferential treatment to any individual or to any group because of the race, color,
religion, sex, or national origin of such individual or group on account of an imbalance
which may exist with respect to the total number or percentage of persons of any race,
color, religion, sex, or national origin employed by any employer . . . in comparison with
the total number or percentage of persons of such race, color, religion, sex, or national
origin in any community, State, section, or other area, or in the available work force in any
community, State, section, or other area.\textsuperscript{24}

This language made clear that only direct, purposive, individual acts of discrimination were to be outlawed,
and not so-called “statistical discrimination” (inferred from numerical imbalances). Even the bill’s most
ardent supporters embraced this interpretation. “There is nothing in [Title VII],” said Senator Hubert
Humphrey, “that will . . . require hiring, firing, or promotion of employees to meet a racial ‘quota’ or to
achieve a certain racial balance. That bugaboo has been brought up a dozen times; but it is nonexistent.
In fact the very opposite is true.\textsuperscript{25} This provision seemed to rule out any kind of compensatory, targeted,
race-conscious policy to promote equal employment opportunity and appeared to resolve American
ambivalence about color-blindness and race-consciousness in favor of color-blindness.\textsuperscript{26}

Two other important elements of the Dirksen compromise directly concerned the structure of the
EEOC and the scope of its power. One stripped the EEOC of the power to file antidiscrimination lawsuits directly, reserving this power for the Justice Department — and then only in “pattern or practice” cases, where it could document systematic, rather than simply individual, discrimination — and at the same time substantially scaled back the EEOC’s investigative power. The other required that the EEOC defer to state fair employment agencies in disputes over jurisdiction. These provisions effectively did two things. They lowered the EEOC from its proposed status as first among equals, the lead agency in the field of job discrimination, and they stripped it of any effective enforcement power, limiting its role to mediating in individual cases.

The congressional compromise over antidiscrimination policy, then, was a product of both the institutional structure of American politics and policymaking and the distinctive pattern of agreement and controversy surrounding civil rights in the 1960s. Substantively, the Civil Rights Act embodied a consensus on color-blindness as the ideological frame for antidiscrimination policy and on a vision of civil rights enforcement that emphasized compensatory remedies for deliberate individual acts of discrimination; except from the South, there was little dissent from these conclusions. The disagreement that had to be resolved in order to form a winning coalition in Congress was thus not over integration as a policy goal but over the form and strength of the state power that would be deployed to achieve it.

The compromise version of Title VII embedded color-blind antidiscrimination policy in an institutional structure that had three important characteristics. First, it failed to create a coordinated civil rights enforcement structure, instead muddying the civil rights waters further by establishing the EEOC in the midst of an already fragmented and confused executive environment. Second, although the EEOC was nominally charged with enforcing Title VII, the act withheld enforcement power from the commission. The EEOC’s weakness and its ensuing rivalries with other agencies for primacy in the realm of antidiscrimination enforcement meant that the commission’s effectiveness depended heavily on
its ability to persuade rather than coerce, and its links with other actors in the civil rights establishment — particularly the courts — became increasingly important in shaping its effectiveness. Finally, the EEOC was particularly vulnerable to struggles for political control and accountability, both between the White House and Congress and within the executive branch itself. In the years following the Civil Rights Act, each of these characteristics would prove influential in shaping the enforcement and development of employment discrimination policy, setting the stage for the ambivalent embrace of race-conscious remedies, despite the color-blind frame of 1964.

The first challenge that the Civil Rights Act posed to the Johnson administration was the coordination of civil rights enforcement. The act dramatically raised expectations about the federal government’s role in attacking discrimination; politically, these expectations fell particularly on the president. Lyndon Johnson had been a conspicuous if moderate champion of civil rights legislation, and the bill’s passage presented him with a political dilemma. Vigorous enforcement would please the act’s supporters and assuage the still vigorous forces of the civil rights movement, but would displease his fellow Southerners and other skeptics of strong state civil rights authority. On the other hand, a White House task force in June 1964 doubted “that the bill will make for sufficient or sufficiently rapid progress as far as the Negro and a good part of the white community is concerned to placate the forces that have gathered over the past years.” Thus for the White House, the ability to control the civil rights activities of the executive branch was essential to managing these considerable political risks.

The administration recognized these risks even before the act passed. As early as May 1964, while the Senate compromise was still in doubt, presidential aide Hobart Taylor suggested to Johnson that “it is all important that we get control of this very ticklish field because now we are beginning to reach the hard core people,” that is, Southern whites. As much as any element of the new civil rights regime, the start-up of the EEOC exposed the president’s political dilemma and the White House’s drive for political
dominance of the federal civil rights apparatus. While some administration officials advised the president to move quickly to bring control of civil rights policy visibly into the White House, others recognized the potential benefits of lying low until after the 1964 election before plunging into the thicket of civil rights enforcement. Johnson took the latter course and did not even appoint EEOC commissioners until May 1965.

There was also a problem of coordination among the alphabet soup of federal and state antidiscrimination agencies. While the EEOC was supposed to enforce Title VII, it was not clear how its activities were to fit in with those of a half-dozen other agencies with similar jurisdiction, and the EEOC’s start-up delay did not help settle matters. After the election, Johnson asked Humphrey to coordinate the coordination of civil rights activities, and in a long memorandum to the vice president-elect, Acting Attorney General Nicholas Katzenbach laid out the basic challenges: central direction of policy from the White House and the growing number of entities with overlapping functions, especially in employment. Katzenbach’s proposed solution, however, was to create a coordinating committee without streamlining or abolishing anything. As Louis Martin of the Democratic National Committee aptly put it in 1967, “the unhappy fact is . . . that every time we seek to coordinate programs we usually wind up with another bureau which is itself full of red tape.”

Humphrey and Johnson nevertheless took up Katzenbach’s suggestion, and in January 1965 the President’s Council on Equal Opportunity (PCEO) was created, chaired by the vice president. Not surprisingly, the new council did not last long. Rather than providing coordination, it merely confused matters, and by summer the White House was already looking for ways to reorganize civil rights enforcement again and entertaining a variety of proposals. Despite Humphrey’s best efforts to protect his coordinating role, the PCEO was abolished in September by Johnson’s Executive Order 11246, which also gave important enforcement responsibility to the Civil Service Commission and the Departments of Labor
and Justice and scarcely mentioned the EEOC. Not only was the White House throwing in the coordination towel altogether, Executive Order 11246 led directly to the creation of the Office of Federal Contract Compliance (OFCC) in the Labor Department, setting up the most important jurisdictional battle of the EEOC’s brief career.

More grave than the problem of fragmented authority was the commission’s lack of power, which limited its effectiveness and threatened to bring it into direct conflict with other federal agencies. Unlike the Justice Department, it could not sue discriminatory employers. Unlike the Labor Department, it could not threaten to withhold government contracts from them. Above all, it lacked the regulatory power to issue authoritative cease-and-desist orders against them. Without these powers, it was reduced to a role as conciliator in individual cases and sideline cheerleader (and sub rosa advisor) in discrimination suits in federal courts. Unable to marshal full regulatory power, largely because pieces of this power had been parceled out elsewhere, the EEOC began inching pragmatically toward affirmative action, based on the notion of statistical discrimination.

From even before the passage of the Civil Rights Act, civil rights supporters and opponents alike recognized that the limits on the EEOC’s power would be a contentious issue. Over the next several years, advocates in Congress, the administration, and the civil rights movement pursued a variety of proposals to expand the EEOC’s power and consolidate its enforcement authority. The most far-reaching of these, transforming the EEOC into a full-blown regulatory agency with the power “to prescribe general rules and practices having the force of law,” was consistent with the original model that advocates had sought but was rejected by the Justice Department. An alternative to full regulatory power was the authority to issue cease-and-desist orders in individual cases, which was the Johnson administration’s preferred option. In addition, there were proposals to transfer to the EEOC enforcement powers that were lodged elsewhere, including the OFCC’s contract compliance function and the Justice Department’s
authority to initiate lawsuits. In the late 1960s, policymakers and civil rights advocates seemed to be converging on cease-and-desist authority for the EEOC. A cease-and-desist bill passed the House by more than 3-1 in April 1966 but died after a desultory Senate filibuster. The Johnson administration again proposed cease-and-desist authority for the EEOC in 1967, but the legislation went nowhere in the 90th Congress, which instead passed open housing legislation in 1968.42

The issue of enforcement power for the EEOC arrived in the Nixon White House almost as soon as Nixon himself did. Nixon’s approach to civil rights was framed by his political position as a Republican seeking to pry Southern voters loose from their longstanding Democratic allegiance but also facing a dominant liberal regime with an increasingly settled commitment to civil rights.43 Treading carefully through this minefield, Nixon took a characteristically moderate position on equal employment opportunity; outright opposition to enforcement would bring opprobrium from the civil rights mainstream, while overly enthusiastic support would put at risk the electoral gains he sought among disaffected white Democrats in both North and South. Nixon did face skepticism from liberals about his commitment to civil rights enforcement. In his scathing April 1969 letter of resignation as EEOC chairman, Clifford Alexander accused the administration of a crippling lack of support. “The public conclusion is inescapable,” Alexander wrote; “vigorous efforts to enforce the laws on employment discrimination are not among the goals of this administration.” A group of liberal Democratic Congressmen wrote to Nixon several months later to protest that “years of civil rights progress . . . have been seriously compromised by your administration.”44

In place of cease-and-desist authority for the EEOC, the Nixon administration supported court enforcement, allowing the commission to file lawsuits directly in federal court. When the Senate passed a cease-and-desist bill in October 1970, however, the administration was thrown into confusion. Even though the 1970 bill died before the House could act, given the House’s earlier approval it now seemed
certain that cease-and-desist was Congress’s preferred approach. When Congress reconvened in 1971, administration strategists and their congressional allies were pessimistic about the prospects of stopping cease-and-desist and again reluctant to oppose it too openly for fear of being cast as anti-enforcement.\textsuperscript{45} But in the next Congress both the House and Senate, by very slim margins, approved a court-enforcement bill behind the familiar coalition of Republicans and Southern Democrats, prompting Tom Wicker of the \textit{New York Times} to write that “both the Southern Senators and the Administration can now plainly be seen wearing the same old Confederate uniforms.”\textsuperscript{46}

Once again, the imperatives of coalition-building in Congress and the presidency had channeled the substantive course of policymaking. The Equal Employment Opportunity Act of 1972 did not abandon the color-blind premises of American civil rights policy, which remained embedded in Title VII; the debate over racial quotas in employment and reverse discrimination remained. What the act did settle was the question of the institutional location of antidiscrimination enforcement: the federal courts, above all, and the federal contracting process, under the direction of the EEOC and the Labor Department, respectively. The culmination of nearly ten years of civil rights legislating was a limited, hybrid enforcement structure with an ambiguous substantive mandate: not on its face a system conducive to robust enforcement, but one that left a great deal of room for political, administrative, and legal maneuvering.

The EEOC was also quite openly exposed to the vagaries of presidential leadership and suffered periodically from weak White House support in a contentious political environment, particularly involving hostile or skeptical members of Congress. By 1969, the EEOC’s caseload had grown well beyond its capacity to respond; its backlog of complaints was in the thousands, and there was a delay of as much as two years in processing complaints.\textsuperscript{47} The commission’s congressional relations were growing ever more antagonistic, resulting in chronic fiscal problems as Congress consistently cut back the agency’s funding
requests, despite regular White House intervention. More serious charges of mismanagement also began to surface. A 1969 management audit by the Civil Service Commission described the EEOC as a “chaotic and demoralizing management environment,” and a year later the Office of Management and Budget again found serious management problems. As a result, skepticism and mistrust of the commission mounted both in Congress and the administration and became an issue in deliberations over expanding its powers. Finally, as historian Hugh Davis Graham writes, “Nixon followed up his victory in the Equal Employment Opportunity Act of 1972 by turning up his campaign rhetoric and directing it against the institutions he was empowering and the purposes they were furthering.” By distancing himself from the civil rights enforcement effort even after forging the compromise that enhanced it, Nixon further compounded the EEOC’s already tenuous position in the fragmentary and disconnected American institutional universe.

**Strength out of Weakness**

These institutional limitations, however, proved a double-edged sword. On one hand, the EEOC’s relative weakness and political vulnerability reflected the general limits on administrative power in American government. On the other hand, these very same institutional constraints created a great deal of slack in the commission’s political and administrative environment. Limits on its power forced it to seek other means of influence, particularly by collaborating with other institutions, both inside and outside the state. This imperative drove the problem of antidiscrimination enforcement into the same fragmented and decentralized political arena that had produced the EEOC’s incapacity in the first place. The struggle for enforcement would be fought out not in terms of administrative power emanating from Washington but in multiple arenas and jurisdictions around the country, and in this political context federalism, usually seen
as a constraint on civil rights enforcement and protection, was actually empowering. In this setting, the EEOC sought to play what role and forge what alliances it could as it sought pragmatic rather than ideological or coercive solutions to the problem of fulfilling its mandate in constrained environment.

Among the EEOC’s key partners in this endeavor were African-Americans themselves, who were organized in a powerful national social movement that remained deeply rooted and active in local political and economic arenas through local organizations. The flourishing of local political organization among African-Americans, in fact, was one of the important enduring consequences of the civil rights movement and these organizations gave African-Americans enhanced political leverage in many parts of the country. In particular, federated organizations such as the NAACP could collaborate with the EEOC in pursuing race-conscious remedies for employment discrimination in a variety of local-level forums. The principal arenas for these activities were collective bargaining between union locals and employers and lawsuits in the federal courts; both of these arenas allowed the EEOC to get around its lack of coercive authority. In particular, the EEOC’s relationship with the federal courts (especially after the 1972 amendments) proved empowering, because it gave the commission access to a politically and organizationally independent means of deciding discrimination cases and enforcing remedies. But beyond this structurally determined opportunity, the more historically contingent relationship that the EEOC was driven to forge with certain elements of the waning civil rights movement in the late 1960s and 1970s helped it to have an impact beyond its apparent institutional means. These elements of the EEOC’s universe — also consistent with the characteristic shape of American administrative institutions — enabled it to participate in the development of policies that transformed American antidiscrimination policy beyond its color-blind legislative origins.

Hamstrung by its limited coercive power and its restricted institutional position, inundated in short order with an overwhelming caseload, and limited by the legal requirement of proving discriminatory intent
in individual cases, the EEOC turned to a variety of tactics to pursue its aims. It was able to exert entrepreneurial influence through several channels, ranging from very informal to more formal, precisely because it could exploit the organizational slack in the federal government, because its precise role in the pantheon of enforcement agencies was so ill defined, and because it was able to find outside partners and allies.

In order to bolster and supplement its weak formal powers, the EEOC essentially did six things. First, it used its limited formal powers to further individual cases filed with it under Title VII. When an employee filed a discrimination case with the EEOC, the commission was supposed to investigate the merits of the claim and rule within sixty days whether there was sufficient evidence of discrimination to warrant a lawsuit in federal court (which could then be filed by the plaintiff). Thus the EEOC did have the power either to advance or stymie actions against alleged discriminators. Although the EEOC very quickly developed a large backlog of cases, numbering in the thousands within a year, and almost never met the sixty-day statutory limit, it could and did use probable cause findings strategically to aid the prospects of private litigation, as it did in numerous complaints against U.S. Steel’s plants in Birmingham, Alabama.

Second, it collected information from employers on the racial composition of the work force, firm by firm. This is did through its form EEO-1, on which it required (under the general administrative rule-making power of federal agencies) employers covered by Title VII to report data on their employees by race and ethnicity. The data that the EEOC compiled from this form would prove a key weapon in the shift toward race-conscious enforcement. But it is essential to note that the reporting system alone was not sufficient to produce affirmative action. The EEOC could not by itself do anything with the data beyond compiling them.

Third, the EEOC used the power of publicity to expose discriminatory practices and induce
employers to change their behavior. It held a series of high-profile hearings on employment practices in New York City, for example, that targeted prominent service industries such as banking and other white-collar industries that depended heavily on their civic reputations in the nation’s most liberal city. Among other employers, these hearings shone a rather embarrassing spotlight on the *New York Times.* 55 In early 1969, another set of hearings, this time in Los Angeles looking into the motion picture industry, raised congressional hackles (particularly Dirksen’s, who threatened to oppose Nixon’s appointment of William Brown as commission chair because of his participation). Yet another round of hearings in Houston in the spring of 1970 brought a protest to the White House from the Republican candidate for Senate in Texas, Representative George Bush, who feared they might pose problems for his candidacy. 56 Such hearings had no legal force, but they did serve to increase public awareness about the extent and sometimes surprising venues of racial discrimination.

Fourth, it developed legal interpretations of Title VII and guidelines for practice for employers. In the U.S. Steel discrimination cases in Alabama, for instance, the commission helped to formulate guidelines on seniority, which was a particularly sticky question in declining industries such as steel where shrinking employment meant layoffs, which usually meant that African-Americans, who had been hired more recently and were lower down on job ladders, would be the first to be let go. 57 It also helped to develop guidelines for the use of occupational tests as a qualification for hiring and promotion, which often worked against black workers and job applicants. 58 In general, too, the EEOC’s legal staff worked hard to develop legal interpretations that would help the commission address its fundamental dilemma: how to enforce the law in a meaningful way in the absence of any real coercive power. Meaningful enforcement, for the EEOC’s legal staff, meant going beyond the piecemeal, one-at-a-time, individual complaint approach and finding strategies that would attack discriminatory practices more generally. 59 The commission’s guidelines and legal interpretations had no binding force, of course, but they did
influence the thought and behavior of other actors with different means of power and influence at their disposal; these actors were the targets of the EEOC’s two other sets of activity.

Fifth, the EEOC filed briefs as *amicus curiae* in federal antidiscrimination lawsuits, which were often allowed to go forward on the basis of EEOC probable-cause findings in cases originally brought as complaints to the commission. Through its briefs, the EEOC was able to argue for its interpretation Title VII before different federal judges in a variety of places on multiple occasions, even though it was legally barred from bringing these suits itself. Thus, for example, the EEOC filed an *amicus* brief in *Griggs v. Duke Power*, the case in which the Supreme Court ultimately ruled that employers could not use even ostensibly race-neutral tests or other occupational qualifications that tend disproportionately to bar minority applicants, unless the employer could show that they were a bona fide qualification for the job in question. The commission’s brief and the testing standards and legal interpretation that it offered were cited explicitly both by the dissenting judge on the Fourth Circuit appeals panel that found for Duke Power and by Chief Justice Warren Burger, who wrote the Supreme Court’s majority opinion reversing the judgment and finding for the plaintiffs.60

Finally, the EEOC cooperated closely behind the scenes with private non-governmental organizations, such as the NAACP and its Legal Defense Fund (LDF), which took the lead in representing plaintiffs in antidiscrimination suits, as well as the Congress of Racial Equality and other groups involved in combating job discrimination in a variety of settings and places.61 EEOC staff members convened strategy meetings with LDF attorneys and others in order to work through disputes with employers. They offered advice about legal strategy (which was not always accepted — the commission’s deputy general counsel John Pemberton advised the LDF’s Jack Greenberg not to appeal *Griggs* to the Supreme Court). They shared data and helped devise legal arguments that plaintiffs’ lawyers could use in arguing cases.62
In particular, these links with the NAACP and the LDF were the linchpin in advancing collective, race-conscious enforcement of Title VII. Neither bureaucrats nor courts, either by themselves or in combination only with one another, could have achieved this result. The EEOC certainly could not; it had neither the power to coerce nor the power to file suits. Nor could the courts; although they had the power to issue decisive and authoritative rulings in the cases that came before them, these cases had to come from somewhere. Alexander Bickel, outlining what he called the “paradox of all paradoxes concerning the [Supreme] Court,” wrote that “the Court may only decide concrete cases and may not pronounce general principles at large; but it may decide a constitutional issue only on the basis of general principle.”

It was the linkages between the EEOC and the LDF that gave the courts both the cases and the principles that they ultimately used to validate the practices and principles of affirmative action. It was the LDF, with the help and background advice of the EEOC, that brought cases strategically to present issues of discrimination in the most legally promising light hoping to make persuasive arguments and find receptive judges. And it was the EEOC that took the lead in developing the legal interpretations and doctrines that backed up those arguments and, ultimately, persuaded judges.

This pattern of policy and political development was dependent not only on the forging of relationships among bureaucrats and judges but also on the collective action of African-Americans, organized into a movement that sought and exploited opportunities offered by the American political system. Although rooted in a national social movement, the NAACP was organized in a federated structure that mirrored the federal structure of the American state — with local, state, and national branches — and so was able to operate in multiple venues and with varied strategies at once. For the NAACP and the LDF, the courts and the EEOC were not simply the upper reaches of a hierarchy whose dicta, pronounced from on high, were law. Rather, they were opportunities to be exploited, points of access to the structure of state power, openings that could be entered to try to pry policy loose and to
advance an approach to anti-discrimination enforcement that some (although by no means all) African-American leaders and organizations and their allies in the worlds of law and government had spent a long time developing.\textsuperscript{65}

At least as much as the EEOC’s other maneuvers, these links forged with the LDF were the key to the commission’s role in nudging forward an interpretation of Title VII based on “disparate impact,” collective employment patterns that were unfavorable to blacks. These informal links, the products partly of the commission staff’s entrepreneurship but also of the organizational slack in the federal government that allowed them to be enterprising, meant that the development of affirmative action was not simply a top-down imposition by meddlesome and imperious bureaucrats and courts, contemptuous of legislative intent and public opinion, as some interpreters suggest.\textsuperscript{66} Rather, it was equally a bottom-up effort, facilitated by the configuration of actors, institutions, and ideas prevailing at the time. The flip side of institutional fragmentation has been a level of improvisatory suppleness that has made the EEOC and the rest of the American race relations establishment remarkably effective. These institutional opportunities, in turn, were the result not simply of the structure of American political institutions but of the way in which African-Americans had been incorporated in those institutions through the historical processes of political development.

\textit{Great Britain}

Britain's approach to the problem of race relations was on the surface quite similar to the liberal integrationism of the Civil Rights Act. But British policy arose out of a very different political and institutional context. Although British patterns of localized links between racial minorities and the state very much mirrored the American model, these linkages did not match so serendipitously the political
opportunities offered by the more centralized structure of the British party and parliamentary systems. As a result, British minorities and their advocates, while they were successful in achieving antidiscrimination legislation, found themselves without the leverage in national politics and policymaking that would have allowed them to make the most of a race relations law that on paper offered very strong inclinations toward collective, race-conscious enforcement.

By the late 1960s, Britain was already developing a tradition of local race-relations activity that tended to emphasize integration of communities rather than assimilation of individuals. As in the United States, the chief organizational and political linkages between British minorities and the states arose at the local level. In both countries, Ira Katznelson argues, “these organizational linkages structured participation, created persistent, well-defined patterns of access, and established orderly procedures for reaching the migrant population on elite terms, leaving the distribution of political power largely intact.”

As a consequence of these predominantly local political ties, minorities were only weakly integrated into the centralized structure of British party politics. Although they overwhelmingly vote for the Labour party, minorities tend to be concentrated in extremely safe Labour seats so that their electoral influence is diluted. The party discipline of the British parliamentary system makes intraparty splits less prominent as strategic openings for policymaking. Thus the Labour party has made relatively little progress in incorporating British minorities, whether by offering policy concessions, forging links with leaders of immigrant communities, or working to mobilize minority voters. For example, it resisted for a long time calls for formation of “black sections” within the party organization to represent and mobilize minority voters, and it has been slow to recruit minority members and elect and appoint blacks and ethnic minorities to national or local offices.

Nevertheless, electoral politics played a role in spurring the British government toward antidiscrimination legislation. In the early 1970s an uneasy interparty consensus on race and immigration
began to break down and race began to move up the public agenda. In the first of two general elections held in 1974, neither party won a majority in the House of Commons. In a second election some months later, Labour won a majority of three seats. Some analyses suggested that nonwhite voters, who were beginning to favor Labour, had provided the margin of victory. Whether or not these voters were decisive, the Labour leadership felt compelled to advocate stronger state protection for racial minorities, at least as compensation to the party’s left wing for its continued acceptance of strict immigration restrictions.

Thus when the government proposed a new Race Relations Act in 1976, it was responding not only to increasing racial tension but also to increasing partisan pressure to take strong action on race relations, much as the Johnson administration had faced a decade earlier. The political imperative was, quite similarly, to attack discrimination in employment, education, and public accommodations, and generally to ensure equal treatment to all regardless of race. In introducing the act to the House of Commons in March, Home Secretary Roy Jenkins announced that the principles on which the government’s policy were founded were (along with immigration restriction) the permanence of racial minorities in the United Kingdom and the imperative of affording them equal treatment. Racial division in British society would not go away, Jenkins said, and the government ought to address it forthrightly. Jenkins’s approach to the race relations challenge did not insist on color-blindness as an absolute policy standard. “I do not think,” he said on becoming Home Secretary for the first time in 1966, “that we need in this country a ‘melting-pot’, which will turn everybody out in a common mould, as one of a series of carbon copies of someone’s misplaced version of the stereotyped Englishman. . . . I define integration, therefore, not as a flattening process of assimilation but as equal opportunity, accompanied by cultural diversity, in an atmosphere of mutual tolerance.”

In making and implementing antidiscrimination law, however, the government faced very different
institutional pressures than the Johnson administration had in 1964. Most important, the government did not face the same coalition-building problems as an American administration. Under the British parliamentary system, which nearly always produces majority governments (as opposed to minority or coalition governments), the process of policymaking does not depend on the piecemeal assembly of legislative coalitions, nor does it, as a rule, allow either concerted minorities or fragments of the majority party to block government-sponsored legislation. Thus the government had no opponents, whether within their own party or on the opposite benches, who could block the march of legislation. Prime Minister Harold Wilson and Jenkins (and James Callaghan, who became prime minister after Wilson’s resignation in April 1976) could enact the government's favored policy without complicating amendments. Thus, despite similar ideological moorings, British race relations law departs substantially from its American counterpart. Nevertheless, the parliamentary debates on the Race Relations Act of 1976 reveal disagreements over issues of institutional structure and power similar to those that shaped American antidiscrimination policy debates of the 1960s.

As in the United States, arguments over the structure and power of the antidiscrimination enforcement agency were at the center of the politics of the Race Relations Act. Rather than creating a fragmented set of enforcement institutions, the act consolidated two older agencies into a new Commission for Racial Equality (CRE), which was charged with the comprehensive enforcement of antidiscrimination law in employment as well as other areas. Moreover, the CRE was to have fairly extensive powers — at least on paper — to address collective discriminatory patterns in addition to remedying individual claims of discrimination. In both respects, the British institutional pattern departed from the American model, despite the similarity of general approach.

Jenkins emphasized both aspects of the bill, arguing particularly that the greater coordination and more extensive power represented by the new commission would allow the government “not only to
combat discrimination and encourage equal opportunity but also to tackle what has come to be known as racial disadvantage.” The act explicitly defined discrimination to include “not only deliberate and direct discrimination but also unjustifiable indirect discrimination. A particular practice may look fair in a formal sense,” Jenkins explained, “or at least neutral in its original intent, but may be discriminatory in its operation.” The CRE was empowered to investigate and sanction employers who engaged in such collective discriminatory practices, as well as to help individuals bring cases in the courts. Moreover, there was little problem of overlapping jurisdiction or fragmented authority concerning race relations in the British government; the CRE was given sole authority over these matters, to some extent coexisting with but largely preempting the locally-oriented community relations approach.

Both aspects of the CRE — collective power and the superseding of local authority — were controversial. Although the Conservative front bench supported the act, many Conservative members of the Commons worried that the new commission’s powers would “be used in a bureaucratic and harrying manner,” or worse. Others worried that the Home Office, which was to oversee the CRE, was notoriously disorganized and overloaded, and suggested that a more modest individual approach might get better results. Similarly, some members opposed combining the existing Community Relations Councils and the Race Relations Board into a single body, largely on the grounds that they served two different purposes (enforcement and education, respectively) that should remain separate. Proponents of the newly configured CRE argued that it was precisely this consolidated, collective power that would render the CRE effective. Alexander Lyon, the Minister of State for the Home Office and the government’s leading spokesman on race relations, explicitly cited the American EEOC’s weakness and ineffectiveness as reasons to give the CRE both broader jurisdiction and greater power.

The resulting legislation was, on paper at least, among the strongest antidiscrimination laws in Europe, stronger in many ways than the American Civil Rights Act in terms of the power it conferred on
the state. In fact, unlike the Civil Rights Act, which seemed explicitly to rule out affirmative action (at least for private employers), the Race Relations Act of 1976 seemed to invite it, by defining discrimination to include indirect discrimination, endowing the CRE with strong regulatory enforcement power, and even enabling (though not requiring) limited forms of “positive action.” Although the law distinguished clearly between “positive action” — action to expand minority employment opportunities — and “positive discrimination” — compensatory preferential treatment for members of minority groups, its definition of discrimination deliberately went well beyond the Civil Rights Act’s explicit disavowal of indirect, statistical discrimination.

But the consequences of the Race Relations Act were quite limited in comparison with the ironic development of affirmative action in the United States. Like the EEOC, the CRE lacks strong coercive sanctions with which it could compel employers to adopt affirmative hiring programs. But it was precisely the institutional fragmentation of the American state that gave the EEOC and other affirmative action advocates in the United States the opportunity to find other coercive means, particularly through the courts and the peculiar political independence of the administrative agencies like the EEOC itself. Dealt a weak hand and forced to find policy solutions that worked, the EEOC was able to maneuver through its institutional environment to pursue a policy that was never explicitly enacted into law. The CRE, on the other hand, although it had legal sanction to pursue and enforce certain kinds of “positive action,” took very little action to do so, even in some instances opposing preferential hiring actions.

A number of institutional factors constrained the CRE from pursuing even the limited forms of “positive action” that fell within its statutory purview. First, disagreements within the Home Office and the Labour Party over the role of the state in acting against racial discrimination made it difficult for the CRE to act vigorously. Even before the Race Relations Act was passed, a Cabinet shuffle forced Alexander Lyon, Labour’s chief champion of action on race relations, off the front bench, in part because
he had clashed with Home Office civil servants about race relations and immigration matters.\textsuperscript{79} Moreover, the Government's indifference, if not outright hostility, to vigorous antidiscrimination enforcement increased further when Margaret Thatcher's Conservatives swept into office in 1979.\textsuperscript{80} The Labour government had intended to increase the CRE’s budget by nearly twenty-five percent in 1979, suggesting a strengthening commitment to enforcement; Thatcher’s increase was less than five percent, and her government actually cut the CRE’s budget in real terms over the next six years.\textsuperscript{81} The Thatcher government also repeatedly ignored proposals that the CRE be given expanded powers.\textsuperscript{82}

Perhaps most important, the British political system provided few openings for alternative routes to positive action, and the integration of British minorities into this nonreceptive polity was weak. Only marginally integrated into the party system, without institutionalized recourse to other sources of power, and without the backing of a social movement on the scale of the American civil rights movement, British minorities were unable to convert the potential embodied in the Race Relations Act into actual outcomes.\textsuperscript{83} In particular, the British judicial system, which is not predisposed to grant claims based on constitutional rights as are courts in the United States, is a weak vehicle for advancing antidiscrimination claims. To the extent that the courts did involve themselves in the antidiscrimination enforcement, their effect was to impose limits on the commission’s powers through judicial review of its procedures rather than to provide a point of access for aggrieved individuals or groups to seek redress for harms done them.\textsuperscript{84} The rigidity of executive control under the British parliamentary system and the rapidity of the Conservative takeover after the creation of the CRE produced very unfavorable conditions for strong state action against collective patterns of discrimination or for the pursuit of “positive action”; in fact, even before the Tories’ 1979 victory, MPs from both sides came to condemn the principle of positive discrimination.\textsuperscript{85} Some years later, the Home Office considered and rejected implementing a contract compliance system for public contractors, modeled on the successful American practice and rejected the
idea, leaving it instead to local government to pursue such policies at their own option.\textsuperscript{86}

Finally, and most paradoxically, the relative centralization of British antidiscrimination policy actually hindered the consolidation of the CRE’s enforcement authority. The British pattern of localized race politics, which had relegated racial issues to lower levels of government without the crushing injustice of institutionalized white supremacy as in the American South, had important advantages for the pursuit of antidiscrimination enforcement and other policies for racial incorporation, offering more proximate opportunities for active coalition-building with white elites and for partnerships across party lines in support of local developmental policy that could assist natives and immigrants alike.\textsuperscript{87} In addition to mandating national action, the Race Relations Act required local authorities to take steps to eliminate racial discrimination, leading to a flurry of activity by local antiracist organizations, Community Relations Councils, party organizations (especially Labour), and other groups at the local level. These efforts have resulted in gains for minorities, especially in public-sector employment and the adoption of equal opportunity policies by some local authorities, but these have not come without conflict nor have they been uniform.\textsuperscript{88} But such local attachments have corresponding disadvantages for minorities, especially the susceptibility to domination and exploitation by local majorities, which can be heightened by the lack of access to and leverage over national political institutions.\textsuperscript{89} In the United States, the particular configuration of historical and political circumstances in the 1960s and 1970s — including significantly the heightened level of minority political mobilization — gave African-Americans and their allies such leverage, allowing them to exploit openings in American political institutions from their highly localized positions when more centralized avenues were closed to them. In Britain, by contrast, local attachments, which were often locally empowering, proved nationally disadvantageous because the structure of British politics did not provide a foothold for locally attached minorities to enter into national processes of coalition building and policymaking.
France

Unlike the Civil Rights Act, the French law against racism of 1 July 1972 was not the product of an intense compromise that was necessary to construct a winning legislative coalition from among fragmented and diverse interests and ideological factions. Policymaking power in the Fifth Republic is heavily centralized in the hands of the executive, providing relatively few points of access for influence on national policy, especially when superimposed on the persistent administrative centralization that has long characterized the French state. Executive dominance makes for less fluid coalition-building; what matters above all in policymaking is the executive’s position, and the sort of inter- and intraparty bargaining that both African-Americans and their opponents have been able to exploit to build majorities in the United States is largely closed as a path to policymaking. This feature of French policymaking institutions both limited the options for ethnic minorities to influence national policy and focused those options on a small number of political actors. Moreover, the weakness of the Socialists in national politics during the 1960s and ’70s and the dominance of French national politics by the Gaullist right during those decades further restricted the potential for minority influence on policy.

Rather than an elaborate, finely calibrated compromise, the law that passed was essentially the same as the proposal that had originally been drafted and presented to the legislature as early as 1959 by the Movement Against Racism and for Friendship Among Peoples (MRAP), an antiracist organization founded in 1949. The MRAP, along with the Communist Party, presented its proposals anew to each legislature through the 1960s without success. The critical turning point in the law’s progress toward enactment was the government’s change of heart, which came in a period of increased racist violence in France. In the fall of 1971, President Georges Pompidou and Prime Minister Jacques Chaban-Delmas signaled, through a letter to MRAP from presidential assistant Jacques Chirac, that the government would
entertain the idea of passing an antiracism law in the coming legislative session. The executive’s change of mind was utterly decisive; by contrast, even after Presidents Kennedy and Johnson supported civil rights legislation, the law’s road to passage was arduous and uncertain. In the French case, rather, whatever uncertainty there was concerned whether the government would back up its private communications with public action, which it did when it announced on 15 April 1972 that it intended to adopt an antidiscrimination law.

The legislative deliberation on the law was, accordingly, short and unexceptional. What deliberations there were took place behind the scenes, among the government, the National Assembly’s Law Committee, and two major antiracist organizations, MRAP and the International League Against Antisemitism (LICA). The controversy revolved around several points, chief among them being the status of antiracist groups as “civil parties,” empowered to bring antidiscrimination cases on behalf of individual claimants. This was a particularly important provision — a “fundamental innovation,” the MRAP called it, “meant to compensate for the failure of public prosecutors” — and the law’s most important institutional innovation. The government was not pleased with this provision at all. Justice Minister René Pleven indicated during the floor debate in the Assembly that the government considered the provision a significant departure from standard French legal practice and was accepting it only with great reluctance. In the final run-up to passage, an alternative bill was introduced in the Senate that would have limited the “civil party” power to groups officially recognized as “public interest” (“utilité publique”) organizations, a restriction that would have excluded both MRAP and LICA. The Law Committee adopted this amendment, only to reverse itself mere hours before debate was to begin in the Assembly, substituting a limitation of the “civil party” power to organizations that had been in existence for five years or more and a stipulation that organizations could not intervene in individual cases without the individual’s consent. Striking the only discordant note in the floor debate, Socialist deputy Michel
Rocard objected to the five-year rule, hinting that it had been deliberately concocted to rule out groups formed in the wake of the 1968 protests. Pleven, in response, suggested that Rocard and his fellow leftists should take what they could get.96

Beyond this disagreement, very little in the legislation occasioned any serious controversy, or even much public notice. The enacted law closely resembles the MRAP’s original proposal of thirteen years earlier. It makes direct and deliberate racial discrimination in employment illegal and it also outlaws racist public utterances and bans groups that promote racism. Like the Civil Rights Act, the French law defines discrimination extremely narrowly, prohibiting only refusal to hire or dismissal “on account of” race. The word “discrimination,” in fact, does not appear.97 But in contrast with the American case, the law does not create any new institutional capacity, whether unified or fragmented, dedicated to regulating or punishing racial discrimination. Rather, it relies on preexisting government institutions — the criminal justice system and the national system of Labor Inspectors — to enforce antidiscrimination law. Finally, the French law makes discrimination a criminal rather than a civil offense, subjecting accusations of discrimination to a very exacting standard of proof in individual cases while largely eliminating the possibility of regulatory pursuit of more collective forms of discrimination.

Although the French legislative debate, more than either the British or American, did contain references to the need for the state to “implement a program of mental hygiene,” as one member of the National Assembly put it, to combat racism in French society, there was, in fact, much more emphasis on the need for effective enforcement of the law.98 In his opening speech on the bill to the Assembly, Alain Terrenoire, the bill’s chief sponsor, emphasized that “a true antiracist politics . . . demonstrates the will of the public authorities to assure the effective implementation of an equality that, far from being the reduction of all to a single model, will come to be the acceptance of their differences.” Another deputy, Michel de Grailly, also insisted on the importance of enforcement, not just principles, in combating
discrimination. “Contrary to what too many citizens believe in good faith, democratic institutions . . . are not sufficient to ensure human liberty and dignity. For it is not enough to protect the individual against the abuse of public power. The state is obligated not only to respect the rights of man but also actively to guarantee them.” And, perhaps most tellingly, Léopold Helène, the deputy from Guadeloupe, spoke of the importance of addressing material discrimination against French citizens of African descent. “Indeed,” he said, “Guadeloupeans leave their archipelago because of its underemployment and economic underdevelopment. Having arrived in the metropole, they find themselves confronted with problems of employment, of housing, of insertion into our difficult metropolitan society. All discrimination concerning hiring, firing, refusal of service, housing, appears to them a provocation, an injustice, a crime.”

There was thus substantial agreement on the importance of attacking such material acts of discrimination as well as rooting out racism from public discourse, and the law provides apparently strong, coercive sanctions: imprisonment of up to a year and fines of up to 20,000 Francs (approximately $4,000 in 1972).

On the other main characteristic of the enforcement mechanism — criminal as opposed to civil or administrative law — there is no evidence of any disagreement. Many French lawmakers and others regarded the criminal law as the strongest possible protection against discrimination because of the force and decisiveness of criminal sanctions. Making racial discrimination a criminal offense has important consequences for enforcement and administration of the law. On one hand, it raises the standard of evidence required to establish discrimination, placing the burden on the plaintiff to show that he was deliberately refused a job, for example, because of his race. This is a particular problem for enforcement during times of high unemployment, when employers necessarily turn away many job seekers without giving reasons. Many judges are reluctant to impose heavy penalties upon convictions, in the belief that the fact of conviction is more important than the extent of the sanction. One French commentator worries that the use of criminal sanctions for racial discrimination will tend to make martyrs of those who
are convicted.\textsuperscript{103} On the other hand, the criminal law gives the state, rather than the individual, the primary responsibility for pursuing the complaint, placing the weight of the state and its coercive apparatus more firmly behind the antidiscrimination cause.\textsuperscript{104} However, in the absence of an agency dedicated to antidiscrimination as its primary mission, there is little institutional capacity or inclination in the French state to pursue racial discrimination cases with any vigor.

There are two principal institutional arms of the state concerned with enforcing the antidiscrimination provisions of the 1972 law.\textsuperscript{105} One is the local police commissioner, actually an official of the national government. Bringing a criminal complaint of discrimination to the police results in long, opaque procedure that is unlikely to be a high-priority matter for the police. The ability of organizations to bring complaints on behalf of individuals certainly helps matters, but not surprisingly, convictions are extremely rare.\textsuperscript{106} The other is through the Labor Inspectors of the Ministry of Labor, who are responsible for regulating all matters concerning the workplace. But although they have ample coercive power at their disposal, Labor Inspectors are generally more likely to use conciliation than coercion. Each inspector must deal repeatedly with the same employers in his territory and so can ill afford to antagonize them needlessly; moreover, an inspector's superiors in Paris want him to deal with disputes on his own, without dragging them in by resorting to formal reports, hearings, and the like.\textsuperscript{107} Thus Labor Inspectors are ill equipped to deal with as potentially explosive a problem as racial discrimination in employment. The institutional problem is that there is no part of the supposedly “strong” French state that has as its primary raison d'être the prevention or punishment of racial discrimination.

In contrast with developments in the United States, the consequences of the 1972 law have been somewhat disappointing. Successful prosecutions for racial discrimination have been very few since the passage of the law. Between 1975 and 1984, approximately 160 cases were reported to the Justice Ministry. From 1984 to 1988, the annual number of convictions for race-related offenses fluctuated
between 95 and 66. Annual convictions in the 1990s continued at a similar level, ranging between 61 and 95 between 1993 and 1997. The more precise data available for these years, however, reveal that approximately ninety percent of these convictions were for acts of racist expression rather than discrimination; only 7 of 380 convictions in that period were for employment-related discrimination. These figures contrast sharply with the number of employment discrimination actions brought in the United States. Since its creation, the EEOC has received more than 2.5 million complaints from individuals, and more than 260,000 private employment discrimination cases have been filed in federal courts since 1977. These figures are of course not strictly comparable — convictions on one hand and total complaints on the other but even so they indicate an extreme imbalance in the amount of enforcement activity between the two countries.

Not only has the legal enforcement of the prohibition against individual discrimination been carried out on a substantially smaller scale in France, but the institutional structure of French politics and policy has not encouraged minorities and their allies to circumvent the proscription of other forms of action. The political opportunity structure of the Fifth Republic, especially in the 1960s and 1970s, was not conducive to minority mobilization. Until 1981 French law prohibited the formation of ethnic- or race-based associations without government approval. Moreover, the centralized focus of French politics provided few points of access for geographically concentrated minorities. Consequently, race- and ethnic-based demands were often deflected onto nonstate organizations such as labor unions; even where these organizations were more hospitable than others, they provided rather weak links to the mainstream of French policymaking. Despite sporadic protest activity and fledgling communal consciousness and organization by ethnic minorities in the 1960s (especially concerning the housing conditions of immigrant workers), questions of racial and ethnic identities were not central to the May 1968 protests in France, which revolved instead around political demands and identities that could exploit opportunities at the
center of French policymaking. Thus neither the French state nor the structure of French policy afforded many opportunities to those interested in vigorous antidiscrimination enforcement, despite the gradual rise of antiracist politics and ethnic political orientations, along with ample evidence of widespread job discrimination in France.

The high barriers against criminal convictions for racial discrimination, along with the minimal punishments generally imposed (the highest fine recorded between 1993 and 1997 was 10,000 Francs, approximately $1,700) made criminal prosecutions unlikely to provoke employers to change their hiring practices. Similarly the limited mobilization and organization of minority groups and their limited access to policy circles further restricted the possibilities for a move toward broader enforcement. The main avenue for organized pressure is through the civil party power of antiracist organizations, which allows them to intervene in discrimination cases and often to publicize employers’ misdeeds in addition to imposing punishments. But the code-based French legal system, unlike the Anglo-American common-law system, does not recognize the binding power of higher-court decisions on other cases, so that legal action in the French system has no cumulative force and little policymaking function. Finally, in response to EEOC activity, many American employers have internalized antidiscrimination law, creating equal employment opportunity offices to ensure compliance with nondiscrimination rules. In France, by contrast, hiring in private firms seems to be rather less institutionalized and to hew more closely to informal network practices that can produce systematically imbalanced results.

It is clear that the institutional structure of French antidiscrimination law — both its choice of criminal law as the enforcement vehicle and its lack of a dedicated antidiscrimination bureaucracy — are centrally related to the disappointing and rather paradoxical results of the 1972 law. The structure of French political and administrative institutions guided the choices of political actors in enacting and carrying out these antiracist impulses. The rigid politics of the French parliament ruled out a broader role.
even for established antiracist organizations in enforcing antidiscrimination law, and the possibility of erecting a dedicated antidiscrimination bureaucracy seems not even to have occurred to French policymakers. Lacking the improvisatory suppleness of the American race relations establishment, the French institutions charged with tackling racial discrimination in employment did not mobilize the full coercive power of the French state in their pursuit of this goal.

**Conclusions: Configurations of Race and State and the Dynamics of Policymaking**

These comparative histories of race policy development pose several important paradoxes. The first revolves around the national cultural and ideological settings that frame race policy in these three countries. On one hand, national cultural repertoires are undoubtedly important in framing the ways in which citizens and policymakers in each country understand race as a political category and conceive of rational and sensible solutions to problems of racial conflict and inequality. In Britain and the United States, racial and ethnic identities are part of the common parlance of politics. They serve as recognized and legitimate, if often contested, focal points for political discourse and mobilization. At the same time, race-consciousness in both countries coexists with a powerful liberal tradition that emphasizes color-blindness and individualism over the assertion of group identities. These patterns not surprisingly have made British and American policy receptive to race-conscious claims and policy demands. The official color-blindness of French republicanism, by contrast, made race-conscious policy all but inconceivable in France by posing steep barriers to the legitimacy of race and ethnicity as salient categories in public life, although as Michèle Lamont shows France’s assimilationist political culture itself strengthens a kind of racism by drawing clear boundaries between those who do and do not share in this culture.120

On the other hand, these cultural and ideological contrasts cannot fully account for crucial
patterns of similarity and difference among British, French, and American race policy. If France and the
United States approached the problem of racial discrimination from such different cultural perspectives,
why did they adopt such strikingly conceptually similar laws? Why did Great Britain, whose cultural
frame for race policy resembled that of the United States, take such a different approach? And then,
having adopted these laws, how did the enforcement of these laws proceed so differently? Conceptual
differences alone cannot explain divergent race policy outcomes; rather, the cultural frames and
ideological paradigms in which policy is shaped must themselves be explained as well as different national
patterns of race policy.\textsuperscript{121} As Martin Schain has shown, for example, France’s vaunted republican model
is as much a product of political processes as a cause, and French policy toward immigrants and
minorities has increasingly diverged from the republican ideal in recent years.

The second paradox is institutional: the institutionally “weak” American state, which produced a
compromised vision of civil rights law, has proved stronger than the nominally “stronger” French and
British states at promoting the enforcement of antidiscrimination law. In addition to the extent of Title VII
enforcement activity — EEOC complaints in the millions and private lawsuits in the hundreds of
thousands since the 1960s — a broad range of American institutions, both public and private, have
adopted and embraced race-conscious, remedial programs practices to try to achieve equal opportunity in
employment, as well as in education, federal contracting, and other realms.\textsuperscript{122} Many of these programs
and practices have come under political and legal challenge in recent years, and many of these challenges
remain unresolved.\textsuperscript{123} But many of these programs are intact and affirmative action itself has remained
surprisingly resilient in the face of controversy. Moreover, as Frank Dobbin and John Sutton have shown,
the EEOC has had an indirect but profound influence on American corporate structure, inducing
companies to institutionalize equal employment opportunity practices without the actual exercise of
coercive authority or legal action.\textsuperscript{124}
It is also arguable, although contested, that federal equal employment opportunity enforcement has actually improved the economic position of African-Americans. Some economists and others have suggested that the gap between black and white incomes had been narrowing steadily since the 1940s and that government enforcement and affirmative action had little if any impact independent of trends that were already in place well before 1964. But James Heckman and colleagues have argued that Title VII enforcement efforts, as part of a broad federal assault on racial segregation particularly in the South, had a demonstrable effect on black employment and wages in the decade or so after 1964. Whether or not affirmative action had appreciable economic effects, the paradox remains: the federal government, particularly the EEOC, had at best weak authority to enforce equal employment opportunity, and yet in the decade after the Civil Rights Act the extent and scope of affirmative action grew from nothing to penetrate large areas of American society and African-Americans made significant economic gains.

Government in the United States notoriously lacks coercive instruments of administrative power relative to more powerful and penetrating European states. More particularly, the fragmentation and decentralization of state power in the United States have in many respects inhibited the development and implementation of comprehensive and authoritative policies in a wide range of domains, from regulation to economic development to the welfare state. But while the institutional structure of antidiscrimination policy is certainly broadly consistent with these general characteristics — particularly the fragmentation of authority in the United States — the ultimate outcomes of antidiscrimination enforcement confound a straightforward institutional explanation. How was the fragmented and decentralized American civil rights apparatus able to function at all effectively and, moreover, to redirect American policy away from its color-blind moorings and toward race-conscious affirmative action? Why was French and British enforcement hamstrung in comparison?

The answers to these puzzles, the comparative histories suggest, lie at the intersection of culture
and institutions, in the particular configurations of political and ideological factors that defined the historical circumstances of race policymaking in each country. The comparison suggests that policies are best understood not merely as the projections of national cultures but as the results of political conflicts in which particular elements of national cultural and ideological repertoires are mobilized and enacted into policy. These political struggles take place within historical and institutional contexts that define the allocation and exercise of political power and so shape policymaking especially by constraining political behavior through the operation of rules, norms, and organizational settings. At the same time, institutions also create strategic opportunities for purposive political actors to further their interests, and they shape political opportunities for the mobilization of social interests. Similarly, political ideas and cultural traditions — institutionalized, taken-for-granted understandings of political and social arrangements — also constrain and enable policymaking, both by limiting the range of policies that are considered rational and by giving policymakers a repertoire of legitimating tactics for their favored policies.

National political structures thus shape policy outcomes not simply by organizing power but also by acting as gatekeepers for political ideas and cultural dispositions. Policymaking in democratic government is therefore not simply a process of optimizing the choice of policy instruments to solve readily identifiable social problems. Rather, it entails the formation of coalitions among actors who represent both interests vying for power and diverse policy ideas. Competing policy ideas do not necessarily embody different cultural dispositions or contending policy paradigms. In some instances, policymakers may be selecting among choices from a common cultural menu, as in Frank Dobbin’s account of industrial cultures and railroad policy in the United States, Britain, and France. Race policy, however, involves a clash of interests between majorities and minorities who almost by definition are on opposite sides of the defining cultural dimension, race-neutrality (or color-blindness). Thus the making
of employment discrimination policy necessarily entails a coalition-building process that combines what Hugh Heclo has called “powering” and “puzzling” — clashes of both power and culture between majorities and minorities.136

The question, then, is how did the processes of coalition formation around particular forms of employment discrimination law differ in these three political systems. On one level, this is a question about the relative capacity of minority groups to participate in these processes of coalition formation in order to influence policy, suggesting attention to such factors as group size, cohesion, and status; participation in electoral politics; patterns of political mobilization; and strategic alliances among groups. For racial minorities especially, distinctive national histories of racial formation have been decisive not only in defining the political boundaries of group identities but also in shaping the links between racially defined groups and national political institutions and it is these historically constructed political configurations — group-state linkages as shaped by political institutions — that constitute the central axis of comparison.137

American, British, and French race policy have clearly been powerfully shaped both by cultural understandings of racial distinctions and by the ideological lenses through which citizens and policymakers view the problems of integration, assimilation, and discrimination. In each country, color-blind ideals of individualism have contended with collective, race-conscious notions of political identity for dominance in the shaping of race policy. Despite substantial overlap in enacted policies, a close comparison of the three national experiences and the critical moments of race policymaking in the three countries suggests that configurations of political institutions — patterns of centralization and fragmentation, opportunities for political mobilization, points of access to the levers of political power — have led often similarly framed policies in very different directions by creating both opportunities and constraints for strategic action.138

In the United States, the clash among the multiple ideological traditions underpinning debates about American citizenship — Gunnar Myrdal’s liberal “American creed” and its illiberal, ascriptive
challengers — were clearly fundamental to midcentury debates about civil rights in general and equal
employment opportunity policy in particular. These broad cultural and ideological traditions framed the
debate, focusing attention on certain kinds of ideas about how the state should recognize and manage
racial difference and inequality in society. But these ideas were situated in a political and historical
context in which institutions clearly defined and delimited the role of African-Americans in the political
economy, so that the interests of African-Americans and their allies and supporters in equal employment
opportunity policies were constituted and organized in particular ways that reflected configurations of
power and the political opportunities they offered to a variety of actors.

The key role of the civil rights movement and of African-American political organizations in this
process points to an alternative hypothesis that might plausibly explain the curious rise of affirmative
action in the United States, namely that the racial crisis of the 1960s, culminating in several summers of
explosive racial violence in many American cities, drove policymakers toward more explicitly race-
conscious solutions across a variety of policy domains — not just employment discrimination but voting
rights, schools, and housing as well. Several factors militate against this interpretation, however. First,
the major reaction to the urban disturbances of the mid-1960s was one of increasing polarization on civil
rights and related social issues that deepened rather than resolving the political dilemma facing Johnson
and other elected officials. The Kerner Commission’s call for massive government intervention to
address racial separation and inequality fell on unsympathetic ears, and the late 1960s saw the dismantling
(or at least the hollowing out) of much of the Great Society effort that had seemed so promising only a
few years before. In the immediate aftermath of the violent summer of 1967, Johnson and his aides
were actually quite apprehensive about civil rights as an issue. In July 1967, a White House-
commissioned poll found that Johnson’s net favorability rating on his handling of racial issues was
negative and that more Americans believed that “someone else” (unspecified) would do better than he at
addressing racial problems. Johnson, moreover, grew increasingly cautious in taking action of civil rights and social policy over the rest of his presidency. Second, the political actors most susceptible to pressure from violence — elected officials and public officials responsible for keeping public order — were the least responsible for the development of affirmative action. Congress, for example, responded to the riots partly by passing the Open Housing Act of 1968, which contained the same color-blind, individual-remedy approach to housing discrimination that Title VII had applied to employment discrimination, while rejecting the chance to expand the EEOC’s powers and beef up Title VII enforcement. Judges and bureaucrats, on the other hand, were rather insulated from pressure for immediate action, although the EEOC was enlisted in a federal effort to help address job shortages in cities. Third, the doctrinal shift toward collective, race-conscious enforcement was already underway before the riots, even if the major events in the development of affirmative action occurred later. The point is not that racial violence was unimportant in shifting antidiscrimination policy, but that in order to understand its role we need a more fully specified account of the means political actors, both inside and outside the government, had at their disposal and the mechanisms by which their actions influenced policy.

Those mechanisms, my argument suggests, did involve social movement actors, but not solely through protest. Rather, African-American organizations used a variety of venues offered to them by the structure of the American state to advance their cause, including the courts and the EEOC. At the same time, however, the role of the civil rights movement, working through these mechanisms, suggests strongly that the view of affirmative action as the product of an insider conspiracy of judges, bureaucrats, and civil rights lawyers to subvert the law could not be more wrong. “Post-1968 civil rights law has notably been imposed on American democracy from the top down,” writes legal scholar Andrew Kull. “Little disposed to reclaim the burden of self-government in an area offering only hard choices, the nation has largely acquiesced in policies chosen by administrators and judges.” Not so. Administrators and
judges indeed played critical roles in the evolution of antidiscrimination policy, but their actions were enabled and sustained by the wide-ranging democratic forces of the civil rights movement and its organizations.

American policy was made in institutions that incorporated African-Americans only on certain terms, the result of a long, often antagonistic history of engagement between blacks and the American state. The result was a circumscribed law that ironically proved a strong instrument for the pursuit of affirmative action, perhaps in part because it was the product of what David Mayhew has called “strenuous, dramatic, and crystallizing” public political actions that promoted compromise across contending ideologies, parties, and institutions. Advocates of affirmative action and other group-sensitive policies had (and still have) multiple political venues in which to pursue their aims and multiple points where deftly applied pressure can produce results that appear to defy legally enshrined color-blindness. Not only are Americans fundamentally ambivalent about color-blindness, but the fluidity of American political institutions give wide scope to social forces that would exploit that ambivalence, and those social actors have seized the strategic opportunities that American politics offers them.

Britain began with a very similar ideological tradition, and British policy leaders even self-consciously modeled their ideas about race and race policy on the American experience, although not without dissent. British policy debates were similarly framed, but they occurred in a different institutional context, in which interests were constituted, organized, and represented in alternative ways. British minorities did not have a long history of engagement in national politics, and British political institutions thus offered them little leverage to shape policy outcomes; at the same time, opposition to antidiscrimination policy was also less deeply rooted in British politics than in the United States and a higher degree of consensus prevailed on racial issues than in America’s deeply race-laden political landscape. The result was that Britain adopted a law that appeared to settle on an alternative paradigm of
antidiscrimination policy but that in the end provided a weak platform for the energetic pursuit of antidiscrimination efforts, particularly through positive or affirmative action.

In France, the political configuration of antidiscrimination policy and of the French state provided no purchase for similarly inclined policy advocates, who could neither convince policymakers in a centralized legislative system to alter settled policy nor find sufficiently powerful levers elsewhere to shift policy any other way. French institutions militated against the engagement of minorities qua minorities in politics, reinforcing the assimilationist tendencies of French political culture. This configuration of forces produced strong race policy, but without a corresponding repertoire of cultural or political moves that might allow racial minorities and their allies to exert legitimate pressure to expand the scope of enforcement. Moreover, the relative rigidity of French political institutions have made color-blind policies harder to dislodge, not simply because color-blindness represents France’s social consensus but because French politics provides few strategic opportunities to its opponents.

For the United States and the study of American political development, this comparison suggests that to consider American race policy as an emanation of either America’s singular racial history or its distinctive political tradition yields a misleading account of the evolution of the American to the challenges of racial diversity. While America’s history of racial division and hierarchy is without doubt distinctive, it by no means renders American race policy beyond the reach of comparative analysis. Rather, careful comparison shows that race policies in a variety of national settings respond to largely the same set of factors and that the same elements of causal explanation are relevant to policy developments both in the United States and elsewhere. Saying this, I hasten to add, is different from saying that the same theory explains race policy trajectories and outcomes across different countries. The elements in play here — national political institutions, cultural repertoires, patterns of mobilization — do not cumulate into a single theory of race policymaking that purports to explain variations in policy across time and space without
regard to particular circumstances. Rather, they are all present in each case, although in different configurations.

Similarly, the comparison argues against accounts of American political development that rely centrally on an account of a political tradition, or even of multiple political traditions, understood primarily as “(1) a worldview or ideology that defines basic political and economic institutions, the persons eligible to participate in them, and the roles or rights to which they are entitled and (2) institutions and practices embodying and reproducing those precepts.” Although elements of these multiple traditions are clearly critically important to any convincing explanation of race policy in these countries, the role these ideological traditions and the cultural repertoires they engender play in shaping policy is situated must be understood in relation to the structure of national political institutions and the processes of policymaking and representation in each political system. Together these two clusters of factors shape the context for strategic political action to make policy and, ultimately, to generate a process of political development. It was neither American liberalism nor any of its challengers that produced the distinctive American pattern of race-conscious affirmative action emerging from color-blind premises, nor was this policy pattern simply a mechanical reflection of fragmented American political institutions. Rather, these policies resulted from the interplay and friction among these factors, the particular operationalization of elements of multiple political traditions by citizens acting within distinct institutional and historical settings.

Finally, the comparison points the way toward a reorientation of approaches to American political development and the politics of American state building. By pointing out in comparative terms the peculiar strength of the supposedly “weak” American state, this study suggests that the now-traditional emphasis on the limitations of the American state in making and implementing policy, particularly difficult and controversial regulatory or redistributive policy, may be misplaced. Rather, the very limitations of the American state — its fragmentation and dispersion, its multiplicity, its lack of many of the
characteristic tools of administrative control — may in fact, under certain circumstances, be sources of strength that produce unexpectedly innovative, decisive, and effective policies. Some hints in recent scholarship suggest a variety of (not necessarily mutually exclusive) mechanisms by which this may occur: bureaucratic networks, the behavior of private actors, and especially the courts. These mechanisms are little understood and deserve considerable attention, and all may have been at work in the construction of the American antidiscrimination regime. Above all, these considerations suggest that a better understanding of the roots of American race policy can open up new avenues of inquiry in American politics, and that, questionable accounts of American racial exceptionalism notwithstanding, race remains at the center of American political development.
Notes


20. Only one Democrat, Frank Lausche of Ohio, was to the right of the most liberal Republican, Jacob Javits of New York.


22. Keith Krehbiel, *Pivotal Politics: A Theory of U.S. Lawmaking* (Chicago: University of Chicago Press, 1998). Parties are notably absent from Krehbiel’s account of policymaking pivots. Nevertheless, given the distribution of civil rights views among Democratic and Republican senators, it is clear that the filibuster pivot was a Republican. Thus my approach, which emphasizes Dirksen’s role both as Republican leader and as a senator near the pivotal point for cloture, is broadly consistent with Krehbiel’s analysis of pivots in policymaking.

23. “Memorandum Describing Changes in H.R. 7152 Embodied in Amendment No. 656 Offered by Senators Dirksen, Mansfield, Humphrey, and Kuchel,” 1964 Justice Department Preparation of Bill Material, Box 1, Legislative Background, Civil Rights Act of 1964, p. 8, LBJL.


29. Task Force Issue Paper, Civil Rights, 17 June 1964, Office Files of Lee C. White, Box 3, LBJL.


31. Memorandum, Hobart Taylor to Johnson, 7 May 1964, HU 2, WHCF, LBJL.

32. Memorandum, William L. Taylor to Lee White, 17 June 1964, Office Files of Lee C. White, Box 2, LBJL; Memorandum, Lee C. White to Johnson, 28 September 1964, LE, WHCF, Box 167, LBJL.


34. Memorandum, Nicholas deB. Katzenbach to Humphrey, 23 November 1964, *Civil Rights During Johnson,* part 1, reel 2; Johnson to Humphrey, 2 December 1964, *Civil Rights During Johnson,* part 1, reel 2.

35. Memorandum, Louis Martin to James R. Jones, 16 December 1967, HU 2, WHCF, Box 7, LBJL.


38. On administrative pragmatism in the EEOC (as well as the OFCC), see Skrentny, *Ironies of Affirmative Action,* 111-44. See also Graham, *Civil Rights Era,* 282-97.


40. Memorandum, Nicholas Katzenbach to Joseph Califano, 13 December 1965, LE, WHCF, Box 65, LBJL.
41. Memorandum, Ramsey Clark to Joseph Califano, 1966 Task Force Report, Legislative Background, Civil Rights Act of 1964, LBJL.

42. Ramsey Clark to Humphrey, 17 February 1967, Civil Rights During Johnson, part 1, reel 10; Graham, Civil Rights Era, 262-73; Massey and Denton, American Apartheid, 192-94.


44. Alexander to Nixon, 8 April 1969, FG 109, WHCF, Box 1, Nixon Presidential Materials, National Archives (hereafter cited as NPM); Reps. Donald M. Fraser, John Brademas, James C. Corman, and Don Edwards to Nixon, 27 June 1969, Ex HU 2, WHCF, Box 2, NPM.

45. Memorandum, Tom Stoel to Garment, 16 January 1971, EEOC, Office Files of Bradley Patterson, Box 29, NPM; Confidential Memorandum, Cole to Garment, 17 February 1971, CF HU 2, WHCF, Box 35, NPM.


48. Memorandum, Patterson to Garment, [May 1972], EEOC, Office Files of Bradley Patterson, Box 29, NPM.


55. Memorandum, Clifford L. Alexander Jr. to Loyd Hackler, 28 December 1967, FG, WHCF, Box 380, LBJL; Memorandum, Clifford L. Alexander Jr. to Henry Fowler, 12 April 1968, HU 2-1, WHCF, Box 44, LBJL; Stein, Running Steel, 118.
56. Dirksen to Bryce Harlow, 7 April 1969, CF FG 109, WHSF/WHCF, Box 23, NPM; Memorandum, Flanigan to Cole, 14 April 1969, CF FG 109, WHSF/WHCF, Box 23, NPM; Memorandum, Garment to Flanigan, HU 2-2, WHCF, Box 17, NPM; Memorandum, Flanigan to Bill Timmons, 9 April 1970, HU 2-2, WHCF, Box 17, NPM.


58. Graham, Civil Rights Era, 251-54.


61. Blumrosen, Black Employment and the Law, 144-49.


76. *Parliamentary Debates* (Commons), 5th ser., vol. 906, 1663-64.


78. Teles, “Why is There No Affirmative Action in Britain.”


91. Mouvement contre le racisme et pour l’amitié entre les peuples [hereafter MRAP], *Chronique du flagrant racisme* (Paris: La Découverte, 1984); Assemblée Nationale, Proposition de loi no. 38, 15 Apr. 1959. See also Bleich, “Problem-Solving Politics,” ch. 5.


95. MRAP, *Chronique du flagrant racisme*, 13. In 1979, LICA became LICRA, the International League Against Racism and Antisemitism.


98. *Journal Officiel de la République Française, Débats Parlementaires, Assemblée Nationale*, 1972, no. 41 (8 June), 2287. The quotation is from the remarks of Jean Fontaine.


110. EEOC data are from the EEOC’s Annual Reports. Courts data were compiled by Sean Farhang from records of the Administrative Office of the United States Courts.


131. Tarrow, *Power in Movement*.


142. Memorandum, Marvin Watson to Fred Panzer, 3 August 1967, CF, Box 82, LBJL; Memorandum, Fred Panzer to Johnson, 18 September 1967, CF, Box 82, LBJL; Memorandum, Califano to Johnson, 10 April 1968, CF HU-2, Box 56, LBJL; Memorandum, Ben Wattenberg to Johnson, 26 April 1968, HU 2, WHCF, Box 8.

143. An exception might be municipal police departments, which might in some cases be expected to respond to racial violence by hiring black officers to improve community relations and forestall future outbreaks of violence. But as Daniel Kryder has shown, this process was already long underway in many cities. Daniel Kryder, “American Race Policy as a Result of War” (Paper presented to the American Political Science Association, 2001, San Francisco).


145. Memorandum, Loyd Hackler to Johnson, 2 August 1967, HU 2, WHCF, Box 6, LBJL.


