

Signals and Spillover: *Brown v. Board of Education* and Other Social Movements

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On February 11, 2004, nearly fifty years after the Supreme Court handed down its landmark decision, *Brown v. Board of Education*, a political activist echoed the Court's wariness about "separate but equal" treatment of American citizens. The Supreme Judicial Court of Massachusetts had ruled in December that a state law providing for the option of "civil unions" between gay people violated the guarantees of equal treatment established by the Massachusetts constitution. Citing its own opinion months before, the Court held that the state constitution "affirms the dignity and equality of all individuals" and "forbids the creation of second-class citizens" (*Goodridge v. Public Health*, Id. at 312). In effect the, the state constitution already afforded same sex couples the same marriage opportunities and obligations enjoyed by opposite sex couples; the Court delayed immediate implementation of its decision, but set a short deadline for legislative action.

Seeking to prevent gay marriages in Massachusetts, the state legislature hastily called a constitutional convention with the express intent of avoiding this day of reckoning by amending the Constitution to eliminate any such protections against discrimination. The Court's decision prevented any easy compromise that afforded gays the benefits of marriage without marriage, and advocates on both sides of the issue aggressively mobilized their supporters.

Opponents of gay marriage pointed to natural law. As example, Representative Marie Parente opined, "Nature left her blueprint behind and she left it in DNA, a man and a woman.....I didn't create that combination, Mother Nature did" (*AP*, February 12). At the same time, supporters of gay marriage repeatedly drew analogies to the civil rights movement. Sen.

Dianne Wilkerson recalled growing up as a black woman in the South, “I know the pain of being less than equal and I cannot and will not impose that status on anyone else...I was but one generation removed from an existence in slavery. I could not in good conscience ever vote to send anyone to that place from which my family fled” (A.P. February 12).

Although marriage, much less gay and lesbian rights, didn’t figure into the politics of the *Brown* decision, the language of *Brown* was everywhere, and advocates claimed to capture its spirit. Arline Isaacson, cochair of the Massachusetts Gay and Lesbian Political Caucus warned, “It’s increasingly clear that the Legislature is positioning itself to take back the marriage rights we currently have, to take back over 1,000 protections we currently have, to enshrine discrimination into our constitution, and to create a *system of separate but unequal*” (emphasis added) (A.P. February 12). At this writing, the Legislature has been unable to craft an amendment commanding majority support, and gay marriages can legally commence in Massachusetts, at least according to the state’s highest court, on May 17.

The anniversary of *Brown* is an appropriate time to examine the decision’s legacy on education, civil rights, politics, and the status of ethnic minorities, in American politics. Most of the papers here will consider the place of *Brown* in a larger framework of a centuries-long struggle for civil rights, and we’re eager to participate in that discussion. At the same time, the Supreme Court and the civil rights movement have both left legacies that extend far beyond the intent of judicious activists or activist judges. Here, we mean to consider the impact of civil rights on the broader landscape of American politics, paying particular attention to social movements expressly concerned with issues other than African-American civil rights. We mean to contribute to a fuller evaluation of *Brown*, as well as to a broader approach to assessing the outcomes of social movements.

We begin by considering the claims activists and analysts have made for the significance of *Brown*. Although it has generally been credited with helping to animate and focus the civil rights movement, scholars have also noted the Court's dependence upon other actors and institutions in order to effect broad social change. We then turn to the literature on social movements, reviewing theories relevant to our consideration of the extended effects of a judicial decision and a social movement, pointing particularly to the concepts of "signals" as a component of political opportunity, and the "spillover" of one social movement to another. We then focus our attention on two related legacies of *Brown* offered subsequent social movements, the use of litigation as a social movement strategy, and the focus on "rights" as an organizing frame. In our conclusion, we return to the unfolding case of gay marriage to recapitulate the arguments of the paper.

THE BROWN WATERSHED

The unanimous decision in *Brown v. Board of Education* looms large in virtually every narrative of the civil rights movement. Although African-Americans had been organizing for civil rights for decades beforehand (e.g., Morris 1984), the decision marked a breakthrough in national politics. To be sure, civil rights had appeared episodically in Presidential politics in the years prior: Harry Truman desegregated the armed forces by executive order in 1947, as part of a larger effort to ramp up American foreign and military policies (Dudziak 2000; Layton 2001); Truman's tumultuous 1948 reelection campaign was marked by pressure for government action by reformers within the party, most notably Minnesota Senator Hubert Humphrey, and by the first exit of Southern Democrats from the party over the issue, led by Senator Strom Thurmond and his "Dixiecrats." Still, *Brown* promised—or threatened—to step

into the day-to-day life of large numbers of black and white Americans in a scale previously unimaginable, with children on the front lines of the change.

By explicitly reversing *Plessy v. Ferguson*, and declaring *de jure* segregation of public schools a violation of the Constitution, the decision marked the success of a longterm litigation strategy employed by the National Association for the Advancement of Colored People (NAACP)'s Legal Defense Fund, based on building on smaller decisions about segregation in professional schools (Kluger 1975)—and in other public institutions. In fact, while *Brown* is the only case widely remembered, it followed scores of cases that examined racial segregation in public institutions, including schools. Moreover, the NAACP was not alone in using litigation to challenge segregated institutions. The League of United Latin American Citizens (LULAC), founded in 1927, had also employed litigation in the service of desegregation. In 1945, backed by LULAC, five Mexican American families filed a lawsuit in the Federal District Court in Los Angeles, challenging segregated schools in Orange County, in a case called *Mendez v. Westminster*. In April 1947, a U.S. Circuit Court of Appeals upheld a decision on behalf of the Mexican American students, on the logic that Latinos did not constitute a non-white race (Carillo 2004), following numerous cases that ruled on whether, Japanese, Chinese, Armenian, Filipino, or Syrian people, for example, were actually white—legally (Lopez 1996).

Brown ended the run of cases about who was entitled to the privileges of whiteness, in effect, undermining *de jure* racial privilege. Read aloud from the bench, with all nine justices present, the decision immediately sparked action in both support and opposition to both the desegregation of schools and a broader civil rights agenda. The decision aligned the Court with the goal of civil rights, often against the positions of not only Southern state governments,

but also the President and Congress, and suggested both a strategy (litigation) and an orientation (equal rights) that animated both the civil rights movement and subsequent movements for decades to come. It promised that the Supreme Court could do what other institutions of government would not.

The decision circulated around activist circles, and Rosa Parks read it, in conjunction with Henry Thoreau's essay on civil disobedience, at the Highlander Institute, not far from here in Nashville in the summer of 1955. The decision operated as a "signal" of changed political opportunities for African-Americans (Tarrow 1996; Meyer and Minkoff 2004), particularly a newly receptive federal government, and spurred what McAdam (1982) describes as "cognitive liberation" among activists and potential activists, that is, a new sense of personal efficacy for pursuing social change. If *Brown* encouraged Rosa Parks and other activists to violate the practice of segregation in the institutions that touched them, it also encouraged others, black and white, Southern and Northern, to support them.

Both supporters and critics have constructed *Brown* as a landmark in American political history. According to Aryeh Neier (1982: 57), "There is little need to speculate about one part of the legacy of *Brown*. It stimulated blacks and other deprived minorities to seek redress of their grievances through litigation.... *Brown* is the cause of the transformation and remains its symbol." Key to the appeal of litigation, Neier notes, is the notion that a strategy based on argument in the courts can obviate the need to build majority support in other political institutions. He (1982: 13, emphasis original) proclaims, "*Brown* was a spectacular demonstration that a depressed minority might prevail in the courts, that the usual trappings of power did not predetermine the results of litigation...A cause might lack the strength to prevail in the legislatures or to make officials in the executive branch listen to it seriously, but the

courts—*so the word went out with Brown*—would pay more attention to its justice than to its resources.”

Others have suggested that *Brown*, in conjunction with a series of the Warren court’s criminal law decisions, led Americans to place undue emphasis on the courts. Reformers turned to the courts, writes Mary Ann Glendon (1991), crafting arguments based on rights and entitlements rather than building majorities through politics. The *Brown* served as an emblem of a newly democratized legal system, which afforded not only legal victories, but financial settlements, to lawyers and organizations advocating on behalf of people disadvantaged in more conventional politics, argues Charles R. Epp (1998)—and the change in American jurisprudence and politics spread globally. Of course, this also took some direct political pressure off other political institutions.

Some scholars have been critical in the overwhelming importance assigned to judicial decisions in general, and *Brown* in particular. Gerald Rosenberg (1991), in careful study of the effect of judicial decisions on public policy, argues that analysts assign too much importance to the Court. In fact, he contends that schools only started to desegregate in response to legislative action—which itself was a response to social mobilization (Garrow 1978).

In summary, *Brown* appeared as a “critical event” (Staggenborg 1993) for the civil rights movement. Even as both the litigation culminating in *Brown* included scores of other cases, and even as the citizen activism had been building for years leading up to the case, the decision provided a touchstone for government and activists, against which both the civil rights movement and institutional political actors, charted their own courses. Given the role of this critical judicial decision, we must wonder whether the decision affected other social movements, and if so, how?

SIGNALS AND SPILLOVER

Social movements are always about more than their explicitly articulated claims, and they always get less than what they, or at least some portion of the activists within them, ask for. This the case, evaluations of success or failure have given way in the academy to considerations of outcomes. Because the factors that give rise to social movements also provoke and promote changes in politics, policy, and culture, separating out the influence of any group, event, or tactic, is extremely difficult (Amenta 2005). In other words, the conditions that produce changes in policy may concomitantly produce social movements calling for those changes.

That said, we can profitably look at the influence of social movements by identifying three distinct, but interdependent levels of effects: public policy, culture, and movement participants (following Meyer and Whittier 1994), which we can use to establish a baseline of how movements affect other movements: public policy, culture, and participants.

Policy. Every study of movement influence on policy derives in some way from the critical work of William Gamson (1990), who identified two distinct components to movement organization success: recognition as a legitimate actor in politics, and new advantages to a group or its beneficiary constituency. Broadly speaking, these measures refer to the substance (new advantages) and process (recognition) of public policy. It is important to add that movement challenges can affect not only the policy choices of governments, but also of other institutions, such as parties and interest groups, businesses, churches, schools, and essentially any other venue in which the public can be engaged.

Culture. Movements struggle on a broad cultural plane, of which formal government policy is only one parameter (Gusfield 1980). Thus, the civil rights movement sought to win

not only changes in rules and procedures that made political inclusion appear more possible to black Americans, but also sought to change the attitudes about racial integration prevalent in mainstream society. In its efforts, the movement drew from available symbols in dominant culture, such as the flag and the Constitution, and appropriated others from African-American communities, bringing church spirituals, for example, into popular political parlance. Within mass culture, the civil rights movement was responsible for large changes in the cultural climate that can best be seen through indicators observed in more mundane cultural products, for example, television network executives deciding to give black actors recurrent roles on prime time television.

Culture constrains policy. It is unthinkable today that government could effect the sorts of formal restrictions on participation in American life by blacks or women common two decades ago. A number of scholars (Breines 1989; Gusfield 1980; Rochon 1998) have argued that the cultural effects of movements, though often neglected by analysts, are often longer-lasting and farther reaching than the more narrow short-term policy victories and defeats.

Participants. Movements also affect those who participate in them. By engaging in the social life of a challenging movement, an individual's experience of the world is mediated by a shared vision of the way the world works, and importantly, the individual's position in it. By engaging in activism, an individual creates himself as a subject, rather than simply an object, in history, and--contrary to popular myth--is unlikely to retreat to passive acceptance of the world as it is. People who forge a world view through the struggle of a social movement will make different kinds of decisions in all sorts of contexts in the future.

At the most general level then, movements can affect the political landscape, but also material and cultural resources available to themselves and to other challengers (Meyer and

Staggenborg 1996). In challenging policy and the policymaking process, movements can alter the structure of political opportunity, or external environment, new challengers face. This approach outlines a broad variety of potential influences, and suggests numerous mechanisms of influence over an extended period of time. The variety of mechanisms also mandates a more flexible approach to assessing movement outcomes, particular in regard to the timing of policy changes. A movement that loses a battle on a matter of policy may alter the policy agenda such that its influence extends to subsequent, although often uncredited, victories.

Taken together, we see ways in which one movement can influence another, and where a critical event—and judicial decision—fits into a larger theoretical framework. Social movements can influence other social movements through each of the three levels of outcomes outlined above. We want to emphasize that *the Brown decision was the product of dedicated social movement efforts, and so we must see this Court decision not only as an act of government, but also as a response to a challenging movement, and thus, a mechanism through which the civil rights movement influenced subsequent movements.*

To ascertain influence, we should identify the mechanisms through which influence can be effected (following McAdam, Tarrow, and Tilly 2002), so that we can trace the process by which changes take place. For the purposes of this analysis, we can focus on three distinct mechanisms: shared personnel between the civil rights movement and other movements; changes in the external environment, or political opportunity structure; and purposive emulation¹—all in some way related to the *Brown* decision. We describe them first in general,

1. This is by no means an exhaustive list of potential mechanisms of influence. Meyer and Whittier (1994) over a distinct, but overlapping set of four mechanisms, while McAdam,

and then turn to the case.

Personnel. While social movements are often explicitly identified with only one issue or set of issues, activists rarely are. Protesting and organizing for a variety of related social changes over several decades is the rule rather than the exception for individual activists (Fendrich and Lovoy 1988; McAdam 1988; Whalen and Flacks 1987; Whittier 1995). The civil rights movement was animated by people who had a range of other political concerns, most notably, commitments to economic justice, peace, and the labor movement. Activists can shift goals and groups in response to the changing political environment, responding to proximate threats and opportunities, while maintaining an essentially consistent political world view (Meyer 1993). After *Brown*, and certainly after the hey day of the civil rights movement, activists filtered into other social movements, bringing with them not only a world view, but an arsenal of tactics (McAdam 1988).

Political Opportunity Structure. The world outside a social movement, that is, its political context, influences its emergence, development, and ultimate influence. Scholars working from this premise refer to the structure of political opportunities a movement faces, economically defined by Tarrow (1998: 19-20) as “consistent--but not necessarily formal or permanent--dimensions of the political struggle that encourage people to engage in contentious politics.” Protest movements alter the structure of political opportunity, and thus the shape and potential efficacy of subsequent movements (Meyer 2004). This means that the efforts of one movement make certain strategies and claims more attractive or promising than others for its

Tarrow, and Tilly (2002), looking at a wider range of movement processes, identify more than three dozen possible mechanisms.

successors, and create a pattern of potential government responses to challengers. As we will see, the *Brown* decision made the judiciary an attractive venue for social movement activity, and encouraged activists to adopt a rights-based frame and a litigation strategy.

Emulation. McAdam, Tarrow, and Tilly (2002: 335) define “emulation” simply as “collective action modeled on the actions of others.” In order for emulation to take place, two additional steps must first be taken. Movement strategists must see sufficient similarity in identity and situation as those they copy to make emulation seem possible. And, perhaps even more importantly, activists must believe that adopting the tactic and sorts of claims of others has a reasonable chance of ensuring safety and providing success. In this regard, the apparently successful litigation strategy culminating in *Brown* created a “demonstration effect” (Freeman 1983) for other social movements.

BROWN AS A SIGNAL FOR SOCIAL MOVEMENTS

Based on the premises outlined above, we can summarize the ways in which the civil rights movement, through the *Brown* decision “spilled over” to affect subsequent social movements. To begin, we need to acknowledge that the civil rights movement provided a seed bed for political activists for the following decades in the United States.

Shared Personnel. The adoption of the litigation model of the civil rights movement was facilitated by the movement of personnel from the civil rights movement to other successor movements. The experience of activism on civil rights spurred young people who had campaigned in the South, for example, to return to their communities and take on additional issues of economic justice. Breines (1989), for example, documents how the experience of civil rights activism energized student activists, and led them to take on urban

issues in the North, transforming a concern with civil rights to a more inclusive one of economic justice. Additionally, one wing of the women's movement of the 1960s and 1970s, for example, grew out of the civil rights movement, responding partly to women's frustration at their treatment within the movement (Evans 1980). The anti-war movement, also, was built on the organizations of students who had supported civil rights, and was filled with young lawyers who saw the Federal judiciary as a potential ally (Neier 1982).

The success of *Brown* encouraged this vision. This takes us to changes in *political opportunities*. First, for whatever its limitations, *Brown* put not only school desegregation, but civil rights for African Americans more generally, on a broad national political agenda. Because activists—and others—mobilized in response to *Brown*, the decision became even more important. The decision sent several significant messages: first, segregation violated fundamental individual Constitutional rights, and the Federal government would intervene to end it.

Second, the Supreme Court was a powerful and independent political institution, and therefore, an attractive venue for activism. The Court could act against other, popular and democratically accountable institutions, in the service of the Constitution, and could stand against majority will to defend the Constitution and the rights of minorities. If we think about African Americans in the South, there were not a lot of attractive political alternatives for redress. Congress was dominated by the Democratic Party, which depended upon a solid Southern (segregationist) contingent to maintain its majority. Presidents were also loathe to act on civil rights for fear of alienating the South. The Court, more distant from political pressure, was the best available bet.

For social movements, which arise mostly among those who cannot win through more

conventional political activities (but see Meyer and Tarrow 1998), the Court was especially enticing. In addition to having the capacity to stand against majority rule, activism within it was relatively cheap. This is not to say that the long years of litigation and professional expertise necessary to prevail in the legal system come easily or cheaply, only that they are more accessible than any other political alternative. Indeed, Epp (1998: 64) reports that foundations were increasingly willing to devote their resources to litigation-based campaigns, seeing the potential of a large payoff for a manageable investment.

Third, the Court encouraged a framing of political demands in terms of the Constitution, in terms of fundamental rights, understood as opportunities for individuals, and encouraged claimants to look to the Federal government—and particularly the judiciary—as a protector. The apparent responsiveness of other branches of government, particularly the Executive, to the Court, and the receptivity of the judiciary to certain kinds of claims, encouraged all sorts of groups who saw themselves as disadvantaged to adopt a litigation strategy based on rights. Indeed, the 14 years following *Brown* were characterized by an activist court protecting individual rights of weak or unpopular constituencies, and hearing challenges against the government by a wide range of interests.

While the Court has always been a last resort for individuals threatened by powerful interests, including government, after the 1950s, the Court became “the most accessible, and often the most effective instrument for bringing about the changes in public policy sought by social protest movements” (Neier 1982: 9; see also Handler 1978: 1). Interestingly, however, this opportunity also seemed most attractive to activists and movements that enjoyed routine access to the ballot box (Rimmerman 2002: 48).

Next, we can consider *emulation*. The success of African Americans in using the courts

led a range of other interests to adopt litigation strategies, and indeed, even the organizational structure of the NAACP and its Legal Defense Fund. O'Connor (1980: 104), for example, describes pressure from board members of the National Organization for Women to create a subsidiary concerned with litigating on behalf of women.

Baker, Bowman, and Torrey (1994) report that the feminist movement's concern with discrimination against women, and inequality between women and men, led them to adopt the NAACP's approach as "the only obvious model.....following the NAACP's example, liberal feminists worked within the system to achieve change by focusing on 'gaining equal opportunity for women as individuals...'" (Baker et al. 1994: 17-18). They contend that NOW deliberately "copied the methods, structures, and funding techniques of the NAACP Legal Defense Fund and concentrated, like that organization, on the courts as an instrument of change through litigating cases raising constitutional claims..." (Baker et al. 1994: 22). Indeed, Costain (1992) notes that members of Congress made the connection between women and blacks, and copied legislative provisions for civil rights as well.

The successful example of litigation, and the simple story about social change implicit in a judicial pronouncement, encouraged the strategy, and groups were able to frame themselves as like African Americans in some way, usually as a distinct group that suffers discrimination in society. Activists organized to provide for equal protection under the law, the same standard articulated in *Brown*, regardless of the nature of their constituency (Neier 1982: 13). The model was most easily adopted by other ethnic minorities and women, but it spread to consumers, disabled people, anti-war activists, crusaders against poverty, and even animal rights and environmental activists.

Handler (1978: 27) reports that the war on poverty's legal services program, started in

1967, was consciously modeled on the NAACP and the Legal Defense Fund (also see Neier 1982: 129), as was the Environmental Defense Fund, also founded in 1967 (Handler 1978: 44). In these cases, as with the NAACP, dedicated organizations raised money to hire lawyers to file litigation to achieve their political goals, and to win political visibility and raise more money. The iconic status of the *Brown* decision, in which the Supreme Court reversed a long-standing precedent and articulated a clear vision of individual rights that mandated, although it did not effect, immediate change in laws and policies, provided an incredible temptation for environmental groups. If the Court could find a right for equal access to education, perhaps it could also find a Constitutional right to a clean environment (Rosenberg 1991: 272).

Surely, the most obvious parallel to the *Brown* case for social movements was the successful effort to use the Supreme Court to bypass state legislatures on abortion rights. Responding to *Brown*, Planned Parenthood organizers had begun litigation to get the judiciary to ensure access to birth control, advancing the notion of a “privacy right.” Activists’ attention to the Courts represented something of a shift, as abortion advocates had primarily been advocating for liberalized laws through state legislatures. Blocked in the Connecticut legislature by the organized opposition of the Catholic Church, Planned Parenthood saw in the Federal judiciary a more friendly venue. In 1965, the Court recognized a privacy right in *Griswold v. Connecticut*, citing “penumbra” or shadows cast in the Bill of Rights, and the fourteenth amendment protection of due process.

Following on this precedent, two young lawyer in Texas, Linda Coffee and Sarah Weddington, resolved to challenge abortion law in Texas, hoping for a sweeping decision comparable to *Brown*. Recent graduates of the University of Texas Law School, both were well-informed not only about the desegregation decision, but also were associated with new

women's organizations. Coffee was a member of NOW and the Women's Equity Action League, and Weddington had joined a feminist consciousness-raising group (Craig and O'Brien 1993; Hull and Hoffer 2001; Rosenberg 1991). They approached their goal politically, searching for a plaintiff to establish standing in order to challenge the law.

The victory in *Roe* came before extensive national action on abortion rights, and spurred political action, first from opponents of abortion rights, and then, in response, from advocates of abortion. The evolving debate has hinged on competing visions of rights, where abortion rights advocates emphasize the autonomy of women to make decisions about their bodies and lives, and anti-abortion advocates seek to assert Constitutionally protected rights for the fetus—or unborn child (Staggenborg 1991). This has resulted in virtually perpetual litigation and mobilization on abortion rights, and a discourse that is not amenable to resolution, either through unambiguous victory or negotiated compromise (Meyer and Staggenborg 1996).

Although the abortion debate provides a particularly salient example of mobilization and countermobilization around a legal strategy and the discourse of rights, it is hardly unique. Table 1 offers a preliminary inventory of social movement litigation groups, most formed in the long, deep wake of *Brown*—with the notable exception of the American Civil Liberties Union (ACLU). To compile this list, we used several internet search engines and a variety of key words to identify social movement groups that employed the litigation strategy well-established by the NAACP's Legal Defense Fund and/or employed the rhetoric of rights that *Brown* institutionalized in American politics.

Before discussion, a few qualifications are in order. This list is not all-inclusive, and the descriptions provided are from the organizations themselves, and so must be considered

incomplete, and at least partly as marketing appeals, rather than objective assessments of activities. Further, most of these groups were formed during or after a period of tremendous growth in the number of interest groups in American politics, which was a response to broad changes in the organization of American politics, including, but not limited to, a period of judicial activism on rights (Berry 1999). Finally, websites are relatively cheap to maintain, and the presence of an active site does not necessarily guarantee a vigorous organization behind it.

TABLE 1 ABOUT HERE

Even given these qualifications, the extent of organizational and strategic emulation is striking. The language of rights and the strategy of litigation has extended well beyond the concerns of ethnic minorities, much less African Americans, to include women, disabled people, the environment, gays and lesbians, student journalists, and animals—in laboratories, farms, and the wild. Group claims explicitly reference due process under the law, basic rights, and challenge the notion of separate standards. It is also important to recognize that opponents of the social movements of the 1960s have also organized litigation-oriented social movement groups to protect their own political stakes. The Center for Individual Rights, for example, recently advocated against affirmative action at the University of Michigan, citing Constitutional protections for non-minority applicants. The Pacific Legal Foundation represents property owners and the general right of private property against environmental regulation. Any observer can find on this list at least a few groups whose attributions of similarity to black children in the South in the 1950s seems strained, if not completely tortured.

CONSEQUENCES OF SPILLOVER

Clearly, the impact of the *Brown* decision encouraged numerous groups to adopt a litigation strategy for pursuing their political claims. Although the Court has sometimes intervened against majorities to protect fundamental rights, it is doubtful that this is a reliable expectation for groups. The widespread diffusion of a litigation strategy has also had other consequences, which are worth considering.

First, the adoption of litigation ties any social movement claimant to the law and to the interpretation of the Constitution. It is, of course, attractive to assume that we can produce massive social change by convincing a small number of justices, with the strength of logic, to mandate policies we view as attractive. By focusing on interpretation, however, social movement organizations may neglect simple, but unattractive, possibilities, most notably, that the law may not be on their side. Moreover, in seeking to frame claims that appeal to Supreme Court justices, groups adopt a language of rights, inherently absolute, and unamenable to compromise. This makes resolution extremely difficult, and virtually ensures continued litigation. Indeed, as the table indicates, now both sides on most political issues are engaged in ongoing litigation campaigns, as even prospective victories in the legal system can mobilize the opposition (Meyer and Staggenborg 1996). Further, the sometimes twisted Constitutional logic that groups must employ in order to make Constitutional claims on, say, the rights of animals, undermines respect for the law more broadly, and for Court decisions on other issues.

Second, the relative simplicity of the judicial process, resulting in a Supreme Court decision which can be interpreted as a win or loss, makes for a simpler narrative than the complicated process of politics. As example, Glendon (1991: 6) suggests that the story of *Brown* has led to unfair, and distorted expectations of the Court on other issues, arguing, “Our

justifiable pride and excitement at the great boost given to racial justice by the moral authority of the unanimous Supreme Court decision in *Brown* seems, in retrospect, to have led us to expect too much from the court where a wide variety of other social ills were concerned. Correspondingly, it seems to have induced us to undervalue the kind of progress represented by an equally momentous social achievement: the Civil Rights Act of 1964.”

Indeed, we might add that the focus on *Brown* can often lead to the neglect of not only earlier lawsuits, but also the messy, difficult, and critically important political organizing generating social protest that led to legislative and social change. In effect, the important triumph on civil rights has led activists to expect the Court to step in, against majorities, to rescue the righteous.

Although this may indeed have been a reasonable expectation of the judicial system during the brief period of the Warren Court, it is certainly not one that is appropriate for the Court throughout most of its history. Instead, the Court has more frequently, as Finley Peter Dunne’s Mr. Dooley asserted a century ago, followed the election returns. We might add that the focus on the Court has to some degree corrupted electoral politics, as candidates for office, particularly the Presidency, can campaign for office by promising to uphold or overturn Court decisions, on say, abortion, gay marriage, or the death penalty, mobilizing voters and raising money—even as they know that in office they are unlikely to be able to do anything about that concern.

The focus on the Court, perhaps once appropriate for some organizations, continues even after the composition and political role of the Court has changed. Social movement organizations, however, routinize activities, rhetoric, and tactics in order maintain their own constituencies and survival. To the extent that groups focus on institutions unlikely to be

responsive, they may be missing real openings elsewhere in the American polity. Further, although changing state or federal laws through the legislative process is generally very difficult and costly; the process does, however, by necessity, build political support at the same time. This is not true of litigation.

We can return to the example at the outset of this paper to see some of *Brown's* legacy at work in the past few months. The gay and lesbian movements' focus on marriage emerged from material, as well as symbolic concerns. Because, health insurance, for example, is dispensed through the family unit, the costs of being barred from marriage are quite substantial. The "civil union" alternative, trumpeted by Howard Dean and John Kerrey in the current presidential campaign, was crafted to provide material equality while ducking divisive symbolic, religious, and moral issues—and the politics of absolutes. Once the Supreme Judicial Court in Massachusetts acted, using the language of fundamental rights and "separate but equal," an inevitable battle has escalated.

Using the language of rights, a few local officials began to act. Gavin Newsom, recently elected mayor in San Francisco, ordered the City to issue marriage licenses to same sex couples. The Constitution of the United States, he argued, provides for this fundamental right—even in opposition to a recently passed state referendum prohibiting gay marriage, and a federal law "defending" marriage. In effect, he contends, he is not breaking the law, but is instead, following the higher law of the Constitution. The mayor of New Paltz, New York, adopted a similar analysis, and began performing marriages himself. In response, an embattled President, George W. Bush, sought to use the issue to mobilize his own support, calling for a Constitutional amendment to define marriage as a mixed sex institution. Given the difficult and time-consuming process of actually amending the Constitution, it seems clear that he is

more concerned with winning the electoral campaign than the issue. Both federal and state courts have begun to pass judgment on the issue, but we feel safe in predicting both sides pushing the issue further and further up the judicial system, hoping for an ultimate resolution that, even if articulated, is unlikely to sit.

CONCLUSION

In this paper we have looked at the impact of *Brown v. Board of Education*, ignoring its most obvious effects—on segregation, education, and law. Instead, we have focused on the impact of the decision on the strategies of other, successor, social movements. We have argued that the legacy of *Brown* inspired, invited, and provoked all sorts of other social movements to turn to the legal system to pursue their claims. This has also affected the way they have framed their claims and mobilized support.

In turning to the legal system, activist groups have recognized that the Supreme Court has the capacity to affect largescale political changes—albeit constrained, somewhat, by the language of the Constitution. In placing politics in the hands of the Court, however, activists may have neglected a broader, more democratic, and potentially more effective, politics.

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Figure 1. Social Movement Organizations Based on Rights			
Organization	Est'd	Description/ Mission Statements	Litigates?
ACLU	1920	ACLU is a non-profit and non-partisan organization whose goal is to to conserve America's original civic values - the Constitution and the Bill of Rights.	Y
Animal Legal Defense Fund	1979	The Animal Legal Defense Fund has been pushing the U.S. legal system to end the suffering of abused animals. Founded by attorneys active in shaping the emerging field of animal law, ALDF has blazed the trail for stronger enforcement of anti-cruelty laws a	Y
Animal Liberation Front	1976	The Animal Liberation Front (ALF) carries out direct action against animal abuse in the form of rescuing animals and causing financial loss to animal exploiters, usually through the damage and destruction of property.	N
AnimalRights.Net	?	Animal rights advocates regularly mislead the public and misrepresent the facts about the use of animals in our society. This web site provides a critical analysis of the animal rights movement and debunks many of their claims.	N
Association of Veterinarians for Animal Rights	1981	The AVAR actively works toward the acquisition of rights for all nonhuman animals by educating the public and the veterinary profession about a variety of issues concerning nonhuman animal use. The AVAR is actively seeking reformation of the way society t	N
Center for Constitutional Rights	1966	The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights.	Y
Center for Individual Rights	1989	The Center for Individual Rights (CIR) is a nonprofit public interest law firm dedicated to the defense of individual liberties. CIR provides free legal representation to deserving clients who cannot otherwise afford or obtain legal counsel and whose indi	Y
Center for Law and Education	1969	The Center for Law and Education (CLE) strives to make the right of all students to quality education a reality throughout the nation and to help enable communities to address their own public education problems effectively, with an emphasis on assistance	Y
Center for Reproductive Rights	1992	The Center for Reproductive Rights is a nonprofit, legal advocacy organization that promotes and defends the reproductive rights of women worldwide.	Y
Council for Disability Rights	1981	On national, state, and local levels, the Council for Disability Rights advances the rights of people with disabilities. The Council promotes public policy and legislation, public awareness through education, and provides information and referral services	N
Disability Rights Advocates	1993	Disability Rights Advocates is a national and international non-profit organization dedicated to protecting and advancing the civil rights of people with disabilities. Operated by and established for people with disabilities, DRA pursues its mission throu	Y
Disability Rights Education and Defense Fund	1979	Founded in 1979 by people with disabilities and parents of children with disabilities, the Disability Rights Education and Defense Fund, Inc. (DREDF) is a national law and policy center dedicated to protecting and advancing the civil rights of people with	Y
Ella Baker Center for Human Rights	?	The Ella Baker Center for Human Rights documents, exposes, and challenges human rights abuses within the United States criminal justice system. We combine policy reform, media advocacy, public education, grassroots organizing, direct-action mobilizing, cu	N?
Environmental Defense Fund	1967	Environmental Defense is dedicated to protecting the environmental rights of all people, including future generations. Among these rights are clean air and water, healthy and nourishing food, and a flourishing ecosystem.	Y
Feminists for Animal Rights	?	Feminists for Animal Rights is a non-profit national educational organization dedicated to ending all forms of abuse against women, animals and the earth. Welcome to our online exploration of the interconnections between the exploitation of women and anim	N
Foundation for Individual Rights in Education	1999		Y

HealthWrights	?	The mission of FIRE is to defend and sustain individual rights at America's increasingly repressive and partisan colleges and universities. These rights include freedom of speech, legal equality, due process, religious liberty, and sanctity of conscience—	N
Lambda Legal Defense and Education Fund	1973	Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, the transgendered, and people with HIV or AIDS through impact litigation, education, and public policy work.	Y
NAACP Legal Defense and Education Fund	1940	LDF has used litigation to make our nation's constitutional and statutory guarantees of equal treatment and civil rights a reality for African Americans and other disenfranchised groups.	Y
National Center for Learning Disabilities	1977	The mission of the National Center for Learning Disabilities (NCLD) is to increase opportunities for all individuals with learning disabilities to achieve their potential.	N
National Center for Lesbian Rights	1977	NCLR is a national legal resource center with a primary commitment to advancing the rights and safety of lesbians and their families through a program of litigation, public policy advocacy, free legal advice and counseling, and public education. In additi	Y
National Consumer Law Center	?	NCLC works to defend the rights of low-income consumers on scores of issues that absorb their precious resources and diminish their efforts to lead productive lives. The following highlights some of the issues on which the Center advocates on behalf of Am	Y
National Gay and Lesbian Task Force	1973	NGLTF is a national progressive organization working for the civil rights of gay, lesbian, bisexual and transgender people	Y
NOW Legal Defense and Education Fund	1966/ 1970?	The litigating arm of the women's rights community. Over the years it has taken the lead in establishing innovative legal, legislative and educational strategies designed to secure equality and justice for women across the country.	Y
Pacific Legal Foundation	1973	PLF has filled the void and has proven itself as a potent representative in the courts for Americans who have grown weary of overregulation by big government, over-indulgence by the courts, and excessive interference in the American way of life.	Y
Parent Advocacy Coalition for Educational Rights	1977	PACER Center was created by parents of children and youth with disabilities to help other parents and families facing similar challenges. Today, PACER Center expands opportunities and enhances the quality of life of children and young adults with disabili	N?
Pension Rights Center	?	The Pension Rights Center is the country's only consumer organization dedicated solely to protecting and promoting the pension rights of American workers, retirees and their families.	N
People for the Ethical Treatment of Animals	1980	PETA is dedicated to establishing and protecting the rights of all animals. PETA operates under the simple principle that animals are not ours to eat, wear, experiment on, or use for entertainment.	N
Public Citizen	1971	Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts.	Y
Seperated Parenting Access and Resource Center	?	SPARC provides aid, support, and assistance to fathers and their families. In addition, we work to promote gender equality in Divorce and Custody issues. SPARC recognizes the value of fatherhood and supports the idea of fathers as custodial parents.	N?
Sierra Club Legal Defense Fund/Earth Justice	1971	Earthjustice works through the courts to safeguard public lands, national forests, parks, and wilderness areas; to reduce air and water pollution; to prevent toxic contamination; and to preserve endangered species and wildlife habitat.	Y
Southern Poverty Law Center	1971	The Southern Poverty Law Center was founded in 1971 as a small civil rights law firm. Today, the Center is internationally known for its tolerance education programs, its legal victories against white supremacists and its tracking of hate groups.	Y
Student Press Law Center	1974	The Student Press Law Center is an advocate for student free-press rights and provides information, advice and legal assistance at no charge to students and the educators who work with them.	N
Worker Rights Consortium	2001?	The Worker Rights Consortium (WRC) is a non-profit organization created by college and university administrations, students and labor rights experts. The WRC's purpose is to assist in the enforcement of manufacturing Codes of Conduct adopted by colleges a	N