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Author

Chen, Anthony S.

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**The Passage of State Fair Employment Legislation, 1945-1964:
An Event-History Analysis with Time-Varying and Time-Constant Covariates**

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Anthony S. Chen^{*}
Institute of Industrial Relations
2521 Channing Way, MC-5555
University of California, Berkeley
Berkeley, CA 94720-5555
tonychen@socrates.berkeley.edu

Abstract

From 1945 to 1964, two-dozen states outside the South passed enforceable fair employment practice (FEP) laws. Yet some states passed such laws far earlier than others. Reviewing several bodies of research, I derive economic, political, institutional, and social hypotheses to explain their diffusion. Discrete-time, logit analysis of a newly assembled data set—containing both time-constant and time-varying covariates—offer mixed support for most theories but strong support for theories stressing electoral politics. Wealth, political competition, and unified Democratic control are positively associated with the likelihood of passage, while percentage black is negatively associated with the likelihood of passage. I infer that Democrats were the party of fair employment in the urban North and that FEP laws passed earliest in politically competitive states in which whites did not perceive blacks as an economic threat. I conclude with suggestions for future research.

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The history of the civil rights in the United States is commonly seen as reaching a dramatic zenith with the enactment of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. This legislative triumvirate is, of course, a social and political achievement of towering proportions. Congress had not passed civil rights legislation since Reconstruction a century earlier. The historiographical prominence accorded to national politics, however, has the unfortunate side-effect of overshadowing the legislative struggle for civil rights that began sweeping the *states* at the close of the Second World War. Consequently, it is only dimly remembered that more than fifty pieces of civil rights legislation mandating fair employment, open accommodations, and fair housing were passed by state legislatures outside the South during the postwar period (Lockard 1968).

Of these, the battle over state fair employment practice (FEP) legislation was perhaps the most politically significant. In the evocative words of one observer, it was the “storm center of the fight” over civil rights. Even as an obdurate coalition of southern Democrats and conservative Republicans consistently found new ways to block the passage of proposed fair employment laws in Congress (Chen, forthcoming), reformers found their legislative aspirations fulfilled in scores of campaigns for state and municipal policies.

State fair employment legislation was also the most economically significant. Stable, well-paying jobs in highly capitalized, unionized industries were at the center of economic security in the political economy of the postwar era (Gordon, Edwards, and Reich 1982). Black leaders such as A. Philip Randolph saw fair employment legislation as an integral part of a larger struggle to win the equality promised to black workers in liberal rhetoric but denied them in

practice. It was hoped that fair employment legislation would pry open urban labor markets that otherwise remained frustratingly closed.¹

Why did some states outside the South manage to pass enforceable fair employment legislation sooner than other states? This puzzle is well worth exploring. There is a well-known dearth of scholarship on civil rights in the urban north during the 1940s and 1950s. Even less is known about the social and political forces underpinning the passage of state civil rights legislation. The subject has elicited a handful of qualitative case studies, but even fewer quantitative studies exist. This article offers one of the first systematic explorations of civil rights legislation in the north; moreover, it does not treat the north as a monolith, since it is concerned with explaining state variation in the timing of fair employment legislation.

But the puzzle also offers a fresh opportunity to test the power and reach of social-scientific theories concerning the diffusion of public policy. A variety of economic, political, institutional, and social theories have been proposed to account for the diffusion of state-level public policies, but which theories have the greatest explanatory value in the case of fair employment legislation? Conversely, what can the case of fair employment legislation do to help extend theories of policy diffusion?

This article remains one of the few studies of policy diffusion to employ discrete-time, event-history methods. With a few notable exceptions, earlier studies rely on other regression-based approaches whose limits I describe below. This article uses discrete-time, logit models to analyze a newly assembled data set constructed out of an eclectic array of historical sources, ranging from overlooked reference volumes to little-known internal reports to archival manuscript collections. Its breadth enables the assessment of a wider range of hypotheses than

¹ Econometric studies by Landes (1967, 1968) show that state fair employment laws were modestly effective in expanding equal job opportunities for black workers during the postwar period.

previously possible. Importantly, the data set contains both time-constant *and* time-varying covariates. This last characteristic is critical because the only other study of fair employment legislation to use event-history methods (Collins 2000) includes only time-constant independent variables. Hence the present study is the first to fully exploit the ability of event-history methods to handle time-varying covariates.

This article begins with a short history of fair employment in the states. It then proceeds to review relevant literature in social and history in order to derive testable hypotheses. After considering the methods and data employed, it presents the results from a simple discrete-time, logit model. It concludes by assessing the implications of the findings for theories of policy diffusion and outlining promising new directions for future research.

FAIR EMPLOYMENT IN THE STATES

In 1941, President Franklin D. Roosevelt issued Executive Order 8802, which prohibited discrimination in war industries and established the FEPC to receive and investigate complaints (*Federal Register* 1941). Never before in his two previous terms had he stood up so aggressively for black civil rights. But a unique confluence of contingencies forced his hand. This included credible threats by black unionist A. Philip Randolph to lead a march on Washington; the political embarrassment that such a gathering would have caused during a Congressional debate on war preparedness; largely unfounded fears of local rioting; and more legitimate concerns that interracial antagonism might hobble industrial production nationwide (Chafe 1999; Garfinkel 1959; Kryder 2000). Once established, however, the FEPC led a tenuous existence, facing constant harassment by southern Congressmen. After being dissolved and then reconstituted in

1943, it was forced to liquidate its operations for good at the end of the war (Neuchterlein 1978; Reed 1991).

Even as the federal FEPC began to falter at the end of the Second World War, campaigns for fair employment legislation took root in the states. As early as 1945, sixteen fair employment bills had been introduced in state legislatures across the country (American Council of Race Relations 1945). By 1964, twenty-nine states had passed fair employment legislation of one form or another (Bureau of National Affairs 1964). Table 1 presents a list of states passing fair employment laws, 1945-1964.

[insert Table 1 about here]

Clearly, the passage of such laws did not follow a smooth, linear trajectory. In the mid-1940s, several northeastern, industrialized states such as New York, New Jersey, Massachusetts, and Connecticut participated in an initial burst of legislation. But afterwards fair employment laws were only passed sporadically until Pennsylvania, Michigan, Minnesota, Colorado and California adopted them in the mid-1950s. The passage of fair employment legislation then peaked again from 1961-1963, with successful campaigns in Illinois and eleven other states, many of them located in the midwest.

The first state fair employment law was enacted in 1945 by New York. This culminated a process that had begun a year earlier when governor Herbert H. Lehman appointed a Committee on Discrimination in Employment to examine racial discrimination in war industries operating in New York. After a lengthy consultative process in which public hearings on a proposed bill were held throughout the state, a second state commission issued a bipartisan report in 1945 with official legislative recommendations (YMCA 1946). The recommendations were fashioned into a bill and introduced into the legislature by majority leader Irving M. Ives (R) and minority

leader Elmer F. Quinn (D). After surviving several amendments, the Ives-Quinn bill passed both houses of the Assembly by substantial margins. On March 12, 1945, Dewey signed Ives-Quinn into law (YMCA 1946).

Northeastern states like Massachusetts quickly followed suit. In 1945, the New England Division of the American Jewish Congress introduced a bill into the state legislature modeled on the Ives-Quinn bill. On account of Republican maneuvering, the bill narrowly failed to receive proper consideration in either house of the legislature. But in 1946 a broad coalition of religious, labor, civil rights, and civic organizations succeeded in convincing ten of twenty-two Republican Senators to join all twelve of their Democratic colleagues in voting for a fair employment bill (Mayhew 1968).

Not all states in the region followed New York so quickly. Pennsylvania lagged considerably behind. It was only in 1955 that Pennsylvania managed to pass a statewide FEP law, despite the fact that a fair employment bill was introduced into every legislative session in Harrisburg since 1945. The chief opponent of fair employment was the Republican majority, which, under the influence of their allies in the business community, regularly suppressed any legislation threatening managerial autonomy. By contrast, Democratic legislators nearly always voted to report fair employment bills out of their committee of origin. In 1955, however, fears of liberal, urban Republicans that they would be hurt in the upcoming mayoral election in Philadelphia forced state Republican leaders to release the bill from the Senate Education Committee, knowing that it would likely pass before the full Senate (Siskind 1997).

While it was among the earliest adopters in the midwest, Michigan also trailed New York. Led by the Detroit branch of the NAACP, campaigns for state fair employment legislation began in the wake of the war. Joining the local NAACP were a wide range of organizations,

including the UAW Fair Practices and Anti-Discrimination Department, the Mayor's Interracial Committee, the ACLU, and the Civil Rights Congress. But internecine conflict among liberal and left-wing groups retarded the passage of legislation. Conflict over different versions of a municipal fair employment ordinance in Detroit proved distracting to the effort to pass broader state legislation. When civil rights liberals began to lobby the state legislature in earnest, however, they found FEP bills held hostage by the Republicans, who controlled both the upper and lower houses. It was only after the Democrats won a greater share of the seats in the 1954 elections that fair employment legislation passed in 1955 (Fine 1966; Sugrue 1996: 170-3).

Notwithstanding the considerable variation in timing, state fair employment legislation shared many common features. Most laws followed the New York model by declaring it unlawful for employers, employment agencies, or labor organizations to discriminate against a person in hiring, promotion, or termination on the basis of his or her race, color, religion, national origin, or ancestry. With the exception of the laws in Idaho, Iowa, and Vermont, which stipulated civil or criminal penalties for unlawful conduct, fair employment legislation typically established a state commission for purposes of enforcement. The vast majority of such commissions were given the authority to receive complaints, hold hearings, compel testimony, initiate conciliation proceedings, and issue cease-and-desist orders to employers or unions, subject to judicial review. Nevada, Indiana, and Wisconsin created commissions with enforcement through conciliation alone, but latter two subsequently amended their laws to grant their commissions cease-and-desist authority. Every state fair employment law save Oklahoma's covered both public and private sectors of employment.

Ultimately, the bulk of non-Southern states adopted fair employment legislation in one form or another. By the time Lyndon B. Johnson signed the Civil Rights Act in 1964, twenty-

nine states in all had passed a fair employment law (Bureau of National Affairs 1964). Of these, twenty-six were nominally enforceable through either an administrative agency (i.e., a state commission endowed with cease-and-desist authority) or the sanction of civil or criminal penalties. Only three were voluntary.

THEORIES AND HYPOTHESES

It should be none too surprising that an extensive literature on state-level civil rights legislation, which was passed only outside the South, simply does not exist. With only one notable exception (Collins 2000), few scholars have thought to extend Dye's (1969) pathbreaking research. However, the quantitative literature on policy diffusion in political science and sociology as well as qualitative case studies in history do offer a number of useful perspectives to guide further research. The following section reviews the body of existing scholarship and derives testable hypotheses from it.

Institutionalist Theories

One set of theories highlights the role of political institutions. Cautioning against a view of the state that considers it merely the epiphenomenal reflection of underlying social and economic forces, Theda Skocpol and her students (Skocpol, Abend-Wein, Howard, and Lehmann 1993) argue that the fiscal and administrative capacities of a state may "affect the willingness of officials, politicians, and social groups to envisage and support politics that would use, and extend, government power." Studies of social policy confirm that greater fiscal capacity is linked to earlier passage of social legislation and more generous financing of social programs (DeViney 1983). But it is not as clear that greater *fiscal* capacity would encourage the

development of civil rights policies, which require comparatively less revenue to implement. It seems more plausible that greater *administrative* capacity would be positively associated with the passage of civil rights legislation. Social groups would be more likely to mobilize for civil rights if they had faith that the state administration would be able to carry out the enforcement of any new laws.

Not only the capacity but also the structure of political institutions have been shown to matter. In his study of parties in state politics, Mayhew (1986) classifies states according to the degree to which they display characteristics of what he labels “traditional party organization” (TPO). Mayhew (1986, 19-20) defines a TPO as an autonomous, durable, and hierarchical party organization that regularly sets out to nominate candidates for public office and relies on material incentives to stimulate participation and loyalty. The presence of a TPO may limit policy innovations requiring the expansion of state administration because the “patronage needs of traditional organizations inhibit the installation of a professionalized bureaucracy” (293). It is plausible, therefore, to expect that the presence of a TPO might discourage the passage of fair employment legislation, which generally called for administrative means of enforcement.

How political institutions organize electoral competition may also strongly influence the passage of civil rights legislation. In the case of state politics, the rules of legislative apportionment prior to the implementation of the Supreme Court’s decision in *Baker v. Carr* accorded rural interests disproportionate political influence in state legislatures.² This raises the possibility that malapportioned states may adopt different policy choices than non-malapportioned states. In an early study, Dye (1965) does not find a malapportionment effect, concluding that the “on the whole policy choices of malapportioned legislatures are not noticeably different from the policy choices of well-apportioned legislatures.” In fact, he finds

that two of his three measures of malapportionment do not appear to explain the variance in state educational and welfare expenditures or tax revenues. Only a scale of urban underrepresentation (David and Eisenberg 1961: 15) shows any statistically significant effects. Of course, Dye's research examines neither the case of civil rights, nor does it consider effect of malapportionment on the timing of legislation. It is thus still reasonable to test for a malapportionment effect on the timing of fair employment legislation. This is all the more important since less systematic, qualitative studies of the subject have found that rural legislators outside the South generally opposed fair employment, largely because they did not have many black constituents (Goldstein 1950; Maslow and Robinson 1953).

HYPOTHESIS 1. States with high administrative capacity are more likely to pass fair employment legislation sooner than other states.

HYPOTHESES 2. States displaying a high degree of traditional party organization are less likely to pass fair employment legislation sooner than other states.

HYPOTHESIS 3. States exhibiting a high degree of malapportionment are less likely to pass fair employment legislation sooner than other states.

Modernization and Economic Development

Another set of theories traces state policy innovation to modernization and economic development. Based on his analysis of eighty-eight different programs, Walker (1969) devises a composite "innovation score" measuring how quickly a state adopted new policies. Walker finds that populous urban and industrial states were earlier adopters than poorer, less developed states. New York, Massachusetts, and California head his list, while Nevada and Mississippi brought up

² *Baker v. Carr*, 369 U.S. 186 (1962).

the rear. “It would seem likely,” he reasons, “that the great cosmopolitan centers in the country, the places where most of the society’s resources are concentrated, would be the most adaptive and sympathetic to change, and thus the first to adopt new programs” (1969, 884). In an important qualification, Gray (1973) disaggregates aspects of Walker’s composite measure to show that policy innovation was issue-specific. But her research also confirms the importance of modernization, particularly wealth, to the adoption of new programs. Dye (1969) develops a scale for measuring the comprehensiveness and strength of civil rights legislation, including fair employment, open accommodations, and fair housing. Higher scores on his civil rights scale are closely associated with more advanced levels of economic development. This finding partly reflects the inclusion of southern states in his analysis, and it remains to be seen whether it also holds true for states outside the South.

HYPOTHESIS 4. More industrialized states are more likely to pass fair employment legislation sooner than less industrialized states.

HYPOTHESIS 5. More urbanized states are more likely to pass fair employment legislation sooner than less urbanized states.

HYPOTHESIS 6. Wealthier states are more likely to pass fair employment legislation sooner than poorer states.

Power Resources

A third set of theories holds that public policy is a response to the mobilization of social groups in pursuit of their self-interest. Whether the groups in question are social elites (Domhoff 1990; Gordon 1994; Mommsen 1981; Quadagno 1988), the working class (Esping-Anderson

1985; Korpi 1983; Stephens 1979), the bourgeoisie (Baldwin 1990), or a racial minority (McAdam 1982; Morris 1984), power-resources theories argue that the development of policy reflects the political power of underlying social groups whose interests it promotes. Hence it is the relative strength and political skill of competing social groups that determine policy outcomes. In the case of social policy, for instance, cross-national research has demonstrated pivotal role of the working class (e.g., Esping-Anderson 1985).

Historically, state fair employment legislation was generally supported by black, Jewish, and Catholic organizations. These groups belonged to protected categories. Industrial unions supported FEP laws because of their broad-based strategy for securing power in the labor market. Organizing workers industry-wide at all skill levels required industrial unions to recruit workers of all racial backgrounds. On the other hand, business concerns and craft unions aggressively opposed such legislation (Goldstein 1950; Siskind 1997; Sugrue 1996). Business viewed FEP laws as a threat to its traditional prerogatives over hiring and promotion. Craft unions saw them as a threat to the strategy for developing power in the labor market, which revolved around restricting access to entry into skilled labor. Both groups perceived FEP legislation as a violation of their right to self-organization.

Hence it is reasonable to expect that states with larger proportions of blacks, Jews, Catholics, and industrial unions would pass fair employment laws earlier than other states. It is also reasonable to expect that states with a strong business community would pass fair employment laws later.³ Lastly, it is reasonable to expect that states in which civil rights groups

³ Owing to the lack of adequate data, however, I do not test this hypothesis. Gray and Lowery (1988: 119) measure business strength by the percentage of a state's labor force employed in manufacturing and services. But this is less an indicator of business strength than it is an indicator of industrialization. The number of business lobbying groups in a state would be a more serviceable measure, but registration information on lobbying organizations does not become available until the 1970s. In the absence of any reliable measures, I decline to test the hypothesis.

were more highly mobilized would also tend toward earlier passage than other states. Collins (2000) found that the proportion of blacks in a state reduced the likelihood of passage, while the proportion of Jewish residents and the strength of industrial and craft unionization raised the likelihood of passage. Again, however, his findings are based on a data set containing only time-constant independent variables.

HYPOTHESIS 7. *States with high proportions of black residents are more likely to pass fair employment legislation sooner than other states.*

HYPOTHESIS 8. *States in which civil rights groups are highly mobilized are more likely to pass fair employment legislation sooner than other states.*

HYPOTHESIS 9. *States with high proportions of Jewish residents are more likely to pass fair employment legislation sooner than other states.*

HYPOTHESIS 10. *States with high proportions of Catholic residents are more likely to pass fair employment legislation sooner than other states.*

HYPOTHESIS 11. *States exhibiting high degrees of industrial unionization are more likely to pass fair employment legislation sooner than other states.*

Electoral Politics

A final set of theories highlights the importance of variables concerning electoral politics. Some scholars have considered the effect of unified government. Berry and Berry (1990) find that states are less likely to adopt lotteries when the executive and legislature are under the control of different parties. Under a unified government, they argue, states are likely to pursue more aggressive revenue-generating strategies, such as increases in income or sales taxes. Other

scholars have focused on partisanship, arguing that the strength of “leftist” or “right-wing” parties influences the chance of adopting new social policies (Castles 1982; Esping-Anderson 1985; Stephens 1979).

While the hypothesized effects of unified government and partisanship can be clearly derived for certain fiscal and social policies, the case of fair employment legislation in the postwar United States is greatly complicated by sectional differences and the contradictory structure of political incentives. Fair employment laws obviously never passed in the south, but outside of the south fair employment generally attracted the support of Democrats and the opposition of Republicans. Yet under unified Republican governments several northeastern states like New York, New Jersey, and Connecticut led the country in passing fair employment laws. On the other hand, unified Republican governments in states such as California, Illinois, and Michigan repeatedly and visibly failed to pass such legislation.

The effect of divided government is equally unclear. In states with Republican-controlled legislatures, for instance, Democratic governors sometimes faced contradictory political incentives. Depending on the particular circumstances at hand, it might have been politically advantageous either to make a good faith effort to sponsor the passage of fair employment legislation or to introduce such legislation knowing that Republicans would never pass it and could be blamed for its inevitable failure. Given these complications, it is hard to derive any predictions *a priori*. The effect of unified government and party control is largely an open empirical question, although there is some reason to expect that unified Democratic control is the partisan alignment most favorable to fair employment.

On the other hand, a general theory of party competition, which with V.O. Key’s claim that “the have-nots lose in a disorganized politics” (Key 1949: 307), is much easier to apply. Its

most precise expression comes with Gray's (1976: 239) hypothesis that "two party competitive states will offer more policies beneficial to 'have-nots' than will uniparty, noncompetitive states." While this hypothesis has generally received inconclusive support over the years (e.g., Dye 1984: 1113), Dye (1969) does find that competitive, two-party states with high voter turnout achieved a more complete range of civil rights laws compared to one-party, low turnout states. However, it should be noted that Dye's finding reflects the inclusion of southern states in his model. It remains to be seen whether it will also hold true for states outside the South, where black voters have the potential to represent the swing vote in states with highly competitive elections. In an event-history analysis with a limited range of data, Collins (2000) also finds a direct, positive relationship between party competition and early passage.

HYPOTHESIS 12. States exhibiting greater party competition are more likely to pass fair employment legislation sooner than other states.

HYPOTHESIS 13. States under unified Democratic control are more likely to pass fair employment legislation sooner than other states.

METHODS AND DATA⁴

Statistical Models and Estimation

Early research on policy innovation (Walker 1969) and civil rights legislation (Dye 1966) relied on Pearson correlations. More recent research on the determinants of social policy has employed regression-based analysis of cross-sectional data (Amenta and Carruthers 1988; Skocpol et al. 1993). Typically, such studies proceed by constructing a dependent variable as an ordinal scale that assigns values according the units of time elapsed after the occurrence of the

first event. Independent variables are measured cross-sectionally at a single point in time. This adaptation of linear regression has at two major drawbacks (Allison 1984; Peterson 1991, 1995; Yamaguchi 1991). First, cases in which the event does not occur are excluded (“right censored”) because the dependent variable cannot be assigned a value. Large numbers of censored cases can lead to significant statistical biases. Second, such methods do not permit researchers to easily incorporate independent variables that change over time.⁵

Event-history methods are a family of non-linear regression models that offer a superior alternative to standard regression techniques because they avoid right-censoring and because they can handle both time-constant and time-varying variables. However, while event-history methods have become commonplace in many areas of sociological inquiry, they are less prevalent in studies of policy diffusion, with only a few exceptions (Berry and Berry 1990, 1992). In a recent groundbreaking article, Collins (2000) does apply several classes of continuous-time, event-history methods—both Weibull and Cox models—to explain the diffusion of fair employment laws.⁶ But he does not fully exploit the advantages of event-history methods, since his data set lacks time-varying independent variables. Nor does the problem under consideration seem altogether appropriate for continuous-time methods.

To analyze the passage of fair employment laws, I employ a discrete-time logit model, as described by Allison (1984), Peterson (1991, 1995), and Yamaguchi (1991). Discrete-time methods are superior to continuous-time methods for the problem at hand because the measurement of time is relatively inexact and because in several years there are “ties” (i.e., years

⁴ For a more detailed discussion of data, sources, and coding, see Appendix B in Chen (forthcoming).

⁵ Variables may be constant over time, or they may vary over time. For example, whether a state once belonged to the former Confederacy is a *time-constant* variable, whereas a state’s personal income per capita is a *time-varying* variable. The ability to incorporate time-varying covariates is a major advantage of event-history methods over other adaptation of multiple regression to the analysis of longitudinal data.

⁶ Chen (1999) and Collins (2000) independently arrived at the idea of applying event-history methods to explain the differential timing of state fair employment legislation.

in which more than one state passed fair employment legislation). Moreover, the passage of legislation is clearly a discrete-time process. Legislation passes only when the state legislature is in session, and state legislatures only meet at certain times of the year. For much of the postwar period, many state legislatures did not even meet annually.

I estimate a model of the general form:

$$P_{it} = a + b_1x_i + b_2z_{it}, \quad (1)$$

in which P_{it} is the probability that state i passes a fair employment law at time t provided that it has not yet done so, a is the intercept, x_i is a time-constant vector of covariates b_1 for state i , z_{it} is a vector of time-varying covariates b_2 for state i that varies according to time t , and b_1 and b_2 are estimated coefficients for x_i and z_{it} , respectively. In order to make the equation more computationally tractable, the logit transformation of P_{it} is taken:

$$\log(P_{it}/(1-P_{it})) = a + b_1x_i + b_2z_{it}. \quad (2)$$

To evaluate the substantive significance of the coefficients, I assume P_0 , a baseline probability of .2 for each coefficient. I then calculate P_1 , the probability associated with a one-standard deviation increase in the independent variable of interest. I then subtract P_1 from P_0 to yield ΔP , that is, the change in probability associated with a one-standard deviation increase in the independent variable, assuming a baseline probability of .2.⁷

I estimate a discrete-time logit model with observations on all thirty-seven, non-southern states. I define a southern state as a state once belonging to the former Confederacy: Alabama,

⁷ P_0 is an assumed baseline probability of .2 for L_0 , where $L_0 = \ln [P_0/(1-P_0)]$. P_1 is the probability associated with a one-standard deviation increase in the independent variable. $P_1 = e^{L_1}/(1+e^{L_1})$, where $L_1 = L_0 + \Delta L_j$, and $\Delta L_j = b_j * \Delta x_j$, and also $\Delta x_j = \text{STD}(x_j)$. ΔP is $P_0 - P_1$, that is, the change in probability associated with a one-standard deviation increase in the independent variable, assuming a baseline probability of .2. In a subsequent draft, I plan to make two changes in the way I evaluate the substantive significance of the coefficients. First, instead of using an arbitrary baseline probability, I will calculate the change in probability associated with a one-standard deviation increase in the independent variable, holding all other variables at their sample means. Second, I will pose counterfactuals based on the results of the model by determining how many years earlier or later a given state would

Arkansas, Florida, Georgia, Mississippi, North Carolina, Louisiana, South Carolina, Tennessee, Texas, Virginia. All logit models are estimated using the LOGIT command in Stata 5.0.

Data, Sources, and Coding

The risk set under analysis is defined as all state-years in which the state legislature met in regular or special session during the period 1941-1964.⁸ This information was obtained from the *Book of the States* (Council of State Governments, various years). I begin the risk set in 1941 because the establishment of the FEPC touched off a series of legislative efforts within the states to establish similar commissions.⁹ I end the risk set in 1964 because Title VII in the Civil Rights Act fundamentally altered the politics of fair employment by prohibiting employment discrimination and subjecting it to regulation by the Equal Employment Opportunity Commission. Following a convention established in the study of state economic performance (see Brace 1993), I exclude Alaska and Hawaii from the data set. The data set contains 516 spells of state-year observations. Table 2 presents basic descriptive statistics of the variables included in the analysis, and the following section briefly describes their data sources and coding schemes.

[insert Table 2 about here]

have passed fair employment legislation if the values of certain independent variables are reset. Collins (2000) also generates such counterfactuals for his models.

⁸ This definition of the risk set represents a compromise between two contrasting approaches. The least rigorous approach would be to include all of the years in the period of interest, that is, 1945-1964. This understates the underlying hazard rate, since many state legislatures do not meet every year. The most rigorous approach would be to include all of the years in which it is known that a legislator introduced a fair employment bill. This, of course, would be extremely time-consuming. Hence I have chosen to proceed by considering a state as “at risk” for fair employment legislation if its state legislature is reported by the *Book of States* to have met in either regular or extra session during a given year, regardless of the actual duration of the session.

⁹ In fact, as early as February 4, 1941, a Senator Mahoney in the New York Senate introduced a bill (No. 572) prohibiting discrimination in defense-related employment on account of race, color, or creed (Commission on Law and Social Action).

Dependent Variable

The dependent variable is passage of a nominally enforceable state fair employment law. This is a binary variable, coded 1 if a state adopts such a law in a given year, and 0 if not (Bureau of National Affairs 1964). Twenty-six states passed such a law during the period under consideration, but only twenty-four of these appear in the data set because of the exclusion of Alaska and Hawaii.

Independent Variables

I collected data on independent variables from a wide range of sources, including federal reports, overlooked reference volumes, internal publications, and archival manuscript collections. Where data is not available for a given state-year, I generated it through linear interpolation. Any exceptions are duly noted in footnotes.

Industrialization. This is a time-varying variable measured by the per capita value-added in manufacturing (U.S. Bureau of the Census, *Statistical Abstract*, various years). Figures are reported in constant 1964 dollars; they are adjusted using the Consumer Price Index for all urban consumers (CPI-U) as reported annually by the Bureau of Labor Statistics.¹⁰

Urbanization. This is a time-varying variable measured by the percent of a state's population living in urban areas (U.S. Bureau of the Census 1975).¹¹

Income. This is a time-varying variable measured by a state's personal income per capita (U.S. Bureau of the Census, *Statistical Abstract*, various years). Figures are reported in constant

¹⁰ For historical CPI-U figures, see <ftp://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>.

¹¹ In 1950, the Census changed its definition of urban residence to include residents of non-incorporated areas proximate to urban areas. I developed two time-varying measures of urbanization, one using the old 1950 definition and the other using the new 1950 definition. In estimates not reported here, I found that both measures perform comparably. This research presents results using the first measure.

1964 dollars; they are adjusted using the Consumer Price Index for all urban consumers (CPI-U) as reported annually by the Bureau of Labor Statistics.

Unified Republican Government. This begins a series of time-varying, dummy variables that tests the effect of party control; unified Democratic government is the reference group, and it is omitted from the model. This variable is coded 1 if the Republican Party controls both the executive and legislature, and 0 otherwise (Council of State Governments, various years).

Republican Governor, Democratic Legislature. This time-varying, dummy variable is coded 1 if a state has a Republic governor and Democratic legislature in a given year, and 0 otherwise (Council of State Governments, various years).

Republican Governor, Divided Legislature. This time-varying, dummy variable is coded 1 if a state has a Republican governor and divided legislature in a given year, and 0 otherwise (Council of State Governments, various years).

Democratic Governor, Republican Legislature. This time-varying, dummy variable is coded 1 if a state has a Democratic government and a Republican legislature in a given year, and 0 otherwise (Council of State Governments, various years).

Democratic Governor, Divided Legislature. This time-varying, dummy variable is coded 1 if a state has a Democratic governor and a divided legislature in a given year, and 0 otherwise (Council of State Governments, various years).

Party Competition. This time-varying variable, following Skocpol, Abend-Wein, Howard, and Lehmann (1993), is the average of three ratios: the percentage of seats in the lower house controlled by the majority party, the percentage of seats in the upper house controlled by the majority party, and margin of victory for the sitting governor in the last gubernatorial election (Council of State Governments, various years; Congressional Quarterly 1994). To generate a

measure of party competition for each state-year, I subtract the average of the three ratios from 1 and multiply the resulting number by 100.

Administrative Capacity. This is a time-varying variable measured by the number of state employees per capita (U.S. Bureau of the Census, *Statistical Abstract*, various years).

Traditional Party Organization. This time-constant variable is operationalized using Mayhew's scale (1986: 196), which indicates the extent to which a state exhibits characteristics of traditional party organization. A score of 5 indicates high conformity to Mayhew's definition of a traditional party organization; a score of 1 indicates low conformity.

Malapportionment. This variable is operationalized using three scales. The first scale is the most technically sophisticated of the three. Devised by Schubert and Press (1964: 316, 325), it measures how close the apportionment of a state approaches certain statistical ideals; namely, the degree to which the distribution of the population of representational units approaches zero variance, zero skewness, and maximal positive kurtosis. A high score on the scale indicates excellent apportionment, while a low score indicates poor apportionment. This is a time-constant variable because Schubert and Press (1964) use only 1960 census data in their analysis. The second and third scales, both of which are developed by David and Eisenberg (1961: 15), are less technically sophisticated but focus substantively on the representational disparity between metropolitan and rural areas. The second scale measures the strength of representation in the state legislature for metropolitan counties; here, a low score indicates severe underrepresentation of metropolitan counties. The third scale measures the strength of representation in the state legislature for rural counties; here, a high score indicates severe overrepresentation of rural counties. These latter two scales are only partially time-varying.¹²

¹² In constructing time-varying scales for metropolitan underrepresentation and rural overrepresentation, I elected to interpolate missing data for the period 1941-1959, but not the period from 1960-1964. This is because

Percent Black. This is a time-varying variable measured by percent of a state's black population (U.S. Bureau of the Census 1975).

Civil Rights Mobilization. This a time-varying variable measured by the number of NAACP members in a state per black capita (Records of the NAACP, various years).

Percent Jewish. This is a time-varying variable measured by the percent of a state's Jewish population (American Jewish Congress, various years).¹³

Percent Catholic. This is a time-constant variable measured by the percent of a state's Catholic population in 1952 (National Council of Churches 1957).¹⁴

Industrial Union Density. This is a partially time-varying variable measured by the percentage of a state's unionized workforce belonging to industrial unions in 1939 and 1953 (Troy 1957).¹⁵

RESULTS

Table 3 presents the results for the discrete-time, logit model. Institutional theories receive the least support. Amenta and Carruthers (1988) demonstrated the robust explanatory power of "state-centered" variables for a range of state-level social policy outcomes. But in the case of fair employment laws the coefficients for administrative capacity (Hypotheses 1) and traditional party organization (Hypotheses 2) are not statistically significant. Similarly, the results for the malapportionment (Hypothesis 3) indicate that badly apportioned legislatures did

David and Eisenberg (1961: 15) reported values for 1930, 1950, and 1960, but not 1970. For the years from 1960-1964, I simply used the values for 1960.

¹³ Figures are a combination of enumeration and estimation by local branches of the American Jewish Committee.

¹⁴ A subsequent draft will incorporate time-varying data on Catholics by state. Thanks to Mary Gautier of the Center for Applied Research on the Apostolate for generously sharing her data with me. This data is collected from the *Official Catholic Directory* (various years).

¹⁵ Data for the years 1941-1953 are interpolated using Troy's (1957) figures from 1939 and 1953. Data for the years after 1953 are time-constant, simply reflecting the values for 1953.

not exhibit different policy choices than their better-apportioned counterparts, confirming Dye's (1965) early finding. None of the coefficients for any of the three measures of malapportionment are statistically significant.

[insert Table 3 about here]

Modernization theories fare better. While the precise dimensions of modernization stressed by Walker (1969)—specifically industrialization (Hypotheses 4) and urbanization (Hypothesis 5)—are not related to the timing of passage, wealth (Hypothesis 6) shows a coefficient (.003) that is significant at the $P < .05$ level. A one standard deviation increase in personal income per capita (\$411), roughly the difference between New York (\$2161) and Michigan (\$1702) in 1941, leads to a .26 increase in the probability of passage.¹⁶ This finding supports Gray's (1973) clarification: Wealth, not industrialization or urbanization, is related to the diffusion of new policies. It also indirectly confirms Dye's (1969) finding on the positive impact of economic development on the comprehensiveness of civil rights laws. In the particular case of fair employment, the positive and significant coefficient for wealth supports the interpretation that wealthy states tended to pass such laws earlier because they were capable assuming the social and economic costs associated with them. Relative to their poorer cousins, wealthier states passed fair employment laws earlier because they could afford to.

Power-resources theories are for the most part disconfirmed. The coefficients for percentage Jewish (Hypothesis 8), percentage Catholic (Hypothesis 9), and industrial unionization (Hypothesis 10) do not achieve statistical significance. This directly contradicts

¹⁶ This assumes a baseline probability of .2. See methods section above for a description of how the logit coefficients are evaluated.

Collins' (2000) earlier findings.¹⁷ The coefficient for civil rights mobilization (Hypothesis 11) is also statistically insignificant. These results run counter to the conclusions of qualitative studies indicating the importance of civil rights, religious, and labor organizations in the struggle for fair employment (e.g., Goldstein 1950). The relative political strength of social groups standing to benefit from fair employment laws appears not to be associated with their diffusion.

However, percentage black (Hypothesis) has a *negative* coefficient of -.391 that is statistically significant at the $P < .05$ level. This confirms Collins' (2000) finding. States with higher proportions of blacks had a higher likelihood of passage than other states. A one-standard deviation increase in a state's black population diminished the probability of passage by -.15. This finding runs counter to Hypothesis 7, and it appears to strongly challenge power-resources theory. But the finding becomes less puzzling if percentage black is regarded not as a political indicator but an *economic* indicator, as per Collins' (2000) framework. States like Washington and Minnesota saw earlier passage of FEP laws precisely because there were proportionally fewer blacks than there were in states like California or Illinois.

This finding paradoxically *lends* support to power-resources theory. If the coefficient for percentage black is construed to indicate labor market competition between blacks and whites, then the central premises of the power-resources theory hold true. Whites and blacks both have a direct stake in the passage fair employment laws, and their political support depends on whether they see themselves as benefiting from it. In states with greater proportions of blacks, whites opposed fair employment legislation because they perceived it as threatening their superior position in urban labor markets. In states with lower proportions of blacks, whites perceived less competition and hence did not oppose FEP legislation as strongly. This interpretation has the

¹⁷ My coding of *industrial unionization* differs slightly from Collins (2000). My variable is the ratio of industrial to craft union membership. The variable he uses is state CIO membership by state population. In a future

added virtue of being consistent with the finding on wealth. Relative to their counterparts in poorer states, whites in wealthier states were less likely to perceive labor market competition against blacks because there was a greater resource base.

Theories highlighting the importance of electoral politics find the strongest support. The measure for party competition shows a statistically significant coefficient. A one-standard deviation (19 percent) increase in party competition—roughly the difference between Massachusetts and Indiana in the mid-1940s—raises the probability of passage by .22. This confirms similar findings by Dye (1969) and Collins (2000), and it points to the bipartisan character of fair employment. In periods of one-party dominance, fair employment legislation was not a politically useful issue for either party, and it therefore had a relatively lower likelihood of passing. When competition between the parties was fierce, however, fair employment legislation became politically valuable. Both parties sought to claim it as their own, making it more likely to pass. Since black voters overwhelmingly supported fair employment legislation, it is fair to conclude that their greatest political clout coincided with highly competitive periods in state politics, when they could potentially represent the swing vote. The finding also indicates the broad importance of party competition as an explanatory variable, since the South is excluded from the sample and party competition remains statistically significant for non-Southern states.

But it is party control that show the most dramatic and consistent effects. The reference category in the regression is unified Democratic control, and as the remaining dummy variables indicate, state governments under unified Democratic control were the most likely candidates of passage. All other alignments of party control have large and negative coefficients. Only the coefficient for states with a Republican governor and Democratic legislature fails to achieve

statistical significance; all other logit coefficients are significant at least at the $P < .05$ level. A one-standard deviation change from unified Democratic control to all other alignments of party control reduces the probability of passage by more than half.¹⁸ This finding supports several qualitative case studies showing that northern Democrats were the strongest supporters of fair employment legislation (Siskind 1997, Sugrue 1996). The results do not rule out political manipulation by Democrats, who might well have introduced FEP legislation when it had no chance of passing or who might have dragged their feet when it did. But the results also clearly indicate that when the Republican party controlled as little as one house of the state legislature the probability that a state would pass a FEP law fell by more than fifty percent.

CONCLUSION

This article fully exploits the advantages of event-history methods. In contrast to previous social-scientific research, it models the timing of state fair employment legislation through a discrete-time, logit analysis of a pooled, time-series data set containing both time-constant and time-varying covariates.

Its contributions are twofold. Theoretically, it has tested the explanatory power and scope of various theories of policy innovation. How well do they apply to state fair employment legislation, and civil rights legislation more broadly? Institutional theories fare the worst; they do not appear to hold much relevance at all. Modernization and power-resources theories receive limited support; they deserve further consideration in future research, particularly with respect to their implications about the underlying social dynamics of legislation. Theories concerning electoral politics have the greatest and most consistent explanatory power, and future research on

¹⁸ This understates the actual size of the effect. It is more appropriate to evaluate the impact of party control by considering the impact of a one-unit change, rather than a standard-deviation change, in the independent variable.

civil rights legislation should turn to them first. Perhaps more than other policy areas, civil rights is a decidedly political issue.

Empirically, the article has identified the conditions under which state fair employment legislation had the best chances of passing. To somewhat varying degrees, the probability of passage was significantly higher in richer states compared to poorer states; states with politically competitive party systems compared to states experiencing one-party domination; states under unified Democratic control compared to states under any other partisan alignment. The probability of passage was significantly lower in states with higher percentages of black residents relative to other states.

These empirical findings sustain two substantive inferences about the politics of civil rights in the postwar United States. The first concerns partisan dynamics. Fair employment appears to have been a bipartisan issue, not the exclusive province of one or another party. This interpretation is supported by the finding that politically competitive states had a higher probability of passing fair employment legislation than in other states. At the same time, however, party control had significant effects that were independent of political competition.¹⁹ The results of the analysis strongly indicate that it was the party of Lincoln who stood in the way of fair employment legislation in the states. While much of modern U.S. political history broadly depicts Republicans as a progressive force on civil rights, examining the case of fair employment legislation reveals that northern Democrats were the strongest backers of civil rights.

¹⁹ It may seem somewhat contradictory to insist on the bipartisan character of fair employment and then to conclude that the Democrats were the party of fair employment. If fair employment is so strongly associated with one party, how could it be bipartisan? This contradiction is more apparent than real. Political competition is measured entirely without regard to party control, and vice versa. More importantly, even if Republicans did compete with Democrats over fair employment in close states, it does not necessarily follow that both parties acted in the same way after taking office. Nor does the level political competition tell us anything useful about the distribution of probabilities underlying different alignments of party control.

The second inference concerns the depth and timing of white resistance to civil rights in northern states. Fair employment stood the best chance of passing in states where whites did not perceive blacks as a competitive threat in the labor market; where they did perceive blacks as a threat, state fair employment legislation had a smaller chance of passing. This interpretation is supported by the finding that wealthier states as well as states with a smaller proportion black residents had a higher likelihood of passing fair employment legislation than other states. Such results challenge the pervasive view of the 1960s in which “color-conscious” policies like affirmative action and busing are seen to have prompted a white backlash against civil rights (e.g., Thernstrom and Thernstrom 1997)—particularly in northern states, where “color-blind” civil rights policies are assumed to have had wide support in comparison to the south. White opposition to civil rights, even “color-blind” policies like fair employment, began much earlier than the late-1960s. Even in northern states it was always much closer to the surface of politics than many accounts acknowledge.

This article points to several fruitful avenues of further research. One key question is whether civil rights legislation constitutes a special or generic case of policy diffusion. Making such a determination requires new studies of two types. The first involves the event-history analysis of other kinds of civil rights laws, specifically fair housing and open accommodations legislation. This is a natural extension of the current research, especially given overlap in data requirements, and it is a prerequisite for determining whether the determinants of fair employment legislation are characteristic of state civil rights legislation as a whole. The second type involves selective reanalysis of data from earlier studies of policy diffusion using event-history methods rather than other, more limited, regression-based techniques. Does the reanalysis support the same theoretical inferences?

Given its critical importance, party control is well worth further research. If unified Democratic control exerts such a consistent influence on passage of civil rights legislation, what range of conditions favor the onset of unified Democratic control? This question may be profitably pursued using discrete-time, event-history models of multiple, repeated events or a multinomial logistic regression model in which party control is treated as an unordered, multiple choice. In addition to their intrinsic interest, such studies would also permit us to explore how economic, institutional, and social forces on civil rights legislation might be mediated in some way by party control.

Finally, fair employment legislation itself could benefit from further study. This article provides strong empirical evidence that Democrats were the strongest supporter of fair employment laws. But for much of the postwar period the Democratic party seldom held command of both elected branches of state government. In fact, Democrats did not enjoy unified control in two-thirds (16 out of 24) of the instances in which states passed fair employment legislation. What explains the diffusion of legislation in these cases? One strong possibility is variation in the stance of Republican party toward fair employment. After all, without at least limited Republican acceptance of fair employment legislation, it would have never passed in states that had not fallen under the complete control of the Democratic party. Although this article has advanced our understanding of how party control shaped state fair employment legislation, its politics remain a rich subject of inquiry, and they hold important implications for students of civil rights and policy diffusion.

TABLE 1. Diffusion of State Fair Employment Laws, 1945-1964

Year	State(s)	No. per annum
1945	New York, New Jersey	2
1946	Massachusetts	1
1947	Connecticut	1
1948		
1949	New Mexico, Oregon, Rhode Island, Washington	4
1950		
1951		
1952		
1953	Alaska	1
1954		
1955	Michigan, Minnesota, Pennsylvania	3
1956		
1957	Wisconsin ^a , Colorado	2
1958		
1959	California, Ohio	2
1960	Delaware	1
1961	Idaho ^b , Illinois, Kansas, Missouri	4
1962		
1963	Vermont ^b , Indiana ^a , Iowa ^b , Nebraska	4
1964	Hawaii	1
<i>Total</i>		26

SOURCE.—*State Fair Employment Laws* (Bureau of National Affairs 1964).

NOTE.—States altogether failing to pass fair employment laws before Congressional passage of the 1964 Civil Rights Act include Alabama, Arkansas, Arizona, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Mississippi, Montana, New Hampshire, North Carolina, North Dakota, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wyoming. States passing non-enforceable laws include Wisconsin in 1945, Indiana in 1961, Nevada in 1961, West Virginia in 1961, and Oklahoma in 1963.

^a pre-existing commission given administrative enforcement powers in the form of cease-and-desist authority

^b civil or penal enforcement

TABLE 2. Descriptive Statistics of Variables Included in the Analysis

Variable	Mean	Std. Dev.	Min	Max
Passage	.047	.211	0	1
Duration	7.194	5.219	0	23
<i>Institutional</i>				
Administrative Capacity (in %)	.834	.350	.114	3.740
Traditional Party Organization	2.194	1.679	1	5
Statistical Malapportionment	43.527	23.802	-4.3	96.3
Metropolitan Representativeness	68.839	17.385	27	99.2
Rural Overrepresentation	183.755	93.315	103.2	547.7
<i>Modernization</i>				
Industrialization (in cents)	63.399	38.190	5.143	174.237
Urbanization	54.547	15.583	17.956	91.081
Wealth (in dollars)	1988.984	411.116	969.179	3284.378
<i>Power-Resources</i>				
Percent Black	3.890	4.237	.109	17.216
Civil Rights Mobilization (in %)	3.588	3.405	0	21.455
Percent Jewish	1.439	1.939	.020	15.959
Percent Catholic	19.654	11.583	3.188	64.647
Industrial Unionization (%)	21.796	14.404	1.667	67.526
<i>Electoral Politics</i>				
Party Competition	67.764	18.776	15.583	99.6
Unified Republican Control	.440	.484	0	1
Republican Gov., Democratic Leg.	.088	.276	0	1
Republican Gov., Divided Leg.	.059	.230	0	1
Democratic Gov., Republican Leg.	.139	.337	0	1
Democratic Gov., Divided Leg.	.074	.254	0	1

NOTE.— All monetary figures are expressed in constant 1964 dollars.

TABLE 3. Logit Coefficients from a Discrete-Time, Event-History Model of the Diffusion of State Fair Employment Laws in Thirty-Seven, Non-Southern States, 1945-1964

	Logit	SE	P ₀	P ₁	$\Delta P = P_1 - P_0$
Duration	.139	.072	.2	.34	.14
<i>Institutional Characteristics</i>					
Administrative capacity (in %)	.734	.927	.2	.24	.04
Traditional Party Organization	.188	.310	.2	.26	.06
Statistical Malapportionment	-.003	.016	.2	.18	-.02
Metropolitan Representation	-.039	.026	.2	.11	-.09
Rural Overrepresentation	-.004	.004	.2	.14	-.06
<i>Modernization</i>					
Industrialization (in cents)	.017	.018	.2	.32	.12
Urbanization (in %)	.023	.037	.2	.27	.07
Wealth (in dollars)	.003*	.001	.2	.46	.26
<i>Power-Resources</i>					
Percentage Black	-.391*	.158	.2	.05	-.15
Civil Rights Mobilization (%)	-.047	.109	.2	.18	-.02
Percentage Jewish	.105	.149	.2	.23	.03
Percentage Catholic	.034	.033	.2	.27	.07
Industrial Unionization	.033	.037	.2	.29	.09
<i>Electoral Politics</i>					
Party competition (in %)	.057*	.026	.2	.42	.22
Unified Republican Control	-2.673**	.891	.2	.06	-.14
Republican Gov., Democratic Leg.	-5.873	4.2	.2	.05	-.15
Republican Gov., Divided Leg.	-4.315**	1.49	.2	.09	-.11
Democratic Gov., Republican Leg.	-2.385*	.995	.2	.10	-.10
Democratic Gov., Divided Leg.	-4.22**	1.562	.2	.08	-.12
Constant	-12.512**				
Loglikelihood	-65				
Number of Observations	516				

NOTES.— P_0 is an assumed baseline probability for L_0 , where $L_0 = \ln [P_0/(1-P_0)]$. P_1 is the probability associated with a one-standard deviation increase in the independent variable. $P_1 = e^{L_1}/(1+e^{L_1})$, where $L_1 = L_0 + \Delta L_j$, and $\Delta L_j = b_j * \Delta x_j$, and also $\Delta x_j = \text{STD}(x_j)$. ΔP is hence the change in probability associated with a one-standard deviation increase in the independent variable, assuming a baseline probability of .2.

* $P < .05$.

** $P < .01$.

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