

COPYRIGHT NOTICE:

Anthony S. Chen: The Fifth Freedom

is published by Princeton University Press and copyrighted, © 2009, by Princeton University Press. All rights reserved. No part of this book may be reproduced in any form by any electronic or mechanical means (including photocopying, recording, or information storage and retrieval) without permission in writing from the publisher, except for reading and browsing via the World Wide Web. Users are not permitted to mount this file on any network servers.

Follow links for Class Use and other Permissions. For more information send email to: permissions@press.princeton.edu

On the Origins of Affirmative Action: Puzzles and Perspectives

The years after the Second World War were a time of optimism and confidence for most Americans. Before the breakout of armed hostilities, President Franklin Delano Roosevelt had characterized America's growing involvement in the conflict overseas as a valiant defense of "four essential human freedoms"—freedom of speech and freedom of religion, freedom from fear and freedom from want. Now the war had come and gone, and the Allies had prevailed. Democracy had triumphed over fascism, freedom over fear. To be sure, success had come at a terrible cost. Over a million military personnel died or sustained injury during the war. Many more sacrifices remained quietly untold, never making it into the official record. But the country had rallied together as never before, and it finally pulled through the darkness. Better days were ahead. Millions of servicemen were returning home from their assignments abroad, ready to resume their lives as civilians with the generous assistance of the G.I. Bill. Old couples reunited. New romances began. There was a baby boom. A steady flow of defense dollars had righted the once-listing economy, and jobs were growing plentiful. For men without a college degree, some of the best jobs belonged to workers at big companies in the manufacturing and industrial sector—companies like General Motors and U.S. Steel. There, strong unions won collective bargaining agreements that meant steady employment, high wages, and generous fringe benefits such as retirement pensions and private health care insurance. Hundreds of thousands of Americans suddenly had the financial wherewithal to become homeowners for the first time, often with the help of federally backed mortgage guarantees. Flush with cash and credit, they went on a buying spree to fill their new homes with washers and dryers, couches and sofas, television sets and every other conceivable sort of household and consumer good. Shiny new cars practically rolled off assembly lines in Detroit and right into the driveways and garages of new homeowners. Life was good, and there was a widespread sense that it would only get better. As the historian James T. Patterson would later write, many Americans were developing "grand expectations" about the road ahead.¹

Everyone understood that jobs were the key to unlocking America's newfound prosperity. "Never underestimate the value of a job," wrote

one typical observer. “It may mean the difference between security and insecurity.” But not all Americans with hopes for the future were able to find jobs so easily. Jobs and the security they conferred proved painfully elusive. In 1947, a resident of Richmond, Calif., wrote to Republican Governor Earl Warren to tell him about her frustrating experience on the job market. For some time now, Mrs. F. L. Osborne had been trying without success to find work as a secretary or retail clerk in northern California. It should not have been so hard. Her credentials seemed impressive enough. A high school graduate, she had excelled at San Francisco Junior College and won a coveted transfer to the prestigious University of California, Berkeley. Finding employment, though, had been strangely and impossibly difficult. Although she was perfectly qualified for the positions to which she had applied, one company had flatly turned her down in San Francisco, and two others in Berkeley had “coldly and abruptly” rejected her. Osborne could hardly hide her disappointment. Her husband had served overseas in the war against fascism and totalitarianism. Things were supposed to get better for them afterward. The whole experience led her to question the sacrifices that they had made for their country. Did the United States not fight the Axis menace so that all Americans might speak and worship freely, so that all Americans might live their lives free from fear and want? If she and her husband could not fully partake of the “four freedoms” for which America went to war, then “why have our men died and for what cause?” Osborne and her husband were black.²

Thousands of other African Americans would have listened to Osborne’s story with a sense of knowing familiarity. The same question surely stood out in their minds as well. But it was less a debilitating doubt than a spur to further action. After the Second World War, growing numbers of African Americans refused to bury quietly their hopes and dreams. Instead, they fought back, staging acts of resistance—big and small, quiet and noisy—all across the country. The most visible and gripping stories emerged in the South, which furnished the plotline, setting, and *dramatis personae* for the now-celebrated campaign of direct action against Jim Crow segregation. A quarter century later, African Americans and their allies could look back with some satisfaction at the accomplishments of what Americans had begun to call the civil rights movement—particularly its southern-led, church-based branch. There was a vibrant movement for civil rights in the North as well, but it was the southern branch that garnered the lion’s share of the attention from the press and the public. Personified by the Rev. Martin Luther King, Jr., it had succeeded in toppling the legal edifice of segregation and won federal legislation that proclaimed formal equality in public accommodations, education, voting, employment, and housing. The scope of freedom had grown ineluctably wider.³

Yet the politics of civil rights had also become more complicated. The political shifts that took place over the course of the 1960s are easy to exaggerate with the luxury of hindsight, and some authors have made the point in the extreme, arguing that a categorical discontinuity divides the decade. Such claims seem overstated. Nonetheless, it is hard to deny that a change of some sort had begun to occur by the mid-1960s. By all appearances, the fire next time had come. A riot had consumed Watts, and then Detroit and Newark. The most charismatic leader of the civil rights movement was viciously gunned down on the balcony of his Memphis hotel room. A profusion of younger leaders rose in his stead, and their militant rhetoric and revolutionary pronouncements made for sensational headlines and garnered easy publicity. Equally puzzlingly, political discourse was rapidly becoming polarized around a new, unfamiliar policy that required or encouraged employers and contractors to develop written “goals and timetables” for the racial integration of their work force. The policy had attracted precious little attention before it gained the force of law. It had certainly inspired no one to march in the streets. But it quickly touched off a fire storm of controversy. Critics castigated it as nothing less than racial quotas and preferential treatment, while proponents viewed the policy as a clear and necessary extension of the egalitarian ideals that had motivated the civil rights movement. Nobody had foreseen it in the early years after the war, no matter how grand their expectations for the future. Yet a policy called affirmative action had somehow managed to become a major focal point of the national conflict over civil rights. This book represents a new effort to rethink how and why such a policy emerged.⁴

Affirmative action remains one of the most politically and ideologically freighted issues in American politics. Even though it first surfaced more than forty years ago, few policies continue to inspire as much soul-searching about the content of our national character. Still fewer have provoked such harsh bromides or forceful defenses. Where did affirmative action come from? How did something so controversial ever come into existence?

Not so long ago it was difficult to find a book or study that offered more than polemic, but now serious answers are plentiful. The most important accounts focus on the tumultuous period of American history that spanned the Kennedy and Nixon presidencies. The central actors and institutions are familiar by now. According to one influential perspective, identified with Hugh Davis Graham, affirmative action was essentially the handiwork of a radicalized civil rights lobby, which “captured” federal executive agencies and courts and led them to subvert the color-blind intent of the Civil Rights Act. In the view of Jill S. Quadagno, Thomas J.

Sugrue, Nancy MacLean, and Martha Biondi, civil rights activism played the most crucial role. The intransigent exclusion of African Americans from the most desirable sectors of employment in the postwar economy, along with the manifest inadequacy of state and federal laws against discrimination, led to a burst of grass-roots protests that all but necessitated federal adoption of affirmative action programs. A third view, advanced by John D. Skrentny, Robin Stryker, and Nicholas Pedriana, focuses on shifts in political culture and partisan politics. At a time when the riots of the late 1960s conferred a new, if momentary, legitimacy to color-conscious policies, affirmative action emerged as a politically opportunistic gambit by the Nixon administration to drive a racial wedge between working-class whites and African Americans. The work of Paul Frymer, Robert Lieberman, and Paul D. Moreno represents a final line of research, one that strongly highlights the critical role of American political and legal institutions. The decentralized and fragmented policy-making institutions in the United States—including the federal courts—presented political opportunities that made the emergence of affirmative action possible.⁵

There is clearly no consensus on the origins of affirmative action, but recent scholarship has identified many of the key actors and storylines. With only a few exceptions, however, existing accounts do not acknowledge the full dimensions of earlier struggles and miss the numerous ways in which they contributed to the emergence of affirmative action. Long before affirmative action became a target of ideological contention and a badge of partisan loyalty, there had been a vital campaign to make it the responsibility of the government to protect Americans from the ravages of job discrimination. The campaign unfolded over the entire federal system, not just the national government, and it drew in a far wider spectrum of social and political actors than generally appreciated. Nor does recent scholarship properly specify the actual set of alternatives over which policymakers repeatedly and fiercely clashed throughout the postwar period. The court-based regulatory system in place today—of which affirmative action forms a small but controversial part—was never the sole historical possibility. Years ago, key numbers of policymakers sought statutory authority for a very different form of government involvement in which the equal treatment of individuals in the labor market—and nothing more than equal treatment—would be enforced through an administrative process based in the executive branch, with the courts playing only a supporting rather than primary role. Yet no major account seriously grapples with these critical developments. What is missing from current debates is a sufficiently broad perspective on history and politics. What is missing is a sense of the road not taken.⁶

This book sets out to fill in the gaps; it looks farther back in time and casts a wider gaze over history, politics, and society than do previous

accounts.⁷ The story I tell does not begin in the 1960s with the Kennedy administration. In fact, it begins two full decades earlier. In line with a recent turn in historical scholarship on civil rights, exemplified in the work of Risa Goluboff, Martha Biondi, Ira Katznelson, Denton Watson, Robert Korstad, Nelson Lichtenstein, and others, I begin with the 1940s, a period that Richard Dalfiume has rightly called the “forgotten years” of the black freedom struggle. Nor does the book focus, as others have, on intrigue in the federal bureaucracy or activism in the federal courts. Rather, it shifts the focus from the executive and judicial branches to the legislative branch, and it devotes special attention to tracing the interplay of state and national politics. Lastly, it does not rehearse the familiar struggles that have essentially become set pieces in the standard history of civil rights. The stories in the following pages are not staged primarily in the South. Few pages are devoted to the dramatic and critical confrontations that took place in Birmingham, Little Rock, Greensboro, or Selma, and the characters driving the plot are not Rosa Parks, Martin Luther King, Jr., and Fannie Lou Hamer—or Orval Faubus, “Bull” Connor, and George Wallace for that matter. This book instead chronicles less-known events and developments that unfolded in northern states and cities. Its main characters include northerners such as A. Philip Randolph, Will Maslow, Irving M. Ives, Frieda S. Miller, Helen G. Douglas, and Augustus F. Hawkins—but also Robert A. Taft, Otto Christenson, and thousands of rural and suburban whites. Many of these events and characters are not closely associated with the standard history of civil rights in the United States, but examining their struggles is absolutely crucial to clarifying the precise origins of affirmative action policies in employment.⁸

When a sufficiently broad perspective is taken, it becomes possible to see in full something that has been forgotten or only glimpsed in part: From the 1940s to the 1970s, there was a vibrant campaign for job equality in the United States. Decades before the phrases “affirmative action” or “equal employment opportunity” entered legal parlance, tens of thousands of Americans—mostly liberal in their political persuasion—made common cause under a different banner, that of “fair employment practices” (FEP). The storied March on Washington took place in 1963, but some Americans during the 1940s and 1950s were already staging marches on Albany and Sacramento, all in the name of winning “fair employment practices” legislation. Theirs was far more than a pet cause of a vocal minority. It was certainly more than the eschatological fantasy of a tiny vanguard. The campaign for FEP enjoyed wide support throughout the populous, industrial cities of the North, Midwest, and West. It drew in the involvement of not only the high and mighty of American politics—elected officials, party strategists, and professional lobbyists—but also ordinary voters hailing from all walks of life and representing

every racial, ethnic, and religious background. Everyone had his or her own personal motives for participating, but what most of them had in common was a commitment to the idea that the government should take serious steps to make sure that jobs—and the measure of economic security that they conferred—were not denied to anyone on account of race, religion, or national orientation. The history of FEP has not been entirely absent from accounts of the civil rights movement, but it has yet to receive the serious attention it deserves. When the fierce, protracted battle over FEP is placed at the center of the story, it becomes the missing link between the “forgotten years” of the civil rights movement and the puzzling rise of affirmative action years later.⁹

The campaign for FEP pressed for legislation wherever legislation could be made, including northern statehouses and city halls. Its highest hopes, however, centered on Capitol Hill, where advocates sought a federal law that would have mandated nondiscrimination in most phases of public and private employment. Central to their vision was a regulatory model in which the authority to enforce equal treatment would be lodged primarily in the hands of a federal agency with administrative powers in the mold of the National Labor Relations Board (NLRB), whose design epitomized the regulatory ambitions of the early New Deal. The antidiscrimination agency would have two specific types of authority to enforce equal treatment. First, it could order offending employers and unions to cease and desist from their discriminatory behavior. Equally significantly, it could order offenders to take “affirmative action” to compensate victims of discrimination for the economic harms that they had suffered as individuals. The passage of FEP legislation would not have outright eliminated the pervasive pattern of racial and ethnic inequality in the labor market, but it would have undoubtedly made “fair employment practices” more than a slogan for millions of Americans.¹⁰

The campaign for FEP legislation was far from a quixotic mission. It was certainly no errand in the political wilderness. On several occasions in the postwar years, those who banded together to press for FEP legislation were not without real prospect of success. Beginning in 1945, they achieved a number of important political and legislative victories, including the passage of laws in most industrial states; the issuance of executive orders by presidents of both parties; and the eventual inclusion of a job discrimination provision (Title VII) in the Civil Rights Act of 1964. Their best-laid plans, however, were only imperfectly realized over the years. By the early months of 1972, job discrimination had come to be regulated by a set of policies that would have appeared unrecognizable to anyone with clear memories of the original struggle for FEP. In particular, public policy had evolved into a bewildering labyrinth of federal and state statutes, administrative regulations, and executive orders. At the federal level

alone, responsibility for monitoring job discrimination was fragmented across numerous departments and agencies. Furthermore, enforcement did not occur through a streamlined administrative process. Aggrieved individuals were left to their own devices. Either they could pursue a civil lawsuit in federal court or they could appeal to a contracting agency for whatever action it deemed most constructive.¹¹

The most striking difference involved the legal and political significance of the term “affirmative action” itself. In the heady ferment of the postwar years, the term originally referred to administrative orders requiring employers or unions to hire, reinstate, or promote individual workers who were the proven victims of discriminatory behavior. Now it referred to written plans for racial integration that all federal contractors were mandated to file as part of their bid for federal contracts, irrespective of what lawyers would later call a “factual predicate” of discrimination. The plans did not merely describe the steps that employers or unions would proactively take to guarantee the equal treatment of individuals. Instead, the instructions set “goals and timetables” for increasing the representation of selected racial groups over time. Numerous private companies were also voluntarily adopting similar plans, motivated by the hope of reducing the pressure for legal and legislative action. The entire regulatory system was a far cry from what had been envisaged in the heady years after the Second World War, and the emergence of “affirmative action” was the most puzzling and controversial development of them all.¹²

This book traces the story of the remarkable journey from FEP to affirmative action. In so doing, it examines the politics behind the gradual eclipse of one model of social regulation and the unexpected rise and institutionalization of another. This critical but unnoticed transformation in public policy frames the puzzle motivating the analysis in the following pages.

The puzzle may be expressed in a series of interrelated questions. Why did liberals never successfully establish a strong, centralized system for regulating job discrimination, one anchored by a Fair Employment Practices Committee (FEPC) with enforcement authority along the lines of the NLRB? Why did a different regulatory system—of which affirmative action formed a small but controversial part—arise instead? More specifically, why did federal jurisdiction over job discrimination become so fragmented? Why did regulatory authority become so decentralized? How did enforcement become the responsibility of the federal courts rather than a full-fledged federal agency? Why did the policy regime develop primarily through administrative regulations and judicial rulings rather than statutory law? Lastly, what explains the emergence of a small cluster of policies—some mandatory, some voluntary—that led compa-

nies to monitor and strive to increase the representation of racial minorities in their work force? Simply put, what explains the advent of affirmative action in employment?

Such questions have no easy answers, but any answer must begin with the simple recognition that liberals were the motive force of the campaign for job equality. At every level of the political process, liberally minded men and women could be found insisting on strong government action against discrimination. Working together, liberals formed a coherent political bloc that represented the main source of momentum for policy change. To be sure, they were a heterogeneous lot, reflecting in part the underlying complexity of their beliefs. American liberalism after the New Deal was a continuously shifting constellation of ideas that exhibited competing, even contradictory, ideological tendencies. As Alan Brinkley has written, some liberals merely wished to rein in what they saw as the inherent proclivity of capitalism toward monopoly; others extolled the virtues of central planning; still others argued for a kind of corporatist or quasi-corporatist arrangement between business, labor, and government. Nevertheless, liberals at mid-century shared a common core of beliefs about whether and how the government should regulate social and economic life. Indeed, most of them were emphatically convinced that government could not simply stand aside and let private interests do as they pleased. What made these men and women liberals—particularly in matters of civil rights—was their unwavering support of the idea that government *could* and *should* regulate discrimination. Precisely how discriminatory behavior should be regulated was a matter of some disagreement, but it was widely agreed that regulation was the responsibility of neither the private sector nor civil society. Instead, it was the rightful responsibility of government to guarantee the equal treatment of individuals, even if it meant wielding strong sanctions. Nowhere was the responsibility more serious than in the case of jobs, which the vast majority of Americans used to build the foundations of their economic security. The fight for FEP was thus more than a simple matter of ensuring equal treatment in the labor market. For liberals, particularly those inspired by Roosevelt's prewar rhetoric, it symbolized a kind of fifth freedom—"freedom from discrimination"—that would make the promise of the Four Freedoms a meaningful reality for all Americans.¹³

To be sure, many liberals accepted Gunnar Myrdal's argument that the racial inequality in the United States stemmed fundamentally from the prejudicial beliefs and moral failings of individual Americans. In his widely read treatise, *An American Dilemma*, Myrdal argued that the "Negro problem" reflected a "problem in the heart of the American." "It is there," he wrote in the study that would garner him the Nobel Prize, "that the decisive struggle goes on." But liberals did not jump from

Myrdal's individualistic diagnosis of racial inequality to the conclusion that the prejudicial beliefs of individual Americans were the only legitimate targets of the assault on racial inequality. On the contrary, liberals considered prejudice far beyond the reach of any public or private intervention. How could any external force truly change a person's innermost thoughts and feelings? Even if it were possible, how could anyone else on the outside know that the change was genuine? The only reasonable hope lay in addressing the behavior that stemmed from prejudice. Discrimination and prejudice were bound up with each other in a vicious cycle, but only discrimination was directly observable and therefore amenable to regulation. Of course, private entities could not be counted on to regulate themselves. Even if it were carried out in good faith, voluntary action by employers and unions could only go so far. For liberals, safeguarding the fifth freedom was a responsibility that could only be entrusted to the government.¹⁴

Liberals formed a discernible bloc in postwar American politics, one that was defined by their shared beliefs about government regulation. But the liberal bloc was both socially and politically diverse. Its most stalwart members were almost certainly African Americans. They experienced the harshest and most ruinous forms of segregation and discrimination, no matter where in the country they lived. Historically, black Americans had been a people of the rural South. Until the eve of the war, more than three-quarters still resided in southern states, and a majority of these men and women lived in rural areas. American participation in the Second World War—and the corresponding renaissance of northern industry—redrew the geography of African American life, spurring a Second Great Migration that would send large numbers of them northward. By 1970, millions of enterprising African Americans had left their southern homes, pushed out by technological advances in agricultural production and beckoned by the promise of economic opportunity. More than ten million African Americans lived outside the South—out of twenty-two million in the United States overall—and all but a slender fraction of them made their homes in big cities. Unfortunately, few of the migrants to northern cities found what they had truly hoped for. If the “North” figured in the black imagination as a kind of Canaan, a mythic place where they might live out the true meaning of the American creed, reality proved manifestly different. Osborne's story of her discouraging experience in northern California was not a contrived tale meant to prod a hesitant official into action. Job discrimination was an all-too-common experience for African Americans—for those who left Dixie behind no less than for those who remained. The historical record is crammed with thousands of letters, diaries, stories, and reports recounting the heartbreaking multi-

tude of ways that they were shut out unfairly from the booming postwar labor market.¹⁵

All of the individual stories eventually added up, one by one, and the result was a grim litany of statistics that scarcely hinted at the depth of human frustrations that surely lay beneath them (table A.1). Perhaps the most striking figure of all was the unemployment rate, particularly for black men. Black women had long been employed at a higher rate than white women, but male unemployment began to diverge along racial lines in the postwar years. By the 1950s, black men were unemployed at nearly twice the rate as white men, a disparity that would endure for decades. Even when the most persistent of them succeeded in finding work, they nevertheless earned less than comparable non-Hispanic white men. The best estimates are admittedly rough, but it appears that a black high school graduate in 1940 earned about sixty cents for every dollar earned by a white high school graduate. The differential narrowed to roughly eighty cents on the dollar by 1970, but it was still a considerable gap. It is impossible, of course, to attribute all of the differences in employment and earnings to crude acts of racial discrimination at the hiring gate. By migrating to the urban North, African Americans were moving to regions of the country that tended to feature higher average rates of unemployment than the South. Moreover, African Americans were on average a less-educated population than whites, and the educational deficit was greatest for southern migrants. Nevertheless, racial inequalities existed at every level of educational attainment, and blacks received a smaller return to their educational attainment than did whites. For most of the postwar period, black men received a twenty percent smaller premium for obtaining a college degree than their white counterparts. Racial discrimination was thus a pervasive presence in the lives of African Americans, wherever they chose to live. The point was certainly not lost on African Americans themselves. "Employment discrimination is not confined to any one section of this country," said a speaker at the 1947 conference of the Alabama branch of the National Association for the Advancement of Colored People (NAACP). "When it comes to getting a skilled or white-collar job, the bars of race prejudice are raised just about as high in the North and West as they are in the South."¹⁶

But blacks were not the only Americans to experience the sharp sting of job discrimination. Nor were they the only ones to take political action as a result. Mexican Americans faced serious job discrimination as well, particularly in the Southwest, where most of them resided. According to a rough wartime estimate by federal official Carlos E. Castañeda, more than two million "Latin Americans" lived in Texas, New Mexico, Colorado, Arizona, and California. Of these, four-fifths were "American-born citizens," and the remainder had already been living in the region before

it became part of the United States. Job discrimination against Mexican Americans assumed myriad forms, but it was perhaps most visible in the racial segregation of the occupational structure. Workers of Mexican background were concentrated in the ranks of unskilled labor, while “Anglos” or people of Western European origin tended to hold skilled or supervisory positions. “Throughout the Southwest [Mexican Americans] are refused employment on an equal basis with other workers,” Castañeda wrote. “When employment is given to them it is restricted to the dirtiest, most undesirable and most exacting jobs. Regardless of previous training, natural ability or aptitude, seniority, or any other consideration, they are generally denied opportunities for advancement.” A similar pattern of occupational segregation held true elsewhere in the country. For instance, in the meatpacking plants of wartime Chicago, “Spanish American” workers at many plants were limited to the sweet pickle, green meat, or hide cellar departments—all extremely unpleasant places to work. The political life of Mexican Americans was less formally organized than other ethnic groups, particularly at mid-century, but cities such as Los Angeles and Chicago nevertheless witnessed bursts of political activity against discrimination during the war itself. In the years thereafter, Mexican American legislators in New Mexico would prove instrumental in launching a campaign for state legislation that would ultimately bear fruit in 1949. “We need. . . [a law against discrimination] here,” wrote one of them to U.S. Sen. Dennis Chavez (D-NM), “and I hope that it will pass so that the discrimination against our people will be stopped.”¹⁷

Though smaller in number, Japanese Americans also formed a definite part of the liberal bloc. As they began to emerge from internment immediately after the war, many Japanese Americans were not particularly inclined toward politics. They were focused on more practical issues, like finding a safe place to live and eking out a living in the face of lingering prejudices. Internment had shattered their former lives, and most of them did not think of turning to the federal government for protection from the new problems they faced. If they took an interest in politics at all, what concerned them the most was securing the equal right to naturalization for the Issei (first-generation Japanese Americans). Nevertheless, when it came to offering support on Capitol Hill, Japanese Americans were reliable members of the liberal bloc. In particular, Mike Masaoka of the Japanese American Citizens League (JACL) testified numerous times before Congress on the importance of taking legislative action against job discrimination.¹⁸

Turning to the political arena in much more significant numbers were various immigrant groups who traced their ancestry to Southern and Eastern Europe and now lived in the same northern cities that were magnets for African Americans. The raw, unbridled nativism that led Congress to

impose national-origin restrictions on immigration during the 1920s had subsided by mid-century, but there was still a discernible bias in the labor market against the foreign born and, to a lesser extent, their children. The bias certainly fluctuated from city to city, no less than it did from firm to firm or job to job. As the postwar period wore on, much of it gradually declined. The most recent and sophisticated evidence actually suggests that the “new” immigrants had more than leveled the economic playing field by the 1940s. To the extent that white ethnics succeeded in carving out niches for themselves in certain jobs or occupation, their background could actually favor them. But ethnic prejudice was definite, even if many “new” immigrants and their children succeeded admirably in overcoming it. Combined with age-old religious antipathies, ethnic prejudice put white ethnics on distinctly unequal footing. Thousands of Italian and Polish Catholics along with Russian and Polish Jews found that they had to try much harder than their native, Protestant peers to achieve the same levels of economic success. For a time during the postwar era, white ethnics insisted on protection from discrimination as well.¹⁹

The grass-roots membership of the liberal bloc was hence robustly interracial and interfaith. Blacks and Jews made up the most active members of the liberal bloc, but it also included thousands of white Protestants and Catholics, and more limited numbers of Mexican Americans and Japanese Americans. It was never the most cohesive assortment of people, but their shared experience of employment discrimination—combined with the fact that northern blacks could vote—furnished a common and powerful basis for collective action. Almost everyone in the liberal bloc grasped the idea that they wielded more political clout together than they did by themselves. Indeed, it was the political behavior and collective action of these ordinary men and women that set the policy-making process in forward motion, even if their presence is fully visible in the historical record only at certain moments. When these men and women wrote letters, formed delegations, and appeared en masse at legislative hearings, elected officials could not help but pay attention, even when such collective mobilization did not always achieve its intended effect. If direct action was the weapon of choice in the struggle to dismantle Jim Crow, northern liberals of all racial backgrounds and religious faiths worked for social change—perhaps less visibly but no less ardently—through the normal channels of electoral politics.²⁰

Of course, grass-roots participation was not wholly spontaneous. Much of it was conjured into existence by interest groups that had a stake of one sort or another in seeing the passage of FEP legislation. Among the most important and active of these groups were those with members who clearly stood to benefit from the protection of such legislation, including race groups like the NAACP, the National Urban League (NUL),

JACL, and the League of United Latin American Citizens (LULAC); religious groups like the American Jewish Congress (AJC), Catholic Interracial Council (CIC), National Council of Churches (NCC), and American Friends Service Committee (AFSC); industrial unions like the United Automobile Workers (UAW), United Steelworkers of America (USWA), and other international unions that together formed the Congress of Industrial Organizations (CIO); and liberal lobbies like the American Civil Liberties Union (ACLU) and Americans for Democratic Action (ADA). The sheer number of interest groups involved obviously posed a problem of coordination, which liberals surmounted with varying degrees of success. While no single, federated organization ever arose to preside over the entire campaign, umbrella organizations sprung up at various levels of the federal system. The push for Congressional legislation was guided in the 1940s by the National Council for a Permanent FEPC (NC), which found itself supplanted in the early 1950s by the newly formed Leadership Conference on Civil Rights (LCCR). Indeed, it was partly a desire to revitalize the campaign for FEPC legislation that led to the establishment of the LCCR. Umbrella organizations were also formed in many states outside the South, where liberals rallied under the banner of groups with names like the Ohio Committee for Fair Employment Practices (OCFEP) and the Minnesota Council for Fair Employment on Merit (MCFEM).²¹

The liberal bloc did not always and everywhere act with complete unity. Its political strength and capacity for collective action was diminished from time to time by internecine conflicts and organizational rivalries, which were inevitable in a bloc of such size and diversity. Among the most enduring and significant divisions was the one that separated African Americans from the white, working-class ethnics with whom they vied for jobs and housing. The two groups had formed the northern core of Roosevelt's electoral bloc since the Great Depression, but tension between them mounted as the Second Great Migration brought ever-increasing numbers of African Americans into northern factories and neighborhoods. Though violence at work was known to break out, conflicts over housing often led to the most explosive confrontations. In 1953, when black families began moving into the Trumbull Park Homes in South Deering, a neighborhood in southeast Chicago, white homeowners unleashed a program of terror and intimidation, detonating "aerial bombs" outside of black apartments and threatening economic and physical retaliation against anyone who transacted business with African Americans. South Deering was no exception. As vividly related by Thomas J. Sugrue, Detroit was the home base of the powerful UAW along with many of the most racially progressive locals in the country, but it too was convulsed by "hidden" waves of violence when African Americans began to move into all-white neighborhoods.²²

A color bar similarly divided blacks and whites at work, where jobs followed a discernible racial hierarchy. In most northern industries, skilled and semiskilled positions belonged to whites, while African Americans were relegated to unskilled and temporary positions. Compared to their white counterparts, blacks were the “last hired, first fired,” relegated as they were to the least secure, most taxing, and poorest paying jobs. These discriminatory arrangements still flourished not only because of employer discrimination but also because of union discrimination. This was particularly difficult to eradicate because local unions enjoyed considerable autonomy from their internationals. Even when strong leaders like the UAW’s Walter Reuther sought to eliminate racial discrimination from local unions and threw their weight behind the liberal campaign for FEP legislation, their efforts met with varying enthusiasm—and sometimes open defiance—from their white rank and file. For their part, African Americans harbored suspicions that union pieties about racial equality were meant only to buoy public relations. The tensions between the two groups simmered steadily throughout the postwar period, and occasionally they boiled over.²³

If postwar liberals found themselves at odds with one another in the workplace and neighborhood, they nevertheless found the occasion to act on their mutual interests in the political arena. When the time came to inject their convictions into the policy-making process, they enjoyed the advantage of having allies on both sides of the aisle. A liberal faction existed in each of the major parties for much of the period, and neither party turned a wholly deaf ear to calls for fair employment practices. The bipartisanship, however, was decidedly lopsided. The overall pattern was fairly difficult to discern in Congress, but it was no less real. In the postwar House, a modest majority of the Democratic delegation usually represented jurisdictions outside the states of the former Confederacy, and these “northern” Democrats were by far the strongest supporters of FEP, particularly representatives who were themselves religious or racial minorities. The most prominent Democrats on the issue included men and women such as Emanuel Celler (D-NY), Helen Gahagan Douglas (D-CA), Augustus Hawkins (D-CA), Mary Y. Norton (D-NJ), and Adam Clayton Powell (D-NY). Each of them represented a liberal, urban district where the demand for protection from discrimination ran the highest. The campaign in the Senate was spearheaded in the early years by Dennis Chavez (D-NM), and he was joined by his co-partisans from states with large, diverse, industrial cities—such as Herbert H. Lehman (D-NY) or Hubert H. Humphrey (D-MN). By comparison, support among Republicans in Congress was more inconsistent and uneven, quite in contrast to their enduring reputation as the “Party of Lincoln.” The national GOP in the postwar period was sharply divided between a liberal and conserva-

tive wing, but liberal Republicans—most of whom represented competitive districts in or near urban areas—were more a harried and fading minority than a rising power. Admittedly, certain Republicans, among them senators like Irving M. Ives (R-NY) or Wayne Morse (R-OR), assumed a prominent role in the politics of fair employment, just as their Democratic peers did. This tended to be the case only for senators, however. Support for FEP was far more uncommon among Republicans in the House, where most GOP lawmakers hailed from conservative, rural areas. The partisan imbalance was even more pronounced in the Oval Office. Although they never offered unqualified backing, Democrats like Harry S. Truman and John F. Kennedy were far friendlier to FEP legislation than Republicans Dwight D. Eisenhower or Richard Nixon, who went on record opposing exactly the kind of enforceable legislation that liberals sought.²⁴

The same uneven pattern of bipartisanship was also present in state politics, where it was more pronounced and visible than it was nationally. In both chambers of most legislatures, it was urban Democrats like Berkeley-Oakland's W. Byron Rumford who were the most consistent backers of FEP legislation. A handful of Democrats who represented predominantly rural districts were decidedly less enthusiastic about fair employment than their urban co-partisans, but the former tended to cast their votes almost as regularly for FEP proposals as the latter. By contrast, support for FEP among GOP legislators was far more variable. It was not entirely missing, but much of the liberalism among Republicans came from lawmakers in hotly contested districts—or from Republicans who either held or coveted statewide office. There is even some evidence that in the rare instances when GOP lawmakers cast their votes for FEP, many did so out of electoral considerations, over and against their own personal preferences and ideological commitments. Genuine esteem for liberal-style FEP legislation was restricted for the most part to Republican governors. The most successful among them, New York's Thomas E. Dewey, used his popularity and clout in 1945 to push through the first state FEP law in the United States. Other liberal Republican governors tried to emulate his example, but for every Earl Warren (CA), Luther Youngdahl (MN), or C. Elmer Anderson (MN), there seemed to be a Goodwin Knight (CA) or C. William O'Neill (OH) standing on the other side of the issue. Far more consistent in their support were Democratic governors, among them Edmund G. Brown (CA), G. Mennen Williams (MI), George M. Leader (PA), Frank Lausche (OH), Adlai Stevenson (IL), and Otto Kerner (IL).

For a time after the war, it appeared that the liberal bloc might well succeed. The state campaign was flourishing. A slew of early laws passed in northeastern states like New York, New Jersey, Connecticut, and Massachusetts, making "freedom from discrimination" more than a mere rallying cry for millions of Americans. The breakthroughs gave liberals genu-

ine hope that other legislative successes would soon follow, particularly in the populous states of the industrial Midwest and West. Not everyone thrilled to the thought, however. On the Left, radical critics reacted with scorn. They regarded state laws as “dead-letter” legislation. On the Right, conservatives reacted with dismay. They feared that early success would enable liberals not only to win the passage of additional state laws but also to build momentum to extract a federal law from Congress. This was indeed the liberal strategy, and it was neither far-fetched nor unrealistic. The states had long served as a testing ground for new ideas and new policies, well before Justice Louis Brandeis likened them memorably to the laboratories of American democracy. As recently as the New Deal, states had led the way on historic social legislation. Many of the central provisions of the Social Security Act began as state laws. Not unreasonably, liberals hoped to set off the same chain reaction with FEP. Though they did not fully realize it at the time, their best chance came during the first half of Truman’s second term, when FEP legislation became the “storm center” of a titanic fight over civil rights in Congress. In 1949 and then again in 1950, liberals came within a razor’s edge of gaining the upper hand. The entire episode validated their strategic blueprint.²⁵

But the experiment with FEP stalled. Conservatives, not liberals, prevailed at the turn of the decade. With the election of Eisenhower and the Republican takeover of Congress in 1952, political momentum for Congressional legislation dissipated for years. Several more states passed laws, but the most electorally significant states—California, Ohio, and Illinois among them—were severely delayed in passing FEP legislation. By the mid-1950s, state laws had become a substitute for, rather than a spur to, national action. As for Congress, it waited until 1964 to address employment discrimination. Even then, it passed a law that was little more than a dim shadow of what liberals had hoped to achieve. The provision covering job discrimination, Title VII, was mediocre at best, establishing the Equal Employment Opportunity Commission (EEOC) but giving it only a sliver of jurisdiction over job discrimination and leaving it without any independent authority to enforce the law. The EEOC could attempt to reconcile aggrieved parties informally, and it could hold public hearings in the hope of embarrassing employers or unions into changing their behavior. If reconciliation proved impossible, however, it could do nothing more. Victims wanting enforcement action would have to file, finance, and win a federal lawsuit on their own. In 1972, when Congress revisited the issue under liberal pressure, it once again contemplated a wide range of regulatory alternatives, including a proposal to make the EEOC a full-fledged administrative agency in the mold of the NLRB. This moment presented the last, best hope for the liberal vision of FEP. What resulted instead, however, was the Equal Employment Opportunity En-

forcement Act, which essentially ratified the court-based system that had taken root in 1964 and left intact the handful of affirmative action policies that had emerged through executive, administrative, and judicial action.

The gradual eclipse of the liberal vision laid the basis for the rise of a new court-based regulatory system, one that became a controversial hybrid of color-blind and color-conscious policies. This chimerical regime was not fated to be. However much affirmative action appears the inevitable outgrowth of regulatory capture, grassroots protest, or shifts in political culture during the Johnson and Nixon years, it might have looked differently if liberals had ever gotten their way. Had liberals successfully convinced Congress to provide for administrative enforcement of the law, particularly before the southern-based civil rights movement crested in the mid-1960s, subsequent disagreements might have taken a vastly different path. There would have been a bona fide regulatory agency on the scene, and policymakers might have focused on a different set of issues, instead of becoming mired in bitter quarrels over racial quotas and group rights. Politics and partisanship would have surely remained part of the equation, but the disputes would have centered on questions of regulatory design. Was the law, as it was written, adequate for the task of ensuring the equal treatment of individuals in the labor market, or was new legislation required? Should the agency be given the authority to initiate investigations without first waiting for a complaint? What constitutes evidence of discrimination, and should the threshold be set higher or lower? Once the agency makes a factual determination about discrimination, how much deference should federal courts give it under review? The most intriguing possibility is that the meaning “affirmative action” might not have taken a color-conscious turn. Instead, it could have acquired a strictly color-blind meaning, referring to the administrative orders requiring employers or unions to compensate individual victims of discrimination for the harms that they had demonstrably suffered—just as liberals had long hoped. The road not taken did not make all the difference, but it made a rather substantial one.

If the seeds that liberals sowed never fully bloomed, it was partially a consequence of their own making. Myriad failures of will and judgment plagued them along the way. The gradual acquiescence of the American labor movement to a two-party political system; a debilitating surge of antiradicalism among labor liberals; the systematic purge of Left-led unions from the CIO and the subsequent decline of interracial unionism—all of these problems or missteps probably weakened and distracted the potential bloc that might have been mobilized behind the FEP campaign. Over time, such problems changed the meaning of liberalism itself.²⁶

Nevertheless, the potential to develop a Left-led, interracial labor movement existed only on a handful of occasions in a limited number of places. To be sure, Left-led unions were absolutely instrumental in advancing the cause of racial equality in certain international and local unions, as numerous authors have powerfully documented. The settings of their stories range remarkably far and wide. During the Great Depression and well into the postwar years, industrial democracy and civil rights went hand in hand for autoworkers in Detroit, public workers in New York City, tobacco workers in Winston-Salem, shipyard workers in wartime Miami, steelworkers in Pittsburgh and Birmingham, and meat packers in Chicago. Moreover, it is impossible to deny that the anticommunist crusades of the McCarthy era—at times led by Cold War liberals—had a chilling effect on these and other inspiring episodes of interracial unity in the American working class. It nevertheless seems difficult to imagine how a “black-labor-Left” bloc, in the phrasing of one historian, would have ever become a major force for policy change in either *state* or *national* politics. Such a bloc was only imaginable, much less possible, in a limited number of localities or municipalities—and rarely higher in the federal system. Even if fratricide had been averted and a black-labor-Left bloc had sprung into existence at the state or national level; even if such a bloc had been led by “independent leftists” rather than members of the Communist Party; even if it had been strong enough to win major concessions from large employers in key industries; even then, it would have been faced with the necessary task of forming and sustaining a viable third party, or else deal with the risk of being captured and domesticated by one of other two. This task may have been slightly easier in state politics than national politics, but it would have been daunting in either venue. Ultimately, it is hard to see how such a bloc could have done more than simply serve as a font of contrapuntal ideas. The formation of a durable third party in American politics is a challenging prospect under the most favorable political circumstances, but the involvement of communists, real or imagined, during the Cold War would have proven a fatal liability on Capitol Hill or any number of northern statehouses. A black-labor-Left bloc would have faced more dangers than opportunities in the campaign for national or state legislation.²⁷

More damaging to the political fortunes of the FEP legislation than liberal anticommunism was the checkered liberalism of southern Democrats and the political and economic interests that they represented. Along with northern workers and African Americans, southern planters and their grass-roots allies were a core constituency of Roosevelt’s unusual electoral bloc—one that Ira Katznelson has memorably likened to a cross between Sweden and South Africa. On a wide range of issues that came

before Congress, particularly policies that involved regional redistribution of economic resources, southern Democrats were among the most stalwart supporters of the New Deal. Their support, however, stopped abruptly at civil rights and industrial relations. It should thus come as no surprise that nothing unleashed their oratorical talents and penchant for demagoguery more effectively than the question of FEP, which stood at the intersection of the two issues—politics and jobs—that posed the gravest threat to the “racial order” and distinctive political economy of the South. Countless examples of southern Democratic opposition existed, but among the most vehement and outspoken congressional critics were Mississippi’s John E. Rankin in the House and Georgia’s Richard Russell in the Senate. Of course, not all southern Democrats assumed the same reactionary posture. Representative L. Brook Hays of Arkansas and other southern moderates sought to articulate a compromise position. The vast majority of southern Democrats, however, seldom hesitated to denounce FEP legislation, often in the most hyperbolic terms. If southern Democrats had been a powerless minority, then their views would not have mattered. But the institutional features of Congress—particularly the Senate filibuster—essentially gave them “veto” power over any civil rights proposal, including FEP legislation. Hence the initial barrier faced by the campaign for FEP legislation was the studied obstructionism of southern Democrats and the agrarian and business elites whom they represented.²⁸

But the politics of FEP were not fractal. The contours of political conflict over the issue did not look the same in northern statehouses as they did on Capitol Hill, and for a very simple reason. There were no southern Democrats in the North. If northern states passed FEP laws at radically different times during the postwar era, it simply could not have been on account of fire-breathing, southern demagogues hoping to preserve white supremacy. Indeed, when a close accounting of the North is taken, it becomes clear that the major sources of political opposition to “freedom from discrimination” were strikingly different there than they were in the country as a whole. It also becomes increasingly evident that the political travails of liberalism were not only, or even primarily, self-made.

A major but continually overlooked source of opposition to FEP legislation did not come from within the actual or potential ranks of the New Deal bloc. It hailed from without. This opposition took the form of a powerful though loosely organized bloc of conservatives—voters, interest groups, and office-holders—who were committed in varying degrees to the principle of equal treatment but united in their antipathy to government intervention in social and economic life. The liberal campaign for freedom from discrimination occasioned a “massive political resistance” among conservatives in industrial states outside the South, and they

mobilized to fight against FEP legislation at every level of the federal system. Few legislative proposals sparked their ire as readily. Wary of the social-democratic resonance of the Four Freedoms and resentful of the New Deal, conservatives balked at the notion of extending government authority, not just federal authority, any further into the industrial relations system. In response to liberal demands for fair employment practices, conservatives juxtaposed a different ideal, one they considered equally “sacred and fundamental.” Instead of “freedom from discrimination,” they defended something they called “freedom of enterprise.” This was *their* fifth freedom.²⁹

The conservative bloc rarely found it necessary to organize itself formally, quite in contrast to the liberal bloc. Instead, it depended on the strength of overlapping preferences and sought to exert influence away from the glare of publicity. There was no organization analogous to the ACLU or the ADA, and there was certainly no organization analogous to the National Council for a Permanent FEPC. Nevertheless, the conservative bloc exerted a powerful, collective force in American politics. What united it more than anything else was the shared belief that government could not and should not regulate human behavior. Social change could come only after voluntary reflection and personal introspection, which themselves could be prompted only by steady education and gentle persuasion. “Mandatory” or “compulsory” legislation would only backfire and harden the attitudes that it was meant to liberalize.

At the forefront of conservative opposition was American business, which considered FEP legislation a rank infringement on traditional managerial prerogatives over hiring, promotion, and firing. During the Great Depression, businessmen had fallen in popularity among large segments of the electorate, and they saw the postwar years as a valuable opportunity to defend their remaining privileges, shore up their public image, and restore legitimacy to the “free enterprise” system. At the top of their political agenda—running second only to limiting unionization through legislation like Taft-Hartley and right-to-work laws—was the campaign against FEP legislation. The business community was no grim monolith, but it was remarkably united in opposing the passage of FEP laws. Indeed, companies of all kinds lobbied frequently, if at times quietly, against FEP proposals. It did not seem to matter whether a firm was big or small, domestically or internationally oriented, capital- or labor-intensive. Nor was there much variation by industry. Banking, finance, retail, manufacturing, and agricultural firms all stood firmly against the FEP at one time or another. Equally noteworthy is the fact that opposition to FEPC was not spontaneously fomented by a handful of ideological mavericks. To the contrary, it was widespread and organized. Throughout the post-

war period, scores of business associations all across the country voted repeatedly to oppose FEP legislation. In national politics, firms sought to pool their political influence by working collectively through the U.S. Chamber of Commerce (USCC) or the National Association of Manufacturers (NAM). State associations, going by names like the Minnesota Employers' Association (MEA), California Chamber of Commerce (CCC), or Illinois Manufacturers' Association (IMA), served much the analogous function in state politics. There were numerous instances when individual businessmen and business associations happily endorsed FEP legislation, but such plaudits were typically forthcoming only *after* an FEP statute had been written into law. As long as a statute had yet to be passed, employers were the most consistent, aggressive, and effective source of resistance.³⁰

When at all possible, business lobbyists preferred to keep a low profile and work quietly behind the scenes, writing letters and meeting privately with lawmakers. Still, they did not hesitate to speak out loudly against FEP legislation at legislative hearings, if it suited their purposes. What they said in such instances was telling. Professing a strong belief in the rightness of racial equality, conservatives nonetheless minimized the scope and severity of discrimination; argued that discrimination would wither away if left alone; claimed that existing laws were sufficient to any problem that might have existed; trumpeted the effectiveness of educational and voluntary methods over enforceable legislation; and warned ominously that attempts to achieve tolerance through legislation would actually heighten color-consciousness and lead to preferential treatment in the form of racial and religious quotas.

If the liberal campaign for freedom from discrimination met with the opposition of economic and political elites, it also rankled thousands of ordinary whites who lived in rural and suburban areas outside the South. For them, FEP unleashed a powerful current of racial resentment. Living in sparsely populated communities with little racial or ethnic diversity, rural and suburban whites considered FEP legislation "class" legislation that gave special preferences to racial and religious minorities living in corruption-ridden, big cities. It violated their sense of fair play and their market-oriented conceptions of meritocracy. Ordinary whites did not organize themselves into political associations to defend their perceived interests, but their animosity toward FEP laws is evident in the hundreds of letters they individually sent to their elected officials.

The shrewdest opponents of FEP legislation understood American politics well enough to maintain the appearance of bipartisanship. Yet they turned to big-business, small-government Republicans at the most critical moments in the legislative process. It was a judicious choice.

Most state legislatures were dominated by large Republican majorities for much of the postwar period, and the greater part of their advantage came from the overwhelming electoral success of the GOP in rural districts, where malapportionment meant that residents of rural areas enjoyed a level of electoral representation that was disproportionate to their presence in the population. Among the fiercest critics of FEP in Congress were conservative Republicans like Robert A. Taft of Ohio and Clare Hoffman of Michigan. In both Congress and the states, conservative Republicans rallied against FEP legislation, casting unfavorable committee votes, making critical speeches, introducing voluntary legislation, and executing parliamentary maneuvers that they thought would undermine the prospects of passage.³¹

The sources of opposition were many, but they were clear. If northern Democrats and liberal Republicans found southern Democrats to be the first barrier to civil rights, then organized business, rural and suburban whites in the “North,” and conservative Republicans defined the outermost political limits of policy-making. At key moments throughout the 1940s and 1970s, it was the real or imagined opposition of the conservative bloc that delayed the passage of FEP legislation in major states; limited the scope of government authority over discrimination; led to the fragmentation and decentralization of administrative institutions; shifted enforcement to the courts; encouraged private actors to pursue “voluntary” approaches to addressing discrimination; and obstructed legislation that would have created a federal agency with regulatory authority along the lines of the NLRB. In a valuable study that is notably attentive to the conservative role, Paul D. Moreno rightly emphasizes the importance of midwestern Republicans like Taft and Everett M. Dirksen (R-IL), who were able to influence policy because they held the balance of power in the U.S. Senate. They were indeed critical, but they were only the most visible members of the conservative bloc. Other postwar conservatives—House Republicans, organized business, and statehouse Republicans—proved equally adept at exploiting political institutions and the party system to shape policy.³²

The critical position of the conservative bloc in the politics of civil rights had profound consequences. Over time, successive waves of conservative opposition created a policy legacy that actually facilitated the emergence of affirmative action. By the mid-1960s, when demands for the racial integration of the work force surged, federal officials found themselves bereft of the tools to enforce equal treatment under the law, despite the passage of the Civil Rights Act. At the same time, organized business feared that Congress would eventually be tempted to grant the EEOC administrative enforcement authority. So federal bureaucrats and corpo-

rate executives turned to affirmative action instead. Underlying the advent of affirmative action is thus a great, unnoticed irony: Postwar conservatives succeeded in fending off national FEP legislation at the cost of laying the foundations for affirmative action, a policy that their ideological heirs would find even more abhorrent.

Any scholar writing on the emergence of affirmative action policies in employment inescapably touches on a larger, interdisciplinary conversation about the manner in which politics shapes the policy-making process. This conversation has progressed steadily for decades, but it has gone through a period of exceptional ferment in recent years, and it therefore seems appropriate for me to indicate and clarify the main ways in which *The Fifth Freedom* is related to it.

The approach I take to understanding the political development of public policy is quintessentially sociological. Other approaches direct our attention to the preferences of the median voter or the heroic strivings of “great men.” I begin with a fundamentally different intuition, one that looks in the first instance to political conflict among different social and economic groups—variously defined—as the motive force behind the emergence, development, and retrenchment of public policy. Drawing on much the same reservoir of ideas as do Jill Quadagno, Peter Baldwin, and Gøsta Esping-Anderson, I see the formation of public policy as deeply rooted in political mobilization of different social and economic groups, who work to promote their collective self-interest by demanding specific types of government action and inaction, or rather, specific types of government policy. My work thus builds on the age-old, sociological insight that public policy “is built on a foundation of concrete demands, made by concrete groups, who clamor for public, that is, governmental, response.”³³

I put a special emphasis on analyzing the political mobilization and political conflict among *elite groups*; namely, groups that are advantageously situated in the larger social, political, and economic structure. Examples of such groups range from the various trade associations that have sprung up to promote the interests of American industry (e.g., manufacturers, planters, merchants, bankers, realtors, and insurers) to the much more loosely organized “Protestant establishment” that dominated the life of the United States throughout much of the twentieth century. To be sure, grass-roots movements can matter a great deal in the policy-making process, and a burgeoning tradition in political sociology rightly focuses on them. The expression of collective grievances through social protest and public demonstrations often corresponds broadly with the emergence of policy. In fact, there is ample historical evidence that social

movements can even stimulate political demand for a policy where none previously existed. When the question of policy change is considered from a distance, social movements are often essential to any inclusive analysis. But policies are frequently made, remade, and unmade even after the marching stops, to borrow a felicitous metaphor from Hanes Walton. The mobilization of a social movement is not always a necessary condition of policy-making. Moreover, if the motivating research question involves accounting for the finer-grained but no less vital features of *policy design*—what specific benefit a program offers, what kind of protection it affords, how it is financed, who is eligible for it, and how it is enforced—then students of the policy-making process cannot restrict their analysis to just social movements. What is also required is a careful, close-up look at the preferences, abilities, and strategies of elite groups. Other approaches can offer only partial guides to understanding the critical intricacies of policy design, mainly because a range of policies is often compatible with the sweeping demands of social movements, the subtle pressures of public opinion, or the grand designs of world-historical leaders. To make clear sense of why certain policies win out over plausible alternatives, what is required is a focus on the clash between elite groups.³⁴

This elite-centered perspective has obvious affinities with the theoretical tradition of C. Wright Mills and G. William Domhoff, both of whom stress the numerous ways in which politics is biased toward elites and their interests. Like these and other well-known critics of pluralism, I do not think that the players are more or less equal; that the playing field is level; or that the rules treat all the players the same. I am fairly well persuaded by evidence to the contrary. Of course, it is the stuff of sheer fantasy to think that American politics is cannily orchestrated by a unitary, omnipotent elite. There is more than one elite, and none is all-powerful. Yet the policy-making process, particularly in the United States, often seems to favor elite groups. Any complete analysis of policy formation and policy development must therefore begin with them. The impulse to ascribe causal significance to elites is far from original; it has assumed many incarnations over the years, emerging in decades-old debates over the corporate-liberal thesis as well as Peter Swenson's recent galvanizing call to "bring capital back in." But the impulse seems like a valid one, especially in the U.S. setting. In the pages that follow, I focus especially closely on the role played by organized business in the politics of policy-making. With only a few exceptions, its influence has been consistently overlooked in the history of civil rights, partly because it has been obscured by business itself. But there was no single interest group whose opposition had a greater impact on the manner in which the United States

regulates job discrimination. Organized business did not always get what it wanted, but even as it settled for what it considered second-best options, it exerted a profound, circumscribing influence on the set of policy alternatives that subsequent generations would confront.³⁵

Of course, elites are not the only force in the policy-making process. I hope that readers familiar with recent scholarly debates will recognize the substantial weight that I give to other factors, ranging from political institutions, public opinion, social movements, political parties, and legislator ideology to timing and sequencing. Of these, I place the strongest emphasis on the role of political parties and political institutions, particularly how it is possible for them under certain circumstances to constrain or amplify the power of social groups in the policy-making process. If conservatives imposed the final political limits on the development of anti-discrimination policy in employment, they did not do so because they were always overwhelmingly powerful. In certain instances, it is true that conservatives were strong enough essentially to dictate the outcome. In other instances, they were not quite as strong, yet they were still able to achieve results that were largely consistent with their preferences. This was due mainly to the operation of political institutions and the party system. For example, conservatives and the congressional Republicans who represented them were numerical minorities, but the supermajority vote required to end a Senate filibuster conferred upon them the balance of power. In the states, malapportionment meant that rural conservatives were overrepresented in the state legislature, usually by Republicans. Sheer strength of numbers and party discipline made it a relatively simple matter to keep FEP laws off the books. Even when conservatives were not particularly numerous, a variety of institutional features of American politics—chiefly partisan control of “veto points” in the policy-making process—made it possible for them to get their way much of the time. What resulted from the interplay among conservative mobilization, political parties, and political institutions over time is the contemporary system for regulating job discrimination. In tandem with other factors, conservative resistance to FEP—as it was refracted through the prism of American parties and political institutions—led to affirmative action as we know it today.³⁶

My inference about the effect of conservative mobilization, political parties, and political institutions on the emergence of affirmative action is based on what is sometimes called a “counterfactual analysis.” This type of analysis aims to explain why an actual outcome of interest (i.e., the factual) prevailed over a range of potential alternatives (i.e., the counterfactuals). A specific outcome can be said to have occurred because other alternatives never came to fruition. Explaining the outcome of inter-

est thus becomes a task in determining why other potential paths were not taken. In developing a counterfactual analysis of affirmative action, I build on a burgeoning trend in the historical social sciences. A cluster of scholars is beginning to recognize the analytical utility of distinguishing between factual and counterfactual outcomes. “All major historical questions,” Maurice Zeitlin writes in an early observation, “break down into two others, one ‘factual’ and one ‘counterfactual’: what happened in history and what might have happened?” Explaining why the factual prevailed over the counterfactual can provide a strong basis for credible inference in studies involving only a single case. Through the judicious use of counterfactuals, case studies can avoid the sin of “just-so” storytelling, a convenient but unconvincing mode of analysis in which events are said to have worked out just as they had to for the outcome of interest to occur. It is important to note that there is no single type of counterfactual claim. According to Daniel Carpenter, there are at least three. “The outcome [of interest] might not have occurred at all; it might not have occurred when it did; it might not have occurred in the form that it did.” *The Fifth Freedom* aims to offer evidence in support of a claim conforming to the third type. Had conservatives not been so successful in opposing FEP legislation, affirmative action might have taken on a vastly different legal and political meaning, and job discrimination might have become regulated through a federal administrative agency that sought only to ensure equal treatment.³⁷

Of course, most traditional historians remain leery of counterfactuals and rightfully so in many instances. They prefer looser formulations, writing of alternatives forgotten or paths not taken. To many of them, counterfactual sounds dangerously too much like second-guessing or wild speculation. More insidiously, counterfactuals tempt scholars to make inferences on the basis of alternatives that only they can see, relying on the gift of hindsight. The counterfactual I pose, however, is not theoretical or imaginary. I would call it a historical counterfactual. Manali Desai has argued that a counterfactual analysis should be based on “what was *demonstrably possible*.” This is what I would consider the minimal burden that a counterfactually informed analysis should meet. A stronger kind of analysis is based not on possibilities that scholars can identify today in retrospect but on possibilities that people living at the time actually perceived themselves and strove to realize. The strongest kind of counterfactually informed analysis goes even further and makes a compelling case that the alternatives at play in a historical situation were not merely imagined or possible but actually plausible. How strong the analysis is depends on how realistic the alternatives were and how close they came to being actualized. *The Fifth Freedom* does not go so far as to argue that FEP legislation was a likely outcome thwarted by conservative opposi-

tion, but it does try to make the case that liberals were perfectly justified in thinking that success was possible, even though they proved unable to win in the end. Whether or not the case that I have assembled is convincing is a determination that readers will have to make themselves.³⁸

This book presents a varied assortment of archival and statistical evidence, much of it drawn from untapped sources, in support of the argument that conservative resistance to FEP led over time to the unexpected emergence of affirmative action. The analysis is developed in chronological and thematic fashion, and it ranges across multiple levels of the federal system. Each chapter of the book focuses on a different episode in the larger struggle to regulate job discrimination.

The story I tell begins at outset of the Second World War. Chapter 2 examines the precarious life of the wartime FEPC and traces the complex pattern of influence that it exerted on the politics of civil rights and the development of national policy. Among the most far-reaching effects of the FEPC was the role it played in launching a decades-long campaign for strong and comprehensive FEP legislation. This campaign was spearheaded by a newly formed bloc of liberal groups for which fair employment practices were the *raison d'être*. Postwar liberals had sound reasons to believe that congressional action was within their reach, particularly when their prospects peaked during Truman's second term. But they would never realize their early aim to reconstitute the wartime FEPC. By the Kennedy years, what had emerged instead was a series of executive orders that covered only narrow segments of the labor market. There were many reasons why liberals failed to win legislation. Among the most obvious and important was the divided character of public opinion. Also crucial was the implacable opposition of southern Democrats, who exploited a range of institutional "veto points" in Congress to obstruct FEP proposals. But the grip of southern Democrats sometimes proved inadequate to their ambitions. There were crucial moments when northern Republicans—under the sway of the conservative, Taftite wing of the GOP—held the balance of power, and the fate of the "fifth freedom" rested with them. What they chose to do with their power in such moments was revealing. Though they would have preferred to keep the public spotlight on southern Democrats, conservative Republicans often proved willing to heed the wishes of their rural constituents as well as the business community, obstructing liberal legislation whenever they considered it necessary for them to do so. Even when liberals mounted their strongest efforts, conservatives proved willing to accept only voluntary legislation. The combined opposition of southern Democrats and northern Republicans was simply too much for liberals to overcome. Instead, they sought executive orders to regulate discrimination in federal employment and con-

tracting—areas where government enjoyed the power of the purse and conservatives could muster less persuasive ideological objections. It was a sensible and understandable compromise, and thousands of Americans benefited from the new policies. The turn toward the executive-led regulation, however, did not come without political costs, although these costs would become fully apparent only decades later.

Liberals did not take sole aim at federal policy. Even as they found themselves limited by a conservative bloc during the wartime period, they actively sought out other policy-making venues where the prospect of success seemed better. Chief among these were state legislatures outside the South. During the Truman administration, success in the states actually formed a cornerstone of a larger strategy. By passing and implementing FEP laws in the populous, industrial states of the North, liberals hoped to demonstrate the value of wielding legislation against discrimination, building political momentum for congressional action. Chapter 3 presents a political and legislative history of the first state FEP law, which cleared the New York State legislature in 1945. The passage of Ives-Quinn significantly elevated liberal hopes. In the face of considerable hostility from rank-and-file Republicans as well as the unbridled enmity of their business allies, liberals had managed to prevail in a fight worth winning. The episode was certainly not a total loss for conservatives, who hit upon a powerful, new formula for framing the rhetoric of their opposition. In particular, they learned the value of professing support for the principle of racial equality while simultaneously rejecting any government regulation of job discrimination; they also learned how to talk about racial quotas and insinuate preferential treatment. Nevertheless, liberal groups carried the day, benefiting from the support of urban Democrats and liberal Republicans. The successful passage of Ives-Quinn marked the beginning of a new phase in the liberal campaign for freedom from discrimination. Whether other laboratories of democracy would prove equally willing to experiment with civil rights remained unclear, but liberals and conservatives alike understood the stakes. Nothing less than the meaning of the “fifth freedom” hung in the balance.³⁹

After their stunning success with Ives-Quinn, postwar liberals mobilized to press the issue, and a “coordinating committee” for state FEP legislation quickly sprung up in almost every non-southern state across the country. Early success, however, would be frustratingly elusive outside of New York. During the late 1940s, when the passage of state legislation would have yielded the biggest return in national politics, only a few states proved capable of taking action. A handful of smaller states had passed FEP laws by then, but Pennsylvania, Michigan, Ohio, California, Illinois, and other politically significant states had not. Chapter 4 examines why the liberal campaign for state legislation experienced initial success in

some states but not others. There were numerous factors at play, including broad differences in public support for a legislative approach to job discrimination, but the most consistent and powerful force in delaying the passage of FEP legislation was the conservative bloc itself. Its influence could only be glimpsed on Capitol Hill, but it was on full display in northern statehouses. Here, too, conservatives held several important advantages, though the source and size of their edge varied from time to time and from state to state. In certain instances, especially in the early postwar period, conservatives were simply too powerful. Due to the malapportionment of state legislatures, which tended to dilute the urban vote, rural voters—most of whom held conservative views on social and economic issues—exerted a disproportionate influence in state politics. The main electoral beneficiaries of the arrangement were Republicans, especially conservative Republicans, who dominated state elections for much of the postwar period. Moreover, organized business was notably stronger in most states than it was in national politics as a whole. Even when their power began to wane in the 1950s, conservatives found that key features of legislative institutions actually magnified their ability to block legislation—far beyond what their raw numbers would suggest. Just as a minority of southern Democrats took advantage of “veto points” to obstruct FEP proposals in Congress, conservative Republicans exploited analogous “veto points” in state legislatures to achieve the same ends. The “Party of Lincoln,” as a result, was less an aid than a hindrance to the cause of fair employment practices. Of course, it was impossible for conservatives to hold civil rights at bay indefinitely. By 1961, most states had managed to pass FEP laws, but the legislation of the Eisenhower era was not so much a spur to action as it was a substitute for it. The window of political opportunity for a federated strategy had closed shut, and liberals would have to devote the preponderance of their attention to spotting and seizing their opportunities in national politics.

The second major political opportunity for federal action finally came when the church-led, southern-based civil rights movement reached an inspirational new summit in the mid-1960s. Its mobilization elevated public support for civil rights and laid the political foundations for the passage of the Civil Rights Act of 1964. The new law, however, failed to confer any enforcement authority upon the EEOC, much the less cease-and-desist authority that liberals had long coveted. Liberals steadfastly refused to accept the defect, successfully lobbying Congress in 1972 to take legislative action. Here was the third opportunity that Congress had to pass FEP. It was also the last opportunity, and Congress demurred. When it passed the Equal Employment Opportunity Act of 1972, Congress decided against administrative enforcement in favor of a new, court-based approach, empowering the EEOC to sue on behalf of aggrieved

workers in the federal courts. The legislation was undoubtedly a step forward, but it also signaled the final eclipse of fair employment practices. The liberal dream since the New Deal was deferred yet again, this time indefinitely. Chapter 5 traces the causes and consequences of the continuing failure to regulate job discrimination through the establishment of a strong and centralized administrative agency. The same combination of political forces that stood in the way of FEP legislation during the postwar years—conservative Republicans, organized business, and southern Democrats—also blocked the EEOC from obtaining any enforcement authority until 1972. The social and political pressure for reform, however, did not suddenly wither away. Instead, it was channeled into the federal bureaucracy and federal courts, where the most aggressive forms of policy innovation had historically taken place. Liberals had always acquiesced to executive orders and court rulings as alternatives to legislation. Such policies were meant to compensate for the statutory vacuum and indeed provide a stepping stone for future legislative campaigns. Now they became a point of departure for a very different set of policies that went under the name equal employment opportunity—and affirmative action.

A final chapter draws conclusions about the origins of affirmative action and discusses their larger implications. Following the federated campaign for FEP legislation from the 1940s through the 1970s, *The Fifth Freedom* offers a new perspective on scholarly debates in a number of closely related fields. For students of political sociology, it reveals the importance of considering how elite mobilization, political parties, and political institutions interact over time to shape the development of public policy. In particular, it reminds us of how partisan control of “veto points” in the policy-making process of a federal system can not only slow the passage of certain long-sought policies but can also sow the conditions for the rise of altogether new policies that few political actors ever fully anticipate. Political scientists specializing in American politics will recognize the challenge that *The Fifth Freedom* poses to dominant ideas about the electoral realignment that began in the mid-1960s and culminated in the Reagan-Bush years. My findings suggest that substantial fractions of the Republican elite and grassroots tended toward racial conservatism long before the advent of affirmative action. Whether or not public policy had taken a “color-conscious” turn in the late 1960s, any Republican majority would have been racially conservative. For historians of the civil rights movement, *The Fifth Freedom* raises questions about the prevailing “discontinuarian” perspective that continues to pervade popular and historical writing about the subject. By focusing on civil rights and electoral politics in the North before 1964, it joins other recently published studies that uncover a host of political continuities that have until now remained hidden from full view. To political historians of the postwar United States,

The Fifth Freedom contributes to the ongoing historiographical debate that conflicts during the 1940s proved critical to the decline of New Deal liberalism and the rise of the New Right. This was indeed a crucial decade, to borrow Eric F. Goldman's phrase, but not only because liberals either capitalized on or squandered their opportunities. The late 1940s are significant because they were a genuine moment of historical contingency in which conservatives took full advantage of their opportunities, though the profound consequences of their narrow victories would become apparent only in the fullness of time. For better and for worse, Americans concerned about racial inequality and public policy continue to wrestle with the unresolved legacies of battles initially fought more than half a century ago.⁴⁰