Distribution Agreement

In presenting this thesis or dissertation as a partial fulfillment of the requirements for an advanced degree from Emory University, I hereby grant to Emory University and its agents the non-exclusive license to archive, make accessible, and display my thesis or dissertation in whole or in part in all forms of media, now or hereafter known, including display on the world wide web. I understand that I may select some access restrictions as part of the online submission of this thesis or dissertation. I retain all ownership rights to the copyright of the thesis or dissertation. I also retain the right to use in future works (such as articles or books) all or part of this thesis or dissertation.

Signature:

Bethany N. Morrison	Date

Naming, Blaming, and Calculating: Understanding Who Files Employment Discrimination Claims at the EEOC

By

Bethany N. Morrison
Doctor of Philosophy

Political Science

Jeffrey K. Staton, Ph.D
Advisor

Micheal W. Giles, Ph.D
Committee Member

Justin E. Esarey, Ph.D
Committee Member

Beth Reingold, Ph.D
Committee Member

Accepted:

Lisa A. Tedesco, Ph.D
Dean of the James T. Laney School of Graduate Studies

Date

Naming, Blaming, and Calculating: Understanding Who Files Employment Discrimination Claims at the EEOC

By

Bethany N. Morrison
B.A., Bowling Green State University, 2007

Advisor: Jeffrey K. Staton, Ph.D

An abstract of
A dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Political Science
2019

Abstract

Naming, Blaming, and Calculating: Understanding Who Files Employment Discrimination Claims at the EEOC

By Bethany N. Morrison

I explore the rates of charges filed for employment discrimination on the basis of race at the Equal Employment Opportunity Commission between 1992 and 2013. I develop a theory of legal mobilization of private individuals for public policy enforcement, combining insights from the seminal Naming, Claiming, and Blaming theory about the formation of disputes, theories of legal mobilization to bring about policy change, and theories of the micropolitics of legal mobilization. I conclude that Perceived Discrimination combined with Support Structure for Legal Mobilization will increase the rate of EEOC charges filed. Similarly, Perceived Discrimination combined with liberal adjudicators in the EEOC and the federal district courts will lead to higher rates of charge filing. From national surveys querying participants about their personal experiences with racial discrimination in the workplace, I estimate perceptions of racial discrimination in the workplace among Black, White, and Hispanic populations. Among Blacks, I find that Perceived Discrimination is lowest in the Southeast and highest in low-population rural states with largely White populations. Among Whites, Perceived Discrimination is highest in the Southeast. From observable indicators of the concept, I develop a Support Structure for Legal Mobilization index. Support Structure for Legal Mobilization is highest in coastal states and in states where United States Circuit Courts of Appeal are head-quartered. With these new quantitative measurement strategies for key variables, I empirically tested the theory explaining rates of charges filed. I unexpectedly found that, in the absence of Support Structure for Legal Mobilization, Perceived Discrimination has a strong negative effect on the filing rates among Blacks. While the interaction term was positive and met some conventions for statistical significance, Support Structure for Legal Mobilization only mitigated an negative effect. Perceived Discrimination among Whites, however, did have a positive effect on charges filed, but the effect was weakened in the presence of Support Structure for Legal Mobilization. The models explaining filing among Hispanics did not find support in the data.

Naming, Blaming, and Calculating: Understanding Who Files Employment Discrimination Claims at the EEOC

By

Bethany N. Morrison
B.A., Bowling Green State University, 2007

Advisor: Jeffrey K. Staton, Ph.D

A dissertation submitted to the Faculty of the
James T. Laney School of Graduate Studies of Emory University
in partial fulfillment of the requirements for the degree of
Doctor of Philosophy
in Political Science
2019

Acknowledgement

I want to thank each member of my dissertation committee. Beth Reingold always read my work and discussed my ideas with such careful attention to detail. She offered an important perspective from literatures I encountered less often in my coursework. I appreciate the calm, thoughtful way Beth talked with me. I always left our conversations with new ideas to pursue and the feeling that the project was interesting and worth pursuing. In addition to all of that, I know that I wasn't the first, nor will I be the last, female graduate student in the department who needed to see real life examples of women in academia successfully navigating the work-family balance. Thank you, Beth, for showing me that it is possible.

Like many Emory graduate students before me, Micheal Giles taught me to think like a social scientist. Before his graduate course on research design, I was a student of politics, not political science. Moreover, Michael Giles trusted me with his *en banc* database project. Because of that experience, I read and read and read countless judicial opinions. I made coding decisions that were sometimes difficult and reflected on them later in valuable conversations with Dr. Giles. In my coursework, I learned that judges' ideologies influence their decisions, that legal institutions differentiate courts from other policymakers in important ways, and that judges make decisions as part of strategic interactions with other actors. Until I read hundreds of cases and participated in the process of quantifying them, I didn't really grok these things. I am very grateful for these learning opportunities.

By far the biggest barrier to completing this dissertation was the voice inside my head, repeating that the project wasn't good enough and that my skillset, particularly in statistics and statistical programming, was inadequate. In his unsentimental and hyper-rational way, Justin Esarey could shut that voice down. He shut it down on a number of occasions because, underneath that Vulcan exterior, Justin is deeply invested in his students' success. Because of that, Justin is also immensely generous with his time. I want to thank him for all the times he walked me through the code because I stubbornly refused to move on if I couldn't understand it.

For as long as I have known Jeff Staton, he has had a very full plate. An overflowing plate, really, with teaching, teaching abroad, research, field research, undergraduate mentoring, graduate advising, V-Dem, conference hosting, directing graduate admissions, and now chairing the department. He balances this overflowing plate on a wrist in a brace from his most recent soccer injury. In spite of all of this, Jeff did not hesitate to take me on as an advisee. He jumped in enthusiastically. Over the last three years, he has helped me to untangle the complications, thoughts, and unflexible expectations that kept me from forward motion. He has kept me positive when that was definitely not my natural dissertation resting state. On top of all that, Jeff is an excellent teacher. Jeff made it okay to be motivated by "normative" questions and real-world problems, issues surrounding inequality and injustice. I appreciate Jeff's skill in translating the language of math to us non-native speakers. I also appreciate his passionate and practical here's-the-intuition approach to Game Theory. Whenever I look at the world through the framework of rational choice theory, whenever I ask "wait, who are the actors? What are their choices?", whenever I annoy my

friends and family by explaining how we are actually playing Bach and Stravinsky, Jeff will be responsible. Thank you, Jeff, there is no way this would have happened without you.

There are so many other sources of support for which I am grateful. Thank you to Nathan Danneman, Stephanie Dean Kerce, Ashley Moraguez, Rick Morgan, Ryan Tans, Maya de Zeeuw, and the graduate student colleagues who helped me become more open to asking for help. Thank you to Nancy Arrington, Lizzy Wiener, Kirsten Widner, and the ladies of goals. Graduate school become so much better when we realized that we could create the community we needed. A special thank you to Jane Lawrence Sumner, my graduate school bestie. I could say thank you for so many things, but a list that long would lessen the importance of the thing I want to say. Thank you for always making me feel like an equal contributor. One might think that the greatest gift you ever gave me could be found in my Jane folder of R-scripts. It's not. When you—Jane Sumner, speaker of math, fluent in code, on the TT at an R1—ask me for my opinion on your work, I feel legit. Thank you for that gift.

Life continues in the midst of writing a dissertation. We had babies to feed, bills to pay, furniture to move, and to move again. Thank you to Tim, Carol, Fred, and Ann for helping us shoulder these competing responsibilities. You gave me the freedom to work without worry.

I could not ask for a more supportive partner in life. Thank you for being the most proud of me, Steve Morrison. Eliza Morrison, you inspire me to be brave and live my values. Thank you. Jay Harper and Sendak Morrison, thank you for lighting the fire under my tuchus.

Table of Contents

1 Introduction 1
- 1.1 The Politics of Legal Mobilization for Policy Enforcement 1
- 1.2 The Case of Employment Discrimination in the United States: 1992-2013 5
- 1.3 Overview of Dissertation 9

2 A Theory of Private Citizen Rights Claiming 15
- 2.1 The Perceived Discrimination Condition 17
  - 2.1.1 Naming (Noticing) the event 18
  - 2.1.2 Blaming someone (else) for the event 19
  - 2.1.3 Claiming a remedy for the event 22
- 2.2 The Rational Choice Framework of Claimant Decision-making 24
  - 2.2.1 Plaintiffs decide to file claims based on a rational cost-benefit analysis of the potential outcomes 25
  - 2.2.2 The outcomes of adjudication are the determined through a fact-finding stage and a rule-application stage 27
  - 2.2.3 The facts and the rules are determined, in part, by extra-legal factors 29
  - 2.2.4 Determinants of The Quality of a Party's Legal Team 31
  - 2.2.5 The Ideology of Adjudicators 36
- 2.3 Empirical Expectations of the Theory 39
  - 2.3.1 Conditional Hypotheses 39
  - 2.3.2 Empirical Challenges: Aggregating Decisions to Claim 40
  - 2.3.3 Moving Forward 44

3 Measuring perceptions of discrimination 45
- 3.1 Past Measures of Perceived Discrimination 46
- 3.2 Collecting and Preparing the Data 51
- 3.3 Initial Exploration of the Data 56
- 3.4 Model Specification 59
  - 3.4.1 Individual-level Model 61
  - 3.4.2 Post-Stratification 67
- 3.5 Results of Model after Post-Stratification 67
- 3.6 Validity 71
- 3.7 Conclusion 76

4 Measuring support structure for legal mobilization 85
- 4.1 Defining Support Structure for Legal Mobilization 85
- 4.2 Existing Measures and the Concept in the Literature 89

4.3 Quantifiable Indicators of Support Structure for Legal Mobilization . . . 92
4.3.1 Minority Rights Organizations . . . 92
4.3.2 Willing and Able Attorneys . . . 95
4.3.3 Financial Support (Legal Aid) . . . 103
4.3.4 The indicators variables in summation . . . 108
4.4 Exploring the Assumption of Unidimensionality . . . 111
4.5 An Index of Support Structure of Legal Mobilization . . . 118
4.6 Validity of the measurement . . . 125
4.6.1 Convergent Validity . . . 126

5 Empirical Investigation of the Theory of Legal Mobilization for Private Policy Enforcement . . . 131
5.1 Introduction . . . 131
5.2 Data . . . 131
5.2.1 Dependent Variable: EEOC Claims per Capita . . . 131
5.2.2 Key Independent Variables . . . 134
5.2.3 Independent Variable: Institutional Ideology . . . 134
5.2.4 Controlling for Observed Racial Disparities in Employment . . . 136
5.2.5 Other Control Variables . . . 137
5.3 The Hypotheses and Methods . . . 138
5.3.1 Results and Discussion . . . 139
5.4 Conclusion . . . 149

6 Conclusion . . . 150
6.1 A Theory of Legal Mobilization of Private Policy Enforcers . . . 150
6.2 Findings . . . 154
6.3 In Conclusion . . . 157

A Appendix . . . 160
A.1 Personal Experiences with Racial Discrimination Questions from Polls . 160
A.2 Bayesian Measurement Model for support structure for legal mobilization 165
A.3 Alternative Model for Ideology Interaction . . . 170

List of Figures

2.1 In the first stage described by Felstiner et al., a potential claimant will either notice a negative experience or not. 19
2.2 A potential claimant will either blame the event on discrimination from her employer and move forward or she will assign any other explanation for the event. 21
2.3 In the final stage of Felstiner's process, a potential plaintiff decides whether to seek restitution from a formal institution. This area is gray to highlight that most theories of litigation start at this stage of the process. 23
2.4 Illustration of the Law and Economics of Litigation's general model for how the litigation "game" proceeds. Note that P describes actions of the potential plaintiff, D describes actions of the potential defendant, and A describes actions of an adjudicator, which in these models, is not a strategic player in the game. In other words, the adjudicator node could be characterized as an act of nature. 26
2.5 The concept of Support Structure for Legal Mobilization and its component parts 34
2.6 Illustration of ecological inference problem as it relates to this project's research design 42

3.1 The averaged results of the multi-level model with post-stratification, with states ranked from largest proportion with complaints to smallest proportions. 68
3.2 These box-and-whiskers plots illustrate the number of states within each category of voter identification law in the year 2013. The dark bar identifies the estimate for the proportion of a race/ethnic subgroup's population with perceived discrimination in the median state for that category of voter ID law 78
3.3 This table was published in the MIT Election Data and Science Lab's report on voter identification laws. The information to make the table came from the National Conference of State Legislatures' webpage on Voter Identification Laws 79
3.4 These box-and-whiskers plots illustrate differences between states with the federal minimum for poll identification requirements (HAVA minimum), states with non-strict ID requirements, and states with strict requirements in 2013. The dark bar identifies the estimate for the proportion of a race/ethnic subgroup's population with perceived discrimination experience in the median state for that category of voter ID law 80

3.5 This box-and-whiskers plot divides the states into those that passed a new voter id restriction between 2004 and 2013 and those that did not. The y-axis is the percent of group population with perceived discrimination averaged over 2004-2013. 81
3.6 These box-and-whiskers plots divide the states into those which passed an Arizona copycat law on immigration, those which proposed bills that did not pass, and those with no proposals. The y-axis is the percent of group population with perceived discrimination averaged over 2004-2013. 81
3.7 Proportion of black population with perceptions of discrimination from 1991-2013. 82
3.8 Proportion of White population with perceptions of discrimination from 1991-2013. 83
3.9 Proportion of Hispanic population with perceptions of discrimination from 1991-2013. 84

4.1 The concept of Support Structure for Legal Mobilization and its component parts 86
4.2 The total yearly revenue of the state's Black and Hispanic rights organizations were divided by the total Black and Hispanic population. Then I averaged the states total yearly revenue for the years between 1989 and 2013. States with no revenues recorded for the period are labeled as "No revenues." I divided the remaining 34 states into those that fell above the mean ("high revenue" states) and those that fell below the mean ("low revenue" states) 94
4.3 This map ranks the states from 1989-2013 according to number of law firms per capita. The darkest shade of blue signifies the ten states with the most firms per capita, and the white states signifying the states with the fewest firms per capita. 96
4.4 The U.S. states ranked according to the number of women attorneys over the population of women in the states. Four years of data from the American Bar Foundation's Lawyer Statistical Reports (1991, 1995, 2000, and 2005) were averaged and then the states were sorted by the average. The darkest shade of blue represents the ten states with the largest number of women attorneys per capita, while the white states are the ten states with the lowest number. 98
4.5 The states from 1989-2013 are ranked according to the average number of white women graduating from law school in the state divided by the population of white women. The darkest states are those with the highest averages. 99
4.6 The states from 1989-2013 are ranked according to the average number of Black and Hispanic people graduating from law school in the state divided by the population of Black and Hispanic people. The darkest states are those with the highest averages. 100

4.7 This map visualizes the American Bar Association's data on lawyers per capita by state. The data from years 1989-2013 are averaged in this visualization. The states in the fifth quintile are the ten states with the most lawyers per capita. The first quintile shows the states with the least lawyer per capita. 101
4.8 This map visualizes the American Bar Foundation's data on lawyers per capita by state. I averaged lawyers per capita for the four years of ABF data (1991, 1995, 2000, and 2005). The states in the fifth quintile are the ten states with the most lawyers per capita. The first quintile shows the states with the least lawyer per capita. 102
4.9 The County Business Patterns data was utilized to make an estimate of the number of employees in the legal services sector in the state. I found the per capita figure and made an average for each state from 1989-2013. The ten states with the highest average of legal employees per capita are the darkest shade of blue, while the ten white states have the lowest rates of legal employees per capita. 103
4.10 To create this map, I summed up the total yearly revenue of the NCCS identified legal aid organizations in a state. I divided the total revenue by the state's population living in poverty. Then I averaged these state per capita figures for 1989-2013. The map reflects the ranking of states according to this average, with darker shades of blue reflecting higher rates of funding per capita. 104
4.11 To create this map, I summed up the total yearly funding of Legal Service Corporation-funded legal aid organizations in a state. I divided the total funding by the state's population living in poverty. Then I averaged these state per capita figures for the following years in which the LSC data were available: 1990, 1991, 2001-2013. The map reflects the ranking of states according to this average, with darker shades of blue reflecting higher rates of funding per capita. 106
4.12 This map was created with the American Bar Foundation's on the number of Legal Aid and Public Defenders in a state. I divided these counts by the population in poverty in the state. Then I averaged the lawyers per capita over the four years for which I have these data: 1991, 1995, 2000, and 2005. The map shows the states ranked by this average—The more lawyers per capita, the darker the shade of blue . 107
4.13 This map was created with counts of legal aid attorneys and public defenders from The American Bar Foundation's Lawyer Statistical Reports published in 1991, 1995, 2000, and 2005. These counts were divided by the state's population in poverty and then averaged. The states were then ordered and ranked according to these averages, with darker shades representing more lawyers per capita. 108

4.14 A correlation matrix of the indicator variables, logged to reduce skew and the influence of the extreme outliers. A small constant was added to each observation to allow observations values of 0 to be included in the logged version. Only pairwise complete observations went into the correlation calculation. In addition, all the indicators were standardized by subtracting the mean and dividing by the standard deviation. 112
4.15 Scree Plot of PCA of Support Structure of Litigation Indicators . . . 114
4.16 Illustrating the dichotomizing process. The blue line indicates the threshold value for the indicator variable. Any observations greater than the threshold value were coded as a 1, while the remaining observations were coded as a 0. 118
4.17 The Support Structure for Legal Mobilization Index, State Scores Averaged between 1989-2013 122
4.18 Ranking the states according to their averaged Support Structure for Legal Mobilization Index scores 123
4.19 The Support Structure for Legal Mobilization Index, Trends over Time 124
4.20 Comparing the Support Structure for Legal Mobilization Index to a unidimensional grade response modeling using the indicators. The scores were averaged across all years. On both scales, one indicates more Support Structure for Legal Mobilization 126
4.21 The 2013 Support Structure for Legal mobilization scores against the Attorney Access component of the Justice Index using data from 2012 and 2013. The Attorney Access scores are the number of FTE civil legal aid attorneys for every 10,000 people living in poverty 127
4.22 The 2013 Support Structure for Legal mobilization scores against the Composite Justice Index built with data from 2012 and 2013. 129

5.1 EEOC claims per capita in 2010. The states are ordered by rank so that the state with the most claims per capita is in the top position. In the Black subset, EEOC claims made on the basis of racial discrimination against Blacks/African Americans is divided by the state population of Blacks/African Americans. The remaining subsets are composed similarly. 133
5.2 The marginal effect of perceived discrimination at different levels of Support Structure for Legal Mobilization from models (3): the OLS model with region and year fixed effects. The bars reflect the 95% confidence intervals. 141
5.3 The marginal effect of perceived discrimination at different levels of judicial ideology from models (3): the OLS model with region and year fixed effects. Judicial ideology is an average of federal district court judges' ideology using Bonica and Sen's DIME ideology scores, reversed for interpretation purposes. Higher values of ideology reflect more liberal ideology. EEOC Claims Per Capita from Models (3): the OLS model with region and year fixed effects. The bars reflect the 95% confidence intervals. 144

A.1 Support structure for legal mobilization from 1992-2013. 168
A.2 Estimates of support structure for legal mobilization by state in 2005. Error bars reflect 80% posterior credible intervals. 169
A.3 discrimination parameter for the indicator variables 169

List of Tables

3.1 Cross-tabulation of race, gender, and personal experience of discrimination . . . 56
3.2 Cross-tabulation of education attainment and personal experience of discrimination . . . 58
3.3 Cross-tabulation of age and experience of discrimination . . . 58
3.4 Fixed effects of the individual level logit model predicting the probability of a yes response on a question about a personal experience with racial discrimination in the workplace. . . . 65
3.5 Welch Two Sample T-Tests . . . 74
3.6 Welch Two Sample T-Tests for states with new restrictive immigration laws . . . 76

4.1 An overview of the indicators of support structure for legal mobilization 110
4.2 Data availability varies by year . . . 111
4.3 Loadings of Principal Components Analysis. Highlighted values are important or large contributors to the principal component. They are values larger than 0.29, which is the value we'd observe if each variable contributed equally to the principal component. Principal components explaining less than 1% of the variance are excluded from this table. . 116

5.1 OLS Results for Black Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Black population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are Black and the total population that is Black . . . 146
5.2 OLS Results for White Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of White population who'd say they had a personal experience with discrimination because of their race. Observed Racial Disparity refers to the relative difference in the percent of managers who are White and the total population that is White . . . 147

5.3 OLS Results for Hispanic Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Hispanic population who'd say they had a personal experience with discrimination because of their ethnicity Observed Racial Disparity refers to the Relative Difference in the percent of managers who are Hispanic and the total population that is Hispanic 148

A.1 OLS Results for Black Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Black population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the relative difference in the percent of managers who are Black and the total population that is Black 171

A.2 OLS Results for White Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of White population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are White and the total population that is White 172

A.3 OLS Results for Hispanic Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Hispanic population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are Hispanic and the total population that is Hispanic 173

Chapter 1 Introduction

In 1979, Lilly Ledbetter began working at the management level of a Goodyear Tire factory in Alabama. When she retired 19 years later, she became fully apprised of the extent to which she was grossly underpaid in comparison to her male colleagues, earning thousands of dollars less per month. Taking action, she filed a lawsuit to recover her lost income and demand her right to equal pay. She sued under the authority of the Equal Pay Act of 1963 and the Civil Rights Act of 1964, which prohibits private entities from discrimination on the basis of sex, race, color, national origin, and religion in a number of domains including employment. Her case rose to the Supreme Court of the United States, where it was ultimately rejected on the basis that she had not filed her claim early enough[1]. In fact, the majority ruled that she needed to have filed suit within 180 days of the first instance of discrimination—i.e. her first paycheck two decades prior. Because she was unaware of the discriminatory action at the time it began, she was unable to pursue her case through the court system.[2]

1.1 The Politics of Legal Mobilization for Policy Enforcement

Ledbetter's experience exemplifies some important aspects of the American civil justice system. First, it illustrates a decidedly American approach to policy enforcement. Citizens who believe that they have experienced a violation of the Civil Rights Act of 1964 are also responsible for initiating the enforcement process.

[1] 550 U.S. 618

[2] Of course, the story doesn't end there. In his first act as president, Barack Obama signed the Lilly Ledbetter Fair Pay Act of 2009, nullifying the Supreme Court's interpretation of the statute of limitations in the Civil Rights Act of 1964.

This approach to statutory enforcement is called a "privatized enforcement regime" by one political scientist (Farhang 2010). Within legal scholarship, it is described as "deputizing private attorneys general," (e.g. Rubenstein 2004). It also a classic example of what Schwartz and McCubbins described as a fire alarm system of oversight (1984). While we increasingly understand how enforcement regimes are assigned to policies and the prevalence of private litigation as policy enforcement in the United States (Barnes 2011, Burke 2002, Derthick 2002, Engstrom 2010, Kagan 2009, Farhang 2010, Stephenson 2006), this literature has less to say on what motivates a citizen to "ring the alarm" after the enforcement regime has been assigned.[3]

This question is one of legal mobilization. Legal mobilization generally describes the situation when a private citizen's "desire or want is translated into a demand as an assertion of one's right," (Zemans 1983). In political science, the concept is often tied to the idea that changes to social policy originating from the courts require "bottom-up" activity from private citizens and organizations (Scheingold 1974, Giles and Lancaster 1989, Epp 1998, McCann N.d., Frymer 2003) and that traditional scholarship on the courts and social change is incomplete when it focuses on "top-down" (or judge-driven) behaviors.[4] In these cases, private citizens and non-governmental organizations are motivated to initiate legal processes because of policy goals.

The Equal Employment Opportunity Commission received approximately 85,000 charges of discrimination against employers every year for the last 20 years. It's safe to say that, in most of these cases, policy goals are not the driving factor in the employee's decision to file a charge. Effective privatized policy enforcement, moreover, has more to do with these charges than the handful of cases reaching appellate courts driven by the policy interests of non-governmental entities. What motivates private

[3]Farhang (2010) is an exception to this statement. His explanation of how enforcement regimes are assigned to policies is dependent on his explanation for how potential claimants decide whether to claim.

[4]Examples of the "top-down" courts and social change scholarship include Epstein and Kobylka (2000) and Canon and Johnson (1999)

citizens to initiate the enforcement process if not policy goals?

One part of the answer lies in legal mobilization scholarship of a different bent. Instead of conceiving of legal mobilization in terms of social reform from below and through the courts, a handful of political scientists (Zemans 1983, Galanter 1974, Farhang 2010), along with sociologists and economists who study litigation, have used the term to describe individual disputing behavior or the "micropolitics of individual legal mobilization," (McCann 2008). This work shares a common framework in which potential claimants consider the formal enforcement option based on rational self interest. They weigh the costs of invoking the system, the expected benefits should they be successful, and the likelihood of their success. These costs and benefits can go beyond monetary considerations, including, for example, reputational costs of seeming litigious or added difficulty to their work environment from stirring the pot. The financial expense and potential award or settlement money are very important considerations, though, because invoking the remedy can be prohibitively expensive to ordinary people.

This distinction is important because, rather than individuals and organizations seeking to change the state by mobilizing, the state seeks to enforce existing policies through individuals for whom the promotion of a public good is but a by-product of their self-interest.

While the individual dispute framework is useful for understanding when ordinary people could be motivated to file charges, the Ledbetter case is a particularly valuable reminder of where the framework falls short. Before Lilly Ledbetter could decide to take on these costs and risks, she had to become aware of the discrimination itself. As Justice Ruth Bader Ginsburg wrote in her dissent to the decision against Ledbetter, "pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time." Ledbetter's experience dramatically draws attention to the gap that can exist between an instance

of illegal discrimination and the perception or awareness in the mind of the individual on the receiving end of that discrimination (Felstiner, Abel and Sarat 1980).

In sum, for Ledbetter to initiate the policy enforcement mechanism available to her through the Civil Rights Act of 1964. she had to hold two beliefs: first, she had to believe that she experienced employment discrimination at the hands of her employer. Second, she had to believe that costs and risks associated with a lawsuit would be worth it in the end. Both conditions were necessary to initiate the lawsuit.

This logic extends beyond Ledbetter. The model helps us understand a more general question: when do private citizens invoke the formal legal remedies available to them? The answer to this question is important to political scientists beyond the few who study the courts and social change. Policy changes, whether through the courts or through the legislature, without policy enforcement is moot. Because of the institution's passivity, the courts have unique struggles when they are responsible for policy enforcement (Rosenberg 2008, Horowitz 1977, Peltason N.d.). In order to identify and draw attention to non-compliance, the court relies on litigants to return to court (Horowitz 1977, Kagan 2009, Zemans 1983). Cases wind up in litigation because of a conflict. There are parties who would prefer not to desegregate a school, close an adult bookstore, or pay damages for a workplace injury. These parties must believe that there are costs associated with non-compliance with an unfavorable ruling, be they financial or reputational. Non-compliance is often shrouded. A school board plan for desegregation may unnecessarily draw out the process, for instance. Or an unconstitutionally crowded prison may reduce some, but not enough, of its population. Litigants must continue to bring potential violations to the court to establish whether the response is non-compliant and to draw attention to it when it is.

The line dividing private law and public law is becoming less and less meaningful. We are increasingly aware that interactions we once may have classified as private

have implications for big questions within political science about power, equity, policy enforcement, and policy creation (Pound 1914, Zemans 1983). We see private enforcement in a wide arena of public policy, including environmental law,[5] civil rights law,[6] labor law,[7] securities,[8] and antitrust law.[9] Now more than ever "the reality is that law depends on citizen-mobilizers for its implementation,"(Zemans 1982).

1.2 The Case of Employment Discrimination in the United States: 1992-2013

In spite of the wide range of policy areas that employ privatized enforcement regimes, this project's empirical investigation is limited to explaining charges filed by private individuals alleging employment discrimination on the basis of their race (Black or White) or National Origin (Mexican or Hispanic) in the United States from 1992-2013. In this section, I briefly explain this research design choice and review how employment discrimination charges are processed by the federal government.

The Civil Rights Act (CRA) of 1964 was landmark legislation that banned discrimination on the basis of race, color, religion, sex or national origin by both public and private entities in a number of arenas including public education, government agencies and assistance programs, privately owned hotels, and employment in both public and private sectors. Title VII is the employment component of the law. Farhang (2010) provides an excellent legislative and political history of the bill's passage through Congress. The Equal Employment Opportunity Commission was created through the CRA of 1964. The EEOC's strength as a protector of employees' right to work free of discrimination has waxed and waned over the years of its existence. These ebbs and flows can be attributed to changes in the leadership of the organization

[5]The Clean Air Act (1963)
[6]The Civil Rights Act of 1964, and The Americans with Disabilities Act (1990).
[7]The Fair Labor Standards Act (1938)
[8]The Security and Exchange Act (1934)
[9]The Sherman Antitrust Act (1890)

under a new president,[10] changes to the budget of the agency, and changes to the law surrounding employment discrimination.[11]

An employee who believes she has experienced discrimination in a hiring decision, promotion decision, firing decision, or on the job and in the work environment may file a claim with the Equal Employment Opportunity Committee. She must file within the statute of limitations, which generally is either 180 days or 300 days after the discriminatory event.[12] After the charge is filed, the EEOC investigates the charge. If the investigation is completed, the EEOC issues a finding of whether discrimination was probable. In 56% of the charges from 1992 - 2013, the EEOC issued a "no cause finding." Those claimants have no more recourse through the EEOC. All claimants, including those for whom the EEOC issued a "no cause finding," will be issued a notice of their right to sue following the completion of the EEOC's investigation. Another 13.5% of charges—the second most common closure outcome—end before the investigation is completed because claimants have requested a notice of the right to sue. Anyone may request a notice of their right to sue after 180 days have passed since they initially filed the charge, regardless of the status of the EEOC's investigation. After the notice of the right to sue is issued, claimants have 90 days to file a lawsuit.

For the remaining claimants for whom discrimination was "probable," the EEOC works with the employee and the employer to remedy the discriminatory event. There are limits on the monetary benefits an employee may receive in an EEOC remedy. Mediation, conciliation, and settlement agreements are all remedy options, but employer participation in these options is voluntary. The EEOC does represent employees in

[10]The agency was "dramatically enfeebled" when Clarence Thomas headed the agency during the Reagan administration, for example, (Wood 1990)

[11]In the five years leading up the Civil Rights Act of 1991, the Supreme Court issued a series of rulings that made it more difficult for employees alleging racial discrimination under the CRA of 1964 to win their cases and to seek damages when they did win. The Civil Rights Act of 1991 was a legislative override of these decisions.

[12]If more than one discriminatory event took place, the statute of limitations applies to each event. If the issue is one of on-going harassment, the charge must be filed within 180/300 days of the last incident of harassment.

litigation in federal court when a successful resolution cannot be reached, but their resources are limited. The average number of lawsuits filed by the EEOC on behalf of an employee or group of employees each year for the last ten years is 206. The voluntary nature of the remedy options, coupled with the limited number of charges the EEOC is able to take to court, highlights the weakness of the EEOC's enforcement powers.

It is difficult to determine how many claimants who received a notice of the right to sue end up filing a lawsuit in federal district court. The Administrative Office of the United States Courts publishes annual reports about the number of lawsuits filed in the district courts divided into general categories, including private civil rights lawsuits. According to their reports, 747,726 lawsuits were filed between 1992-2013 under the private civil lawsuit classification. While this classification does exclude the private civil rights lawsuits filed by inmates based in habeas corpus, it does include all lawsuits filed under the Americans with Disabilities Act (ADA), the Equal Pay Act (1963), the Age Discrimination in Employment Act (ADEA), and the Civil Rights Act (1964).[13] From the EEOC charge data, we know that 5,259,972 charges were closed with a request for a notice of the right to sue, a "no cause finding" and a notice of the right to sue, or "conciliation failure." It is safe to assume that the private lawsuits filed most like came from this group.

The choice to limit the empirical test to this theory is driven by a couple of considerations. The central consideration is limitations in available data. A secondary motivation is an interest in reducing causal complications from different institutional pathways.

The choice to focus the project on charges filed in the Equal Employment Opportunity Commission by Black, White, and Latinx people for employment discrimination

[13]The information, however, is not fine-tuned enough to learn the extent to which EEOC claims in the subset of this investigation—those filed on the basis of discrimination for race-Black/African American, race-White, National Origin-Hispanic, and National Origin-Mexican—end up in federal district courts.

based on their race or national origin was driven by data limitations with one of the key independent variables: Perceived Discrimination. As chapter three will explain, the estimates of Perceived Discrimination come from short national opinion polls, many of which have less thirty questions. There were not enough polls with questions about personal experiences with discrimination based on gender, sexual orientation, religion, age, or other relevant categories to build a sufficiently large megapoll for the states and time period in this study. This explains why other categories beyond race weren't included, but it does not address questions about why estimates were limited to just the largest race and ethnic groups in the country. Here there were simply not enough respondents in the megapoll that belonged to other race or ethnic groups to make confident estimates of these groups' responses at the state-year level. This same limitation is discussed by the political scientists who have done the most to advance this approach to estimating state level opinion in the field (Kastellec, Lax and Phillips 2010; 2014, Lax and Phillips 2009*a*). When an employee is considering charging an employer with discrimination under the Civil Rights Act of 1964, she actually has several institutional routes she can take. The institutional routes available through federal employment discrimination law can be classified as one of three options: first, a person can file the charge at the EEOC, allow the charge to work its way through the EEOC's processes, and accept the outcome it reached;[14] second, a person can file the charge at the EEOC, allow the charge to work its way through the EEOC's processes, and then reject the outcome, filing a lawsuit in US District Court. The EEOC's findings have no binding authority and, even if the EEOC issues a "no cause finding," a claimant can pursue the case *de novo* in US District Court. Finally, a claimant can file a charge at the EEOC, file for a notice of the right to sue as soon as permissible, and then file a lawsuit in a US District Court. In other

[14]In the seven million charges from 1992-2013, 15% were closed with a settlement With benefits, successful conciliation, or withdrawal with benefits, suggesting that a non-trivial set of charges are resolved through the EEOC's processes.

words, a claimant could use only the bureaucratic path, only the litigation path, or a sequential combination of the two.

The option of institutional pathway complicates the study of legal mobilization because both the institution itself and the ideology of the decision-makers within the institutions can make the charge more (less) costly, more (less) profitable, and more (less) difficult to win. Bureaucratic agencies are thought to be easier for private citizens to navigate compared to private litigation options, with more predictable outcomes compared to those arrived at by Courts. Bureaucratic options are thought to have smaller, more predictable award amounts compared to civil lawsuits, which may be less attractive to some potential litigants. These tradeoffs are discussed in works including Kessler (2010), Stephenson (2006), Farhang (2010). Adjudicators selected by or identifying with Republicans are thought to side less often with employees in discrimination cases compared to adjudicators selected by or identifying as Democrats (Farhang 2010, Sunstein et al. 2006, Moyer and Tankersley 2012, Farhang and Wawro 2004, Songer, Haire and Davis 1994).

Every formal claim of employment discrimination under the Civil Rights Act of 1964, however, begins with filing with a charge at the EEOC, no matter the path that follows. This action is the start of the process, regardless if the claimant intends to file a lawsuit as soon as permissible or if the claimant intends to work her claim through the agency.

1.3 Overview of Dissertation

In chapter two, I develop the theory of private citizen rights claiming that I have introduced in this chapter. The theory brings together two very different scholarly traditions: the first tradition comes from the Law and Economics of Litigation legal scholarship and subsequent work in political science that stemmed from it. This tradition emphasizes how potential litigants and defendants approach their litigation

decisions with careful attention to the costs, expected benefits, and probability of a successful outcome from the formal dispute resolving institutions. The second scholarly tradition terms is based in Law & Society, an interdisciplinary research field that emphasizes "how inequalities are reinforced through differential access to, and competence with, legal procedures and institutions," (Mather 2011). My theory brings together insights about private individuals to explain their decisions whether to invoke a formal dispute resolving institution.

Chapter two, however, will draw attention to some empirical challenges to testing the theory. The following two chapters are dedicated to addressing those challenges so that we can reach an empirical testing stage. I focus in particular on the empirical challenge of measuring concepts such as *perceived discrimination* and *support structure for legal mobilization*.

Chapter three is the first of three empirical chapters. The goal of chapter three is to create quantitative estimates of one of the key variables in my explanation of legal mobilization: perceived discrimination. In chapter three, I propose a measurement strategy for this concept. I begin with a set of national opinion polls that ask respondents questions about whether they have had a personal experience with discrimination based on their race and ethnicity. I combine these polls into one internally consistent megapoll, with poll level variables to account for differences in how the question was worded or formatted.

Next I run a model to predict individual responses to the personal experiences with discrimination questions, using demographic and geographic information about the respondent to form predictions. Coefficients from this model predicting individual responses help to create estimates at the state-year level. I create estimates for three groups in each state-year: the proportion of Black people (non-Hispanic) in a state-year that would indicate they had a personal experience with racial or ethnic discrimination, the proportion of White people (non-Hispanic) in a state-year

that would indicate that they had a personal experience with racial or ethnic discrimination, and lastly the proportion of Hispanic people in a state-year that would indicate that they had a personal experience with racial or ethnic discrimination. I created these state level estimates using the coefficients from the individual model and a method called post-stratification that weights individual responses based on demographic and geographic data in the US Census.

In chapter three, I find nationwide demographic trends in the rates of expressing personal experiences with racial or ethnic discrimination. Black respondents (non-Hispanic) are more likely than White respondents (non-Hispanic) or Hispanic respondents to report that they have personal experiences with racial or ethnic discrimination. Males are more likely to respond that they have personal experiences with racial or ethnic discrimination than females. People with more education, particularly those with post-graduate degrees, are more likely to report that they have these experiences. Senior citizens (people 65 and older) are much less likely to report having these experiences.

I also discover some geographic trends in how people respond to questions about personal experiences with racial or ethnic discrimination. The states with the largest Black populations—states in the Southeastern United States—are among the lowest in terms of the proportion of the Black population expressing that they have personal experiences with race discrimination. While far fewer White people report personal experiences with racial discrimination, it's these same set of states in the Southeast where rates of expressing personal experiences with racial discrimination are highest among Whites.

Chapter four is also an empirical chapter that develops, executes, and validates a Support Structure for Legal Mobilization index, another key variable in my theoretical model. I start with twelve indicator variables tied to Charles Epp's Support Structure for Legal Mobilization concept, including the number of people employed

in the legal profession and the number and size of legal aid organizations operating in the state. With these indicator variables, I consider whether a unidimensional approach to measuring Support Structure for Legal Mobilization is appropriate. I find that this approach is not supported by the relationships between indicator variables directly related to the concept. While existing scholarship has relied on one or two indicator variables as their measurement of the concept, this implicitly unidimensional approach is particularly problematic. A principal components analysis is one tool I employ to reach these conclusions.

Next, I aggregate the twelve indicator variables into an Support Structure for Legal Mobilization Index, which maps all state-years onto a scale based on the strength of legal support structure. On the whole, states in the Southeast and rural west have the lowest scores on The Support Structure for Legal Mobilization Index. Mid-atlantic and New England states rank among the highest on the index, but Illinois, Minnesota, and Louisiana defy this geographic trend with their high scores. Over time with the states, the trend is for scores to improve, but it is not a strong trend. Many states' scores do not meaningfully change in the 24 year period.

With these two new measures in hand, I test my core hypotheses in chapter five: we will see more discrimination claims filing in states where perceived discrimination combines with factors that shift the cost-benefit analysis of filing to be more favorable to the potential litigants from private society. I test the claim using Ordinary Least Squares regression analysis with fixed effects to model employment discrimination charges filed on the basis of racial discrimination at the Equal Employment Opportunity Commission from 1992-2013. Filing a charge at the EEOC is the first formal step of the process, irregardless of whether the litigant intends to file a lawsuit in US District Court or seek resolution within the EEOC's institutions. The requirement is specified in the Civil Rights Act of 1964.

I find some support for the theory: in most model specifications where Black and

Hispanic discrimination claims are the dependent variable, Perceived Discrimination's effect on the rate of claims filed is stronger when Support Structure for Legal Mobilization is high. An unexpected result of some of these models, however, is that, in the absence of Support Structure for Legal Mobilization, Perceived Discrimination has a negative relationship to rates of EEOC claiming for employment discrimination against Blacks and Hispanics.

In models predicting claims filed based on "reverse discrimination" or employment discrimination against White people, Support Structure for Legal Mobilization weakened the effect of Perceived Discrimination (among Whites) on the dependent variable. This outcome was unexpected and warrants further consideration.

I find that the party of the president (and, by extension, executive agencies including the EEOC) behaves in a predictable way: it strengthens the effect of perceived discrimination on rates of EEOC claims for employment discrimination against Black or African Americans. It weakens the effect of perceived discrimination in rates of EEOC claims for employment discrimination against White Americans.

On the other hand, the interaction between US district court ideology and perceived discrimination had little support for the models predicting claims filed for discrimination against Blacks and Hispanics. For models predicting claims filed for discrimination against Whites, perceived discrimination's positive effect on filing is stronger when the US District Courts of a state are more liberal. This unexpected result warrants consideration as well.

As I conclude the project, I discuss some of the broader policy implications of this work. The work speaks to a conversation among legal, policy, and social scientists about the efficacy of the Civil Rights Act of 1964. In addition, the project has implications to the literature within political science about legislatures' decisions to delegate policy enforcement to private citizens through civil lawsuits and the effects of legislative efforts to incentivize litigation to improve policy enforcement. Finally, I

will suggest several avenues to expand and improve this course of study.

Chapter 2 A Theory of Private Citizen Rights Claiming

When do private citizens employ formal legal institutions to resolve grievances? In the introduction to this project, I suggested an answer to this question. Private citizens will make rights claims if two conditions are met: first, they must have a belief transformation. They must go through a process in which they realize that they have experienced a negative event and transform that negative event into a experience of rights deprivation. Second, they must decide that the combined personal costs, personal benefits, and probability of success from the pursuit of a rights claim outweigh the costs and benefits of not pursuing the claim. Galanter (1974) began a long tradition of referring to this latter option as "taking one's lumps" or "lumping it," which this project continues.

Several intellectual traditions have approached questions about private rights-claiming with different assumptions and different underlying objectives. Each contributes, however, to this project's underlying theoretical framework. These traditions include legal mobilization scholarship within the interdisciplinary field of Law and Society (e.g., Felstiner, Abel and Sarat 1980, Epp 1990), legal research about the Law and Economics of Litigation (e.g., Posner 1972, Landes 1971, Rubin 1977, Priest and Klein 1984), the law as a vehicle for social change literature from judicial politics (e.g., McCann N.d., Horowitz 1977, Scheingold 1974), and formal theories of political science related to the origins of early state institutions (e.g., Milgrom, North and Weingast 1990, Shapiro 1981).

In this section, I draw on these areas of scholarship to provide the theoretical basis for the two conditions of private rights-claiming. We can look to several seminal works about legal mobilization, most notably, Felstiner, Abel, and Sarat (1980), to

reach the first condition of the argument: an aggrieved individual must perceive of the event as discrimination. These authors consider whether and why an individual interprets a negative experience as an illegal act. In the context of this project, they consider the process by which an individual perceives a negative experience in the employment realm as an act of discrimination and therefore a violation of the Civil Rights Act of 1964.

We can find support across several intellectual traditions for the second condition—the rational calculation condition. This second condition has two parts: it starts with a literature primarily based in the law and economics of litigation from the legal field. It is supported by work on the origins of state institutions. In these works, scholars discuss the strategic interaction between a potential plaintiff and defendant and the personal costs and benefits each party weighs as they consider their options. The end product of the work is the derivation of the conditions under which a plaintiff would file and a defendant would settle or take the claim to court.

Within the fields of political science and law and society, an informal discussion takes place, in which this rational calculation of the parties process is assumed. Scholars focus on extra-legal factors that can alter the outcome of this payoff calculation, making a claim a better (or worse) option for reasons beyond the facts of the case and the location of the governing laws. This project centers on two such external conditions: the potential claimant's legal support structure and the ideology of the third-party adjudicators.

While both conditions have a strong connection to existing literature, this paper takes a further step: I emphasize that the two cannot be treated as independent explanations of when claimants pursue legal claims. If a potential claimant never transforms a negative employment experience into an experience with discrimination, then any conditions that could alter the outcome of her cost-benefit analysis should be irrelevant to the decision to pursue a claim. She should never reach the decision-

making stage. In other words, the effect of any external factors that alter the payoff of a claim, such as the potential claimant's legal support structure or the ideology of future third party adjudicators, is conditional on the claimant's first having a perceived discrimination experience.

This conditional relationship is difficult to uncover empirically because of a selection problem: we can only observe instances of claims being filed. While this result *could* occur because both conditions have been met, we cannot determine whether one of the conditions would have been sufficient. In the final section of this chapter, I discuss this empirical challenge and how it led to a project that discusses aggregate levels of rights-claiming.

2.1 The Perceived Discrimination Condition

This section discusses a premise with a strong theoretical history: the perception of a negative event as a legal violation is an important and necessary first step to claiming redress (Felstiner, Abel and Sarat 1980, Zemans 1982, pgs. 1003-1004). The perception of an event as a violation of a *right* is a particularly compelling reason to file a legal claim (Scheingold 1974). In the context of this paper, the perception of an event as racial discrimination helps us to understand, at least in part, the rates of racial discrimination claims filed with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

Felstiner, Abel and Sarat (1980) define three clear steps necessary for private citizens to enforce a civil rights violation committed against themselves. These three steps are summarized as "naming, blaming, and claiming." "Naming" simply refers to a person's recognition that they have experienced an injury. "Blaming" is the process of assigning the onus for such an infraction to an employer, the state, or another outside entity. "Claiming" refers to the action of filing a lawsuit and initiating a legal process with the goal of receiving restitution for the named infraction. In the context

of this project, "claiming" describes the second condition of private rights claiming—the rational decision-making phase—and is addressed in the following section.[1]

2.1.1 Naming (Noticing) the event

People experience negative events with other people or entities on a pretty regular basis. "Trouble, problems, personal and social dislocation are everyday occurrences," (Felstiner, Abel and Sarat 1980). Some of these troubles, problems, and dislocations pass us by unnoticed. Because each of us lacks complete information about the world around us, a person may cheat off of our exams, steal carrots from our gardens, or do shoddy work on a home repair, and we simply may never know about the behavior. Moreover, this behavior may or may not lead to consequences for us down the line.[2] In order for another person's behavior to start a rights-claiming process, it must first be identified by the potential rights claimer. In the language of Felstiner, Abel and Sarat (1980), first "unperceived injurious experiences" must become "perceived injurious experiences" or "PIEs." They must be "named."

The difficulty in naming an injurious experience can vary widely. In the context of employment discrimination, an injurious experience sometimes is easily identified—a person can be fired, for example. The case of Ledbetter is a good illustration of how an injury can go unperceived. In her dissent to the decision against Ledbetter (2007), Justice Ruth Bader Ginsburg pointed out just how insidious pay disparities can be: "often [they] occur, as they did in Ledbetter's case, in small increments. Only over time is there strong cause to suspect that discrimination is at work."[3]

[1] As I move forward, I treat these three stages as distinct and sequential. The reality is fuzzier. For example, a person may become more confident and assertive with attributing blame on an employer after she speaks to an attorney. She only would have thought to speak to an attorney, however, if an inkling of the thought was there.

[2] Felstiner, Abel and Sarat (1980) come from a psychological perspective and would bridle at the description of the initial source of a claim as an "objective [event] that happened in the past," (637) While it may be "psychologically naive" (637), I move forward with it as a useful simplification.

[3] On the other hand, Berrey, Nelson and Nielsen (2017) is one of the most extensive empirical investigations of employment discrimination charges I have encountered. They write of their surprise at the employers' alleged behavior and its flagrance and lack of subtlety in their interviews with plaintiffs.

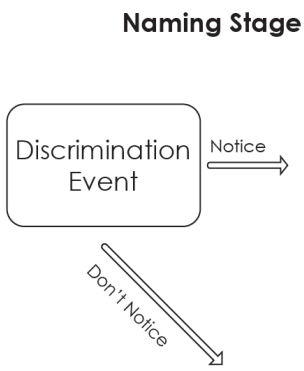

Figure 2.1: In the first stage described by Felstiner et al., a potential claimant will either notice a negative experience or not.

Throughout this chapter, I will illustrate the stages of the private citizen's rights claiming process. These figures highlight all of the opportunities for a potential plaintiff to end up "lumping it," rather than initiating the formal rights-claiming institutions. In Figure 2.1, we see the first opportunity for a potential plaintiff to fall off the path to rights-claiming: she simply does not notice that another person did something injurious to her.

2.1.2 Blaming someone (else) for the event

Merely recognizing that a negative experience has occurred is not enough. Blaming is "the transformation from perceived injurious experience to grievance," (Felstiner, Abel and Sarat 1980). In the context of employment discrimination, one must not

only blame one's employer, but also attribute specific motivations to the employer. That is, the employee must believe that the employer made the decision leading to the negative act on the basis of the employee's race, sex, or some other prohibited characteristic.

The challenging nature of identifying an act as discriminatory is not necessarily self-evident. To illustrate the challenge, let's consider the following situation: a woman of color is passed over for a promotion at her workplace. The experience is a negative one, and it will have financial ramifications for her and her family. She can understand this experience in a several ways. One explanation is simply bad luck. Alternatively, she may explain this situation as a personal grudge or dislike by her superiors. Another explanation is that she did not earn the promotion or, relatedly, there was a better candidate for the position. Finally, there is the lens of discrimination. That is, she may see the management's decision to overlook her for a promotion as a decision motivated by bias against her based on her sex or race. In all these explanations but the last, the employee has little basis to transform her negative experience into a legal grievance. It can simply be attributed to chance and hardship. In Figure 2.2, this second drop-off point on the way to a rights claim is highlighted.

Whether an employee transforms a negative event into a legal grievance is the function of several features of the experience and of the employee herself. Zemans (1982) identifies three features of negative event that increase the likelihood that a person will "perceive an incident or occurrence as in need of a response," which may or may not be a legal response. These features are the salience of the negative experience, the duration or frequency of the experience, and loss resulting from the experience, both actual and anticipated.

In addition to the characteristics of the experience itself, personal traits of the employee and her social environment also affect the likelihood that she perceives the

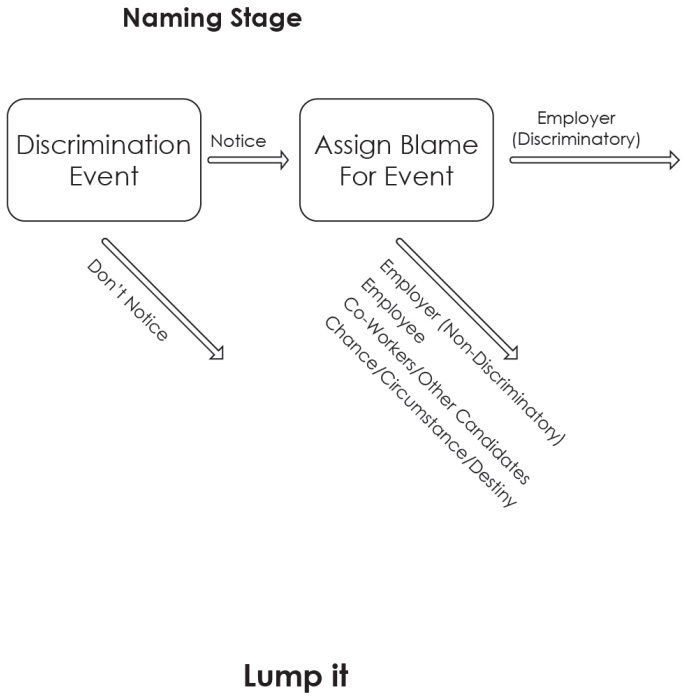

Figure 2.2: A potential claimant will either blame the event on discrimination from her employer and move forward or she will assign any other explanation for the event.

event as discrimination. She may be more or less educated on the law. She may be more or less rights-conscious. Moreover, her social environment, especially the norms and values of her community, can influence how she perceives the promotion decision. Zemans describes the "educative role" these norms play "in influencing how events are perceived," (pg. 1004). Moreover, social and legal norms often are the basis for defining right and wrong (pg. 1004). Scheingold more fully discusses the value of legal-consciousness and rights-consciousness in his seminal *The Politics of Rights* (1974).

Names Matter: The Myth Of Rights

Naming and blaming an experience as a violation of a law, and particularly, a right is important to explaining legal mobilization. Stuart Scheingold's *The Politics*

of Rights (1974) describes the powerful and motivating "myth of rights" in American culture. The act of calling something a right transforms a mere need or a want into an entitlement. Where a lawsuit may be considered frivolous or a litigant opportunistic, a rights claim and rights-seekers carry with them more legitimacy and importance. Denying a person a right means violating some of our most long-lasting and unifying ideological beliefs. In other words, "a belief in rights can help groups to visualize and focus grievances and perceptions of unfairness that might remain otherwise inchoate...If a group of people accustomed to powerlessness learn that they are entitled to a right, they are more inclined to mobilize to demand the right," (Scheingold 1974).

Similarly, adjudicators—particularly judges—may see claims based in established rights as more appropriate for their purview. In *The Hollow Hope*, Rosenberg (2008) discusses how the courts view their domain as limited. Individuals with claims not based in an established constitutional right have more difficulty succeeding with the claim.

The Bill of Rights is the legal and constitutional basis for federal legislation prohibiting employment discrimination. Namely, employment discrimination violates the equal protection clause of the Fourteenth Amendment, which forbids treating classes of citizens differently under the laws of a state. When we call an event "discrimination," we invoke the myth of rights or rights language. Identifying a negative incident as a rights violation gives it an urgent and galvanizing force, which leads to action, and a claim becomes more likely under this framing.

2.1.3 Claiming a remedy for the event

Felstiner, Abel and Sarat (1980) call the final stage of their model the "claiming" stage. This stage is characterized by the potential plaintiff's decision to ask the person or entity that he or she blames for a remedy (pg. 636). While Felstiner et al. acknowledge the possibility that the person or entity responds by providing a

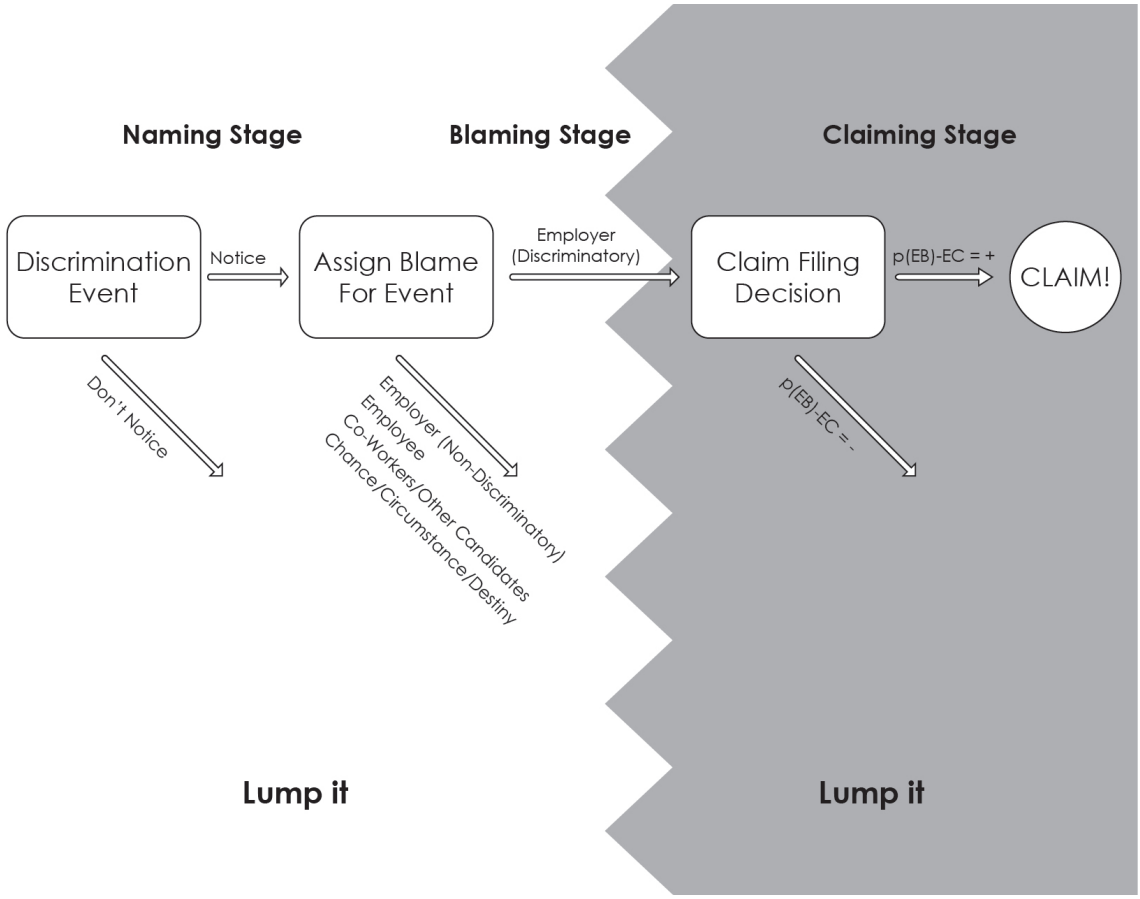

Figure 2.3: In the final stage of Felstiner's process, a potential plaintiff decides whether to seek restitution from a formal institution. This area is gray to highlight that most theories of litigation start at this stage of the process.

satisfactory remedy to the potential plaintiff without invoking the law, this project focuses on the other scenario—that is, the claim is rejected and the potential claimant faces a decision whether to invoke the formal dispute resolution institution or not. Thus, for this project, claiming refers to the initiation of a formal dispute resolution institution. In the context of employment discrimination in the United States, the formal dispute resolution institution is initiated when an employee files a charge either with an Equal Employment Opportunity Commission office or a state's Fair Employment Practices Agency.

As Figure 2.3 highlights, some potential plaintiffs reach the moment where they decide whether to file a claim only to lump it in the end. This raises the question:

what factors lead some to lump it while others move forward with a claim? A wide range of scholars have set out to answer this question. In fact, much of the existing literature on the decision to rights-claim—i.e. the entire process outlined in Figure 2.3—explains that decision with a narrow focus on just the final node in Figure 2.3. Whether coming at the question from an economic, political, or sociological framework, the conversation centers solely on the "claiming" stage— the third and final step in Felstiner, Abel and Sarat's framework.

2.2 The Rational Choice Framework of Claimant Decision-making

A seemingly disparate set of scholarship actually share a common language and framework for understanding the final stage of rights-claiming: the decision to file a lawsuit is the product of private parties' rational calculation of the costs and benefits of a claim, combined with the probability of a resolution in their favor. In other words, these literatures work within a rational choice framework. Zemans (1982) very directly proposes a shift in our models of legal mobilization to "a decision-making model that focuses on the individual actor and the factors weighed in deciding whether and how to proceed in mobilizing the law." Some legal scholars trained in economics had already implemented this individual decision-making model to address their questions about the economic efficiency of the institution of private litigation as a tool for resolving private disputes (Posner 1972, Landes 1971, Rubin 1977, Priest and Klein 1984). The individual rational-choice framework has also been valuable in theory-development on the earliest origins of dispute-resolution institutions (Milgrom, North and Weingast 1990, Shapiro 1981). In scholarship highlighting social inequities inherent to courts and formal dispute resolution institutions, arguments still focus on the factors weighed by individuals and how they may systematically burden certain groups more than others (Galanter 1974, Epp 1998). Sometimes these authors may

propose or evaluate solutions to them (Farhang and Spencer 2014, Farhang 2010). It's in this wide-range of scholarship that I find theoretical support for the second condition: After transforming their experiences into beliefs that their rights have been violated, potential plaintiffs must decide that the combined personal costs, personal benefits, and probability of success from the pursuit of a rights claim outweigh the costs and benefits of not pursuing the claim.

2.2.1 Plaintiffs decide to file claims based on a rational cost-benefit analysis of the potential outcomes

Within the legal scholarship around the law and economics of litigation, we find theories that most explicitly exemplify the rational choice framework of claimant decision-making. This work centers around the question of why private citizens file lawsuits and, in particular, whether and when a lawsuit is an efficient, private solution to a dispute (Landes 1971, Rubin 1977, Priest and Klein 1984). In these models, litigation is represented as a strategic and sequential game between a potential litigant and defendant. The process implicitly starts at the "claiming" stage. That is, there is no stage in these models where potential plaintiffs may or may not learn that they experienced discrimination at the hands the potential defendant. In addition, the interaction between the two parties is strategic and antagonistic interaction. They each have a set of choices to make, and they decide on the best choice by maximizing their personal payoff with the opposing party's likely choice in mind. It's antagonistic because the outcome of the interaction is mostly zero-sum: if the plaintiff wins an award or settlement, the defendant by definition loses that amount. Finally, like the real-life decision to litigate, potential plaintiffs in these models make the first move. They decide whether to start the dispute or to stay home and lump it. The best case scenario for the defendant is that the plaintiff never initiates the process to begin with. This process is illustrated in Figure 2.4.

In these models, we find a very clearly outlined set of terms that go into the

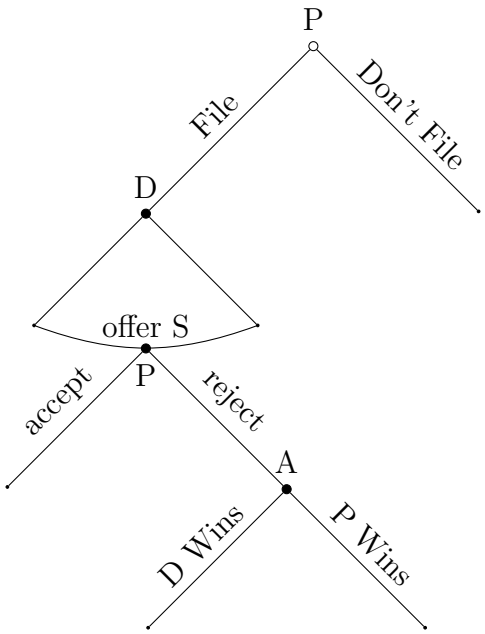

Figure 2.4: Illustration of the Law and Economics of Litigation's general model for how the litigation "game" proceeds. Note that P describes actions of the potential plaintiff, D describes actions of the potential defendant, and A describes actions of an adjudicator, which in these models, is not a strategic player in the game. In other words, the adjudicator node could be characterized as an act of nature.

players' payoff function, which ultimately drives the decision to litigate. As with any individual-level rational choice model, both parties are motivated to make choices that maximize their expected return or payoff. In other words, the parties engage in a cost-benefit analysis. In these models, both parties are motivated by private economic self-interest, rather than an altruistic purpose or a purpose driven by any public good a lawsuit might provide. For the plaintiff, the decision to file a claim is a function of an aggrieved individual's rational calculation of the costs, benefits, and the expectation of a successful outcome. Potential litigants face costs that include, for example, the financial costs of hiring legal representation and filing fees. They can also face costs to their time and opportunities. Benefits usually refers to the monetary rewards from damages or a settlement. The expectation of a successful outcome refers to how likely the plaintiff is to be successful in her claim, in large

part a function of the strength of the facts in her case, the location of the legal rule governing the dispute, and features of the adjudicator.

Farhang (2008) succinctly sums up the payoff structure of a potential plaintiff within this literature: "A prospective plaintiff will proceed with litigation when a case's expected monetary value (EV) if tried is positive, where EV is a function of the plaintiff's estimate of the expected monetary benefit of the case if she prevails (EB), the probability that she will prevail if the case goes to trial (p), and the expected costs of litigating the claim (EC). Thus, $EV = EB(p) - EC$, and the rational plaintiff will file suit if EV is positive." In other words, if a plaintiff's case looks unlikely to succeed or if success won't mitigate the costs of claiming, she won't pursue it. These two possibilities are illustrated in Figure 2.3.

2.2.2 The outcomes of adjudication are the determined through a fact-finding stage and a rule-application stage.

Above I discussed the rational choice model for how potential plaintiffs decide to file claims, including the decision-making process and the factors going into the decision. As part of the decision-making process, the potential plaintiff looks ahead at what would happen if the case reaches the adjudicator. She asks: "how likely am I to win the case? how much will I be awarded if I win? Would this award off-set my costs sufficiently?" How do we know the answer to these questions? In the language of Farhang, we need a better idea of the determinants of p and EB. Understanding the process of adjudication is the first step towards answering these questions.

In a simplified sense, adjudication has two steps: it begins with a fact-finding stage and then a rule-application or legal argument stage. In the fact-finding stage, a third-party adjudicator—which may be a judge, jury, or part of bureaucratic agency—comes to a determination about the event(s) that lead to the claim. The events leading up to a dispute are not transparent and are often disputed by parties. Facts must be uncovered to find out what "really" happened. After a claim is investigated, the

adjudicators determine a single fact-scenario—the single fact-scenario may be the facts as alleged by the plaintiffs, the defense, or somewhere in-between.

Then the adjudicators apply rules to the fact-scenario. Third party adjudicators have to decide which rule or rules to apply and how the rules apply to the facts. Rules determine which "bin" a claim goes into: the "win the dispute" bin or the "lose the dispute" bin. In other words, legal rules place facts into certain dispositions (Kornhauser 1992*b*;*a*, Lax 2011). If the plaintiff wins the dispute, the process continues to a third stage: The third-party adjudicator determines the civil damage award owed to the plaintiff, which is again determined by the relevant case law and statutory law.

Let's return to the crucial questions guiding a potential plaintiff in her decision to file: what determines p and EB—the probability of a win and the size of the damage award? We would LIKE to say simply "the facts" and "the law." That answer may work in an ideal situation, in which the "real" fact-scenario can be easily discovered and the rules governing them are clear-cut, consistent, and easily applied. If that were the case, plaintiffs would claim when the facts of their case meet the criteria for, say, employment discrimination laid down in the law, given that the damage award required by the law would sufficiently off-set her costs. If the case will *obviously* meet the criteria, plaintiffs will file and defendants will offer the minimally acceptable settlement to avoid the costs of a trial. Alternatively, if the case facts *obviously* fall short of the criteria, plaintiffs will avoid the costs of claiming and not file. If the case is a close call or if the case law has not yet mapped out which bin the facts fall into, the plaintiff will file and the case will likely go to the adjudicator. Only the "tough cases"—those in which the outcome is difficult to predict— truly need an independent third-party adjudicator. Within the Law and Economics of Litigation field, scholars cite these outcomes as evidence of the efficiency of litigation as a dispute-resolution institution.

2.2.3 The facts and the rules are determined, in part, by extra-legal factors

In many important ways, the fact-finding and the rule application stages are not easy, clear-cut, and consistent. For example, which facts are uncovered and become "the facts of the case" is, in part, a function of the quality of the legal team representing the parties. The quality of a legal team also affects the rule application stage. In addition, adjudicator ideology affects which rules are applied to the case and how they are applied. Litigation as an adjudicating institution is particularly vulnerable to these concerns, but bureaucracies with adjudicating functions are not immune. While there are other extra-legal factors that can influence the fact-finding and rule application outcomes, this project focuses on the two above.

How does the quality of a party's legal team affect the uncovering of the facts? Claimants are very reliant on their legal team for a successful claim. Uncovering and investigating the facts often falls to the parties' legal teams. In the common law tradition, court employees are expected to stay out of the investigation process. In fact, courts have little staff to engage in the fact-finding process. The parties' lawyers know which facts are relevant and have staff to uncover the facts, making them important to plaintiffs' success. Even if courts did involve themselves in the fact-finding process, it is important to remember that another feature of these decision-makers, whether juries or trial level judges, is that they are generalists. They may not have the expertise or time in some technical cases to sort through the facts (Posner 2010).

Similar to fact-finding, which rules are invoked and applied is, in some part, a function of the quality of a party's legal team. In fact, the importance of lawyers in this role begins long before a trial. Lawyers are commonly described as gatekeepers to the civil legal system (Kritzer 1997, Sandefur 2015, e.g.). Without representation, the legal system and its procedures are difficult to navigate. This relates, in particular,

to rules about what and when to file with the court and appropriate responses to procedural motions.

In addition to these pre-adjudication rules, a party's legal team plays an important role in presenting options to the adjudicator. Judges and juries have an ad hoc decision-making process and their process is decentralized. In court, lawyers may provide arguments for which rules to apply and how they apply. Some authors suggest that adjudicators mostly choose from the options presented to them, again emphasizing the importance of an attorney. Lawyers are better equipped to make these arguments relative to most parties. Courts require specialized and technical knowledge and training. A potential plaintiff does not know how to situate their case within legal language, legal precedents, and legal procedures. In the common law tradition, the norm is that new cases and rulings must be consistent with and situated in the existing body of law.[4]

Plaintiffs working through a claim in litigation are particularly reliant on their legal team to reach a successful outcome. This is not to say, however, that plaintiffs working through a claim in a bureaucratic process are free from this burden. Bureaucracies may be understaffed and underfunded, which could mean they do not uncover important facts. Lawyers are valuable in the bureaucratic setting because of adversarialism–the lawyer is more invested in your success than bureaucratic staff because it has a direct effect on her success (payment and reputation).

[4]Here I have focused on one role that attorneys play in the naming, blaming, and claiming process: affordable, high-quality legal assistance can modify a potential plaintiff's utility in filing a claim by increasing the probability of success and, possibly, also the size of the award. This simplification ignores the role that lawyers can play in the naming and blaming stages of the legal mobilization process, providing both information and an interpretive lens in which a potential plaintiff may see her negative experience as violation of her legal rights. This relationship informs my choices in chapter 5 (the hypothesis testing chapter), particularly in the interaction of perceived discrimination and support structure for legal mobilization.

2.2.4 Determinants of The Quality of a Party's Legal Team

We know that certain types of parties systematically have better representation than other types of parties. In his seminal "Why the Haves Come Out Ahead," Galanter (1974) introduced us to the concepts of "repeat players" and "one-shot" litigants."One-shot" litigants tend to be ordinary citizens—a plaintiff in a tort, tenant in a rental dispute, an employee suing for discrimination or a citizen suing for government services or action. Participation in a lawsuit is a rare event for this type of individual, which means they usually start the process without legal representation and limited knowledge of the relevant law and legal process. One-shot litigants usually suffer from a dearth of legal resources. They are more likely to represent themselves pro forma, to rely on an over-worked and under-paid public defender, or simply hire a less experienced and more poorly-trained attorney than their opponent's attorney or legal team. Because of the important role lawyers play in the outcome of cases, this disparity increases one-shot litigants' risk of loss.

In contrast, "repeat players" are parties that have regular interaction with the legal system and, as a result, have relatively easy access to a legal team. Businesses, unions, government agencies, and private organizations are key examples of repeat players. A repeat player is likely to have a team of experienced lawyers on the payroll or on retainer. They may have incorporated the expected costs of litigation into their yearly budgets. As a result, repeat-players have already paid the overhead costs of hiring legal representation.

Compared to repeat players, the stakes of a single lawsuit are higher for one-shot litigants. Repeat players have economies of scale on their side. Unlike one-shot litigants, repeat players can play the long-game, able to recover from an unfavorable decision or two. Losing a case is often far more devastating to a one-shot litigant, who may have drained her savings or incurred debt pursuing the lawsuit. Of course all of this assumes that the case reaches a final verdict. The one-shot litigants' resources

could run out, which could force them to settle potentially legitimate claims rather than go to trial. This problem is intensified by the fact that one-shot litigants are vulnerable to dilatory tactics from the opposing party.[5]

The importance of a litigant's status as a one-shot or repeat player has been explored in previous research. The focus has been on the effect of litigant status on the dispositions of cases in high courts. That is, do repeat players win more appeals? This body of research has included work about case outcomes at state supreme courts (Wheeler 1987-1988), U.S. Circuit Courts of Appeal (Songer and Sheehan 1992), the U.S. Supreme Court (McGuire 1995, Sheehan, Mishler and Songer 1992), and even high courts of other nations (Haynie 1994, Haynie and Sill 2007, Sheehan and Randazzo 2012).

These contributions, while important, may underestimate the effect of litigant status by focusing on the high courts. By the time a one-shot litigant reaches the appellate level of the political process, there are reasons to suspect that she has more in common with a repeat player than the pool of ordinary citizens contemplating litigation as a solution to their civil conflicts. In particular, a one-shot litigant at the Supreme Court often has a stake in the long-term policy outcomes of a decision, has the financial and legal backing of private organizations in civil society, and has a legal team experienced with Supreme Court litigation. In other words, she bears a striking resemblance to a repeat player.

Repeat players do have more resources and that gives them a distinct advantage in

[5]While repeat players have advantages in a short-term context because of their legal resources, they also may have an advantage for a separate reason. Some theories about the evolution of legal doctrine suggest that private litigation between repeat players and one-shot litigants is vulnerable to bias. Repeat players are thought to more invested in the outcome of litigation. If a court rules against a repeat player and creates or changes the legal rule, the consequences extend beyond the current case. Now the rule exists and the party will be a party in future cases (they are repeat players) under an unfavorable rule. In other words, repeat players are incentivized to settle cases that they will lose and adjudicate cases they are confident they will win. One-shot players are not operating under this incentive to develop a favorable rule for future cases. The consequence of these features is that the doctrine developed is biased in favor of repeat players (Galanter 1974, Priest 1980)

the legal process when facing one-shot claimants. If we can reduce this gap, thereby making individual claimants look more like repeat claimants in the earlier stages of the judicial process, it would go a long way to resolving the bias against one-shot litigants in adjudication. There is substantive variation among one-shot litigants in the amount of resources available to them. Demographic and geographic characteristics of a jurisdiction can change the cost of pursuing litigation. Members of the legal profession overwhelmingly reside in urban areas. Major rights organizations also tend to headquarter in these areas. District courthouses are located in cities and courts of appeal are located in larger cities. In small or population-dense districts, litigants are closer to their attorneys, sources of financial support, and closer to the courthouse. In large and population-dispersed districts, this isn't the case. Litigation is more costly in these districts.

Throughout this text, I refer to the degree of legal resources available to one-shot claimants in a geographic region as its "support structure for legal mobilization." This concept was developed by Charles Epp in an important book about which nation-states experience "rights revolutions" in their judiciaries.[6] The term goes beyond the number of lawyers in a region and recognizes that certain types of lawyers are more likely to represent one-shot claimants. In addition, the term recognizes the important role that organizations can play in supporting this type of claimants. The concept also embodies the idea that private and/or state sources of external funding reduces the

[6]In *The Rights Revolution*, Epp sets out to explain why rights revolutions occur in some countries, but not others. A rights revolution is the systemic transformation of a state's judiciary into an institution with concern, attention, and support for individual rights. There are some differences between rights revolutions and the phenomenon that I set out to explain in this project. A rights revolution is a one-time systemic change in a society, whereas rights-claiming is an on-going phenomenon. In addition, a rights revolution requires that litigation reach the appellate level, where appeals-level judges can change the direction of the judiciary. This project focuses on much earlier stages of the adjudication process. Nevertheless, the idea that financial and legal support can give one-shot litigants the advantages of repeat players is as relevant to explain privatized rights-claiming. Rights revolutions, like rights-claiming, depend on private individuals. Individuals with actual injuries are nearly always required to file lawsuits. With a support structure for legal mobilization, these individuals can gain some of the advantages held by repeat players, making a claim rational, even with only their personal welfare in mind.

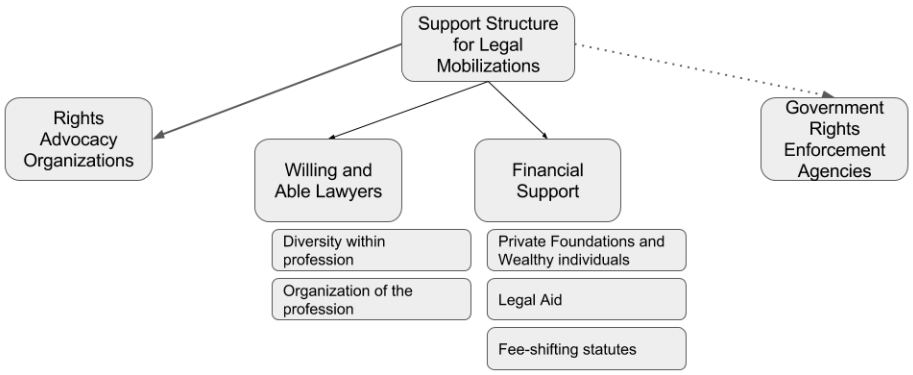

Figure 2.5: The concept of Support Structure for Legal Mobilization and its component parts

burden of a lawsuit to an individual. Though it varies across nation-states, Epp notes that support structure for legal mobilization may also include sources of government support that go beyond external funding, such as rights-enforcement agencies. Figure 4.1 illustrates the central components of the concept. Let's go through each of the components in the figure and explain their role in improving individuals access to formal rights resolution institutions.

Rights-advocacy organizations are non-governmental organizations with staff and resources dedicated to promoting the rights of a given group, whether it is women, minorities, immigrants, children, the aged, or the disabled. Rights-advocacy organizations have played an important role in rights campaigns. Examples include the NAACP's legal defense fund and its support of test cases during the American Civil Rights movement (Epp 1998). Another example is the role of women's rights organizations and unions in the litigation surrounding pay equity (McCann N.d.). More recently, Shannon Gleeson (2009) writes about the importance of nongovernmental organizations for rights claiming in non-unionized and immigrant laborers.

What exactly do rights organizations do to reduce the burdens of claim-filing? Individuals with a claim have a lot of initial leg-work compared to organizations.

Individuals have to seek out legal services when organizations tend to already have these relationships, either through their professional networks or as part of their staff. Non-governmental organizations can help financially support litigants and help connect them to a lawyer.

The second component, willing and able attorneys, goes beyond the number of lawyers in a region. An increase in the availability of lawyers in general should make a legal system more accessible because supply of lawyers will meet or exceed demand. In addition, lawyers can seek out clients, rather than the other way around, making the process of filing easier to the individuals. On the other hand, businesses are the major consumers of legal services, not individuals. Charles Epp suggests that specific features of the legal profession are more closely connected to legal support structure than simply the number. Changes in legal demographics and legal training can lead to greater representation of individuals. As the legal profession diversifies to include more women and minorities, he argues, new classes of lawyers become more willing to take cases from traditionally underrepresented parties. These groups are more interested in careers in public defense, legal aid, and public interest litigation.

The way the legal profession organizes is also associated with support structure for legal mobilization. Large firms are better than small and solo firms when it comes to legal support structure for several reasons. "The extent to which lawyers practice in firms rather than alone influences their ability to specialize, to work on nonremunerative cases, and to take advantage of economies of scale," (Epp 1998, pg.20). In support of this claim, research shows that the largest portion of organized pro bono work in the United States comes from attorneys in this setting (Sandefur 2007).

In addition, both rights-advocacy organizations and willing and able attorneys work to even the playing field by educating individuals on their legal rights and the process of pursuing them. Both can connect potential litigants to similarly situated

individuals and to lawyers and sources of financial support.

The third component of Epp's concept is financial support for litigation. Legal aid is an important resource for civil justice, and the Legal Services Corporation is the main ways the federal government financially supports this resource. Wealthy individuals and private foundations can also support litigation. Fee-shifting statutes increasingly empower individuals to file lawsuits. These include attorneys fees provisions, for example, which require a losing defendant to pay the winning plaintiff's attorney's fees, usually in addition to other monetary or injunctive relief. [7]

In sum, the concept of legal support structure branches off into three related but distinct categories: rights-advocacy organizations, willing and able attorneys, and sources of external funding. Each works to lower the burden on an individual considering a lawsuit and bolster the individual's likelihood of success. By improving the gap between employees (usually one-shot claimants) and employers (usually repeat players), the adjudication bias against employees can be reduced.

2.2.5 The Ideology of Adjudicators

While the rules-application stage of adjudication can be strongly influenced by disparities in the quality of a party's legal team, it is certainly not the only extra-legal factor at play. The political ideology of the decision-maker is another key factor. That is, the extent to which an adjudicator holds a politically conservative ideology or politically liberal ideology affects the choices they make in the courtroom. During

[7]Epp also discussed a fourth component that was present in some but not all of the nation-states that experienced rights revolutions: government agencies that promote rights enforcement. In the United States case in *The Rights Revolution,* the Department of Justice, the Solicitor General's office, and the Equal Employment Opportunity Commission are all mentioned as important resources to right-related appellate litigation. I do not include this fourth component in this project because all state-years have access to the EEOC and so there is no variation in this resource among my cases. In addition, the support that the EEOC might provide a litigant happens down the line from behavior investigated here (whether a charge is filed at all by the employee). After a charge is filed, after the EEOC investigates and determines a violation occurred, after the parties participate in the conciliation process and that process is unsuccessful, then the EEOC may choose to file a lawsuit on behalf of an employee in a U.S. District Court. To do so would provide valuable financial and legal support to the employee, but this occurs in only 8% of charges for which conciliation was unsuccessful.

adjudication, judges are presented with competing arguments. At the trial level, these arguments may be about what "really happened" (i.e. the facts of the case), but they may also discuss which rules are the appropriate rules to apply to the case, in addition to *how* the rules ought to be applied. A judge with a more conservative (liberal) political ideology may be more open to arguments aligned with conservative (liberal) policies.

Much of the field of judicial politics has taught us that judicial ideology affects the direction of case outcomes (e.g. Segal and Spaeth 2002, Segal 1997) and the content of the legal rules developed. While ideology can certainly be constrained by institutional features of courts, such as collegial decision-making, judicial hierarchy, and the powers of other branches of government, it remains an important judicial motivation (Epstein and Knight 1998, Murphy 1973). The evidence is well-established among other appellate level courts in the federal judiciary (Cross 2003, Sunstein et al. 2006, Zorn and Bowie 2010, Hettinger, Lindquist and Martinek 2004). This project, however, focuses on early stages of the judicial process, for which there are more mixed results about the effect of ideology on decision-makers (for support for the role of ideology, see, Rowland and Carp 1996, Rowland, Carp and Stidham 1984) (for evidence against the role of ideology, see, Segal 2000, Sisk, Heise and Morriss 1998).

Some issue areas are relatively easy to divide by ideology. For example, cases involving the rights of the accused are often relied on in judicial politics research because of the ease with which they can be classified. Pro-defendant decisions are considered more liberal than pro-state or pro-police decisions.[8] In cases of employment discrimination, a clear line has divided up the ideological space with more liberal adjudicators tending to side with plaintiff-employees and more conservative adjudicators tending to side with defendant-employers. (Sunstein et al. 2006) studies the effect of ideology on a wide list of subject areas in appeals courts including race discrimination and sex

[8]Alternatively, the liberal and conservative positions in cases that pit one corporate defendant against another corporate defendant in a contract dispute are far more difficult to suss out.

discrimination. He finds wide support for his hypotheses about the effect of ideology in appellate panels is supported in these issue areas. Similarly, Moyer and Tankersley (2012) write that "panel ideology was a driving force for adoption " of a hostile environment standard for sex discrimination.

Bureaucracies and bureaucratic adjudicators are also influenced by ideology, though it is thought to play out differently. Power is diffuse within a judiciary, which means that judges across the system are empowered to evaluate a claim without much risk of reprisal from the upper levels of the hierarchy. This leads to ideological diversity across the judiciary, with areas that are more ideologically liberal (for example, the U.S. Court of Appeals for the Ninth Circuit) and areas that are more conservative (such as the U.S. Court of Appeals for the Fifth Circuit). Power within a bureaucratic agency, however, is thought to be concentrated at the top of the hierarchy, which leads to the argument that a bureaucratic agency–in spite of any geographic diffusion–is more ideologically uniform over each executive's time in office (Posner 2010, Farhang 2010). [9]

How does adjudicator ideology play into decisions made by potential litigants about whether to file a claim to begin with? It goes back to the potential claimant's payoff calculation, in particular, the terms p and EB. A rights-claimant is less likely to be successful in a trial when her adjudicator is more politically conservative. Even if she is successful under these circumstances, the size of her award is likely to be smaller. In short, an adjudicator with a conservative (liberal) ideology has the ability to decrease (increase) the number of instances in which she would file a claim.

[9]This feature drives concerns that bureaucracies are susceptible to ideological drift or capture. We see capture, for example, when a piece of legislation passed by a liberal coalition of legislators is interpreted by a bureaucracy staffed by a conservative president. Congress's intentions may be ignored or even worked against. For example, this problem occurred at the Equal Employment Opportunity Commission under Ronald Reagan. Currently, the administration of the Environment Protection Agency under President Trump is subject to the critique.

2.3 Empirical Expectations of the Theory

In the previous sections, I discussed the theoretical foundations for my explanation of rights-claiming. While much of the literature focuses on the rational decision-making phase of the process, I highlighted Felsteiner et al.'s argument that the decision to file a claim is the final step in a three-step process. First, a potential rights claimant must "name" her experience and assign "blame," in this case, to her employer for denying her rights. If this condition is met, then the potential claim can consider whether it is in her best to file a formal claim or "take her lumps." The decision is based in an individual's rational decision-making calculus. She decides whether her costs of claiming, the likelihood of a successful outcome, and the benefits of a successful outcome to her make the action worth pursuing. While there are quite a few factors that can swing the direction of the claiming decision, I highlighted two important ones that go beyond legal factors: the legal support structure surrounding a potential claimant and the ideology of the adjudicators who would consider the claim.

2.3.1 Conditional Hypotheses

This explanation for rights-claiming has one final component: The process I describe above is a conditional relationship. A potential claimant must believe that she was the victim of discrimination at the hands of her employer, then she must determine that the expected benefits of a formal claim outweigh the costs. Without a person holding the belief that she was denied a right, it's difficult to imagine her contemplating the pros and cons of a rights lawsuit.[10] Since a potential claimant must initiate the formal rights-claiming process, we would not expect a claim to be filed if the individual never contemplated the decision.

What does this line of thinking mean for the external factors that alter the payoff

[10]Unless the person is just an opportunist...

of a claim, such as the potential claimant's legal support structure or the ideology of future third party adjudicators? Simply, these factors can make a difference in whether a claim is filed only when a potential claimant first has perceived a personal experience with discrimination. This reasoning leads to this project's more formal hypotheses:

Hypothesis 1 (H1): *More EEOC claims filing occurs when both support structure for legal mobilization AND perceptions of personal discrimination experiences are high.*

Hypothesis 2 (H2): *More EEOC claims filing occurs when the number of adjudicators with a liberal ideology is high AND perceptions of personal discrimination experiences are high.*

2.3.2 Empirical Challenges: Aggregating Decisions to Claim

This chapter presented a theory that focuses on individual-level behavior. When would an individual, having experienced a negative employment event, file a formal employment discrimination claim against her employer? The ideal empirical test would also take place at the individual level. The process might start with a random sample of individuals. Some of those individuals must believe that they have experienced racial discrimination in the workplace or there would be no variation for a key explanatory variable. In addition, some of those individuals must have decided to file a charge with the Equal Employment Opportunity Commission or we would have no variation on the dependent variable. Ideally, we would learn about the perceptions of discrimination and, in later surveys, we would learned about the decision to file to isolate the direction of the causal process.

At this point, the intractability of an individual-level model begin to emerge. The sample size necessary to get variation on the dependent variable would need to be very large. Berrey, Nelson and Nielsen (2017) estimate that only about 1 percent of

African-American workers who have a perceived discrimination experience in their workplace in the last year file a charge with the Equal Employment Opportunity Commission.

Additionally, this individual-level data would require an objective determination of whether a discriminatory event took place, in addition to the respondent's perceptions. Without these data, we would have difficulty interpreting the decision not to file a claim. The respondent may not file for three reasons: 1. she never realized her experience as one of employment discrimination, 2. she decided that a formal claim would likely give her a worse personal outcome than not, or 3. she never experienced a negative event in the first place. Intuitively, most of the time the third explanation is at play—on a daily basis, most of us are not experiencing employment discrimination. Unfortunately, all three of these bases for not-filing are indistinguishable from each other. Not-filing because it didn't happen looks the same as not-filing because it wasn't worth it.

While these difficulties are not impossible to overcome, I instead move forward with an empirical test of the conditional hypotheses at the state-year level rather than the individual level. Because of the move from the individual to the aggregate, the project does face problems related to ecological inference. That is, the project tries to draw conclusions about individual behavior from aggregated data. Two advantages motivate my decision to aggregate. First, rather than attempt a nearly intractable survey project, an aggregated model allows me to take advantage of existing data resources that have not been previously used to make quantitative measures of the concepts of interests. In short, it is far more tractable.

In addition, this design allows me to dedicate attention to the issue of geographic differences in the rates of employment discrimination claiming. I particularly want to understand whether and why variation in rights-claiming across states occurs because of normative concerns that, in spite of a common federal law detailing the right US

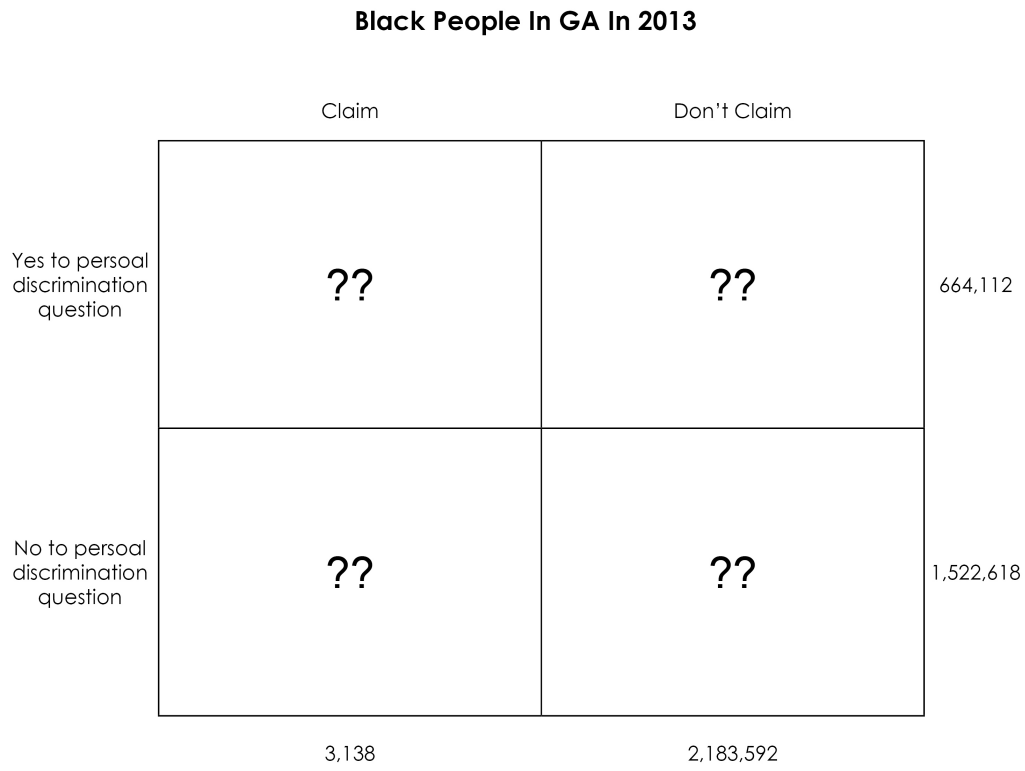

Figure 2.6: Illustration of ecological inference problem as it relates to this project's research design

citizens have to be free from employment discrimination, an individual in one part of the country might have greater protection than an individual in a different part of the country. If inequality exists, it may lead policy-makers to rethink the privatization of policy enforcement. To incorporate spacial variation into an individual level model, however, not only would my sample need to be large enough to capture the relatively rare event of an EEOC charge filing. It would also have to be large enough that perceived discrimination and filing behavior could be reliably estimated in states with small observations.

These reasons, however, do not diminish aggregation's threat to inference. Figure 2.6 exemplifies the ecological inference problem inherent in an empirical test of my theory at the state level. The figure highlights what we can actually know or can

derive about the Black population of Georgia in 2013. The Equal Employment Opportunity Commission publishes data about the number of charges filed in a state-year, so we know that 3138 Black Georgians decided to file a charge of employment discrimination on the basis of being Black in 2013. By linearly interpolating population sizes between Census year, we can estimate the overall size of the Black population in Georgia in 2013 is 2,0186,730. If 3138 Black Georgians filed charges, then the remaining 2,183,592 did not file a charge.

Using a methodology described in the following chapter, I estimate that 664,112 Black Georgians would respond to a question about whether they had an experience with racial discrimination in the workplace in the affirmative. By implication, the remaining 1,522,618 Black Georgians would respond in the negative.

Here ecological inference problem arises because I do not know have information to fill in the cross-tabulation table in Figure 2.6. In particular, I cannot say how many of the 3138 charges filed came from the 664,112 Black individuals that said they had a experience with racial discrimination and how many came from the other group. Instead, I have to assume, possibly incorrectly, that they mostly come from the affirmative group.

Similarly, if I were to estimate that overall, Georgia in 2013 had moderate levels of support structure for legal mobilization, I would have to make assumptions about the extent to which the 3138 individuals had access to it if I wanted to suggest a relationship exists between the two. We would know that the assumption is tenuous, for example, if we learned that the majority of the 3138 claims originated in parts of rural Georgia while the majority of lawyers and organizations that make up the estimates of support structure structure live in urban areas.

2.3.3 Moving Forward

Before moving forward with an empirical test of the argument put forth in this chapter, several concepts require further consideration about measurement. While political scientists have a long history of measuring the ideology of state actors, far less work has been done on measuring concepts like perceptions of personal experiences with discrimination and support structure for legal mobilization. As such, the following two chapters develop an statistical approach to measure these concepts, produce estimates of these concepts as they relate to employment discrimination in the United States over the last 20 years, and evaluate the approach and estimates for validity. Afterwards in Chapter 5, these estimates are employed in a statistical analysis of the determinants of rights-claiming in the realm of employment discrimination in the U.S.

Chapter 3 Measuring perceptions of discrimination

In the previous chapter, I laid out an explanation for private citizen rights-claiming. I argued that rights-claiming is a function of both a rational calculation of the costs and benefits of claiming and an earlier stage, in which potential claimants may or may not identify that they have the right to claim. In the context of employment discrimination, a potential claimant either perceives a work-related event as discrimination at the hands of her employer or not during the first stage. This chapter introduces an approach to measuring the perceived discrimination concept of the theoretical framework.

One way to learn about whether a person perceives of herself as a victim of discrimination is simply to ask. Over the last several decades, news organizations and academics have conducted national polls that have done just that. They have asked respondents about their personal experiences with discrimination on the basis of race and ethnicity. Often they even ask about respondents' experiences with discrimination in the workplace or on the job market. In this paper, I employ these survey data to produce estimates of the underlying population of a state in a given year with a perceived racial or ethnic discrimination experience.

I reach these estimates of perceived discrimination through a multilevel regression model with post-stratification (MRP). MRP models help to address some of the concerns associated with using national polls to develop state-level estimates, namely concerns related to the small samples in the low population and non-contiguous states.

The results of the multilevel model are in some ways intuitive. In states with very small minority populations, people of color report more personal experiences with employment discrimination. If there are few people of color in a community, the

people making the hiring, firing and other employment decisions are probably not other people of color.

The results are surprising in other ways, and they highlight the importance of measuring perceived discrimination over actual or observed discrimination when exploring the causes of rights-claiming. In states with large populations of people of color and concerning histories of discriminatory policies, namely states in the southeastern United States, we see some of the lowest rates of self-reported discrimination experiences.

Before diving into these results, I will further develop the rationale behind the estimation strategy. First, I will compare the use of individual questions from national opinion polls to existing scholarly approaches to measuring the concept. Then I will introduce the raw survey data, observing some of the initial patterns in the data and highlighting the features that necessitate the multilevel regression model with post-stratification. Then I will walk through the specifics of the model specification before sharing the results of the model. Finally, I will consider the question of validity by looking for a connection between the results of the model and policies thought to create an environment more hostile to people of color.

3.1 Past Measures of Perceived Discrimination

Because perceived discrimination centers around personal beliefs about personal experiences, some of the most well-developed conceptualizations and measurement strategies for the concept can be found in the fields of psychology, sociology, and public health (for extensive reviews and discussion of existing tools in these fields, see Utsey 1998, Bastos et al. 2010, Kressin, Raymond and Manze 2008, Lewis, Cogburn and Williams 2015, Brown 2001). Scholars in these fields are interested in perceptions of discrimination as distinct from actual discrimination.[1] Their purpose in measuring

[1]Self-reporting is sometimes used as a measure of actual discrimination. We know that respondents may over-report discrimination experiences because, for example, of a heightened level of race

perceptions of discrimination is to better understand racial disparities in chronic conditions such as hypertension and obesity and the role stress—in this instance, stress caused by daily experiences of racial discrimination—may play in health outcomes. In these contexts, like this project, the objective nature of the event—whether it was truly discrimination or not—is less relevant than what the respondent believes occurred. To address these questions, researchers have developed and fielded survey instruments to capture self-reported perceptions of discrimination.

There are dozens of these tools in the fields of psychology, sociology, and public health. One meta-analysis in 2010 identified 24 different scales of self-reported racial discrimination (Bastos et al. 2010). Another 2008 article dedicated to discrimination in a healthcare setting identified 34 measures of self-reported discrimination (Kressin, Raymond and Manze 2008). Survey instruments of perceived discrimination include The Perceptions of Racism Scale (Green 1995), the Perceived Racism Scale (McNeilly et al. 1996, Vines et al. 2001), and the Everyday Discrimination Scale (Forman, Williams and Jackson 1997, Clark and Gochett 2006), to name a few.

Unfortunately, these existing tools were designed with different research questions in mind and, as a result, they were implemented in such a way that the data collected cannot be reappropriated for this project. The authors were not interested in geographic units, so they did not work to procure a random national sample. Sometimes the authors were interested in how perceived discrimination affected a specific demographic group. One study, for example, surveyed only Black men in one mid-Atlantic town (Gary 1995). Another example surveyed patients in one borough of New York City(Broudy et al. 2007). Another example surveyed Black and White veterans in

consciousness. There is also systematic under-reporting, thought to be due in part to discomfort with the idea of being a victim. Nevertheless, self-reporting considered a mostly accurate tool for measuring actual discrimination, better than other approaches because it includes discrimination events that were never reported. When respondents indicate that they have experienced discrimination, 80-98% of that group, depending on the study, have been able to give specific and detailed descriptions of the discrimination event in a follow-up open-ended question, which is a signal of the validity of the self-report approach to measuring discrimination. Smith (2002) discusses this line of thinking in his General Social Survey Report on approaches to measuring racial discrimination.

five American cities (Kressin et al. 2004). In some studies, like the first two examples, there was no geographic diversity among respondents. In others, like the third example, respondents all shared an important feature, veteran status, making the results difficult to compare to the general population. Some large scale projects come closer to fitting the bill, but researchers inquired about only the respondents' larger geographic region (Americans' Changing Lives project and United States National Health Measurement Study). In short, survey instruments on perceived discrimination were created and fielded with different research questions in mind. As such, surveys were not administered to large enough, or diverse enough, groups, for a study where geographic region is an important component.

This project, on the other hand, gets at the concept through questions from short national polls mainly solicited by news organizations. Questions about discrimination in these polls mostly were intended to learn about public opinion on policy issues such as affirmative action and civil rights. Both Smith (2002) and Dixon, Storen and Van Horn (2002) approach personal experiences with discrimination with public opinion and policy in mind.

Dixon, Storen and Van Horn (2002) is a report conducted by Rutgers' John J. Heldrich Center for Workforce Development Rutgers, as part of their annual series Americans Attitudes About Work, Employers and Government (Work Trends). The organization interviewed 1,470 respondents in a national sample. The overarching conclusion of their report was that two American workplaces exist: "The workplace described by the white worker is one where equitable treatment is accorded to all, few personally experience discrimination, and few offer strong support for policies such as affirmative action to correct past discrimination against African American and other minority workers. In stark contrast, the workplace of non-white workers is one where the perception of unfair treatment is significantly more pronounced, where many employment policies such as hiring and promotion are perceived as unfair to

African-American workers, and where support for corrective action is high," (Dixon, Storen and Van Horn 2002).

Several relevant trends came up in the survey results. African-American respondents were the most likely to report unfair treatment at work based on their race (28% of African American respondents). 22% of people of Hispanic origin reported unfair treatment at their work based on race. Only 6% of White respondents responded that they experienced unfair treatment based on their race at work. Another important trend that came up in the Rutgers' survey has to do with income and education. The rate is highest for non-white people with more formal education and higher incomes. These trends are consistent with other scholarship (Brown 2001, Gomez and Trierweiler 2001, Gary 1995, Sigelman and Welch 1991, Avery, McKay and Wilson 2008)

Smith (2002) is a General Social Survey methodological report about strategies employed to measure actual discrimination, including self-reporting in surveys. Like the approach outlined later in this chapter, Smith (2002) collects national opinion polls from the Roper Center for Public Opinion Research's archives. These include polls from Gallup, NBC and the Wall Street Journal, CBS, the Los Angeles Times, and the Washington Post. He found 51 questions about personal experiences with discrimination in his search of the iPoll search engine by the Roper Center. Like Dixon, Storen and Van Horn (2002), he also found that "reported discrimination is always highest for Blacks and lowest for Whites and usually intermediate for Hispanics and Asians."

In some ways, relying on national polls is a stark change from scholarly approaches to measuring perceived discrimination. Polls lack the intellectual authority of the instruments developed by academics to answer their research questions. The questions in the polls were not designed with this project's research question in mind. In addition, questions from polls do not rely on or capture the rich, multifaceted conceptual-

ization present in the measures from psychology and public health. Nevertheless, the national poll strategy overcomes the limitations preventing me from using existing instruments to study perceived discrimination across the 50 states.

Moreover, Smith (2002) and Dixon, Storen and Van Horn (2002) show that national opinion polls are not completely divorced from research measuring perceived discrimination. In addition, Sigelman and Welch (1991) relied on a series of ABC/Washington Post in their investigation into Black opinions on racial inequality and policies that could affect the socioeconomic gap between races in America. Similarly, Avery, McKay and Wilson (2008) examined how demographic features, and demographic similarity between employees and employers, affect perceptions of discrimination using a national civil rights in the workplace survey conducted by the Gallup organization in 2005.

Smith (2002) and Dixon, Storen and Van Horn (2002) share the most overlap with my approach to measuring perceived discrimination. In fact, the Rutgers survey, along with some of the national opinion polls described in Smith, are included in the set of polls from which my estimates derive. Nevertheless, the projects vary in important ways. Both authors rely on summary statistics and cross-tabs. Neither report attempts to quantify the size of the effect of variables they think are important to how a respondent answers the perceived discrimination question. Neither attempts to determine whether the variable effects they describe are statistically distinguishable from noise. Finally, neither attempts to learn whether response rates change based on the respondent's state of residence. Given that states' vary in their cultural values and political climates, there is reason to believe that respondents in one state may have different experiences and different perceptions of their experiences relative to similar respondents in another state.

3.2 Collecting and Preparing the Data

Because of limitations in the data collected from previous studies of perceived discrimination, these data are not suitable in an investigation of the effects of perceived discrimination on rights-claiming across the states over the last twenty years. There are not enough data points, the data are concentrated in small geographic areas, and the datasets are not compatible with each other such that a researcher could easily combine them. As a result, I collected and combined national opinion polls and surveys as an alternative data source for this project.

I identified polls primarily through the iPoll search engine created by the Roper Center for Public Opinion Research. I supplemented my search with the Inter-university Consortium for Political and Social Research (ICPSR) data archive and the data archive at the University of North Carolina's Odum Institute. I reviewed all polls that came up from a search of the term "discrim%" from 1989-2013 on these sites. Most questions identified through this search were questions about support for policies related to discrimination (such as affirmative action), beliefs about the degree to which discrimination is a problem for a group of people, and beliefs about progress or change for the situation of a group of people in the United States.

To be included in the megapoll from which I derive my estimates of perceived discrimination, the polls needed the following:

1. the respondent answered a question about his or her own personal experiences with discrimination.[2]

2. the question asked about employment discrimination in particular or unspecified discrimination [3]

[2]including one question that did not differentiate between a personal experience and an experience of a family member.

[3]This excluded polls that asked about discrimination in healthcare, police interactions, experiences at restaurants, pools, or public cinemas, etc. Two polls, however, asked about employment and educational opportunities.

3. the question listed race or ethnicity as the basis for the discrimination.

4. the poll or survey included information about the respondent's state of residence, race, Hispanic heritage, gender, age, and education level.

I identified 34 polls and surveys meeting these requirements.[4] A complete list of the 34 questions is available in the Appendix. Some examples of qualifying questions include:

"Please tell me if you believe that any of the following things have ever happened to you because of racial discrimination [...] As a result of discrimination...you were passed over for a promotion which went to a white?"[5]

"Has there ever been a time when you have NOT been hired or promoted for a job because of your race or ethnic background, or has this not happened to you?"[6]

Was there ever a specific instance when you felt discriminated against because of your race? IF YES: What happened? [7]

After collecting the polls that met the search parameters, they were combined into one internally consistent megapoll. This involved three steps: first, the megapoll needed a binary variable for whether the respondent had a personal experience with racial or ethnic discrimination. Second, demographic variables regarding age and education had different coding schemes across the polls and surveys. The megapoll needed age and education variables that were internally consistent. Finally, metadata about the polls needed to be collected so that later I could control for variation among

[4]State of residence was the biggest barrier to a larger set of polls. The information was often excluded from the publicly available dataset to protect confidentiality. In future work, I would like to learn whether I could use national polls, without geographic identifiers, to improve estimates of demographic features.

[5]Source: Gallup/CNN/USA Today Poll, March 1995

[6]Source: Pew Hispanic Center National Survey of Latinos, 2002

[7]Source: New York Times Poll, June 200. Note the second question was asked as an open-ended question and the interviewer later coded whether the experience employment discrimination, educational discrimination, or a number of other codes. Only responses that were coded as employment discrimination were coded as an affirmative response in the megapoll.

the polls in how the discrimination question was asked and to whom the poll was administered.

Most of the polls ask their personal experiences with racial discrimination question with a yes/no response option. In these cases, the megapoll discrimination variable was identical. The remaining polls had one of two problems: the response options were not binary or the personal experience with discrimination information came through a series of question. Four polls in the set worded the question on a scale where the respondent could indicate that he or she "never" experienced discrimination, "rarely" experienced it, sometimes experienced it, and so on. If the respondent indicated that he or she "never" experienced discrimination, the respondent was coded as a 0 or no. All other responses were coded as a 1 or "yes."

In some polls, the personal discrimination information came out of a sequence of questions. For example, a interviewer may have asked "have you, a family member, or a close friend experienced discrimination in the workplace?" If the respondent answered in the affirmative, then the interviewer might follow up with "did you have the experience?" In every poll except one, the respondent was asked a follow-up question about whether they personally had the discrimination experience. Only respondents who indicated in the follow-up question that they personally had the experience were coded in the affirmative in the megapoll.

Another sequence might have been "have you ever been the victim of discrimination in the work place?" If the respondent answered in the affirmative, the interviewer might follow up with sequence of questions like "were you discriminated against because of your sex? Were you discriminated against because of your race? were you discriminated against because of your age?" (and so on). In this sequence, only respondents who indicated in the follow-up question that race was the basis for their discrimination experience were coded in the affirmative in the megapoll.

One final sequenced question asked whether the respondent had experienced dis-

crimination over a time period. If the respondent indicated that they had, they were an open ended question: "What happened?" The interview would code the open ended response as one of a set of categories that included employment discrimination. Only responses coded as employment discrimination were coded as an affirmative response in the megapoll.

The second stage to combining the surveys into a single megapoll involved recoded demographic variables into internally consistent categories. Age and education variables varied widely across polls. Some age variables were categorical, some were numerical. For education variables, the options between a high school degree and a bachelors degree varied, along with the options after a bachelors degree. In the megapoll, there is a categorical variable for age with four categories: 18-29, 30-39, 40-64, and 65+. The megapoll's education variable was also categorical with the following options, "less than a high school graduate","high school graduate", "some college or associate's degree", "bachelor's degree", and "post-bachelor's study."

At this stage, I also created a megapoll variable identifying respondents as Black (non-Hispanic), White (non-Hispanic), and Hispanic (all races). These categories are mutually exclusive in this variable. Only respondents from these groups were included in the megapoll because the sample sizes of other racial groups are too small to make reliable estimates even though this method is designed to accommodate small samples in low population states.

In the final step to combine the 34 polls and surveys into a megapoll, I coded meta-data about the polls. These are binary variables that identify similarities in the wording of the perceived discrimination question across polls. In particular, I coded similarities that were likely to systematically increase or decrease affirmative responses to the personal experience with discrimination in the workplace question. For example, when a survey provides scaled response options rather than a binary choices, the wording makes it likely that respondents would respond in the affirmative.

This reasoning is the basis for a fixed effect term for polls with scaled response options.

I anticipated that sequenced questions, questions without a specific time-frame for the discrimination event, questions where the discrimination location was unspecified rather than limited to the workplace, along with other In the individual model, a poll fixed effect controlled for the effect of sequenced questioning in the questions about the personal experience with discrimination event.

For example, I mentioned earlier that four polls give the respondent a gradient or scale set of responses to the question about personal experiences with racial discrimination. That is, someone experiences it "never," "rarely," "sometimes," and so on. I assume that more respondents answer in the affirmative to the graded response options relative to the dichotomous choice. I created a dummy variable for polls with a gradated response scale to control for this effect.

The wording of the survey question varied in other ways across polls. Some questions asked whether the respondent "ever" experienced discrimination while other questions asked whether the respondent experienced it within a specific timeframe, such as the last year or last five years. Because respondents are more likely to answer in the affirmative to a question without a timeframe, I created a dummy variable to control for this questions without a specific time restriction.

Another systematic variation in the questions wording was whether the question explicitly mentions discrimination in the realm of employment. If the question asked about discrimination in an unspecified arena, more respondents were likely to answer yes. As such, this feature was captured in a dummy variable.

Some polls targeted Hispanic audiences in particular. If the respondent knew that the poll was intended to gather the opinions of Hispanic people, she might infer something about the friendliness of the interviewer or interviewing company to Hispanics. Alternatively, she might feel more compelled to be a model representative of the group. To control for these possibilities, one last dummy variable was coded

Table 3.1: Cross-tabulation of race, gender, and personal experience of discrimination

	no percentage (raw count)	yes percentage (raw count)
White men	0.80 (12, 091)	0.20 (3, 059)
Black men	0.45 (1, 957)	0.55 (2, 354)
Hispanic men	0.70 (4, 541)	0.30 (1, 921)
White women	0.88 (13, 472)	0.12 (1, 842)
Black women	0.59 (3, 130)	0.41 (2, 182)
Hispanic women	0.79 (5, 467)	0.21 (1, 487)

to identify polls with this emphasis.

3.3 Initial Exploration of the Data

We can start to think about potential effects of demographic variables on perceptions of discrimination simply by looking at contingency tables (cross-tabs) for these data. For example, what trends do we initially observe just by looking at responses to the discrimination questions broken down by race and sex? Table 3.1 shows a breakdown of respondents by their race and sex and their response to the question about personal experiences of discrimination. In each racial/ethnic group, men are reporting more experiences with employment discrimination on the basis of race or ethnicity.[8] The difference between men and women, unsurprisingly, is not as large as the difference in reporting among the three racial/ethnic groups. Black respondents are answering in the affirmative 20-30% more often than other groups, at least double the rate.

Table 3.2 shows a similar breakdown. This time we compare responses to the question about racial discrimination across different levels of educational attainment.

[8]While I have not come across literature to explain this trend, my intuition is that women are classifying their discrimination experiences as based on sex or race, while men are predominately interpreting them through the lens of race. The alternative explanations are that 1. women experience less racial discrimination compared to men, 2. women are less cognizant of when they are experiencing discrimination relative to men, or 3. men are more prone to attribute a negative employment experience to discrimination.

Race is the third dimension in the figure. Among White and Hispanic respondents, we do not observe much variation across educational attainment, although the least educated categories do answer in the affirmative at the lowest rates in both groups. Among Black respondents, the range is wider. Where about 40% of high school graduates and less than high school graduates report a personal experience with discrimination, 55-59% of Black respondents with any higher education report personal experiences with racial discrimination. It is too early to draw conclusions here, but these trends do raise concerns about whether more vulnerable groups perceive discriminatory events as discriminatory at the same rate as more educated—therefore possibly more race-conscious—groups.

Table 3.2: Cross-tabulation of education attainment and personal experience of discrimination

	White Respondents		Black Respondents		Hispanic Respondents	
	no	yes	no	yes	no	yes
less than a high school graduate	0.84 (1,919)	0.16 (360)	0.61 (816)	0.39 (519)	0.77 (2,861)	0.23 (851)
high school graduate	0.86 (7,528)	0.14 (1,267)	0.59 (1,891)	0.41 (1,329)	0.74 (2,913)	0.26 (1,003)
some college or associate's degree	0.80 (7,290)	0.20 (1,799)	0.44 (1,353)	0.56 (1,731)	0.68 (2,287)	0.32 (1,075)
bachelor's degree	0.83 (6,122)	0.17 (1,295)	0.45 (698)	0.55 (860)	0.72 (1,448)	0.28 (566)
post-bachelor's study	0.80 (3,535)	0.20 (865)	0.41 (370)	0.59 (535)	0.69 (544)	0.31 (249)

Table 3.3: Cross-tabulation of age and experience of discrimination

	White Respondents		Black Respondents		Hispanic Respondents	
	no	yes	no	yes	no	yes
Ages 18-29	0.81 (3,316)	0.19 (796)	0.54 (955)	0.460 (822)	0.72 (2,561)	0.28 (986)
Ages 30-39	0.80 (4,383)	0.20 (1,079)	0.48 (865)	0.520 (919)	0.70 (2,210)	0.30 (930)
Ages 40-64	0.79 (10,402)	0.21 (2,755)	0.42 (1,617)	0.580 (2,279)	0.68 (2,883)	0.32 (1,336)
Ages 65+	0.87 (5,174)	0.13 (760)	0.47 (593)	0.530 (675)	0.76 (754)	0.24 (240)

Table 3.3 presents the division among different age groups in responses to the discrimination question. Again, the data is further subsetted by race. The variation among age groups is limited. Among Hispanics and Whites, in particular, responses vary little among the first three age groups. In the oldest group, we see one possible difference: more respondents age 65+ report that they have not personally experienced discrimination based on race. This drop does not occur among the oldest Black respondents. In fact, though it is not a large difference, it is the youngest age group in the Black subset, rather than the oldest, with the lowest yes rate.

While these contingency tables draw attention to demographic trends that have some facial validity (particularly given the support they hopefully lend to existing conclusions/work/results), we cannot draw confident conclusions about these trends yet, particularly if these demographic variables co-vary strongly with each other. Besides, we really want to know how all these demographic features together influence responses to the racial discrimination questions. Moreover, we want to understand how geographic features—state culture, state history, state ideology, rural-ness and urbanness, to name a few affect the choice as well. In short, we really want a statistical model that incorporates these demographic variables along with geographic ones to explain respondents' choices. There are, however, some challenges to using these polls to make state-level estimates of perceptions of discrimination.

3.4 Model Specification

The central challenge to developing estimates of perceived discrimination based on demographic variables and state of residence using national opinion polls is that they are *national* opinion polls. They were developed and executed to make reliable estimates of opinion at the national level. They were not intended to make state-level estimates and, as a result, states with small populations have very few respondents. In a number of surveys, some states have no respondents at all. The 2003 survey

sponsored by Time Magazine and CNN is a good example of this problem. The poll had 1,299 respondents. None of the respondents were from Alaska and Hawaii. Wyoming, Delaware, Idaho, and Montana had far fewer respondents. What if, based on pure bad luck, one of the respondents had been really unrepresentative of the population of Montana? For example, what if, by chance alone, two of the three respondents from Idaho were black? The opinion estimate for the whole state may sway widely in the wrong direction. With larger sample sizes, the polled sample will look more and more like the actual population of the state and, therefore, produce more accurate estimates of state opinion. Researchers, lacking the supernatural ability to go back and time and modify the sample size for their purposes, have developed ways to cope with this problem. Often they gather together more surveys over more years to make each individual state's sample size large enough, in a method called disaggregated or unpooled model.

Unpooled models have limitations. In unpooled models, individual poll responses are estimated within the state. They cannot incorporate information common across state units into their estimates, such as regional effects and national effects within a given time period. In addition, since polls from different years are often combined to increase the number of respondents from small states, the unpooled option often precludes or limits a researcher from building estimates that can vary over time. Finally, the unpooled approach has one significant disadvantage for my larger research question: questions about personal experiences with discrimination are not common poll questions. Even when they are included in a poll, sometimes only a subset of respondents are even asked the question. In short, it is difficult to find enough polls such that small states have large enough samples to make reliable estimates.

A multilevel regression with post-stratification (MRP) can overcome the limitations of unpooled models. With this partial-pooling approach, individual responses to a question are modeled as a function of demographic predictors and geographic

predictors. Geographic predictors are nested in a hierarchy. In this case, states are nested in regions that are nested in the nation. The post-stratification phase involves weighting the individual model's estimates using actual census data about the state to improve the accuracy of state-level estimates.

Park, Gelman and Bafumi (2004) developed modern multilevel regression models with post-stratification as a means for producing state-level estimates of opinion using national polls. Lax, Kastellec, and Phillips have implemented and promoted the technique, employing MRP both in their own research (Lax and Phillips 2009*a*;*b*, Kastellec, Lax and Phillips 2010, Lax and Phillips 2012) and through the creation and free distribution of an MRP primer to teach the method in a applied way (Kastellec, Lax and Phillips 2014).[9]

3.4.1 Individual-level Model

I apply multilevel regression with post-stratification to model the probability that a given individual will answer yes to the question of whether he or she has had a personal experience with racial discrimination in the employment field. The variable is binary, where a 1 equals a yes response and 0 equals a no response. All missing responses were removed from the data. The probability of a person answering in the affirmative to the relevant question is a function of the individual's demographic and geographic features, along with features of the poll to which she responded. The following is the mathematical statement of this model:

$$\begin{aligned}\Pr(y_i = 1) = \text{logit}^{-1}\Big(&\alpha^{\text{state}}_{s[i]} + \alpha^{\text{region}}_{r[i]} + +\alpha^{\text{poll}}_{p[i]} + \alpha^{age}_{k[i]} + \alpha^{education}_{l[i]} + \alpha^{age*educ}_{(k[i],\ l[i])} \\ &+ \beta^{\text{black}}_{s[i]} * \text{black} + \beta^{\text{hispanic}}_{s[i]} * \text{hispanic} + \beta^{\text{female}} * \text{female} + WB\Big)\end{aligned}$$

[9]This primer made this project possible!

The term i indexes individual respondents, so i ranges from 1 to the total number of complete survey responses in the megapoll, 52,496. α^{Black},$\alpha^{Hispanic}$, and α^{Female} are binary categories where 1 indicates that the respondent is a Black (non-Hispanic), Hispanic, or Female, respectively. The initial exploration of the data suggests that women respond in the affirmative to questions about race-based discrimination at a lower rate then men. The raw data also suggests that, consistent with expectations from previous work, people of color report more personal experiences with racial discrimination. Race and ethnicity are modeled with two dummy variables, Black and Hispanic, which are mutually exclusive. If a respondent is a Black Hispanic or a White Hispanic, the respondent is coded as Hispanic. All survey participants who identify as something other than White, Black, and/or Hispanic were dropped from the dataset, due to difficulties producing accurate state-level estimates with samples that small.

The term k is a 1 to 4 index for the age categories, and l is a 1 to 5 index for the education categories. These variables are modeled as random effects.

In addition to demographic features, the predictions are a function of the individual's geographic situation, including her state of residence and the region of the country the state occupies. The term r indexes the respondent by 1 of 5 regions. State and region random effects help us to account for differences among the states such as state culture, state history, rural-ness and urbanness, to name a few. The estimates can be improved by including explanatory variables available at the state-level but not the individual level. For example, we may believe that one reason why fewer people say yes to the discrimination question in Texas may have to do with the states strong tendency towards conservatism. The "Texas effect" may have something to do, in part, with political ideology. To capture this idea, I model state effects as a function of political ideology, using the percentage of the vote share that went to the presidential candidate of the Democratic Party in the most recent past presidential

election.

State-level effects can be problematic when one demographic group in a state has a very different experience than another demographic group in the state. For example, in a state where half the population feels very discriminated against and the other half feels like their lives have been relatively free of discrimination, that state effect would average to 0, which isn't the complete picture. Similarly, if a small group of people of color feel very discriminated against while an overwhelmingly white majority does not have that experience, the small group's perceptions would be difficult to pick up. While the dummy variables for race and ethnicity would pick up a systematic nation-wide effect for these variables, it is possible that the experiences of Black citizens of some states might be different than the experiences of Black citizens of other states, based on the laws and institutions of the state, the states' culture and values, and the racial diversity of the state, to name a few reasons.

As a result, I employ a varying slopes and varying intercepts random effects model, which allows the effect of race and ethnicity to vary by state. The terms $\alpha_{s[i]}^{black}$ and $\alpha_{s[i]}^{hispanic}$capture this modeling choice. μ^{black} and μ^{hispanic} are estimated as fixed slopes in the model. State effects are also modeled as a function of the state's Democratic vote share in the most recent presidential election:

$$\begin{aligned}
\beta_{b[i]}^{\text{black}} &= \mu^{black} + \alpha_{s[i]}^{\text{black}} \\
\beta_{h[i]}^{\text{hispanic}} &= \mu^{hispanic} + \alpha_{s[i]}^{\text{hispanic}} \\
\alpha_s^{state} &\sim N\left(\beta^{presvote} * presvote_s, \sigma_{state}^2\right)
\end{aligned}$$

Finally, the index p categorizes the respondent by the poll she answered (1-34). While not of substantive interest, the model requires a set of poll-related effects, controlling for variation based on when the question was asked, the way the question is asked and differences in the survey's target audience. As a start, because it is

difficult to account for all ways in which polls may systematically vary, I include a random effect for each poll. In addition, the term W is a $1 \times j$ vector of dummy variables for aspects of the poll's wording and B is a $j \times 1$ vector of fixed effect intercept shifts for wording variations;W represents a matrix of poll fixed effects. These are binary variables capturing systematic differences in how the poll worded its question about discrimination along with who the poll targeted. For example, I included a dummy variable for whether the discriminatory event was in the employment realm. I also included a dummy variable if the question about perceived discrimination was a two-part (or sequence) of questions.

The α terms for poll, age, education, age-education, and region are modeled effects for the various groups of respondents (modeled as drawn from a normal distribution with mean zero and endogenous variance):

$$\alpha \sim \Phi\left(0, \Sigma\right)$$

Results of Individual Model

By reviewing the results of the individual model, we can investigate whether there is support for the trends we observed in the cross-tabulations of the raw data earlier. Table 3.4 shows the results for fixed effects of the model. For demographic variables of race, ethnicity, and gender, the fixed effects need to be added to the state random effects to substantively interpret the effect. The coefficients do inform us, however, that the variables are each statistically significant in the direction the cross-tabs suggested. The intercept represents White respondents and the negative direction indicates that they are less likely to perceive themselves as experiencing discrimination. Black respondents, with their positive coefficient, are more likely respond in the affirmative to questions about perceived discrimination, along with respondents who identify as Hispanic. Finally, women respondents are less likely to indicate they have personal experiences with racial discrimination.

	Dependent variable:
	perceived discrimination
Constant	-2.852^{***}
	(0.253)
Black	1.884^{***}
	(0.067)
Hispanic	1.120^{***}
	(0.079)
Female	-0.356^{***}
	(0.024)
State vote share for	0.135
Democratic candidate for president	(0.215)
Poll Fixed Effect:	0.862^{***}
Employment Dummy	(0.209)
Poll Fixed Effect:	0.690^{***}
Timeframe Dummy	(0.189)
Poll Fixed Effect:	0.844^{***}
Scaled Responses Dummy	(0.283)
Poll Fixed Effect:	-0.470^{**}
"Helped or Hurt" wording	(0.202)
Poll Fixed Effect:	0.792^{***}
"Education" wording	(0.261)
Poll Fixed Effect:	-1.487^{***}
"What Happened?" Follow-up	(0.263)
Poll Fixed Effect:	0.106
"Victim" wording	(0.224)
Observations	52,496
Log Likelihood	$-23{,}357.400$
Akaike Inf. Crit.	46,760.790
Bayesian Inf. Crit.	46,964.770
Note:	*p<0.1; **p<0.05; ***p<0.01

Table 3.4: Fixed effects of the individual level logit model predicting the probability of a yes response on a question about a personal experience with racial discrimination in the workplace.

The individual model does not show support for the idea that states with more conservative populations report discrimination experiences at different rates than more liberal states. The State Democratic Vote Share coefficient in Table 3.4 shows the lack of statistical support for the relationship.

Poll level effects, on the other hand, are an important set of control variables. Whether the question mentions employment specifically (Poll Wording: Employment), mentions a time frame for the experience of discrimination (Poll Wording: Timeframe), or mentions a degree to which one experienced discrimination (Poll Wording: Scaled Response), differences in the text of the perceived discrimination question on the surveys led to systematic differences in the rates to which respondents answered in the affirmative.

It's worth noting that two poll-level fixed effects did not support existing work on measuring perceived discrimination. That work has suggested that surveys that word their questions on personal experiences with discrimination using the actual term "discrimination" and "victim of discrimination" will see fewer respondents respond in the affirmative because of "a sense of shame or distress at having been a victim of discrimination or a desire not to be labeled a victim," (Smith 2002). I coded a poll-level dummy variable for whether the term "discrimination" was mentioned in the question and another for whether the phrase "victim of discrimination" was included. When included in my individual model, the discrimination dummy did not come close to reaching conventions for statistical significance ($p = 0.67$). While the "victim" terminology came closer to these thresholds ($p = 0.17$), the direction of the effect was positive, suggesting respondents were more likely to answer in the affirmative if victim was part of the language.

3.4.2 Post-Stratification

After completing the multi-level model, the results are post-stratified using the longform Census from 1990, 2000, and the American Community Survey 2009-2013 sample.[10] The longform Census and American Community Surveys include variables that match the demographic variables from the individual model: age, sex, education, and race/ethnicity. By the end of the individual model phase, we can use the estimated effects to create a prediction for demographic group, in each state, in each year. In the post-stratification phase, we can multiply the effect by the actual population in the group-state-year and produce an estimate of the actual number of people of that type who would say yes to a question about a personal experience with discrimination.

3.5 Results of Model after Post-Stratification

The final product of the MRP estimation is an estimate of the total number of people in a state's White, Black and Hispanic populations that would answer yes to questions about personal experiences with racial discrimination. To make the estimates comparable across states, this estimate is divided by the total respective population. That is, the estimate of Black individuals in a state who would respond in the affirmative is divided by the total Black population of the state.

Figure 3.1 illustrates the results of the model averaged over the time. The states are ordered such that states with the highest portions of the population reporting discrimination are at the top of the figure. The first plot on the left illustrates the results for the Black populations of the states, the middle shows the results for the White populations, and the plot on the right of the figure shows the results for the Hispanic populations.

[10]The off-Census/ACS years are linearly interpolated using the ipolate function in Stata.

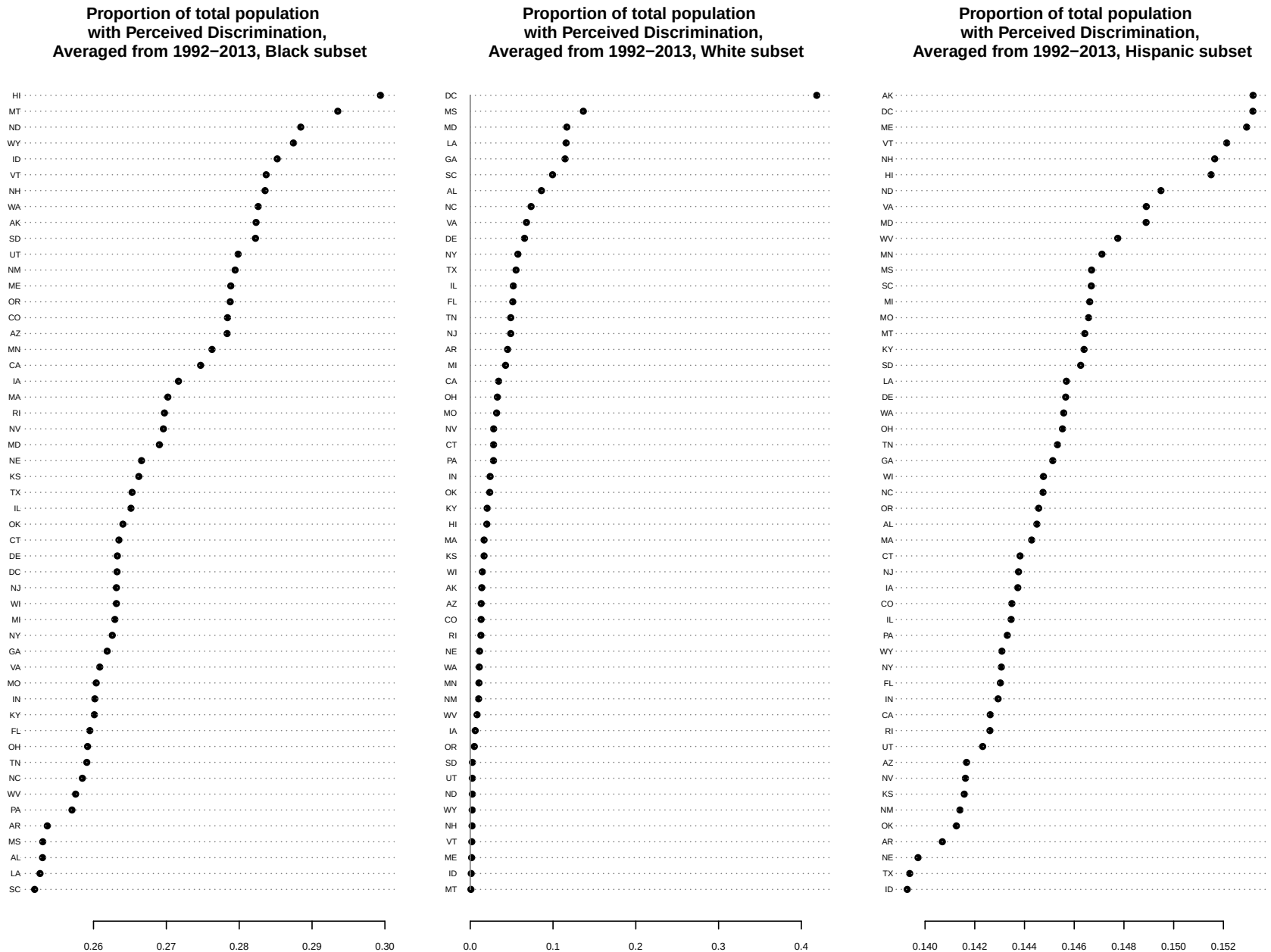

Figure 3.1: The averaged results of the multi-level model with post-stratification, with states ranked from largest proportion with complaints to smallest proportions.

The first two plots have some easily identified patterns. In the first plot, between 25% and 30% of the Black populations of the states will answer yes to a survey question about a personal experience of employment discrimination on the basis of race. The states with some of the largest Black populations— both in raw number and in proportion of the total population— have some of the lowest rates of reporting racial/ethnic discrimination. These states include Louisiana, South Carolina, Virginia and Alabama. States with very small populations overall and small Black populations top the list. A Black person in Vermont, Montana, or Idaho is much more likely to answer that they have had a personal experience with racial or ethnic discrimination in the workplace.

In the second plot illustrating the results for White populations of the states, the trend reverses. The states with the largest Black populations are the states where Whites are reporting personal experiences with racial discrimination at the highest rates. This includes Mississippi, Georgia, Louisiana, and South Carolina. On the whole, the portion of white populations of the states reporting employment discrimination experiences on the basis of race ranges from near 0% to 14% with DC as a strong outlier near 30%. When we exempt DC, this range is still nearly three-times as wide as the range for Black populations. It is also skewed to the right. In rural states with few people of color, such as Wyoming and Maine, Whites very rarely report personal experiences with discrimination.

In some ways, this trend makes sense. The more people of color in a state, the more people of color making hiring, firing, and employment decisions. A negative experience for a White employee with a Black employer can more easily be perceived as race-based. Similarly, it is less likely for a Black employee to see an experience as racial discrimination when the employment decision was made by a Black employer(Avery, McKay and Wilson 2008).

On the other hand, this trend is a little surprising and normatively concerning.

In the states in the South, where we might expect actual racial discrimination to be higher because of past and present discriminatory policies and racial tensions, Blacks are reporting discriminatory experiences at the lowest rates.

The final plot seems to echo the first. Again the list is topped with rural states with small minority populations. Unlike the plot for Black populations, these rural states are both among the highest ranking states and the lowest ranking. While Vermont, Maine, and North Dakota have among the highest estimates of Hispanic populations with personal experiences with discrimination, the states of Idaho, Nebraska, and Kansas have some of the lowest estimates. In a vein similar to the first plot, states with the largest populations of Hispanics/Latinx seem report personal experiences with discrimination at a lower rate. Arizona, Texas, Nevada, and New Mexico are among the bottom 10. This final plot has the narrowest range of the three with 14%-16% of the Hispanic populations of the states estimated to report experiences with racial/ethnic discrimination in the employment field. This range suggests that geography may not be an important factor in explaining why Hispanics report workplace discrimination.

Figure 3.1 shows the rates of perceived discrimination averaged over 20 years. If we are interested in trends in each state and demographic group over time, we can turn to Figures 3.7, 3.8, and 3.9 at the conclusion of this chapter. These figure shows the rates of perceived discrimination for each populations in each state over a 21 year period. The rates of perceived discrimination over the period leave me concerned and warrant further investigation. There are very strong effects for specific years that do not seem to be related to events of the time. One interesting temporal trend is that, among the three race or ethnic groups, only Whites are consistently reporting more experiences with discrimination on these grounds since the 1990s.

3.6 Validity

Before incorporating these estimates of perceived discrimination into an empirical test of the theory of legal mobilization for private policy enforcement, we should consider how well the estimates capture the concept of perceived discrimination. To review the validity of these estimates as a measure for perceived discrimination, I consider their relationship to other related phenomenon.

I anticipate that perceived discrimination is related to observed racial disparities in employment, in particular, the portion of people of color in management positions relative to the portion of people of color in the overall state population. Under-representation of people of color in management positions could be the result of discrimination in the workplace, but it also could be the result of other factors like differences in educational opportunities, socioeconoic class of family of original and other forms of structural racism including incarceration rates. For this reason, we would not expect a perfect relationship between the two concepts, but they ought to be positively related.

I also anticipate that perceived discrimination will be related to the passage of state public policies that disproportionately harm people of color. Two examples of such policies are the passage of voter ID laws since 2000 and the passage of anti-immigration laws like the Support Our Law Enforcement and Safe Neighborhoods Act in Arizona in 2010 and subsequent copycat bills in the following two years.

I used two resources to identify the voter ID laws in the states. The first resource was the National Conference of State Legislatures' voter ID law history. The NCSL categorizes voter ID laws based on two dimensions: the first dimension is whether the state requires an ID and, if it does, whether the ID is a photo ID. The most restrictive law on this dimension is a photo ID requirement, the least restrictive law is one requiring no ID at all to vote. The second dimension is the strictness of the ID requirement. If the law requires a person without the required identification to cast a

provisional ballot and return within a few days with the proof of identity before the provisional ballot is counted, the law is categorized as a strict law. Conversely, a law is categorized as non-strict if "At least some voters without acceptable identification have an option to cast a ballot that will be counted without further action on the part of the voter," (NSCL website). Non-strict states may require, for example, that a voter sign an affidavit before casting a ballot on election day. Figure 3.3 visualizes the two dimensions and categorizes each state according to their voter identification laws as of summer 2017.

The voter ID history documents changes to ID laws, but does not necessarily identify the law that existed prior to the change. As a result, I also relied on a report to the U.S. Election Assistance Commission on Best Practices to Improve Voter Identification Requirements authored by The Eagleton Institute of Politics, Rutgers, The State University of New Jersey and The Moritz College of Law, The Ohio State University. This report describes ID laws in all 50 states in 2004 and I coded these laws using the NCSL's two dimensions and categories, thereby establishing a baseline.

Figure 3.2 visualizes the voter identification laws of the states in 2013, which is the final year of the perceived discrimination estimates. The least restrictive category is the no ID requirement and the most restrictive category is the strict photo ID requirement. The categories in-between are more difficult to order because it requires us to make assumptions about whether a law's strictness is more important than the type of ID required in terms of restrictiveness.

If we look at the most restrictive category of voter ID laws, we observe that the states with the most restrictive voter ID laws are those states where people of color have the smallest percentages of the population reporting personal experiences with discrimination. Conversely, for the states' White populations, we see the strictest requirements for voting when Whites' rates of perceived discrimination are highest. In other words, in states where we might expect racial tensions to be the most fraught,

Whites are reporting personal racial discrimination experiences more frequently. In those same states, people of color seem to report fewer experiences with perceived discrimination in states.

Another way to divide up the states by voting restrictions is to simply look at strictness. In states with strict requirements, votes are not counted if voters without the proper identification do not return within a specified time-frame with the appropriate documentation. In non-strict states, these votes are still counted on election day. In Figure 3.4, the states are grouped into three categories: states with the federally mandated minimum voter identification requirements (HAVA minimum), [11] states with non-strict ID requirements, and states with strict requirements. The difference between the strict states and the other states is starkest in the plot contrasting the laws with perceived discrimination in White populations. It is the most muddled in the plot contrasting the laws with perceived discrimination in Hispanic populations.

A Welch Two Sample t-test can contextualize the observations in Figures 3.2 and 3.4. The t-test calculates whether a statistically significant difference exists between the means of two groups. In this case, the test helps us answer the question: are states with more restrictive voting ID laws statistically different from other states in terms of perceptions of discrimination among race groups? The t-statistic and p-values produced by a Welch Two Sample t-test inform us of the probability we would see the difference in means if in actuality, there was no statistical difference between the groups.

Table 3.5 provides the results of those t-tests. When it comes to perceived discrimination among Hispanics, there seems to be a small, but statistically significant difference between states with the most restrictive voter ID laws and those without.

[11] The Help America Vote Act of 2002 (HAVA) established a minimum requirement for voting identification in the states. When a voter registers for the first time, she must provide a driving license number or the last four digits of her social security number

Perceived Discrimination	Independent Samples	Mean of X	Mean of Y	p-value
Black Populations	strict and not strict	0.245	0.250	0.116
	strict photo ID or not	0.242	0.250	0.006
	new voter ID restrictions or not	0.290	0.296	0.047
Whites Populations	strict and not strict	0.052	0.031	0.154
	strict photo ID or not	0.065	0.030	0.059
	new voter ID restrictions or not	0.048	0.035	0.261
Hispanic Populations	strict and not strict	0.129	0.132	0.081
	strict photo ID or not	0.128	0.132	0.027
	new voter ID restrictions or not	0.159	0.161	0.037

Table 3.5: Welch Two Sample T-Tests

The same pattern seems to exist among Black populations, but the p-values are larger. While the difference in means across the restrictive and nonrestrictive states is larger for perceived discrimination among Whites, the difference looks to be statistically indistinguishable from the null hypothesis.

Another way to think about racial tensions in a state is to consider whether the electorate or legislature has sought to make voting more difficult for marginalized people in recent history. The NCSL identified the 2000s as the start of a new wave of interest in voter identification laws, with the first law originating in Missouri in 2002. The Eagleton Institute Report described voter identification law in each state in 2004, so from that point onward I could code whether a legislative bill or referendum passed in a state, making voter identification laws more restrictive. Because the goal was to get a sense of the racial climate of the state, I included any bill or referendum that passed, even if the Courts halted implementation of the law. Because my perceived discrimination scores end in 2013, that was the final year in which a bill or referendum could pass and be included in this investigation. Figure 3.5 shows the distribution of perceived discrimination scores among states that passed a new restriction and states that did not. Percent of the group population with perceived discrimination was averaged from 2004 to 2013.

Table 3.5 also provides the results of t-tests on the means of states that passed

new voter ID restrictions and those that did not. The same trend emerged: a small but statistically significant difference in means exists between the states that passed restrictions and those that did not, at least when it comes to populations of color. While the reverse appears to be true in the second plot in Figure 3.5, any difference in perceived discrimination among Whites between the two groups of states is not statistically distinct from the null hypothesis that the means are the same.

The political climate of a state, particularly its climate towards Hispanic/Latinx people, may also be reflected in its laws surrounding immigration. In 2010, the state of Arizona made national headlines with its passage of the Support Our Law Enforcement and Safe Neighborhoods Act. The law was among the strictest states laws surrounding immigration at the time and affected the lives of legal aliens and U.S. citizens, by requiring aliens to carry proof of their legal status and by requiring law enforcement officers to attempt to determine immigration status of anyone detained legally and for whom they had reasonable suspicion of illegal immigration status. The law prompted other states to pursue similarly strict laws on Hispanic people living in the states.

Mother Jones produced a report and database identifying state anti-immigration laws and bills in the years 2010-2011. They relied on the National Conference of State Legislatures to produce these materials. In this report, states were classified by whether a state proposed an anti-immigration bill similar to the Arizona law and, if so, whether it passed. Figure 3.6 shows the estimates of perceived discrimination for each category of states.

I tested the means of states that proposed laws resembling Arizona's immigration law (including Arizona's original law) to states without proposals in 2010-2011 using a Welch Two sample t-test. Any state with a proposal, regardless of whether it passed, was included in the first group. Independent sample t-tests comparing perceived discrimination in states that passed restrictive immigration bills from those that did

Perceived Discrimination	**Independent Samples**	**Mean X**	**Mean Y**	**p-value**
Black Populations	proposed restrictive immigration law or not	0.284	0.290	0.121
	passed restrictive immigration law or not	0.281	0.286	0.422
Whites Populations	proposed restrictive immigration law or not	0.046	0.027	0.065
	passed restrictive immigration law or not	0.066	0.037	0.280
Hispanic Populations	proposed restrictive immigration law or not	0.154	0.156	0.247
	passed restrictive immigration law or not	0.153	0.154	0.372

Table 3.6: Welch Two Sample T-Tests for states with new restrictive immigration laws

not pass them did not find a statistically significant difference in the means. Similarly, estimates for perceived discrimination in states that passed copycat immigration laws were not statistically different from those that did.

3.7 Conclusion

One of the biggest empirical challenges of this project is how to estimate perceptions of discrimination in a large-N quantitative study across the United States. In this chapter, I proposed that perceived discrimination could be estimated for three race groups in each state-year using national opinion polls and a multilevel regression model with post-stratification. The modeling approach addresses the problems of small sample sizes in low population states.

The results of this model aligned with expectations from previous scholarship: Black respondents have the highest rates of perceived discrimination, followed by Hispanics. Education level had a positive relationship with the rate of responding yes to a personal discrimination question. In addition, contrary to at least one previous study, age was negatively related to the yes rate. Perceptions varied little over the 20 year time period. One of the most interesting results of the measurement model is the trend for rural states with small Black populations to have the highest estimates for percent of the population with perceptions of discrimination, while the estimates were lowest in states in the Southeast, with large black populations but histories of

discriminatory policies. Similarly, White populations have the highest estimates of perceptions with racial discrimination in those Southeastern states.

The following chapter also confronts a measurement challenge. At its core, this chapter's measurement challenge is one faced by researchers of public opinion: too few people were asked the question we care about and we can't go back and ask for a re-do. As a result, state-level estimates are difficult to estimate, particularly in low population states. Multilevel regression modeling with post-stratification mitigated this difficulty.

Chapter four's measurement challenge is of a different sort. Support Structure for Legal Mobilization is an important concept within the field of law and society. It is also a latent concept and its conceptual structure, particularly whether it is unidimensional, is under-developed in scholarship. Chapter four considers these questions and challenges and proposes a measurement strategy for the concept, which will later be utilized, along with these Percieved Discrimination estimates, in the hypothesis testing chapter five.

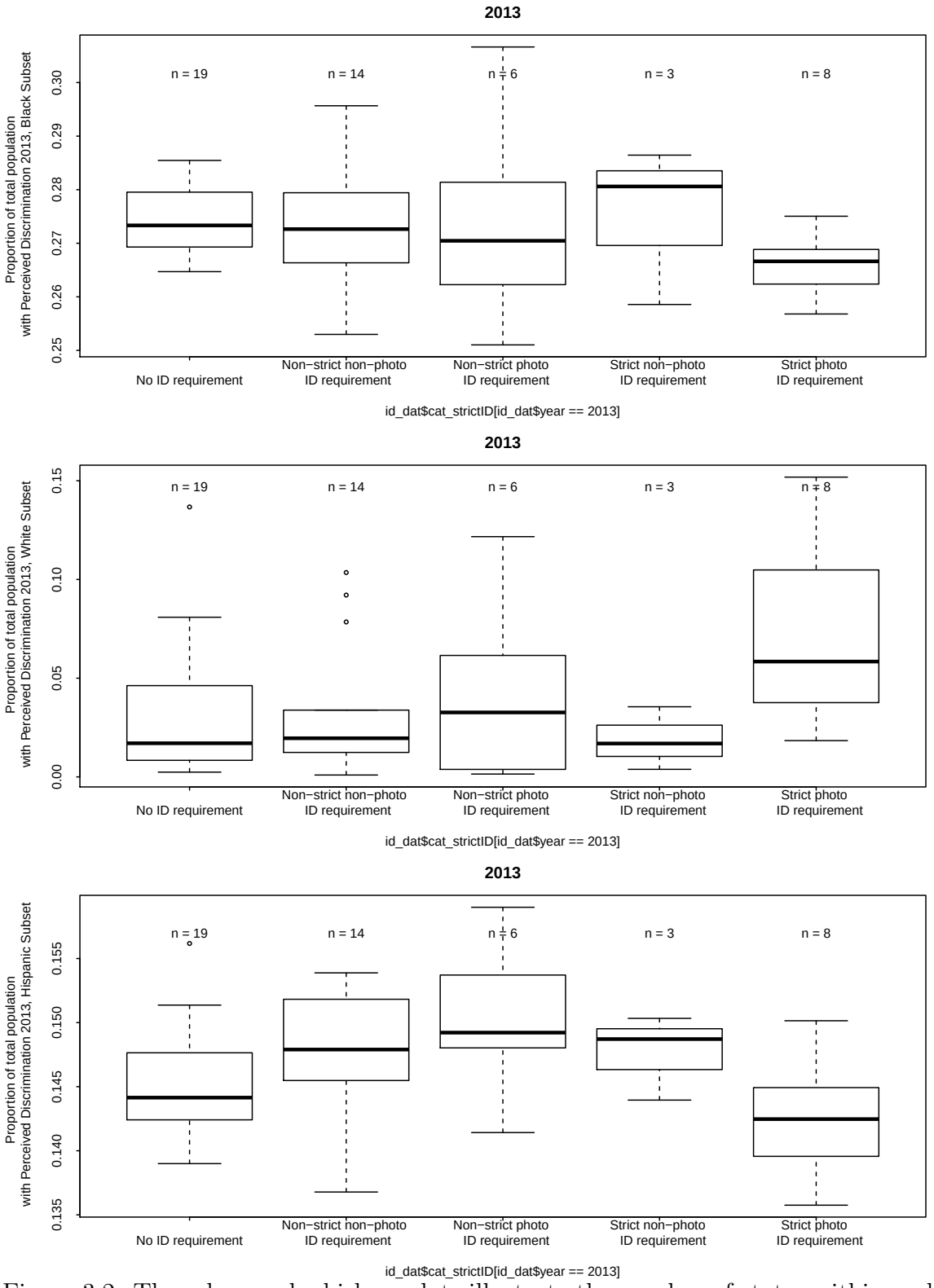

Figure 3.2: These box-and-whiskers plots illustrate the number of states within each category of voter identification law in the year 2013. The dark bar identifies the estimate for the proportion of a race/ethnic subgroup's population with perceived discrimination in the median state for that category of voter ID law

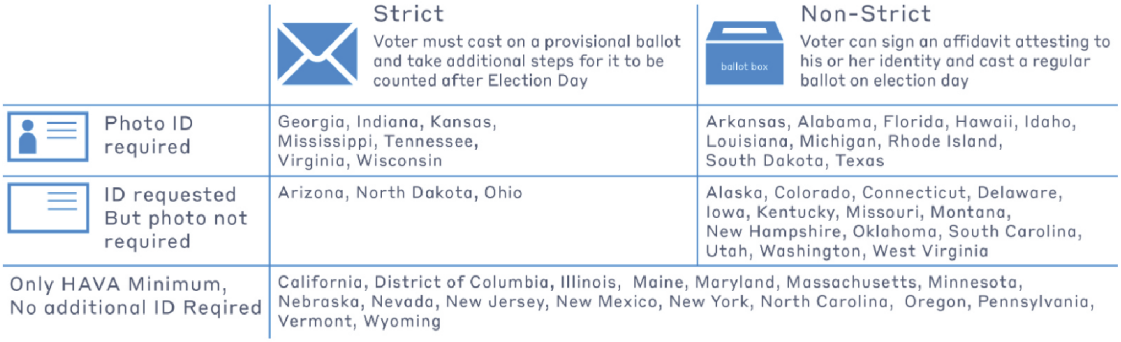

Figure 3.3: This table was published in the MIT Election Data and Science Lab's report on voter identification laws. The information to make the table came from the National Conference of State Legislatures' webpage on Voter Identification Laws

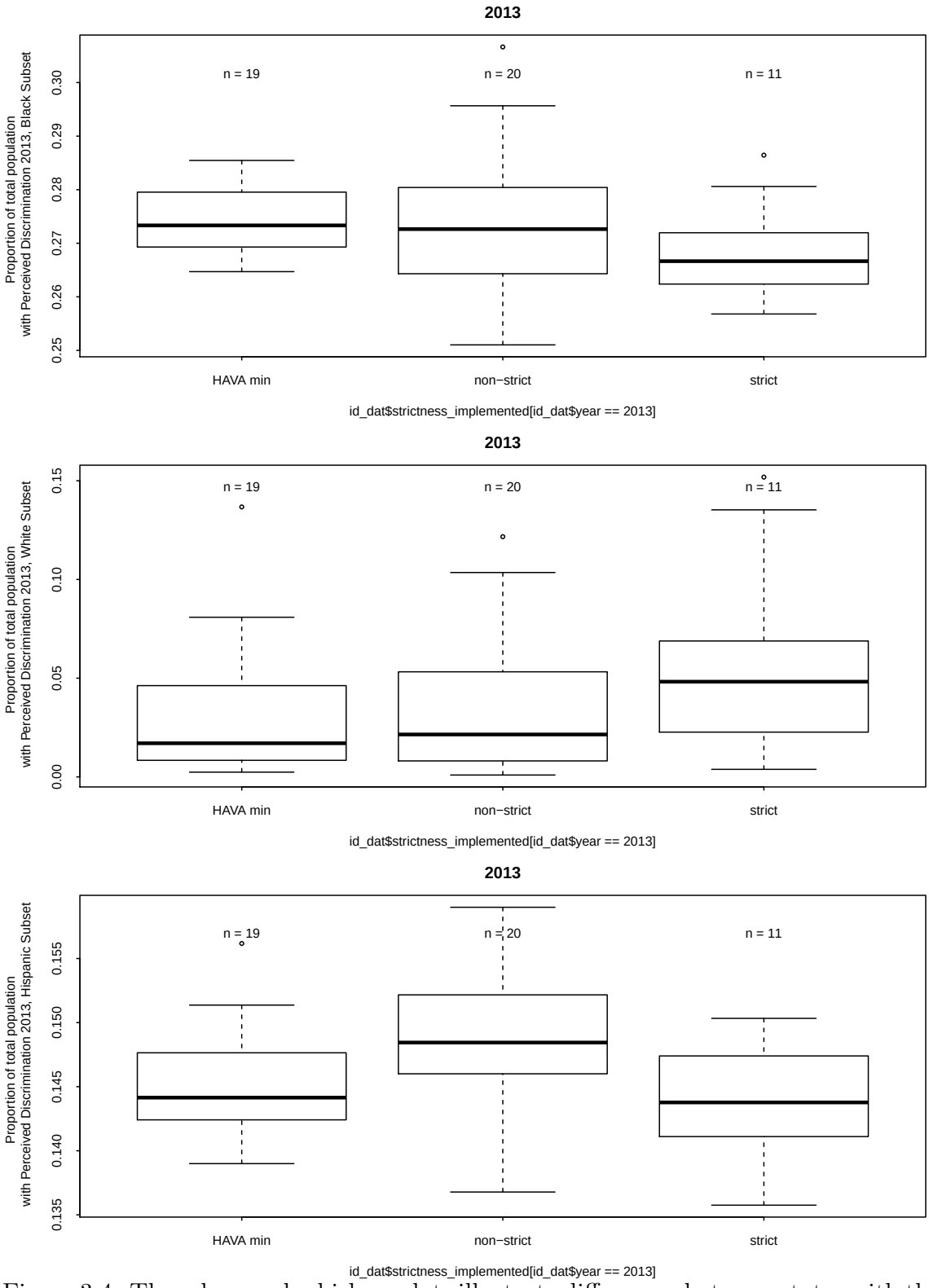

Figure 3.4: These box-and-whiskers plots illustrate differences between states with the federal minimum for poll identification requirements (HAVA minimum), states with non-strict ID requirements, and states with strict requirements in 2013. The dark bar identifies the estimate for the proportion of a race/ethnic subgroup's population with perceived discrimination experience in the median state for that category of voter ID law

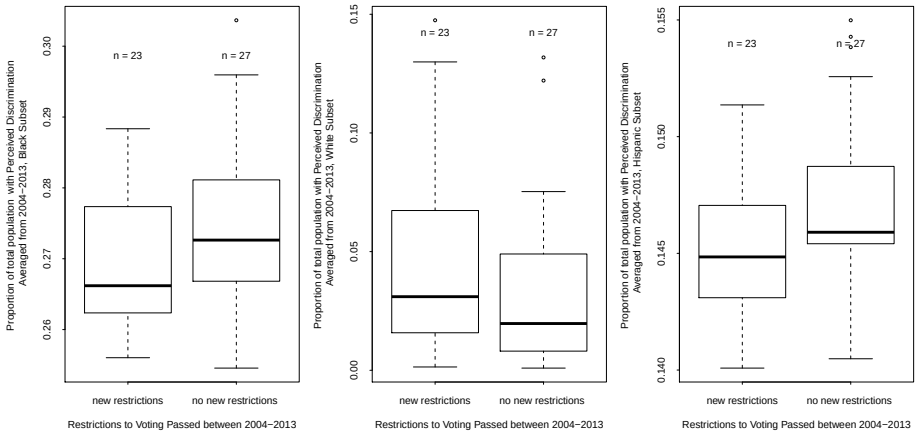

Figure 3.5: This box-and-whiskers plot divides the states into those that passed a new voter id restriction between 2004 and 2013 and those that did not. The y-axis is the percent of group population with perceived discrimination averaged over 2004-2013.

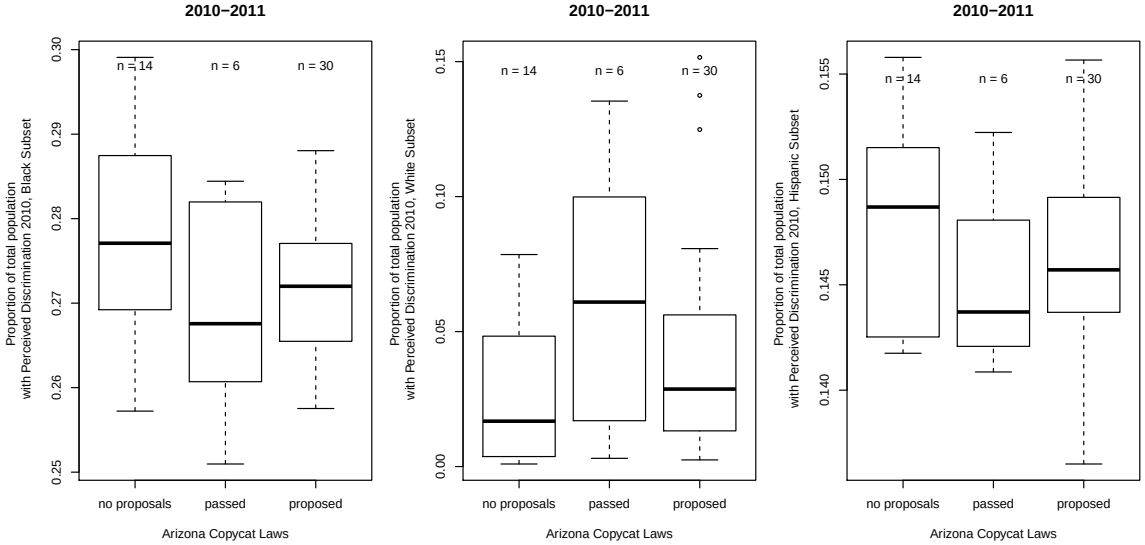

Figure 3.6: These box-and-whiskers plots divide the states into those which passed an Arizona copycat law on immigration, those which proposed bills that did not pass, and those with no proposals. The y-axis is the percent of group population with perceived discrimination averaged over 2004-2013.

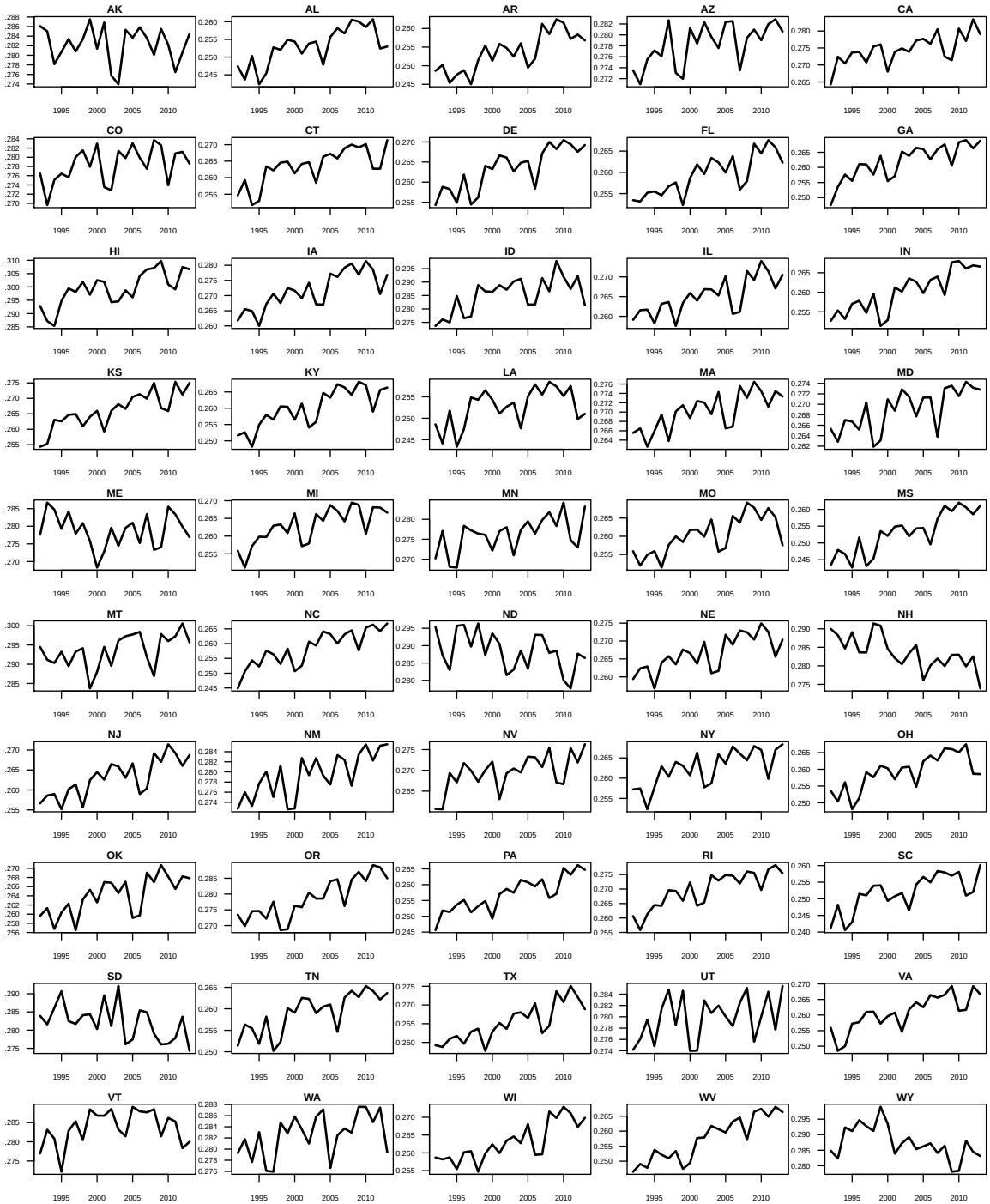

Figure 3.7: Proportion of black population with perceptions of discrimination from 1991-2013.

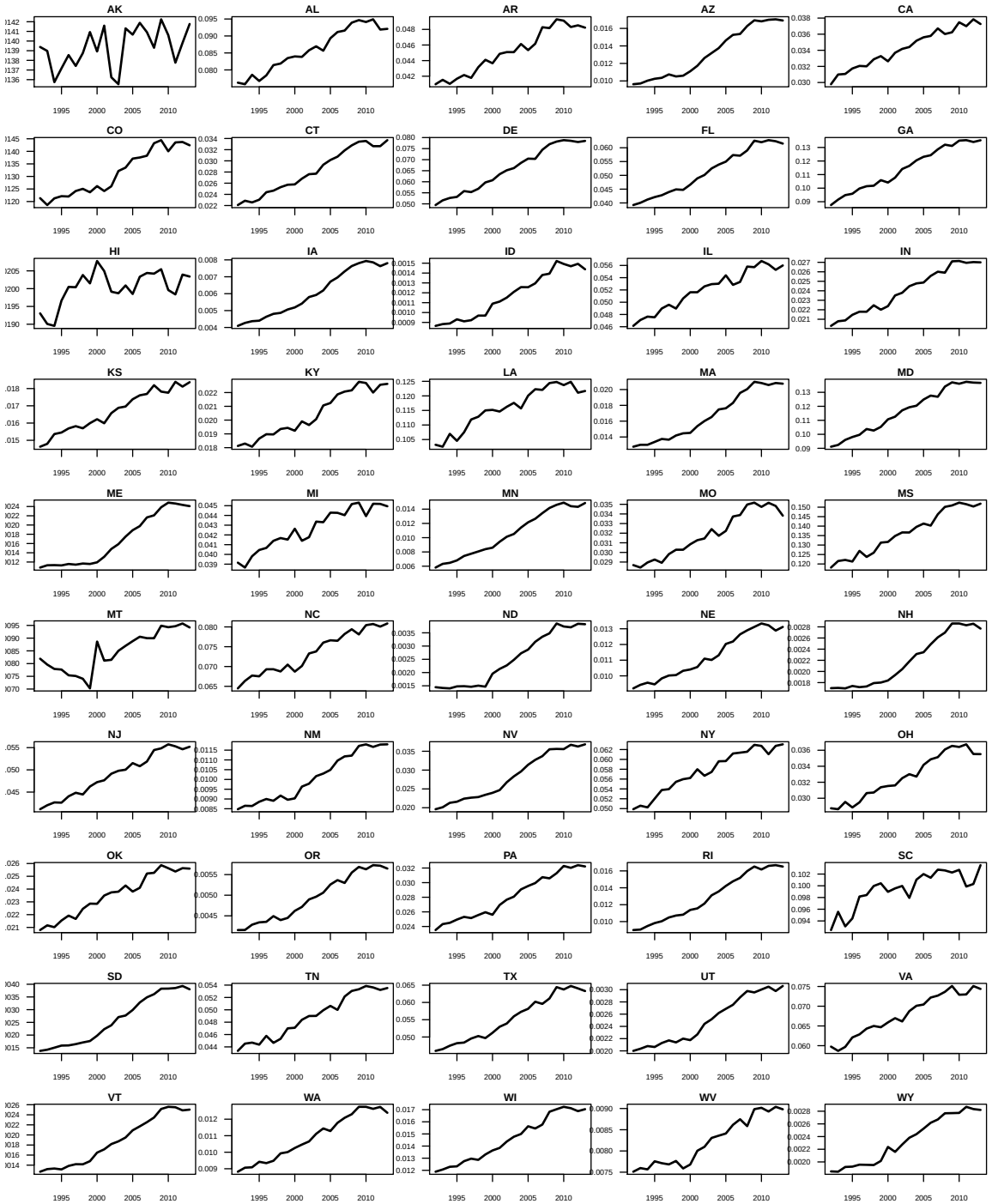

Figure 3.8: Proportion of White population with perceptions of discrimination from 1991-2013.

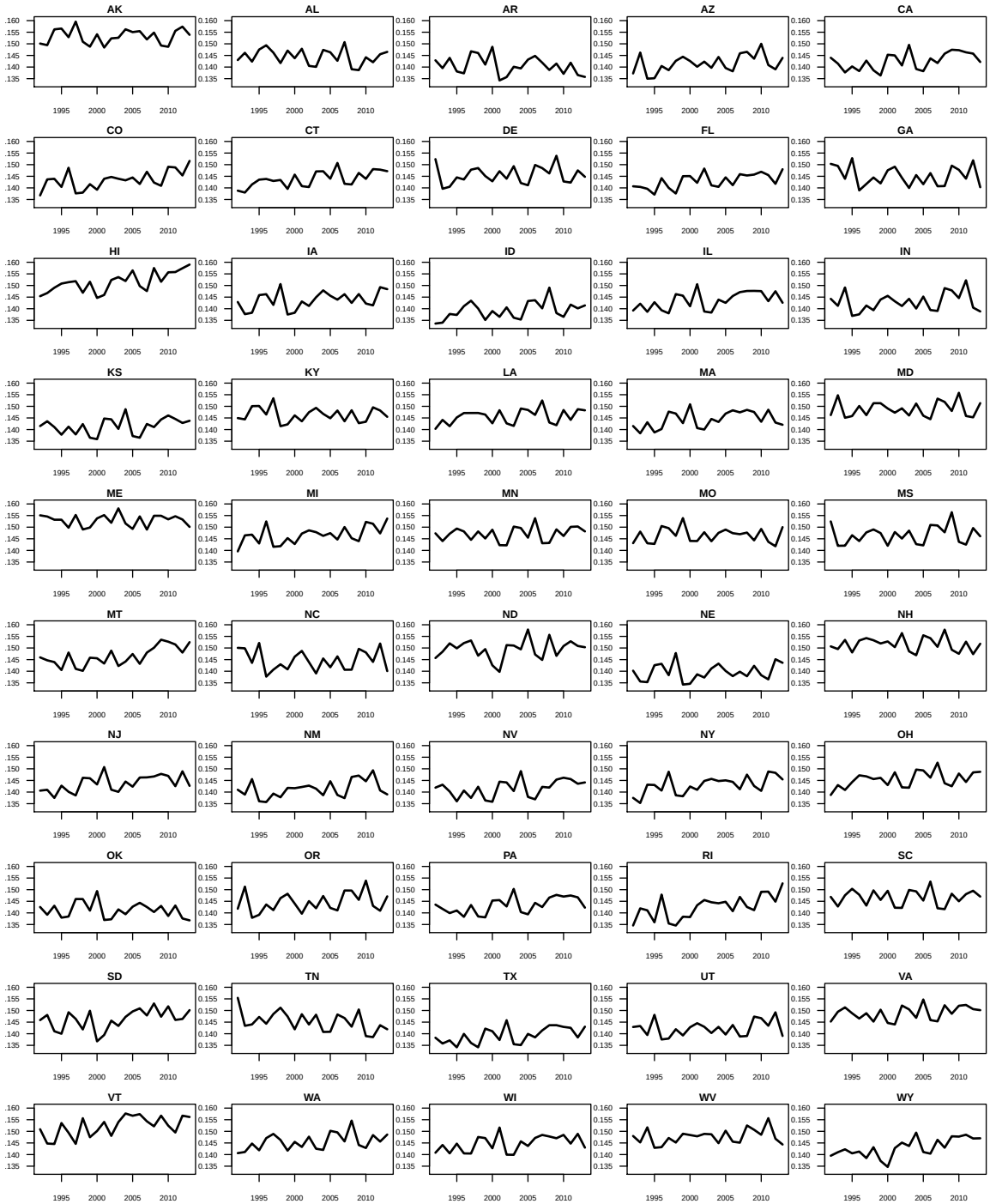

Figure 3.9: Proportion of Hispanic population with perceptions of discrimination from 1991-2013.

Chapter 4 Measuring support structure for legal mobilization

Support structure for legal mobilization affects both the perception of an event as a rights-violation and the decision whether to pursue a rights claim. In addition, support structure for legal mobilization reduces the costs associated with pursuing rights claims and increases the probability of success. After a grievance is identified, support structure for legal mobilization makes it easier to move forward with a claim. To explore and support this theoretical proposition, we need a method of measuring the presence and strength of a legal support structure in a region in a given year. I propose combining a set of indicator variables into an additive index to account for the multidimensionality of the concept.

4.1 Defining Support Structure for Legal Mobilization

Chapter two first introduced the concept of support structure for legal mobilization. Charles Epp developed the concept in *The Rights Revolution* as an explanation for why some countries have had successful rights revolutions—that is, a fundamental shift in the judiciary's attention to and support of individual rights. Where previous scholarship had posited that the change came from constitutional design, changes in judicial attitudes, or a culture of rights consciousness, Epp reminds his readers of the uniquely passive nature of many judicial institutions. In a common law system, judicial policy can only change through actual cases and controversies. Therefore, cases involving individual rights must consistently reach the appellate courts for changes to occur. Everyday individuals with standing have to bring those cases. This is a resource-intensive investment, often taken on when the case law is unfavorable to

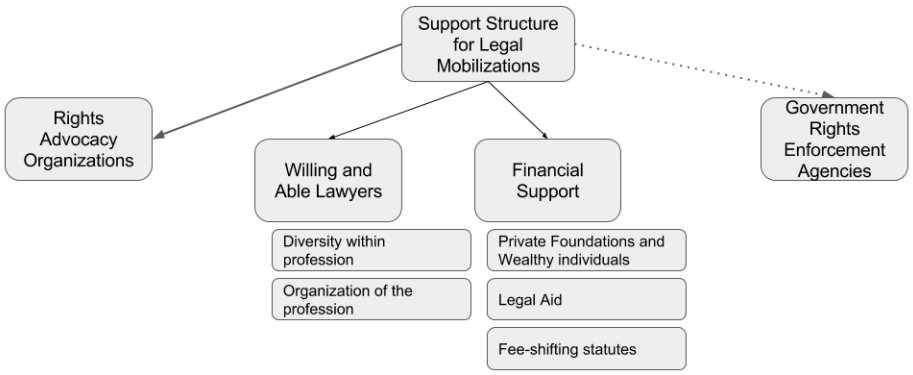

Figure 4.1: The concept of Support Structure for Legal Mobilization and its component parts

individual with the suit. Support structure for legal mobilization "can provide the consistent support that is needed to move case after case through the courts," (19).

The support structure for legal mobilization consists of three main components: rights-advocacy organizations, willing and able attorneys, and financial support. Epp suggests that, in some instances, government rights enforcement agencies are a fourth component.[1] Figure 4.1 illustrates the structure of the concept.

Rights organizations are crucial to rights revolutions. They can provide individuals with legal counsel and financial assistance. These organizations also can support potential litigants by connecting them to networks of volunteer or low-cost attorneys and legal aid organizations. In addition to supporting individuals with claims, rights organizations think of the big picture, developing long-term legal strategies to get cases with sympathetic litigants and the right fact patterns to the appellate level courts. At the big picture level, these organizations bring publicity to a cause and fund research on it. Several national rights organizations were important forces in the

[1]While the United States is a weak case of this fourth component compared to the UK and Canada cases, Epp does give the example of the Justice Department to illustrate how this component supports individual rights litigants:"The Justice Department at some points in its history has directly supported lawsuits, conducted and coordinated legal research and strategy, and filed supportive amicus curiae briefs" (page 19)

rights revolution that took place in the mid-Twentieth century United States, such as the NAACP, ACLU, and American Jewish Congress, among others.

The second component of support structure for legal mobilization is the availability of willing and able attorneys. Epp breaks down the component further: for a region to have willing and able attorneys, the legal profession must be diverse. Epp focuses on the extent to which women and people of color join the profession to capture this feature. Epp argues that the feature is important because attorneys from nontraditional backgrounds are more likely to choose careers that help those at a disadvantage in the legal system. In addition to the diversity of the profession, willing and able attorneys is characterized by the organization of the profession. Larger firms permit lawyers to "specialize, to work on nonrenumerative cases, and to take advantage of economies of scale"(20). [2] In the context of the American rights revolution, Epp provides the time-line for changes in legal training, law school demographic composition, and professional organization in the 20th century alongside the changing Supreme Court docket.

The final component Epp stresses in his definition of support structure for legal mobilization is financial support for litigants. Epp reminds us that "the judicial process is time-consuming, expensive, and arcane,"(18). Without financial support, litigants may choose a disadvantageous settlement for their cases or may never file a claim at all. Hiring a legal team is one of the largest expenses, but the quality of a party's legal counsel plays an important role in the outcome of a case. Financial support can come from wealthy individuals, private foundations, legal aid organizations, and from laws that reduce the financial burden to one-shot litigants, such as fee-shifting statutes. To support this point in the American case study, Epp details the role that organizations like the Ford Foundation, the American Fund for

[2]He also includes legal training in this category, by which he means that legal training must take place in law schools rather than in an apprenticeship model. There is little variation in this aspect of the concept because the apprenticeship model in my case—the United States from 1989-2013–is legal in just a handful of states and rarely utilized.

Public Service, and the Legal Services Corporation played in either financing rights-advocacy organizations or, in the case of the latter organization, providing low cost legal assistance directly to individual litigants who qualify.

While I rely on Charles Epp's concept and its three underlying components, this project diverges from Epp in an important way. Charles Epp uses support structure for legal mobilization to explain rights revolutions at the country-level. A rights revolution is a historic transformation, a fundamental shift in the nature of a state's judiciary. This transformation occurred in the United States in the middle of the 20th century. From the nation's inception until the Great Depression, the dockets of the American federal courts were filled with economic case. Epp's main argument is that these courts considered and supported more and more individual rights cases because of the growing support structure for legal mobilization in the 20th century. Eventually the system crossed a threshold to become a post-rights revolution state.

This work investigates a phenomenon long into the post-rights revolution period in the United states: legal mobilization in employment discrimination cases at the U.S. state-year level from 1989-2013. Instead of a threshold model of causality, I expect a direct correlation between the explanatory variables and the dependent variable.[3]. Lastly, components of the causal story, such as long-term litigation strategies and judicial decision-making at the highest levels of the court, do not factor into the theory proposed for rights claiming. The policy-making judicial bodies play a diminished role here.

Despite these differences, support structure for legal mobilization should bring about more individual rights claims for similar reasons as Epp's theory of rights revolutions. Lawsuits start in the lowest rungs of the judicial hierarchy whether or not they are bound for the Supreme Court. Private individuals with standing have to start the legal process in both cases, and it is expensive and risky for them to do

[3]While there likely are upward bounds to that relationship, this project does not theorize on them

so. Support structure for legal mobilization reduces the costs of legal representation to private individuals with claims, making actual litigants of potential litigants.

4.2 Existing Measures and the Concept in the Literature

In order to test this component of my theory of legal mobilization in a large-scale quantitative study, I need to produce credible and quantifiable estimates of a region's support structure for legal mobilization. This poses a challenge. Support structure for legal mobilization encompasses several distinct but theoretically related features of a region. These features include, for example, the number of lawyers in the region, the diversity and organization of the legal profession, the number and capacity of legal aid organizations, and the presence of supportive rights organizations. This section discusses how previous scholarship has addressed the move from conceptualization to operationalization and measurement.

Brace and Hall (2001) provide an approach to measuring this concept across the states. In this project, they want to explain the portion of state supreme court dockets filled by cases with power asymmetry between the parties and also the success rate of the "have-nots" in these cases. Building from Epp (1998), they theorize that legal support structure may explain variation here. In order to test this explanation, they use two variables to capture whether a state has more affordable and, therefore, accessible legal resources: lawyers per capita and legal interest organizations.[4] They find support for the lawyers per capita variable, but none for the legal interest organizations variable.

[4]This variable is actually proportion of state lobby groups that are legal organizations. Aside from the fact that we don't know how a group is classified a legal organization (are they bar associations? Legal aid ngos? Both?), a proportion like this can be misleading. This proportion is conditional on two things: the actual number of legal organizations and also the relative size and strength of the other lobby groups. For example, let's say there are 30 legal organization lobby groups in state A and state B. In addition, there are 100 oil lobby groups in A, but only 10 in B. B would preform better on this scale with the exact same number of legal organizations per capita.

The single (or in this case double) indicator approach to measurement can be problematic, particularly if the initial concept is multifaceted. Consider Figure 4.1. The Brace and Hall variables may capture part of the "willing and able lawyers" branch of this concept, although lawyers per capita does not touch on diversity within the legal profession nor the organizational structure of the profession. The financial support and rights advocacy organizations branches, on the other hand, are completely absent. Perhaps this absence could be justified, if we knew that these variables were highly correlated and, therefore, are substitutable. The fact that one of their variables was statistically significant while the other was not suggests that they are not, in fact, substitutable.

Brace and Hall (2001) are not the only researchers to solve the measurement question by using a single indicator of the concept. Songer, Johnson, and Bowie (2013) are another example of this measurement strategy for legal support structure in a quantitative test of a theory. These authors theorize that formal constitutional changes, in particular, the adoption of the 1982 Canadian Charter of Human Rights, played an important role in the rights revolution in Canada. Like Epp, the authors use shifts in the Supreme Court's agenda toward more individual rights and constitutional cases as evidence of a rights revolution. To control for support structure for legal mobilization, the authors include two indicators of the concept: the number of lawyers and amount of monetary support from the state to legal aid. The authors find modest support for the relationship between legal aid funding and changes to the judicial agenda, but no support from their statistical models for the relationship between the lawyer population and the agenda shift.

When Epp has investigated the impact of support structure for legal mobilization in quantitative work, he similarly uses a single or double indicator approach to measurement. In an earlier iteration of the Rights Revolution project, Epp (1991) describes how private individuals have greater difficulty acquiring and compensating

attorneys and how that difficulty may keep these individuals from pursuing rights litigation. From this claim, he moves to minority and women attorneys as an explanatory variable. The data comes from the "census of the population" for 1970 and 1980. it is divided by state population of women and minority people. (is this the u.s. census or some portion of it?)looks at 1970, 1975, 1980 "The dependent variable is the number of lawsuits filed per 1,000 minority and female employees subject to Equal Employment Opportunity Commission jurisdiction in each state" (Epp 1991 pg. 152)

After *The Rights Revolution*, Epp's next book project was entitled *Making Rights Real*(2009). The book discusses the process by which some recalcitrant local bureaucracies adopt policies and guidelines to implement new rights. In *Making Rights Real*, Epp returns to the support structure for legal mobilization concept, though in this text it is referred to as "local litigation support structures." He measures the concept in two ways: first, he asks local bureaucrats and managers of their perceptions of the number of attorneys and citizens groups in the community, particularly those that would be willing to support lawsuits against the manager's agency. In addition, he has an actual count of the number of attorneys in a locality who specialize in lawsuits against government agencies. He used the Martindale-Hubbell directory of attorneys for this count, specifically those attorneys who listed "government" as a specialty.

The single (or double indicator) approach is difficult to justify, particularly when a scholar has available data for a variety of observable manifestations of the concept. Choosing just one of the manifestations means losing all the information that the other manifestations provide. Moreover the scholar faces some difficulty justifying the choice. Why choose one manifestation, say, the number of legal aid organizations, as the proxy for the concept over a different manifestation, such as the number of lawyers in the region? With a set of related-but-not-perfectly-correlated observable indicators of the concept and no obviously superior single indicator, the ideal measurement

strategy combines information from the set to produce a single scale.

4.3 Quantifiable Indicators of Support Structure for Legal Mobilization

To measure support structure for legal mobilization, I began by collecting indicator variables based on Epp's description of the concept from *The Rights Revolution* as they apply to this research context. This section describes these quantifiable indicators.

4.3.1 Minority Rights Organizations

In *The Rights Revolution*, rights organizations cover a range of rights such as the rights of racial minorities (the NAACP), religious freedom (the Anti-Defamation League) and First Amendment and individual liberties (the ACLU). This project sets out to explain the rate of rights claiming in the context of employment discrimination on the basis of race or ethnicity. Because of limitations in the survey data in Chapter 3, these claims will be further narrowed to those filed because of racial or ethnic discrimination against Black people, Hispanic people, and White people. Therefore, I limit rights organizations to just those that protect the rights of Black and Hispanic people. For concision, I continue to refer to this subset of organizations as minority rights organizations.

To quantify rights organizations in this project, I use data made available through the National Center for Charitable Statistics (NCCS). The NCCS cleans and combines information from Form 990s that public charities, private foundations, and all other 501(c) organizations file with the Internal Revenue Service. This information is both descriptive and financial. Not all non-profit organizations are included in the NCCS data, however, because organizations that report gross receipts of less that $25000 in a fiscal year are generally not required to file a Form 990. Many organizations

that advocate for minority rights, particularly at the local level, do not make this threshold.

Each organization in the NCCS dataset is coded with a National Taxonomy of Exempt Entities (NTEE) code. These codes were developed by the National Center for Charitable Statistics and the Internal Revenue Service and is the only classification system of its kind. Organizations designed to inform private donors about NGOs, including Guidestar and Charity Navigator, publish these codes in their entries on non-government organizations.[5] I aimed to include all organizations in the NCCS dataset with the NTEE code R22 (Minority Rights) that focused on the rights of African-Americans/Blacks and Latinx/Hispanics.[6]The NCCS provides this information on what groups are assigned this code: "Organizations that support the passage and enforcement of laws and other social measures that protect and promote the rights and interests of one or more specific ethnic groups or individuals who have a common national origin. Use this code for organizations like the NAACP and La Raza."[7]

[5]In spite of its widespread use, the NCCS data had extensive NTEE coding errors and required extensive cleaning. Many organizations were flagrantly miscoded. To name just a few, a conservative Christian advocacy group named Liberty Counsel, a group formed to advocate for congressional redistricting named Arizonans for Fair and Legal Representation, and the Feminist Majority foundation were all categorized as I80. The Society of Petrophysicists and Well Log Analysts, the American Association of Community Junior Colleges, and the Association for Core Tests and Course (which advocates for the inclusion of the classics in university curricula) were all classified as R22. Churches, addiction rehabilitation centers, domestic violence shelters, and CASA programs were among the most frequently miscoded organizations.

After learning about this problem, I reviewed all entries coded as R22 and I80 and removed all organizations that I could identify as belonging to another existing NTEE area. I also programmed a search for strings in all organizations belonging to the major groups R (rights organizations) and I (Crime and Legal-Related) to find minority rights and legal services organizations that may have been incorrectly coded. For example, search terms for R22 organizations included the National Association for the Advancement of Colored People, La Raza, Urban League, the National Council of Negro Women, and the League of United Latin American Citizens, and these organizations' various abbreviations and misspellings.

[6]I neglected to include organizations with a focus on the rights of Americans of European descent and do not know how the NCCS addresses these groups, given their overlap with hate groups.

[7]The coding rules for NTEE assignments—nor who is responsible for determining what NTEE code is assigned—are not transparent. The system does not allow for intersectionality, so an organization that is designed to protect the rights of Black women, for example, will be assigned either R22 or R24 (Women's Rights). Organizations such as the Southern Poverty Law Center is classified as I-83, public interest law, defined by the NCCS as "organizations that primarily handle class action

Total Yearly Revenues of Minority Rights Organizations in NCCS Dataset Averaged from 1989-2013

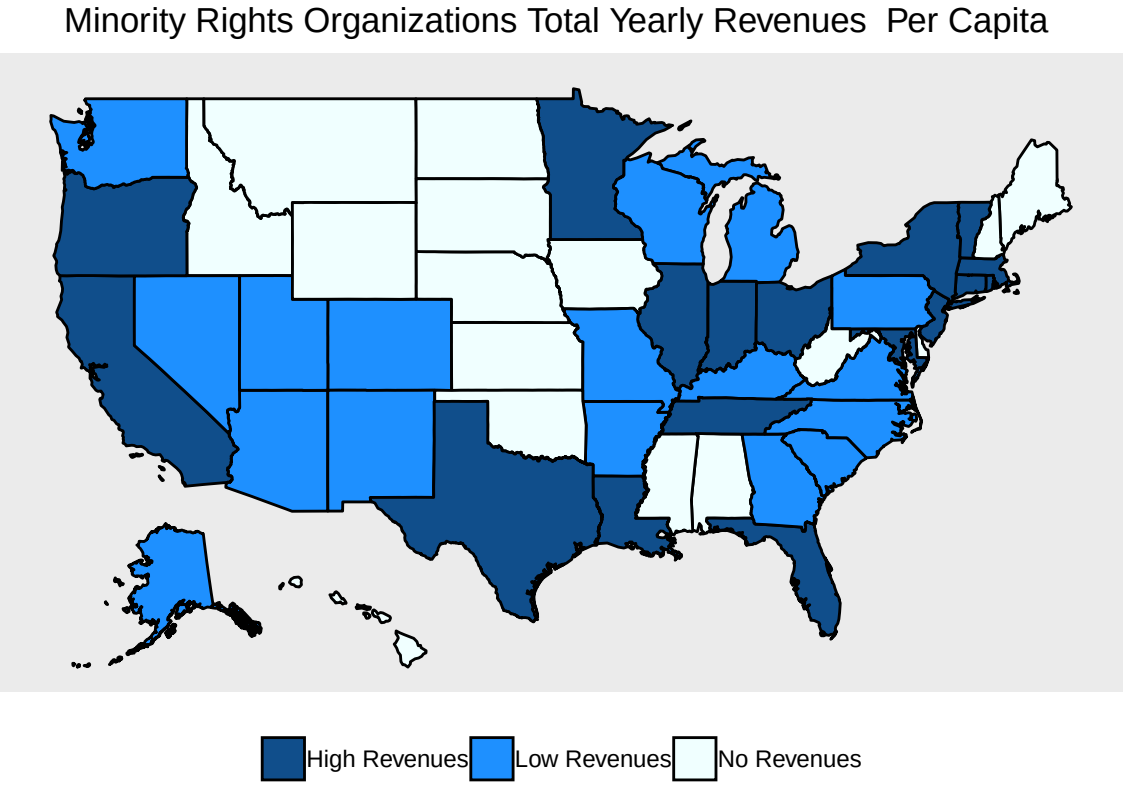

Figure 4.2: The total yearly revenue of the state's Black and Hispanic rights organizations were divided by the total Black and Hispanic population. Then I averaged the states total yearly revenue for the years between 1989 and 2013. States with no revenues recorded for the period are labeled as "No revenues." I divided the remaining 34 states into those that fell above the mean ("high revenue" states) and those that fell below the mean ("low revenue" states)

Figure 4.2 is a map visualizing the states ranked on the strength of their minority rights organizations averaged over 1989-2013. The figure suggests that rural states have the weakest presence of minority rights organizations. Some of these states have

litigation and lawsuits related to issues of interest to the public in general rather than assisting individuals." The Southern Center for Human Rights is categorized as R20, civil rights, defined as "organizations that work for the passage and enforcement of laws or other social measures that will more effectively protect the rights of specific groups. Use this code for organizations that broadly address civil rights and advocacy issues or which focus on populations not specified below."

relatively small Black and Hispanic populations, but some states, like Mississippi and Alabama, have among the largest populations of Black Americans. States with large Hispanic populations (such as Florida, Texas, and California) are among those with the most minority rights organizations revenue per capita. States on the coasts (such as California, Oregon, New York, New Jersey and Massachusetts) seem to be among the highest ranked.

4.3.2 Willing and Able Attorneys

Charles Epp divided the subconcept of Willing and Able Attorneys even further: it included both 1. the organization of the legal profession and 2. the diversity of the profession. Although it is not explicitly described as part of the concept, scholars have used lawyers per capita as a single measure of support structure for legal mobilization (Brace and Hall (2001), Songer, Johnson, and Bowie (2013)). In addition, employment discrimination claims are likely to be made among the employed and these litigants will rely on attorneys in private practice. For this reason, I also include a third component of Willing and Able Attorneys in my measure: total attorneys per capita.

Organization of the Profession

The organization of the profession refers to the extent to which lawyers work as part of larger law firms, rather as solo practitioners. I have quantified this aspect of the concept using the Census County Business Patterns (CBP) data. The County Business Patterns series provides annual county-level information about businesses and economic industries. I looked at the number of establishments in a county that provided "legal services." Then I narrowed the data to only those establishments with 50 or more employees, making the assumption that establishments with this number of employees would constitute large legal firms according the Epp.[8]. At this

[8]Charles Epp does not define how large a firm must be for it to produce the benefits to support structure for legal mobilization. I also looked at the number of firms with 10 employees. Firms with 50 employees or more (per capita) is correlated with firms with 10 employees or more (per capita)

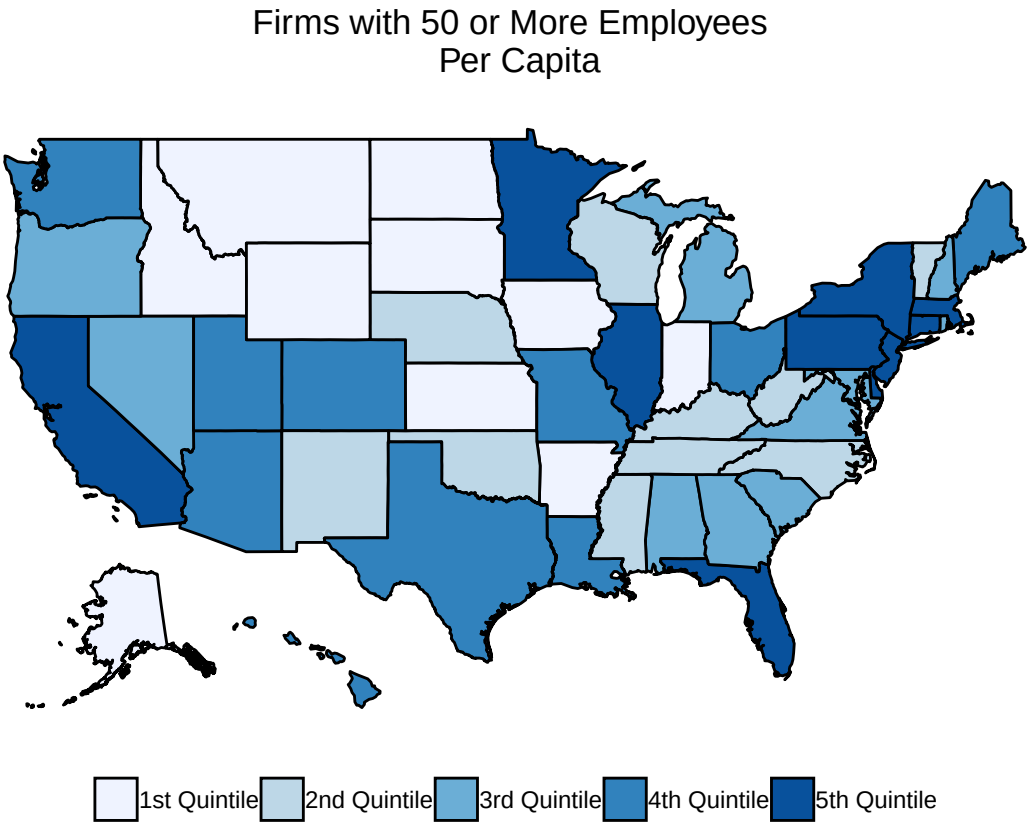

Figure 4.3: This map ranks the states from 1989-2013 according to number of law firms per capita. The darkest shade of blue signifies the ten states with the most firms per capita, and the white states signifying the states with the fewest firms per capita.

point, I had county-year data of the number of legal services establishments with 50 employees or more. I aggregated up to the state-year level and divide by the state's total population for a per capita measure.

Figure 4.3 is an average of the state per capita figures from 1989-2013. The states with the highest averages are darkest, while the states with the lowest averages are white. The figure seems to bear some similarity with Figure 4.2. Rural states in the west are among the states with the least support, while coastal states like California and New York are among the highest. Like Figure 4.2, Minnesota, Illinois, and

with a Pearson's R of 0.56.

Florida are among the highest ranking states. Unlike the previous figure, Indiana and Tennessee are ranked much worse, suggesting that there may have been outlying organizations the NCCS data.[9]

Diversity of the Legal Profession

The diversity of the legal profession is the second component of Epp's the "Willing and Able Attorneys" subconcept. The concept refers to the addition of women and minorities to the legal profession.

The American Bar Association does not publish statistics of the number of women lawyers or lawyers of color in a state. The American Bar Foundation, however, published the Lawyers Statistical Report approximately every five years until it was discontinued. The last four reports (1991, 1995, 2000, and 2005) all included counts of the number of women attorneys in a state. The Lawyer Statistical Report did not report counts of lawyers of color in a state.

Figure 4.4 visualizes the average of women lawyers per woman in the population from these four reports. California, New York, New Jersey, Colorado, and Illinois are among the states with the most women lawyers per capita. States in the Southeast, like North and South Carolina, Alabama, and Mississippi are among the lowest ranked states, along with the rural western states of North and South Dakota, Idaho, and Utah.

I also looked at the National Center for Education Statistics' Integrated Postsecondary Education Data System (IPEDS) as alternative measure of diversity in the profession. IPEDS publishes data submitted by law schools on the characteristics of their law school graduates, including whether the graduate identified as Black, His-

[9]An alternative measure of this concept is the ratio of solo practitioners to lawyers in the state. Epp discusses how the norm of practicing in a solo practice among (nation) state's legal professionals is a large barrier to the state's rights revolution. The ratio of solo practitioners to total lawyers is correlated with firms with 50 or more employees (per capita) with a Pearson's R of 0.01, with firms with 10 or more employees (per capita) at 0.11, and with total lawyers (per capita) with a Person's R of 0.22. Theoretically, this ratio should be negatively correlated with these concepts (the smaller the ratio, the better for support structure for legal mobilization).

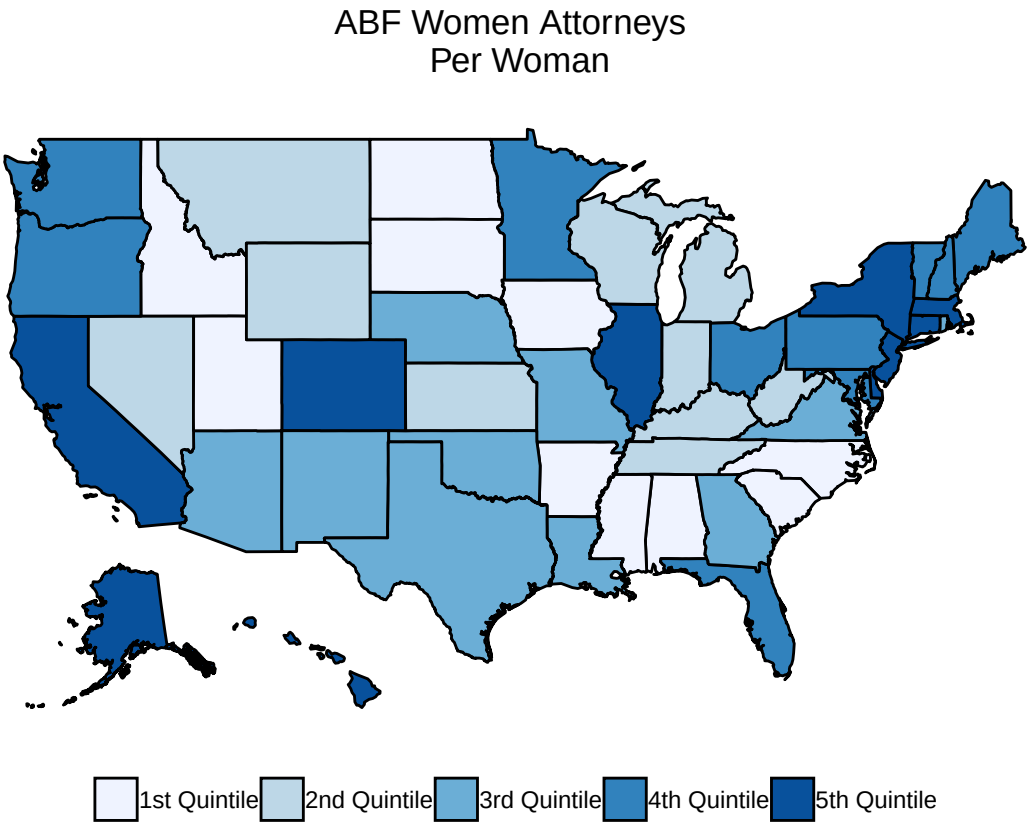

Figure 4.4: The U.S. states ranked according to the number of women attorneys over the population of women in the states. Four years of data from the American Bar Foundation's Lawyer Statistical Reports (1991, 1995, 2000, and 2005) were averaged and then the states were sorted by the average. The darkest shade of blue represents the ten states with the largest number of women attorneys per capita, while the white states are the ten states with the lowest number.

panic, or as a woman. These data only characterize that year's law school graduates, not characteristics of the legal profession as a whole in a state. They attribute graduates to the state of their law school, not accounting for the possibility that they left to practice law in a different state.

Figures 4.5 and 4.6 illustrate how states rank based on this measure of diversity in the legal profession. These maps have a number of unusual outliers, such as the ranking of Nebraska and Wyoming in Figure 4.5 and West Virginia, Iowa and New

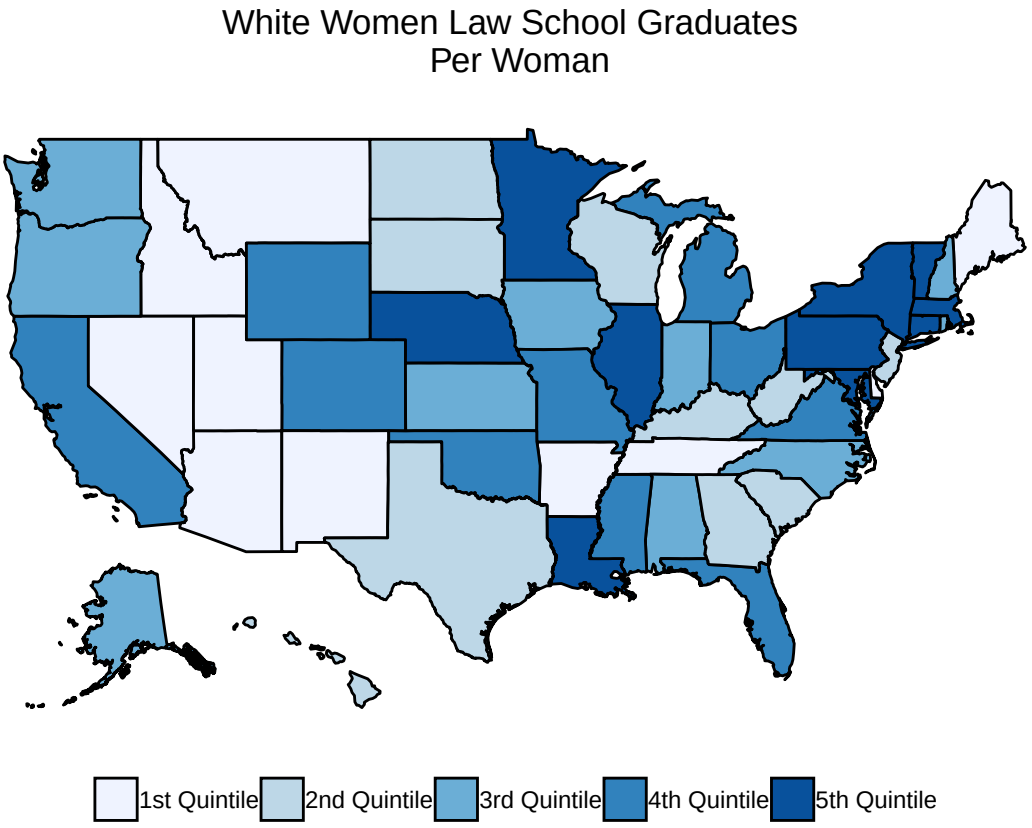

Figure 4.5: The states from 1989-2013 are ranked according to the average number of white women graduating from law school in the state divided by the population of white women. The darkest states are those with the highest averages.

Hampshire in 4.6, which call into question the validity of these data as a measure for the diversity of the legal profession.

Number of Attorneys

Although Charles Epp does not describe the overall number of attorneys in a state as a component of "Willing and Able Attorneys," other authors have used it as a measure of the his concept. Because of this existing work, along with the logical connection between an increase in lawyers driving down the price of legal services, I include it as part of my measurement strategy for Support Structure for Legal Mobilization.

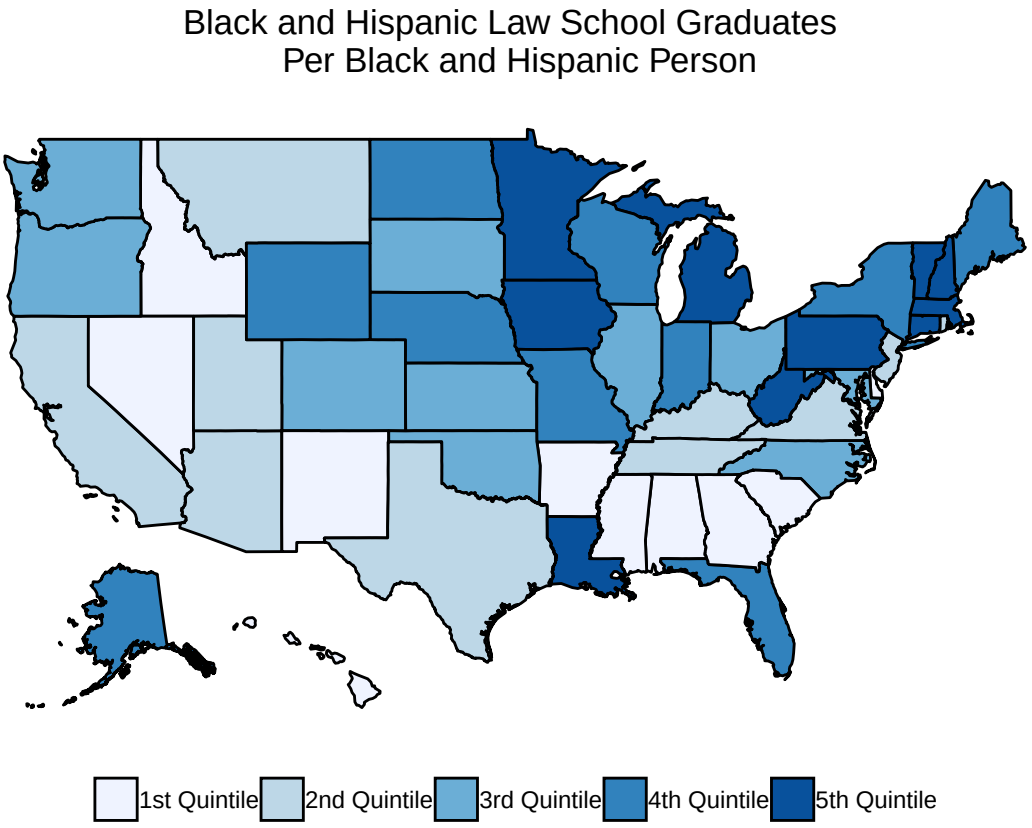

Figure 4.6: The states from 1989-2013 are ranked according to the average number of Black and Hispanic people graduating from law school in the state divided by the population of Black and Hispanic people. The darkest states are those with the highest averages.

One data source for the overall population of lawyers in a state is The American Bar Association. The ABA publishes the annual National Lawyer Population Survey on their website. The counts of lawyers per state are submitted to the ABA by state bar associations or state licensing bodies. Figure 4.7 shows the states' rankings in total lawyers per capita, averaged over 1989. The trends look similar to earlier indicators, with states like New York, Illinois, and California topping the list. States in the Southeast and rural western states seem to occupy the lowest rankings.

The ABA data can be further validated with the American Bar Foundation's Lawyer Statistical Report. This report, which has been discontinued, was released

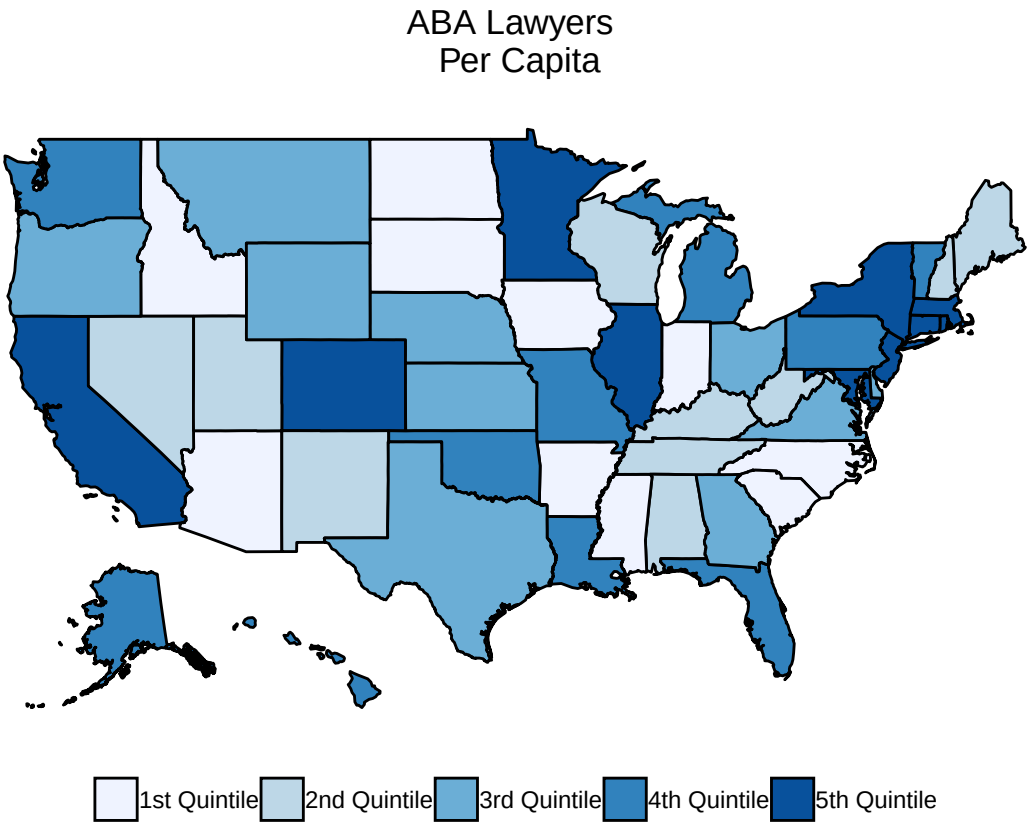

Figure 4.7: This map visualizes the American Bar Association's data on lawyers per capita by state. The data from years 1989-2013 are averaged in this visualization. The states in the fifth quintile are the ten states with the most lawyers per capita. The first quintile shows the states with the least lawyer per capita.

four times during the 24 year period of this study (in 1991, 1995, 2000, and 2005). Figure 4.8 illustrates the rankings of the states based on lawyers per capita and it closely resembles Figure 4.7. The County Business Patterns data is an alternative way to approach measuring the legal profession in a state-year. Rather than relying on state bar associations' reporting, the County Business Patterns data is obtained from U.S. Census programs, including the Business Register database and the Company Organization Survey. The County Business Patterns data reports the number of offices with a certain number of employees within a given industry in each county (i.e. the number of offices with 1-4 employees offering legal services in Dekalb County,

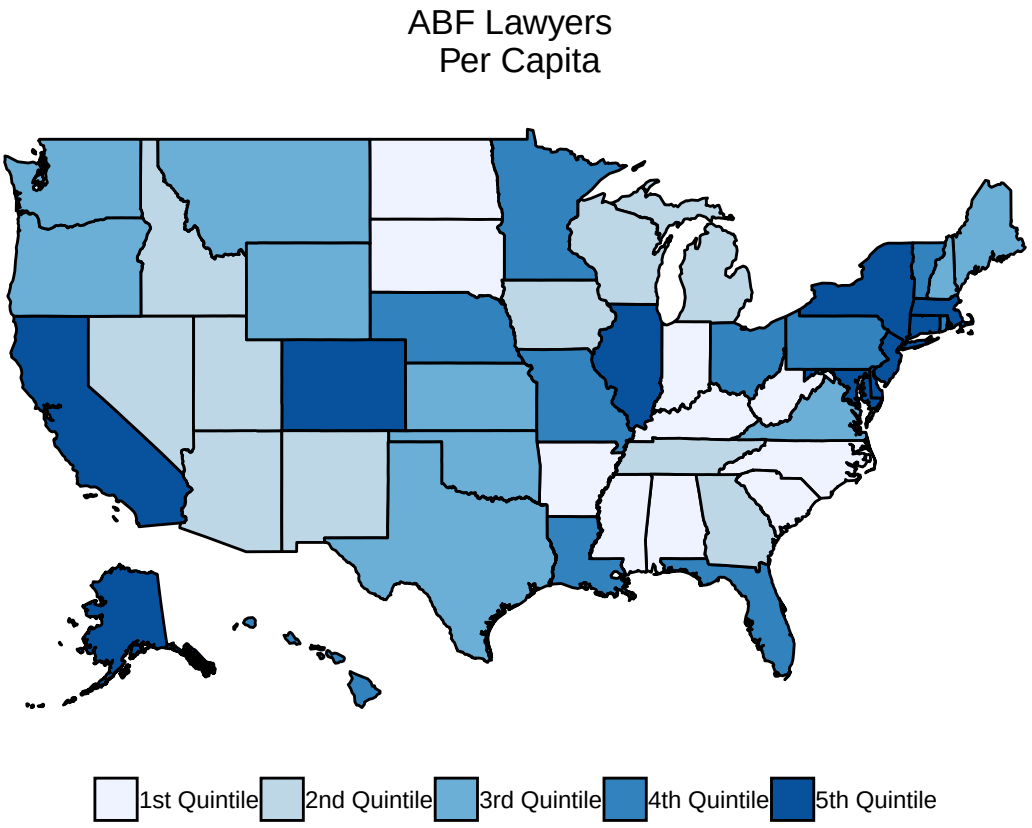

Figure 4.8: This map visualizes the American Bar Foundation's data on lawyers per capita by state. I averaged lawyers per capita for the four years of ABF data (1991, 1995, 2000, and 2005). The states in the fifth quintile are the ten states with the most lawyers per capita. The first quintile shows the states with the least lawyer per capita.

GA). I used these data to make an estimate of the employees working in the field of legal services in the county, and then the state. This includes lawyers, paralegals, legal secretaries and any other staff.

Figure 4.9 shows the rankings of the states from 1989-2013 according to legal employees per capita. It seems to confirm the trends we observed in the maps describing the ABA and ABF data.

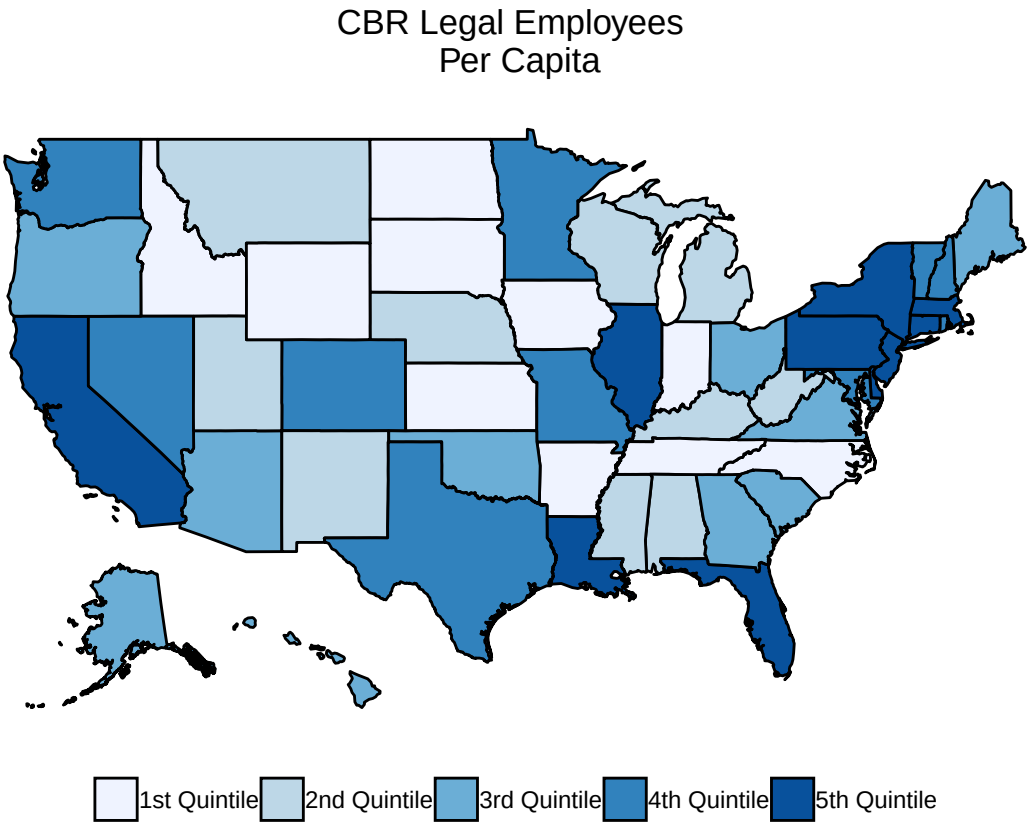

Figure 4.9: The County Business Patterns data was utilized to make an estimate of the number of employees in the legal services sector in the state. I found the per capita figure and made an average for each state from 1989-2013. The ten states with the highest average of legal employees per capita are the darkest shade of blue, while the ten white states have the lowest rates of legal employees per capita.

4.3.3 Financial Support (Legal Aid)

Sources of financial aid is the final sub-concept of Support Structure for Legal Mobilization. I focus on quantifiable indicators of legal aid as measures of this concept.

The National Center for Charitable Statistics (NCCS) provides information about nonprofit legal aid organizations using the Form 990s that organizations file with the IRS if their revenues are greater than $25000.[10]. The NCCS identifies legal aid

[10]The NCCS data should not be used without extensive cleaning and recoding. See the footnote above

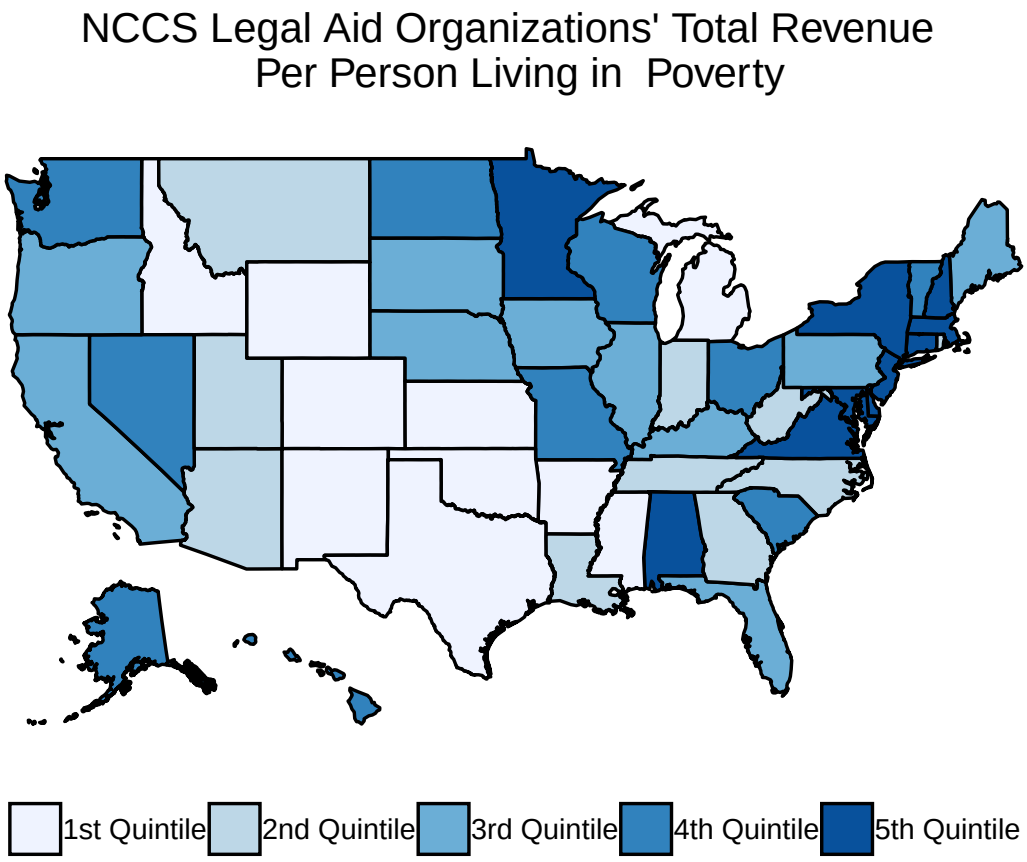

Figure 4.10: To create this map, I summed up the total yearly revenue of the NCCS identified legal aid organizations in a state. I divided the total revenue by the state's population living in poverty. Then I averaged these state per capita figures for 1989-2013. The map reflects the ranking of states according to this average, with darker shades of blue reflecting higher rates of funding per capita.

organizations with the NTEE code I-80, which the NCCS defines as "organizations that provide general legal aid regarding criminal and/or civil matters at little or no cost for individuals who are economically disadvantaged." I removed groups providing criminal defense from the data. Because legal aid organizations hire employees, and therefore have larger operating costs, the NCCS data for legal aid organizations are

probably less biased than the NCCS data for Minority Rights Organizations (minority rights organizations are likely missing from the NCCS dataset because organizations were too small to reach the filing threshold).

I sum up the total revenues of legal aid organizations in a state-year and then divide it by the population in poverty. Figure 4.10 shows the U.S. states from 1989 to 2013 ranked according to the average yearly revenues per person in poverty. These rankings start to look different from the rankings in previous indicators. There are more rural, middle states with high rates of legal aid available.

The Legal Services Corporation, established by Congress in 1974, provides funding to local legal aid organizations through a competitive grant process. Presently, it funds 133 legal aid programs with operating 800 legal aid offices. The LSC is the largest funder of civil legal aid in the United States. While the NC

As an alternative measure of legal aid in a state, I turned to data about Legal Services Corporation-funded legal aid programs.[11] I sum up the total grants of LSC-funded legal aid programs in a state-year. This includes grants provided by the LSC and also private grants, and state and local grants. Then I divide them by the population living in poverty in the state.

Figure 4.11 illustrates how the states rank on this measure of the strength of legal aid organizations in a state. This measure breaks from previous indicators even more than the NCCS-based measure of legal aid. Again the rural middle states are ranking much higher than they had in measures of Willing and Able Attorneys and Rights Organizations.

The American Bar Foundation's Lawyer Statistical Report is another resource for data on the strength of legal aid in a state. The Lawyer Statistical Report published counts of the combined number of legal aid and public defenders in a state. I divided

[11]I have data about the total funding of LSC funded programs from two sources: their annual Factbooks and a FOIA request to the LSC. In the years that the two sources overlap, I average the two funding totals.

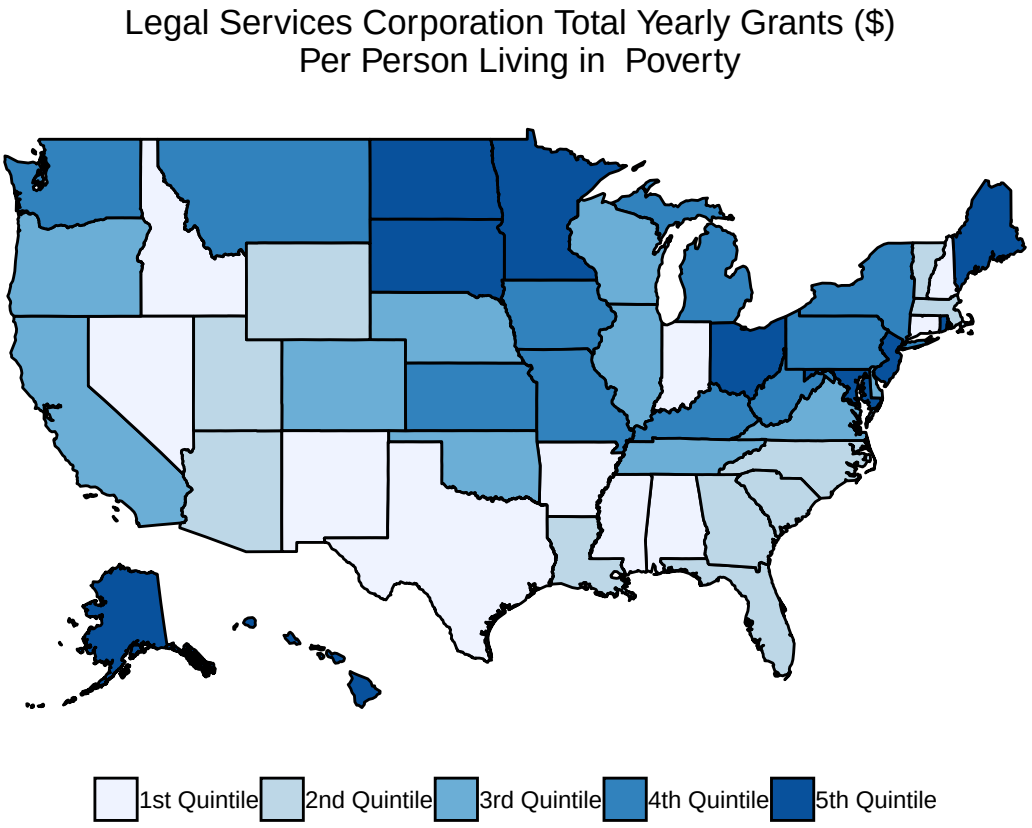

Figure 4.11: To create this map, I summed up the total yearly funding of Legal Service Corporation-funded legal aid organizations in a state. I divided the total funding by the state's population living in poverty. Then I averaged these state per capita figures for the following years in which the LSC data were available: 1990, 1991, 2001-2013. The map reflects the ranking of states according to this average, with darker shades of blue reflecting higher rates of funding per capita.

these counts by the population living in poverty in a state.

Figure 4.12 visualizes the states ranked according to these per capita figures averaged over the four years the report was published between 1989 and 2013. This figure bears a strongly resemblance to previous rankings maps. States like California, New York, and Illinois have high rankings. On the other hand, like Figure 4.10 and Figure 4.11, the rural middle west does appear to rank better for legal aid than it did with Minority Rights organizations and Willing and Able Attorneys.

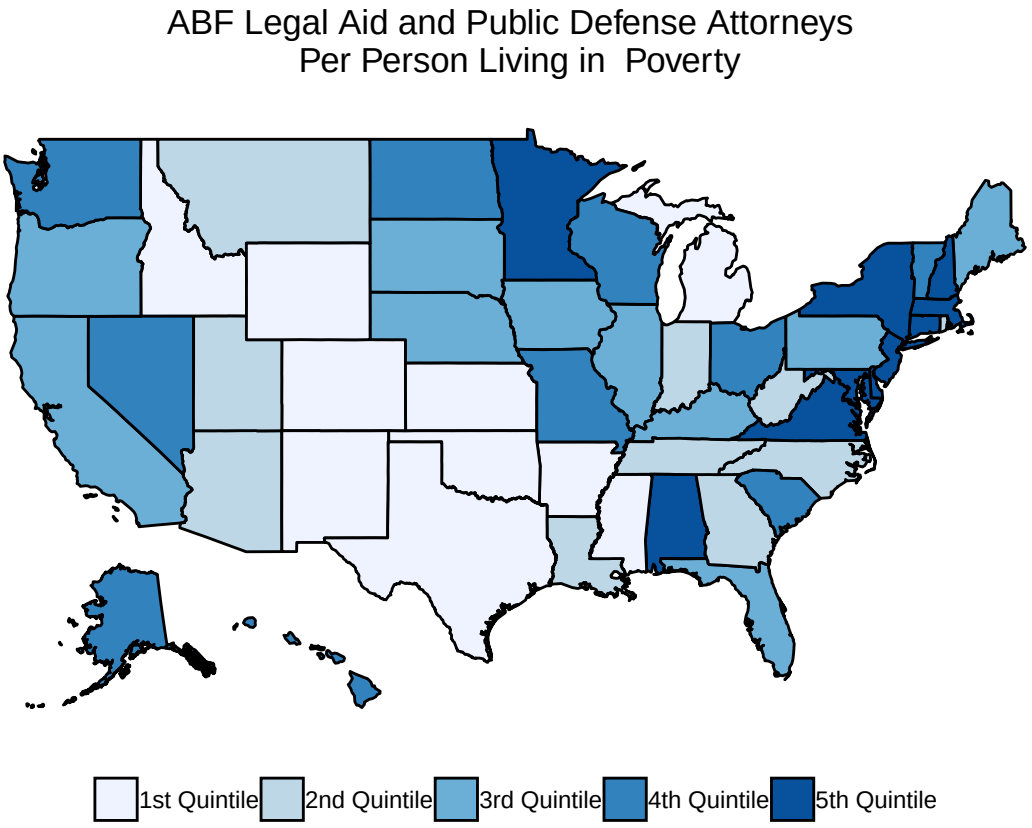

Figure 4.12: This map was created with the American Bar Foundation's on the number of Legal Aid and Public Defenders in a state. I divided these counts by the population in poverty in the state. Then I averaged the lawyers per capita over the four years for which I have these data: 1991, 1995, 2000, and 2005. The map shows the states ranked by this average—The more lawyers per capita, the darker the shade of blue

Scholars have noted the role that professional legal associations, such as bar associations, play in providing low-cost or pro-bono legal services to individuals in the United States. Using the National Center for Charitable Statistics data on non-profit organizations, I also looked at this potential indicators of funding. Figure 4.13 shows the states ranked by their bar associations' average total yearly revenues per capita from 1989-2013. The New England and the mid-Atlantic states top the rankings, but we also see familiar top-ranked states like Illinois and Minnesota. Florida and

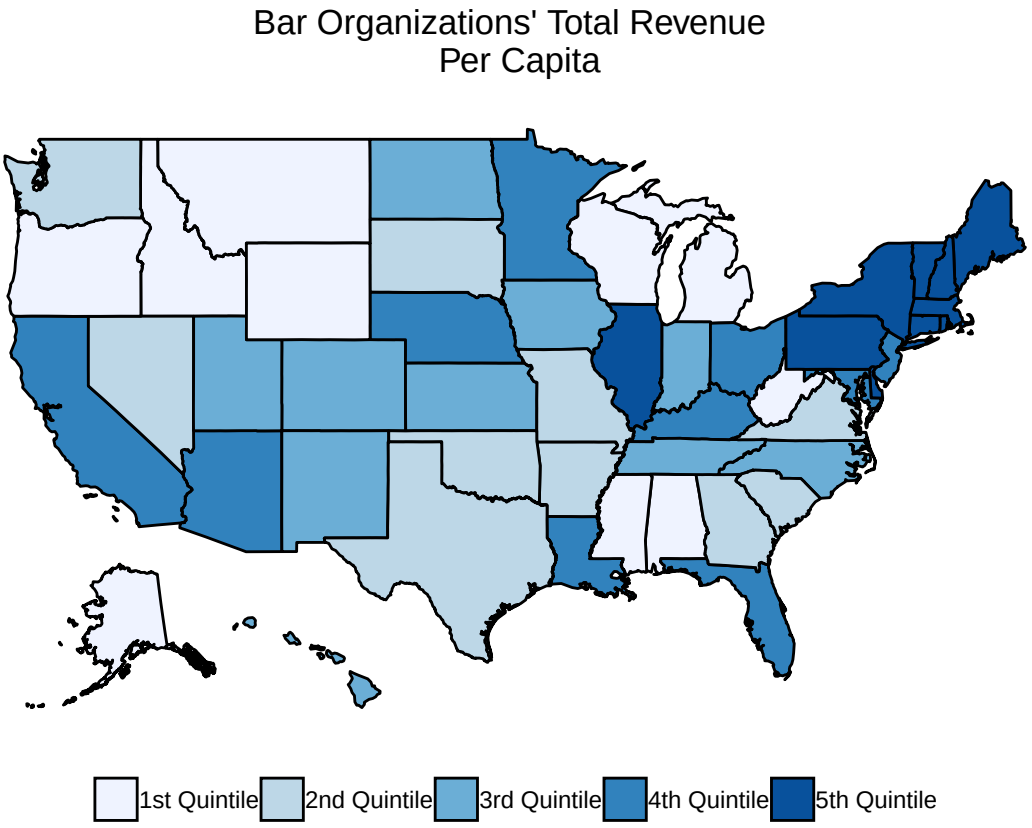

Figure 4.13: This map was created with counts of legal aid attorneys and public defenders from The American Bar Foundation's Lawyer Statistical Reports published in 1991, 1995, 2000, and 2005. These counts were divided by the state's population in poverty and then averaged. The states were then ordered and ranked according to these averages, with darker shades representing more lawyers per capita.

Louisiana are again the lone strong states in the Southeast.

4.3.4 The indicators variables in summation

Table 4.1 sums up this section by providing a brief description of each indicator variable, its connection to the Support Structure for Legal Mobilization concept, and the indicator's data source. The table highlights one feature of the indicator variables: some indicators are indicators of the same concept. For example, the number of women attorneys and the number of white women graduates from a state's

law school are both indicators of the diversity of the legal profession. Figure 4.14 will provide evidence that some theoretically related indicators vary quite a lot. Without a rationale to evaluate which indicator is closer to the "true" latent concept, I moved forward with theoretically overlapping indicators.

Component	Sub-Component	Observable Indicator	Indicator Description	Source
Rights-Advocacy Organizations		Total Revenue Black & Hispanic Rights Organizations	The sum of the total yearly revenue of state's rights organizations for Blacks and Hispanics divided by the Black and Hispanic population	National Center for Charitable Statistics
Willing and Able Attorneys	Profession's Organization	Law Firms (50 or greater employees)	The number of firms in a state with 50 or more employees over total population	US Census - County Business Patterns
	Profession's Diversity	ABF Women Lawyers	The number of women lawyers over population of women	American Bar Foundation
	Profession's Diversity	White Women Law School Graduates	The number of women law school students graduating in a given year over population of white women	IPEDS[12] Completion Survey
	Profession's Diversity	Black & Hispanic Law School Graduates	The number of Black and Hispanic law school students graduating in a given year over Black & Hispanic population	IPEDS[13] Completion Survey
	Total Attorney Population	ABA Lawyers	The number of lawyers per person	American Bar Association
	Total Attorney Population	ABF Lawyers	An alternative count of the number of lawyers per person	American Bar Foundation
	Total Attorney Population	Legal Employees	The number of people working in the legal field per person	US Census - County Business Patterns
Sources of External Funding (Legal Aid)	Legal Aid	Total Revenue of Legal Aid Organizations	The sum of total yearly revenue of a state's legal aid organizations divided by population in poverty	National Center for Charitable Statistics
	Legal Aid	Total Grants of LSC-funded Legal Aid Programs	Total yearly grants given to legal aid programs funded by the Legal Services Corporation including non-LSC grants over population in poverty	Legal Services Corporation
	Legal Aid	ABF Legal Aid Lawyers and Public Defenders	The number of lawyers working in legal aid and public defense per person in poverty	American Bar Foundation
	Pro Bono/Charitable Work	Total Revenue of Bar Associations	The sum of total yearly revenue of bar associations in a state Over the total population	National Center for Charitable Statistics

Table 4.1: An overview of the indicators of support structure for legal mobilization

Indicators	Source	Years Available
ABA Lawyers	American Bar Association	1989-1990, 1992-2013
ABF Lawyers; ABF Women Lawyers, ABF Legal Aid Lawyers and Public Defenders	American Bar Foundation	1991, 1995, 2000, 2005
Legal Employees; Law Firms (50 or greater employees)	US Census County Business Patterns	1989-2013
White Women Law School Graduates; Black & Hispanic Law School Graduates	IPEDS Completion Survey	1987, 1989-2013
Total Revenue Black & Hispanic Rights Organizations	National Center for Charitable Statistics	1989-2013
Total Revenue Legal Aid Organizations		
Total Revenue Bar Organizations		
Total Grants of LSC-funded Legal Aid Programs	Legal Services Corporation Factbooks and FOIA Request	1990-1991, 2001-2013 [14]

Table 4.2: Data availability varies by year

Table 4.2 highlights a different feature of the set of indicator variables: systematic missingness of some variables. While some indicators cover nearly all the years of the study (such as the indicators related to non-governmental rights organizations), others include just a handful of years (such as indicators originating from the American Bar Foundation). While coverage is consistent across states, certain years, especially further back in time, have weaker coverage.

Another important feature of these data is that all of the indicator variables are skewed strongly to the right. This feature holds even when the most persistent and problematic outlier (the District of Columbia) is removed from the set. This pattern suggests that a handful of states have far and away more legal resources than the rest of the states.

4.4 Exploring the Assumption of Unidimensionality

Before I considered strategies for aggregating the set of indicator variables into a single measure of the overarching concept *Support Structure for Legal Mobilization*, I had to think about the dimensionality of Epp's concept. Does the concept map onto a single latent dimension? Alternatively, do the three lower components of the concept each reflect distinct dimensions? In using a single indicator variable as their measure of the concept, previous scholarship implicitly assumed a single dimension for the latent concept. A correlation matrix of these indicator variables, in addition to

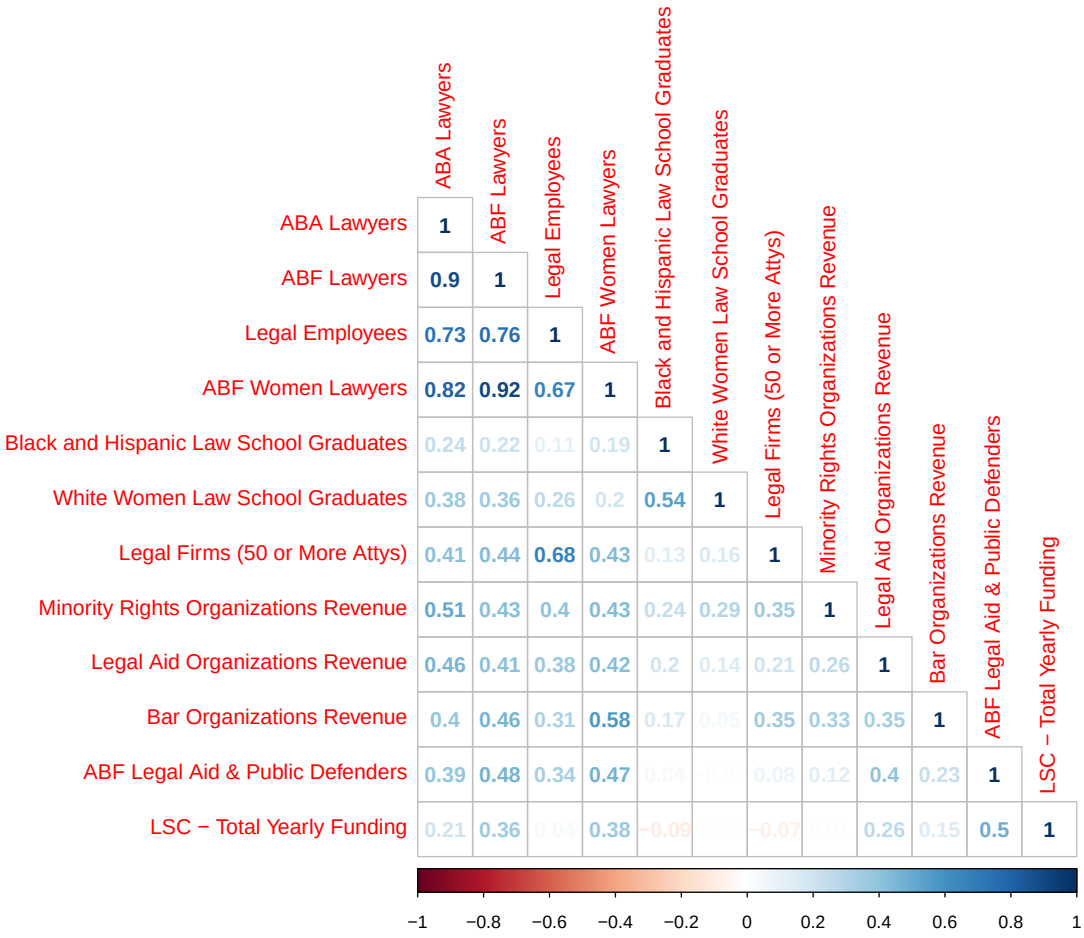

Figure 4.14: A correlation matrix of the indicator variables, logged to reduce skew and the influence of the extreme outliers. A small constant was added to each observation to allow observations values of 0 to be included in the logged version. Only pairwise complete observations went into the correlation calculation. In addition, all the indicators were standardized by subtracting the mean and dividing by the standard deviation.

a principal components analysis of them, show that an assumption of unidimensional latent concept is not supported by the data.

Figure 4.14 is a correlation matrix of the indicators. The variables are per capita. They are logged because of strong right-skew in their distributions. After they

were logged, they were standardized. These transformations addressed my concerns that outlying observations in the right-tail would make the variables correlate more strongly, overstating the strength of the variables' similarities. For this same reason, I excluded the District of Columbia from the correlation matrix.

If a single unifying concept—Support Structure for Legal Mobilization—connects all the variables, we would expect to see strong associations between the variables. In Figure 4.14, we observe that some indicators are more strongly correlated with each other, such as lawyers and legal employees per capita. Other indicators, however, have comparatively weak associations, such as lawyers per capita and the indicators associated with legal aid. In short, the correlation matrix does not provide strong evidence for the argument that there is a single latent dimension of Support Structure for Legal Mobilization.

As a next step, I conducted a principal components analysis of the indicators to reduce the set of indicators into its most important components or dimensions. Before conducting the PCA, I prepared the data. Since principal component analysis cannot be conducted on a datasets with missing observations, I linearly interpolated missing data and carried forward (backward) the last observation for NAs in the earliest and latest years of the dataset. I standardized the variables by subtracting their means and dividing by their standard deviations. Finally, I logged the variables to reduce the strong right-skew of their distributions. I used the *princomp* function in *R* and the PCA was based on a correlation matrix (i.e., cor = TRUE)

Figure 4.15 is the scree plot, visualizing the percentage of the total variance each principal component (or dimension) explains. The first principal component explains the most variance at about 42%, followed by the second at about 13%. The third principal component explains 12%. The remaining all explain less than 10% of the total variance. To explain over 90% of the total variance, one would need to include over half of the principal components.

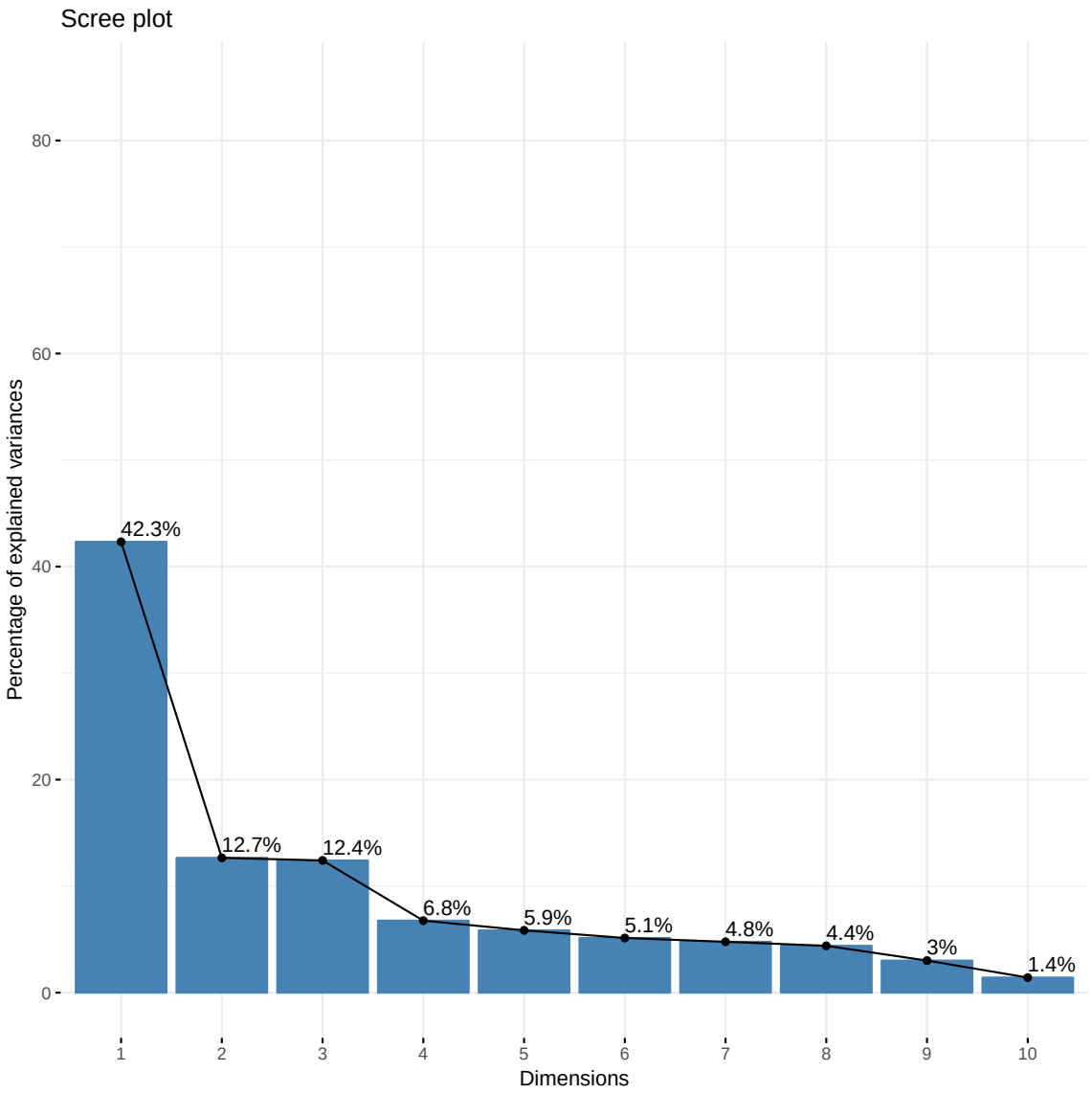

Figure 4.15: Scree Plot of PCA of Support Structure of Litigation Indicators

Table 4.3 provides a better idea of which variables contribute to each of the principal components. The table highlights in bold the large loadings, or those loadings providing the most information to a principal component. Using the sum of the squares of all loadings, we can identify the loading value if each variable contributed equally to a principal component. In this case, that value is 0.29. Consequently, any variable that has a larger loading than 0.29 has contributed more than one variable's worth of information to the principal component and, therefore, I highlight it as a

large or important contributor to the principal component.

Indicators	PC1	PC2	PC3	PC4	PC5	PC6	PC7	PC8	PC9	PC10
ABA Lawyers	**0.41**			0.22	0.11	0.15		0.21	0.11	
ABF Lawyers	**0.41**			0.27				0.26		-0.13
Legal Employees	**0.36**	-0.12	-0.22	**0.34**	-0.18	-0.12	0.17	-0.13		**0.72**
Legal Firms (50 or More Attys)	0.25	-0.20	**-0.46**		**-0.31**	-0.25	**0.38**	**-0.31**	0.17	**-0.50**
Black & Hispanic Law School Grads	0.13	**0.65**		-0.26	-0.20	**-0.31**	-0.24		**0.52**	0.15
White Women Law School Grads	0.16	**0.65**			-0.10		**0.39**		**-0.57**	-0.17
ABF Women Lawyers	**0.40**				0.12		-0.21	**0.33**	0.21	**-0.33**
ABF Legal Aid & Public Defenders	0.22		**0.50**	0.27		-0.22	**-0.35**	**-0.60**	-0.23	-0.18
Bar Organizations Revenue	0.28	-0.15	-0.10	**-0.52**	**0.32**	**-0.53**	-0.15	0.17	**-0.40**	0.12
Legal Aid Organizations Revenue	0.25	-0.18	0.14	**-0.47**	**-0.63**	**0.46**	-0.16		-0.16	
LSC - Total Yearly Funding	0.15	-0.13	**0.57**	**-0.29**	0.25		**0.62**	-0.12	0.26	0.11
Minority Rights Organizations Revenue	0.24	0.17	**-0.34**	-0.19	**0.48**	**0.51**	-0.14	**-0.49**		

Table 4.3: Loadings of Principal Components Analysis. Highlighted values are important or large contributors to the principal component. They are values larger than 0.29, which is the value we'd observe if each variable contributed equally to the principal component. Principal components explaining less than 1% of the variance are excluded from this table.

While the first component only explains 42% of the total variance, it does seem like the closest thing to a single indicator of the concept of support structure for legal mobilization. Most of the variables, except for the law school graduation variables, have loading values above or near to the cutoff value of 0.29.

While it is tempting to suggest that the second dimension is capturing the diversity of the legal profession, I think it is a function of less than ideal data rather than evidence of a theoretically driven dimension. If it were evidence of diversity in the legal profession, we'd like to see that the ABF indicator of women lawyers also passed the important contributor threshold. Its loading, however, was less than 0.00, functionally contributing nothing to the principal component. Something about that law school graduation data makes it a poor substitute for actual lawyer populations in a state.

The third and fourth dimensions might be capturing the financial support/legal aid component of support structure for legal mobilization. Unfortunately, the data were not closely related enough to reduce to a single principal component representing the concept.

Lastly, I want to return to two other components of Epp's concept: the organization of the legal profession and the presence of rights group. No single principal component seems to represent these concepts. They both have negative loadings passed the contribution threshold in dimension three. They pass the threshold again in the fifth dimension, but in opposite directions.

The results of the PCA suggest that two or more dimensions may be more appropriate when measuring support structure for legal mobilization. It also suggests that using the loadings of the principal components analysis as measures of the different aspects of Epp's concept is not an ideal strategy, given that loadings for each indicator for each principal component do not map neatly onto Epp's concept. This may simply be the result of noisy and less than ideal data.

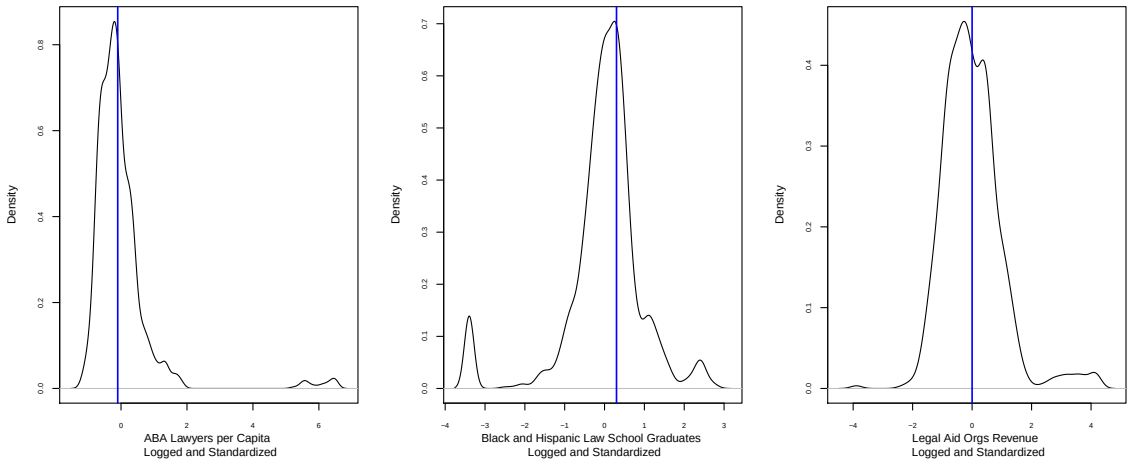

Figure 4.16: Illustrating the dichotomizing process. The blue line indicates the threshold value for the indicator variable. Any observations greater than the threshold value were coded as a 1, while the remaining observations were coded as a 0.

4.5 An Index of Support Structure of Legal Mobilization

This section describes the process of aggregating twelve indicator variables related to several subconcepts of Support Structure of Legal Mobilization into a single score for the overarching concept with values ranging from 0 to 1.

The first step in the process was to code the indicator variables as binary variables. To do so, I identified a threshold value for each indicator variable. The value was near but greater than the median value and generally around the curve of the distribution's initial descent.

Figure 4.16 illustrates this threshold on three example indicator variables. If an observation was greater than the threshold value for that indicator, I coded the observation as a 1. If it was less than or equal to this value, I coded the observation as a 0. This coding rule was adopted to let the distribution of the data drive the categorization rather than adopting an arbitrary standard that could divide up substantively similarly observations.

Although there are three central subconcepts of Support Structure for Legal Mo-

bilization, one of those subconcepts has another underlying level: Willing and Able Attorneys is comprised of the diversity of the legal profession and the profession's organization into firms. In addition, I am including the total supply of attorneys as part of the concept, reflecting the ways in which the concept has been quantified in previous work. Women lawyers, White women law school graduates, and Black and Hispanic law school graduates are all indicators of the professional diversity component of "Willing and Able Attorneys." To aggregate these three variables, I set a threshold rule: if an observation is coded as 1 for two of the three dichonomized indicators, then the observation was scored as a 1 the professional diversity measure. I used the same rule to aggregate the two total lawyers variables and the legal employees variable into a total supply of attorneys score. Since there is only one variable for the legal profession's organization into firms (Law Firms with 50 or greater employees from the County Business Practices data), that variable represents the final underlying component of Willing and Able Attorneys.

With scores assigned to these three underlying components, the next step in the aggregation process was to combine them into a score for the "Willing and Able Attorneys" subconcept. To do so, I averaged the scores for diversity of the profession, total supply of lawyers, and professional organization. This coding decision reflects my understanding that each subcomponent of Epp's overarching concept should carry equal weight.

Willing and Able Attorneys combines with rights advocacy organizations and sources of financial support for one-shot litigants to make up Support Structure for Legal Mobilization. The second subconcept, rights advocacy organizations, has only one indicator variable in my collection: Black and Hispanic Rights Organizations' revenue. That indicator, after it was dichotomized, became the measure of the second subconcept.[15]

[15]This indicator is among the most problematic of the indicators in the set for several reasons:

1. the original data came with extensive coding errors in terms of its classification of NGOs into

There were four indicator variables capturing the third subconcept—financial support for one-shot litigants: lawyers employed in legal aid and public defense, legal aid organizations' revenue, bar organizations' revenue, and total funding for LSC-supported legal aid organizations. To aggregate these four variables, I set another threshold rule: if a 1 was assigned to at least three of the four dichotomized variables, then the observation was scored as a 1 for the financial support measure.

I then averaged the scores for rights advocacy organizations, willing and able attorneys, and financial support for one-shot litigants to get a final overarching score for Support Structure for Legal Mobilization.

Cronbach's alpha is a diagnostic of the internal consistency among a group of indicators. The Cronbach's alpha for all 12 indicator variables after I dichotomized them was 0.84, an acceptable rate of internal consistency. The four indicators capturing financial support for individual plaintiffs score a 0.60 Cronbach's alpha. The

---

subject areas like minority rights organizations.

2. Unlike a legal services organization or a law firm, non-governmental organizations may be headquartered in one location, but have a national policy agenda. A rights organization with a national agenda, headquartered in New York or Washington DC would inflate the scores in that location (That said, organizations do have local chapters or franchises. In other words, it is true that a NAACP observation in Maryland may represent the resources of the national organization and overinflatate what that organization does in Maryland, but the dataset does not exclude local branches of the NAACP that meet the threshold size.).

3. Unlike the other indicators, the Minority Rights indicator is not cross-checked against other indicators, so that outliers that appear in only this source are removed.

In the future, I would like to take two steps to address this problem. First, I recently read an chapter by Paul Gardner in which he used the followthemoney dataset of campaign donations to measure interest group presence in an area. I would like to apply the method to minority rights organizations and incorporate it as a second indicator of the concept.

Second, over the course of this project I discovered the *Mapping American Social Movements* digital humanities project at the University of Washington, under the direction of Professor James N. Gregory. Gregory and his colleagues have mapped NAACP branches in the United States from 1909 to 1980. Following their approach, the mapping could be extended to the years of this study and would be a better indicator, in some ways, to the NCCS Minority Rights Organizations that does not include organizations reporting less than $25000 in revenue, which presumably, includes many local branches of the organization. This data would also improve estimates of minority rights organizations.

In the meantime, the validity of the SSLM index is easier to evaluate if we understand the role this potentially problematic indicator has on the final scores. If minority rights organizations are excluded from the index and sources of financial support and willing and able attorneys are given equal weight, the original three-concept index and a two-concept index are correlated at $r = 0.90$

three indicators for diversity in the legal profession has a Cronbach's alpha of 0.48, a particularly weak score for internal consistency. Lastly, the three indicators capturing the overall supply of attorneys in a region have a 0.82 Cronbach's alpha.

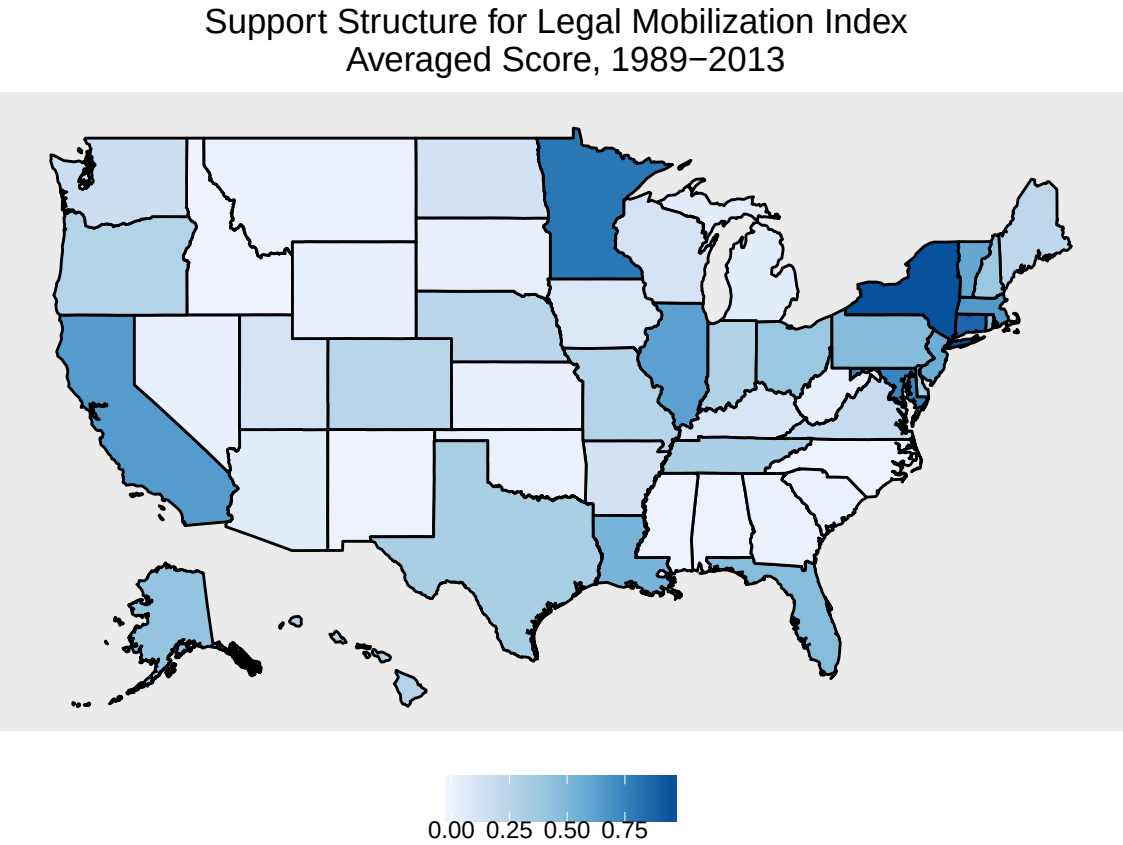

Figure 4.17: The Support Structure for Legal Mobilization Index, State Scores Averaged between 1989-2013

Figure 4.17 is a first look at the results of the aggregation process. In it, each state's scores were averaged from the 24 year period. Darker shades of blue indicate states with higher index averages during this period. Figure 4.18 presents the same averages, but with the states ordered according to their rank. Both figures illustrate how the Southeast and rural western states make up the body of low scoring states. There are exceptions, though, to that trend, which would provide interesting leverage to help rule out counterarguments based on geographic region and their shared cultures and histories. For example, both Louisiana and Florida, ranked 11th and 13th, score far better than their regional counterparts. Minnesota as compared to

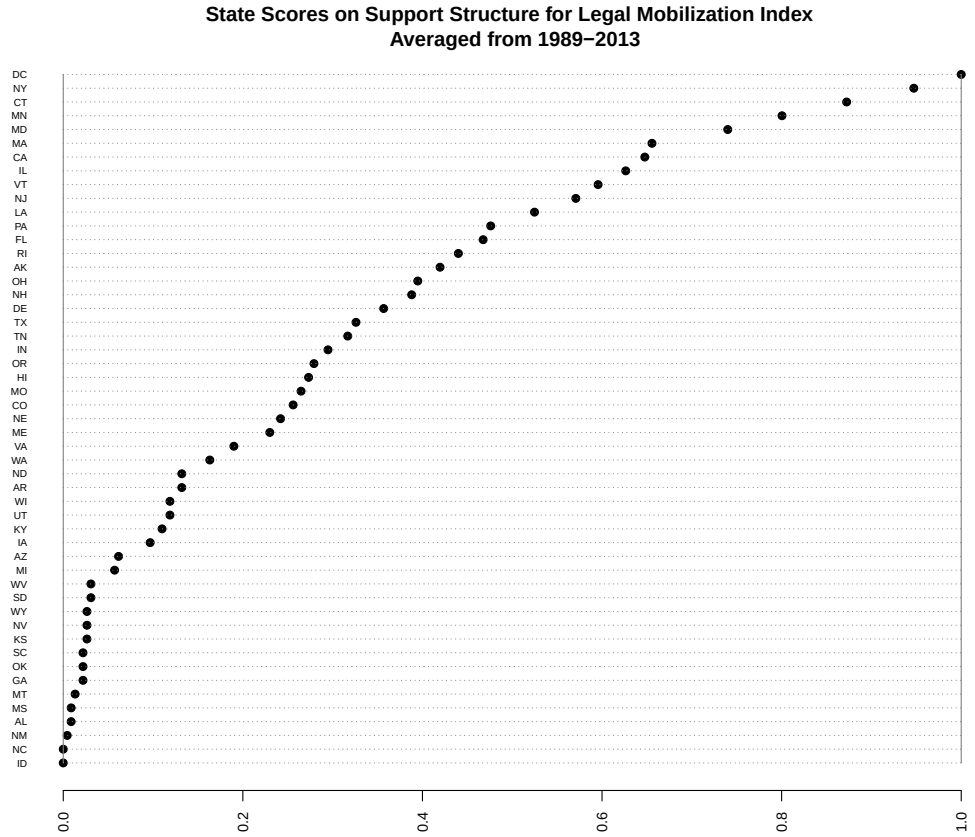

Figure 4.18: Ranking the states according to their averaged Support Structure for Legal Mobilization Index scores

Michigan and Wisconsin is another interesting regional divergence.

Figure 4.19 provides a different perspective on the final index, highlighting how scores have varied over time in each state. Among the lowest scoring states, such as Georgia, North Carolina, Idaho and Oklahoma, we see little variation in Support Structure for Legal Mobilization over time. On the other hand, among the more high scoring states from Figures 4.18 and 4.17, including Minnesota, Pennsylvania, New Jersey, and Vermont, we see an upward trajectory over time. Only the very top ranking states—New York, Connecticut, Massachusetts and Maryland—seem to start the time-series with strong scores on the Index.

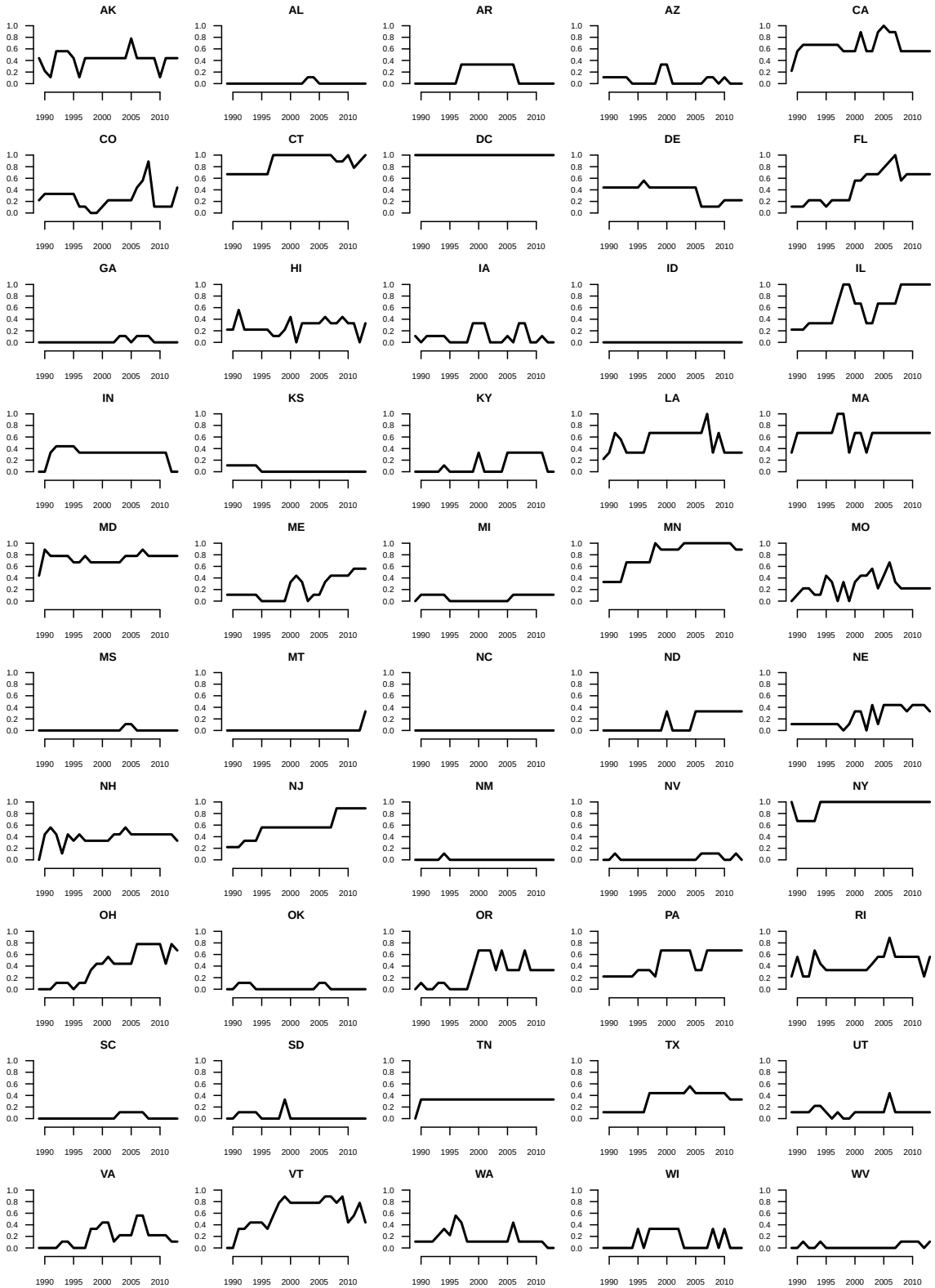

Figure 4.19: The Support Structure for Legal Mobilization Index, Trends over Time

4.6 Validity of the measurement

Questions about validity are at the forefront of any new approach to measuring a concept. We can consider these questions on several fronts: first, we can approach questions of measurement validity by considering the facial validity of the final estimates. In layman's terms, do the results seem off given what we generally know? We generally expect organizations to headquarter in large cities and for those same cities to draw members of the legal profession. As a result, the fact that we observe the most support structure in states that house some of the largest metropolitan areas, such as New York City, Philadelphia, Los Angeles and Chicago does resonate.

Alternatively, we can think about the measure's validity by evaluating how well the original theory and its attributes correspond with the chosen indicators and measurement technique. From that perspective, the approach has strengths and weaknesses. Some indicators, such as those from the Integrated Postsecondary Education Data System Completion Survey (The Law School Graduates Data) seem to be more weakly connected to the attribute than is ideal. In addition, a couple of aspects of Epp's theory did not find their way into the measurement because they did not apply to the phenomenon I am setting out to explain. Sources of external funding, such as private foundations and fee-shifting statutes, might need to be added to the measurement strategy if someone wanted to use this measure in a different research context.

While I dedicated much thought in this chapter to the measurement technique and whether it was the most appropriate for Epp's concept, a statistical measurement model with a single dimension does have advantages. In particular, it would allow the data to drive the weighting of the indicator variables, rather than author-derived rules for weighting and aggregating.

Figure 4.20 compares the Support Structure for Legal Mobilization Index to a Bayesian graded response model using the same set of indicators.The Figure illustrates

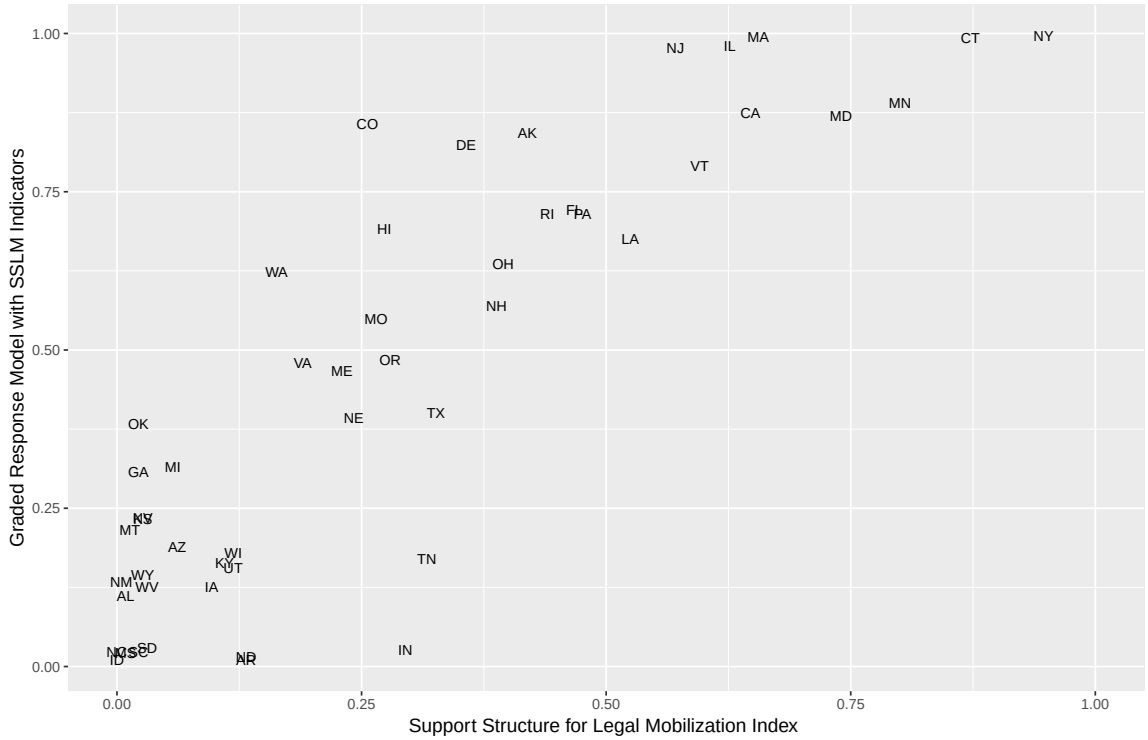

Figure 4.20: Comparing the Support Structure for Legal Mobilization Index to a unidimensional grade response modeling using the indicators. The scores were averaged across all years. On both scales, one indicates more Support Structure for Legal Mobilization

that, while the two approaches varying on some observations, overall, they lead to very similar results. In fact, the averaged scores from the two measurement strategies correlate at $r = 0.86$. The Graded Response model specification and results can be found in the appendix.

4.6.1 Convergent Validity

Finally, we can consider how closely aligned this measure is to a strongly related concept and the ways we measure it. To consider validity from this angle, I turn to the concept of Access to Justice, which is widely discussed among legal academics and legal practitioners. Initially, this concept was closely tied to ensuring that all litigants had attorneys. Increasingly, the concept is associated with de-emphasizing the importance of having legal representation, by developing small claims courts and

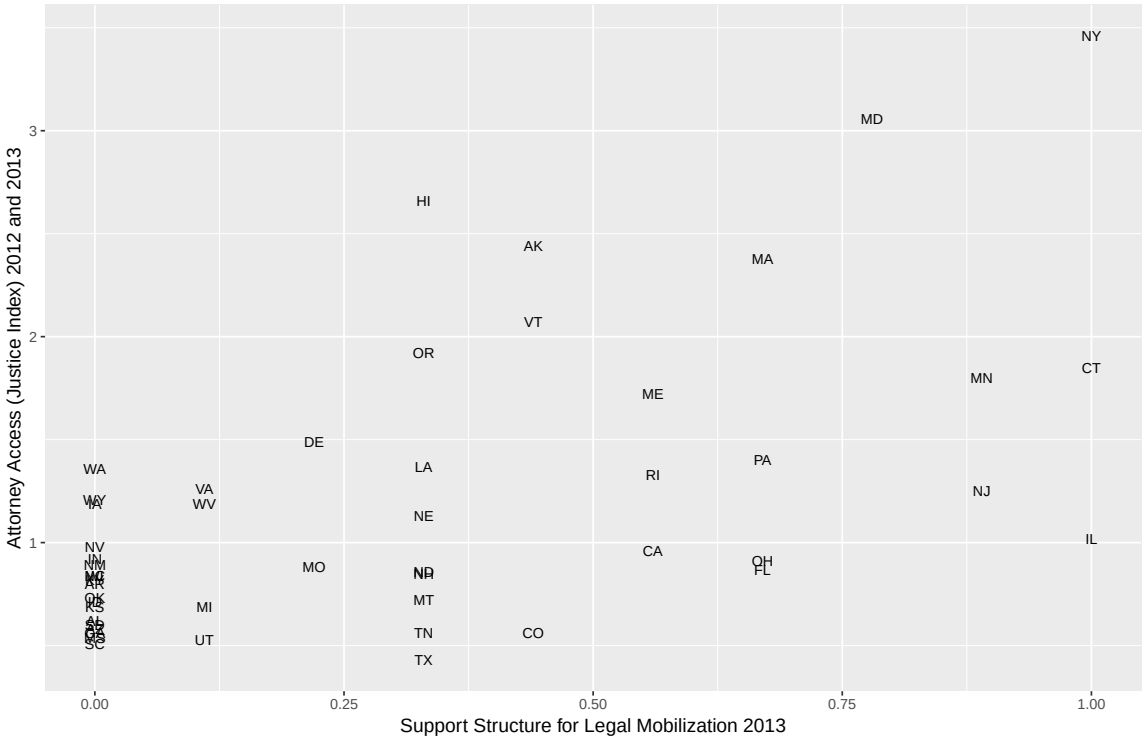

Figure 4.21: The 2013 Support Structure for Legal mobilization scores against the Attorney Access component of the Justice Index using data from 2012 and 2013. The Attorney Access scores are the number of FTE civil legal aid attorneys for every 10,000 people living in poverty

resource centers for self-representing litigants, for example.

In 2014, The National Center for Access to Justice at Fordham Law School first published the *Justice Index*, a comprehensive and accessible source of information about access to justice across the fifty states. Access to Justice, in this context, has a rich definition reflecting the evolution and expansion of the concept in legal scholarship. The composite index combines an Attorney Access Index with a Self-Representation Index, a Language Access Index, and a Disability Access Index. To make the composite index, each index is transformed onto the same scale and then averaged, giving each sub-index equal weight in the overall scoring.

To explore the validity of my approach to measuring support structure for legal mobilization, I investigated the relationship between my Support Structure for Legal Mobilization scores and the portion of the Justice Index related to attorney access.

Attorney access in the Justice Index is measured with one indicator, the number of full-time equivalent (FTE) civil legal aid attorneys for every 10,000 people living at or below 125% of the federal poverty line. The Justice Index is a new endeavor and only two sets of scores have been released; the first release was in 2014, and the data was gathered in 2012 and 2013. As a result of this short timespan, I limit this validity investigation to the Support Structure for Legal Mobilization scores from 2013.

Figure 4.21 plots the Justice Index's scores for 2012 and 2013 against the Support Structure for Legal Mobilization Index in 2013. If the Support Structure for Legal Mobilization measure is accurately capturing the underlying concept, we would expect it to see a positive relationship between the concepts. We'd want to see few observations in the upper left and lower right quadrants. The former would indicate that The National Center for Access to Justice found those states to have strong attorney access, while my index found them to be among the weakest in Support Structure for Legal Mobilization. In fact, Figure 4.21 suggests that this outcome was infrequent, with Hawaii and Alaska as notable exceptions.

A surfeit of observations in the lower right quadrant, on the other hand, would indicate that my index scores states high on the Support Structure for Legal Mobilization index, but those same states have low rates of civil legal aid attorneys per capita according to the Justice Index. This outcome is more common. For example, the SSLM index places New Jersey, Minnesota, Connecticut, and Illinois pretty squarely among the states with the most access to these resources. The Justice Index places Illinois and New Jersey pretty squarely in the middle of the distribution.

In spite of these differences, the two concepts are correlated at $r = 0.57$ and do agree on a number of observations.

I honed in on the relationship between SSLM and attorney access in the Justice Index because the remaining components of the Justice Index have weaker theoretical connections to Support Structure for Legal Mobilization in the context of race-based

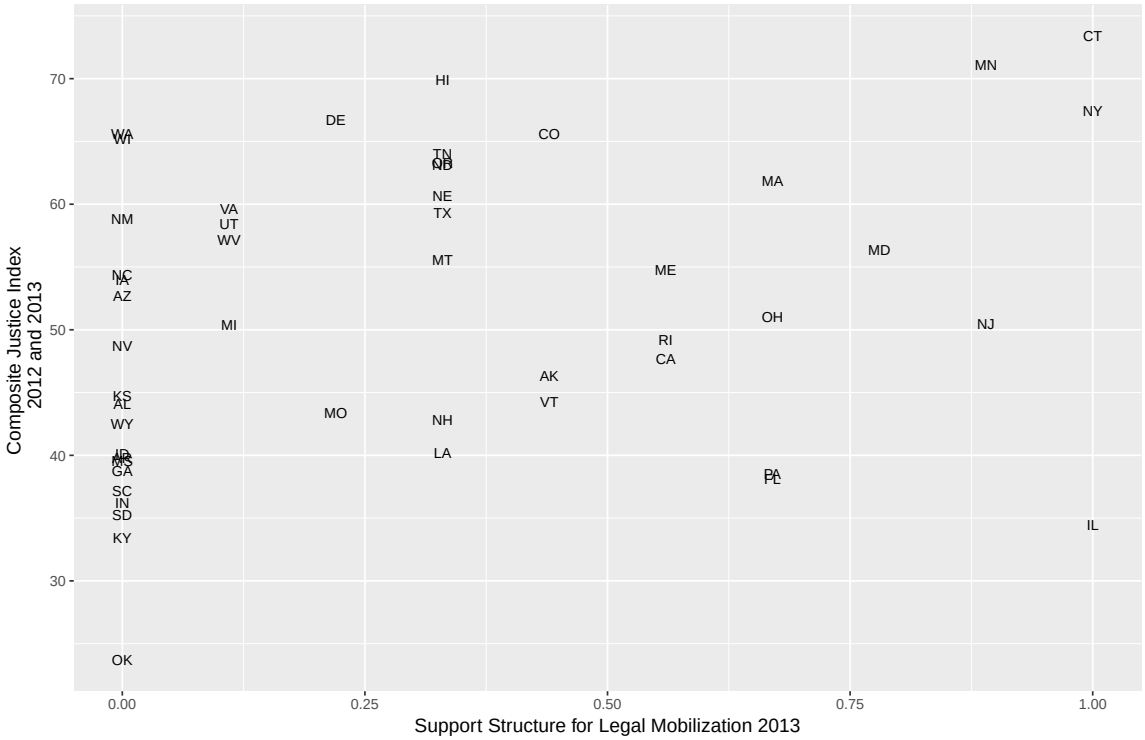

Figure 4.22: The 2013 Support Structure for Legal mobilization scores against the Composite Justice Index built with data from 2012 and 2013.

employment discrimination. All three of the other indices, for example, were developed using questionnaires about services and features of the states' court systems, while this project focuses on claims in a federal agency and federal courts. Nevertheless, the concepts remain theoretically connected, so Figure 4.22 provides the same comparison as Figure 4.21 with the Composite Index.

Figure 4.22 shows that there are far more areas of disagreement, particularly among states scoring 0 on the SSLM index. The correlation between the SSLM index in 2013 and the Composite Justice Index is only $r = 0.30$.

Concluding thoughts

This chapter walked through the process of choosing a measurement strategy for a latent concept that, for the most part, has only been measured with a single or double indicator variables. By considering the relationships between a larger set of indicator

variables of the concept, I concluded that a single dimension approach to measuring the concept—the approach implicit in the use of a single indicator variable as the measure—is not supported by the data. Instead, I proposed and executed an index of the concept that equally weighted the three sub-concepts of Support Structure for Legal Mobilization: rights organizations, willing and able attorneys, and financial support for one-shot litigants. With this Index in hand, we can now empirically test the hypotheses discussed in chapter two.

Chapter 5 Empirical Investigation of the Theory of Legal Mobilization for Private Policy Enforcement

5.1 Introduction

This project sets out to explain the rate of claims-filing on the bases of discrimination against Blacks, Whites, and Hispanics/Mexicans. It asks why there is variation in the rate of claims-making among the different states and across a 21 year period. In this chapter, I investigate whether a region's Support Structure for Legal Mobilization coupled with individuals' perceptions about whether they have experienced racial or ethnic discrimination help us to understand the rate of employment discrimination claims filed on the basis of race or ethnicity in the Equal Employment Opportunity Commission.

Previous chapters have laid the groundwork for this investigation, first by detailing the theoretical basis for the argument that these two phenomenon, in combination, should lead to more rights-claiming, then by outlining strategies to overcome the difficulty of measuring Support Structure for Legal Mobilization and Perceived Discrimination. With these measurement tools now available, this chapter sets out to test the theory using an ordinary least squares regression model with fixed effects. I find some modest support for the theory.

5.2 Data

5.2.1 Dependent Variable: EEOC Claims per Capita

Between 1992 and 2013, 1,556,473 claims were filed at the Equal Employment Opportunity Commission (EEOC) for employment discrimination on the basis of racial

discrimination against Black or African-American employees (1,186,836 claims filed), racial discrimination against White employees (141,429 claims filed), and national origin discrimination for Hispanic or Mexican employees (231,451 claims filed). The dependent variables in the following analyses come from this subset of EEOC claims. This subset accounts for 21% of all claims filed at the EEOC during this period. In fact, claims alleging racial discrimination on the basis of being Black or African American is the second largest category of all claims filed. Only claims filed on the basis of Retaliation are greater.[1]

In the following statistical analyses, the dependent variables are always per capita and logged, to make different states comparable to each other and to reduce the right skew of the data.[2]

Figure 5.1 provides a snapshot of EEOC claims per capita by state in the year 2010. The states are ordered by rank. In Figure 5.1, we observe some unusual variation. For example, geographic regions don't seem to cluster together. In the Black subset, Alabama is in the top 10, while South Carolina is in the bottom 10. Louisiana, Mississippi, North Carolina, and Georgia are scattered throughout the rankings.

[1]In response to a Freedom of Information Act request in 2016, the Equal Employment Opportunity Commission provided me with individual-claim-level data for all claims filed between 1992 and 2013. Claims were coded with some minimal information about the charging party, the responding party (employer), the basis for claim, and the type of resolution of the claim. The subset of claims for this project are those with one of the following basis codes: "Race–Black/African American," "Race–White", "National Origin–Hispanic," and "National Origin–Mexican." I did include claims tagged with the basis codes of "color", "National Origin: Other," and "bi-racial/multi-racial." While these categories almost certainly include Black/African-American and Latinx claimants, I do not have enough information to pick those claims out from claims from other groups.

[2]To log claims per capita, I added a small constant to the data to address observations of zero claims per capita.

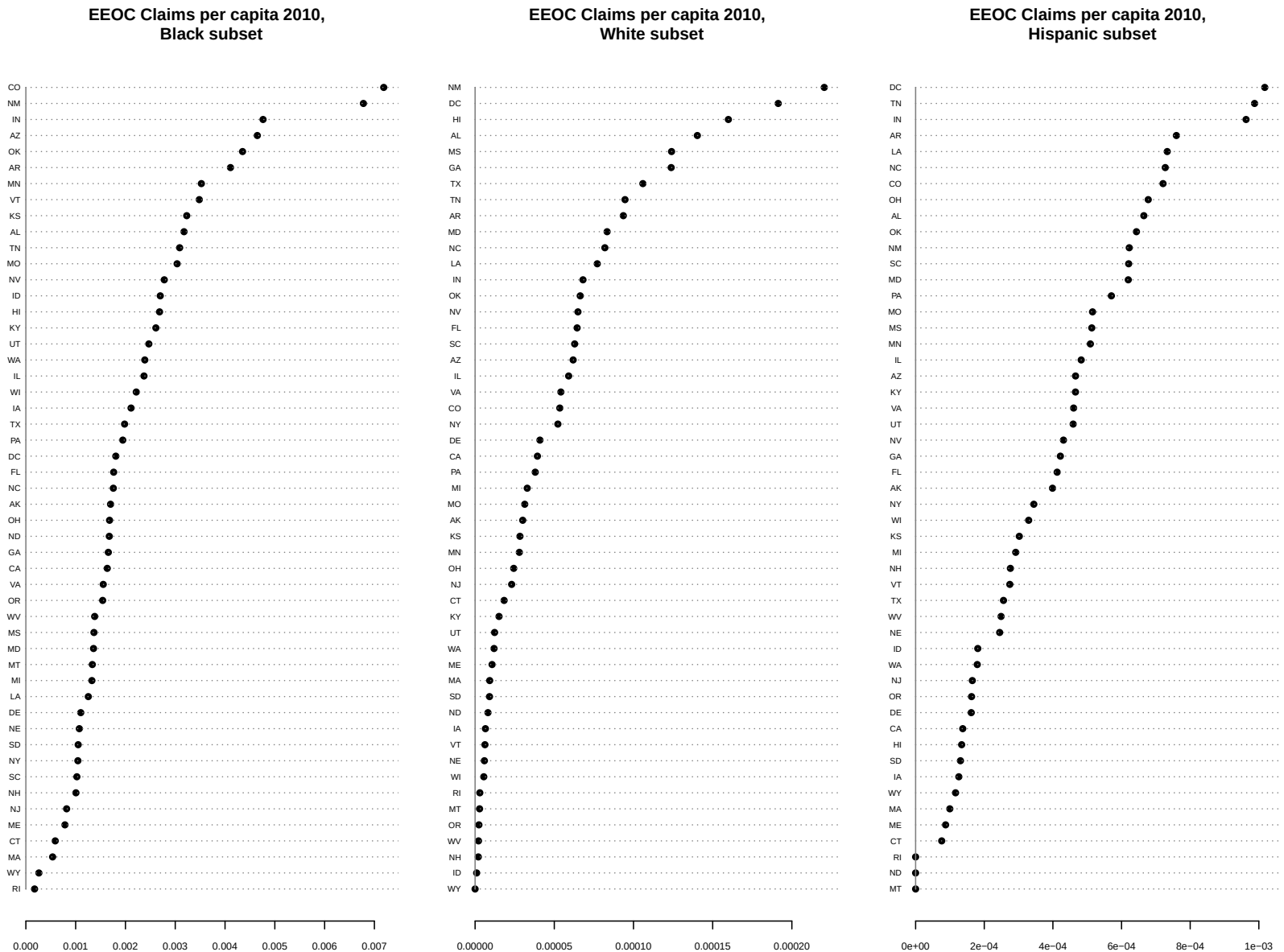

Figure 5.1: EEOC claims per capita in 2010. The states are ordered by rank so that the state with the most claims per capita is in the top position. In the Black subset, EEOC claims made on the basis of racial discrimination against Blacks/African Americans is divided by the state population of Blacks/African Americans. The remaining subsets are composed similarly.

5.2.2 Key Independent Variables

The development of the Support Structure for Legal Mobilization (SSLM) additive index is the subject of chapter four. Each state-year is scored with a value between zero and one, with zero representing the least support and one representing the most support.

The development of the perceived discrimination variable is the subject of chapter three. Throughout this chapter, perceived discrimination refers to the estimated percentage of a population in a state-year that would answer yes to a question about whether they have had a personal experience with discrimination on the basis of their race. For example, in models predicting the rate of claims of racial discrimination against Black or African-American, perceived discrimination refers to the percentage of the Black population in a state-year that would answer yes to a question about personal experiences with discrimination because of the color of their skin. Similarly, in models predicting the rates of claims on the basis of racial discrimination against White people (so-called "reverse discrimination"), perceived discrimination refers to the percentage of the White population in a state-year that would answer yes to a personal experience with racial discrimination question.

Throughout the statistical analyses in this chapter, the Support Structure for Legal Mobilization variable is interacted with the Perceived Discrimination variable. Chapter two walks through the reasoning behind thinking of the relationship between the two variables as conditional: Support Structure for Legal Mobilization can both reduce the costs of claims filing and increase the probability of a successful outcome, increasing the expected benefits of a claim-filing.

5.2.3 Independent Variable: Institutional Ideology

The ideology of the decision-makers considering a rights-claim has an effect on the probability of winning the claim and the size of the award, if the claim is successful. In

general, we except more liberal decision-makers to be more pro-employee and more conservative decision-makers to be more pro-defendant. I adopt some traditional measures of ideology to account for the effect of ideology on the decision to file a rights claim.

The Equal Opportunity Employment Commission is a federal executive agency. The president appoints the upper level administrative positions in executive agencies. For this reason, I use the party of the president in power in a given year as a rough proxy for the institution's ideology. Observations are coded as 0 if the president is a Republican and 1 if the president is a Democrat.

The United States District Courts are the bodies who consider any federal lawsuits filed after a claim is filed at the EEOC. Because most lawsuits never go beyond the trial court, my measure of the ideology of the relevant U.S. courts stops here. I started with the Bonica and Sen DIME scores, which are ideology scores based on campaign donations. Then I averaged the DIME scores of all sitting judges in all the districts within a state in a given year. This average was the ideology score of the federal district courts in a state-year. [3] The range for averaged DIME scores in a state is -1.23 - 0.66, where 0.66 is the most liberal set of district court judges in a state-year and -1.23 is the most conservative set of judges.[4]

Like Support Structure for Legal Mobilization, the ideology of the adjudicators should interact with Perceived Discrimination. Before a potential claimant can think through the effect judicial or agency ideology has on the expected benefits of her claim, she must know that she's experienced an event for which rights-claiming is a remedy. For this reason, the variables capturing the ideology of the executive and the federal judiciary are interacted with Perceived Discrimination in the following

[3]There were 27044 judge-years in this dataset. 386 judge-years were missing based on that fact there were no DIME scores for them.

[4]In the original DIME data-set, negative numbers indicated more liberal ideology. For ease of interpretation of the model results, I multiplied the averaged DIME scores by -1 to reverse the direction.

statistical analyses.

A final ideological consideration is the ideology of the state institutions that would resolve the claim if it is pursued through a state-level agency or court. Individuals looking for a state-level resolution usually file their claims in what the EEOC refers to as Fair Employment Practices Agencies. Claims filed in state agencies are automatically dual-filed with the EEOC and vice versa. To account for the ideology of state institutions, I rely on the Berry, Ringquist, Fording and Hanson measure of state government ideology. These scores are based on interest-group ratings of members of the state legislature and the state governor, but unfortunately do not include the ideology of the state court system. The Barry scores range from 0 to 100, with smaller values indicating more conservative institutions.

5.2.4 Controlling for Observed Racial Disparities in Employment

Self-reporting of racial discrimination through surveys has been used as a measure of racial discrimination in other work. The measurement approach is considered valid and reliable (For a discussion, see Smith 2002, Berrey, Nelson and Nielsen 2017). If my estimates of perceived discrimination pick up an effect of racial discrimination, then positive results may be less convincing as evidence of the theory's value. One might conclude that that people are simply filing more charges in places where more charge-worthy behavior takes place.

I try to control for this potential omitted variable by including a control variable for observed racial disparities in employment. I focus on one type of disparity in employment: the extent to which the racial makeup of people in management positions resembles the racial makeup of total state population (hereafter, Observed Racial Disparity).

To calculate a state's Management Disparity, I started with the Census's Current Population Survey. I identified all respondents who were coded as holding a

management occupation, such as food service managers, construction managers, and education administrators. I identified the percent of all respondents with management occupations in a state that were Black (non-Hispanic), White (non-Hispanic), and Hispanic. For example, in Georgia in 2016, 19% of people in management positions were Black/African American, 76% were White, and 5% were Hispanic. I compared these percentages to the percentage of the total state population that was Black, White, and Hispanic. In Georgia in 2013, 31% of the total population was Black/African-American. Then I found the relative (percent) difference between the two values. Continuing with the Georgia example, the percentage of Black people in management is 39% lower than we'd expect given the size of the state's Black population. This value is the Management Disparity for the Black population in Georgia in 2013.[5][6]

5.2.5 Other Control Variables

Other economic and cultural-geographic factors may play a role in the decision to file a claim. I include the median income for a state, the annual unemployment rate in the state, the logged total population of the state, and fixed effects for state, region, and year.

A state's unemployment rate indicates the difficulty of finding a job and a greater risk of becoming unemployed or underemployed. When the unemployment rate is high, we might expect to find more grievances and greater number of EEOC claims

[5]I log the relative difference between the percent of all managers from racial/ethnic group A and the percent of the total population belonging to group A. Prior to logging, I added a small constant to make all observations positive and non-zero.

[6]There are at least two problems with this control variable: 1. the CPS is a sample of the population. Somewhere between 140,000 and 220,000 individuals are surveyed a year and their responses are weighted to more closely resemble the true population. Some states have zero Black or Hispanic respondents in management occupations in the sample, so no responses are weighted, so the extent of the problem in those states is exaggerated. 2. What if Blacks/Hispanics have fewer post-secondary degrees than Whites and therefore there are fewer qualified candidates for management positions in these groups? Or fewer Blacks/Hispanics apply for management jobs because of endemic racism or a state's cultural legacies? In both instances, "actual" employment discrimination under the Civil Rights Act (1964) is not the cause of the disparity.

filing. I employ the Bureau of Labor Statistics monthly non-seasonally adjusted rates, which I average to create yearly estimates of unemployment by the state.

When a state has a higher median income, it may indicate that its citizens on the whole are more able to bear the costs of filing a claim. We might expect to see more filing at the EEOC in these states. I turn to the U.S. Census Bureau' Current Population Survey and its Annual Social and Economic Supplements for state median income data.

Finally, geographic and cultural divides may play a role in the rate of EEOC filing. For example, more rural places may find it more difficult to file. Alternatively, denizens of these regions may simply be less litigious than urban and more populated areas. To capture this possibility, I include fixed effects for regions, dividing the U.S. into Northeast, North Central (Midwest), South and West. To hone-in even more on the rural/urban divide, I include the logged total population of the state as another control variable.

5.3 The Hypotheses and Methods

This chapter tests the following two hypotheses:

More EEOC claims filing occurs when both support structure for legal mobilization AND perceptions of personal discrimination experiences are high.

More EEOC claims filing occurs when the number of adjudicators with a liberal ideology is high AND perceptions of personal discrimination experiences are high.

To test these hypotheses, I ran ordinary least squares regressions on logged EEOC claims per capita using Perceived Discrimination, Support Structure for Legal Mobilization, and institutional ideology as the key explanatory variables. If the interaction of Perceived Discrimination and Support Structure for Legal Mobilization is positive

and statistically significant, we'd find support for Hypothesis1. If the interaction of Perceived Discrimination and the ideology of the federal courts is positive and statistically significant, we'd find support for Hypothesis2. Similarly, a positive and statistically significant coefficient for the interaction between Perceived Discrimination and the party of president supports Hypothesis 2.

Rather than running one regression for all claims filed under the four bases discussed above (Race–Black/African-American, Race–White, National Origin–Mexican, and National Origin–Hispanic), I ran separate regressions for each racial/ethnic group (combining claims filed coded as National Original–Mexican and National Origin–Hispanic). Pooling can obscure behaviors that may vary within and across small subgroups.

5.3.1 Results and Discussion

Tables 5.1, 5.2, and 5.3 show the results of four models applied to three different subsets of the dependent variable: EEOC claims filed for discrimination against Black or African-American people, EEOC claims filed for discrimination against White people, and EEOC claims filed for discrimination against Hispanic and/or Mexican people. The claims are per capita, divided by the state's total population of Black people (not Hispanic), White people (not Hispanic), and Hispanic people (all races), respectively. The four models highlighted in the tables vary as follows: models (1) across all subsets have no fixed effects; models (2) have fixed effects for year; across all three tables, models (3) have region and year fixed effects; and models (4) have state and year fixed effects. Overall, the results provide some support of the first hypothesis. They also highlight the need for a more nuanced theory about the role that individuals' races and ethnicities, along with adjudicator ideology, play in the decision to rights-claim.

Table 5.1 shows the results for Ordinary Least Squares regression models to explain

the rate of EEOC claims filed for discrimination against Black or African-American people (the Black subset). The results provide some support for Hypothesis 1. The coefficients for this interaction are positive and statistically significant in all four specifications of the model with the subset.

The results, particularly those in the model including fixed effects for region and year (3), seem to suggest something a little different than what I theorized: Absent Support Structure for Legal Mobilization, Perceived Discrimination (among Blacks) leads to fewer charges filed in a state. Support Structure for Legal Mobilization may be neutralizing an unexpected negative effect.

This result is very similar to the results of all four models on EEOC claims filed on the basis of National Origin discrimination against Mexicans and Hispanics (the Hispanic subset). In Table 5.3, the coefficients on the interaction term for Support Structure for Legal Mobilization and Perceived Discrimination (among Hispanics) for all four models are positive and statistically significant. The effect of Perceived Discrimination (among Hispanics) when there is no Support Structure for Legal Mobilization is negative and statistically significant. When SSLM is added to the equation, it seems to weaken and, at some levels of SSLM, neutralize the negative effect.

In Table 5.2, the interaction term behaves very differently. In the models for EEOC claims of discrimination against White people (the White subset), the coefficients are negative and significant. If there is more Support Structure for Legal Mobilization in an area, Perceived Discrimination (among Whites) has a weaker effect on the rate of claiming. In all models, the direction and the strength of the effect is similar and, though their P-values do get larger with additional fixed effects, they remain within conventions for statistical significance. In the White subset, unlike the other subsets, we see that Perceived Discrimination has a positive effect on filing when there is no Support Structure for Legal Mobilization in a state.

To more fully understand the interaction between Support Structure of Legal

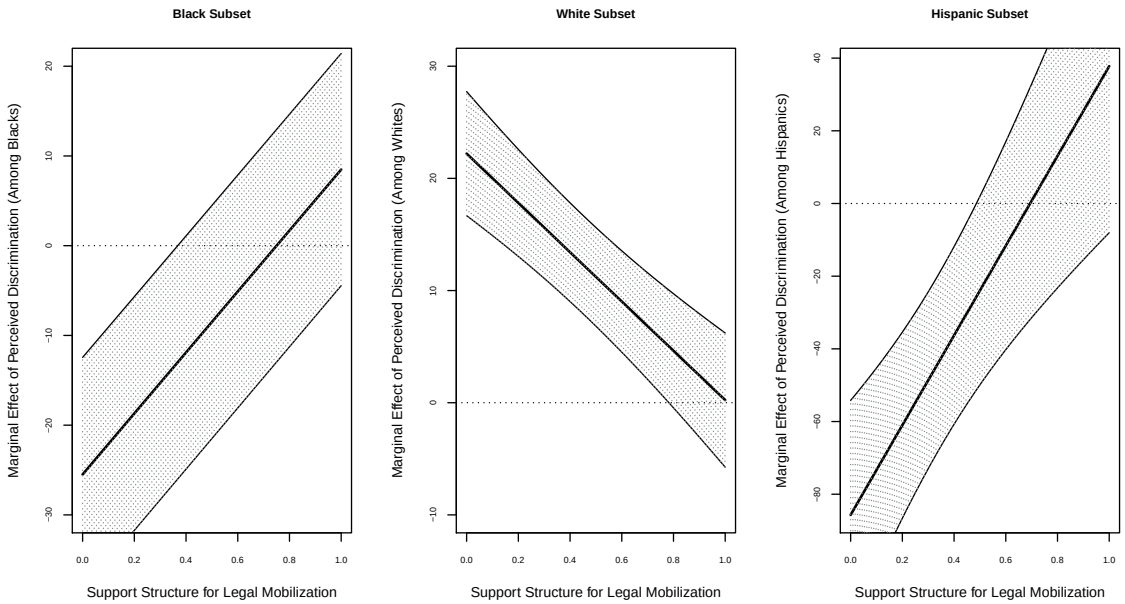

Figure 5.2: The marginal effect of perceived discrimination at different levels of Support Structure for Legal Mobilization from models (3): the OLS model with region and year fixed effects. The bars reflect the 95% confidence intervals.

Mobilization and Perceived Discrimination, we can compute the effect of Perceived Discrimination at observed values for Support Structure for Legal Mobilization. Figure 5.2 presents the marginal effect of Perceived Discrimination on EEOC filing per capita at each value of SSLM for each of the three subsets. The Figure also provides the 95% confidence intervals.

Figure 5.2 highlights a result somewhat out-of-line with the expectations set out in the theory of legal mobilization for policy enforcement chapter. I expected that Perceived Discrimination would not affect filing rates without Support Structure for Legal Mobilization. In plots 1 and 3 (the marginal effects plot for the Black and Hispanic subset respectively), we something even more concerning. When Support Structure for Legal Mobilization is not present, Perceived Discrimination is actually negatively related to EEOC filing. In other words, SSLM seems to be mitigating Perceived Discrimination's negative effect until Perceived Discrimination has no effect at all on filing.

In the first plot in Figure 5.2, we observe that the confidence intervals for the marginal effect of Perceived Discrimination on filing rates crosses zero when Support Structure for Legal Mobilization is around 0.4 for the Black Subset. The confidence intervals continue to cross zero for all values of SSLM above 0.4. Similarly, in the third plot in Figure 5.2, describing the Hispanic subset, the confidence intervals for the effect of Perceived Discrimination (among Hispanics) on EEOC filing cross zero when Support Structure for Legal Mobilization is 0.5 and greater. In both groups, Perceived Discrimination has no effect on the rate of EEOC filing at these values of SSLM (and values higher).

The White subset, however, does the exact opposite of the other two. The second plot in Figure 5.2 describes the marginal effects of Support Structure for Legal Mobilization on Perceived Discrimination for White individuals. When no Support Structure for Legal Mobilization is present in a state, Perceived Discrimination (among Whites) has a strong and positive relationship with EEOC filing. Support Structure for Legal Mobilization weakens this positive effect until, at the highest levels of SSLM, Perceived Discrimination (among Whites) has no effect on EEOC filing at all.

One of the strongest results of this empirical investigation is the interaction between perceived discrimination and the party of the president and administration. In Table 5.1, a Democratic administration increases the effect of Perceived Discrimination on rates of claiming. The strength of the effect, as well as our confidence in the statistical significance of the result, remain relatively constant in all four specifications of the model. This outcome supports Hypothesis 2. It also aligns with our understanding that Democratic administrations, compared to Republican administrations, are more friendly to labor and to people of color. The likelihood of a favorable disposition might seem higher to a potential claimant under these circumstances.

In contrast to the models predicting EEOC filing among people of color, Table 5.2 shows that the interaction between Perceived Discrimination (among Whites)

and Democratic president is negative and significant in the models for White EEOC discrimination claims. When the president is a Democrat, Perceived Discrimination (among Whites) is a weaker predictor of the rate of claims. White claimants of racial discrimination may believe they have a worse shot of an outcome in their favor at an EEOC in an Democratic administration. The institution may be perceived as more hostile to these claims because of the connection between "reverse discrimination" and conservative ideology.

On the other hand, in the models predicting EEOC claims for discrimination of Mexicans and Hispanics, there is no support for Hypothesis 2 in the interaction between Perceived Discrimination and the party of the president. Table 5.3 shows that the coefficients for this interaction remain positive, but fail to meet conventions of statistical significance in every case but model (1).

The interaction of Perceived Discrimination and the ideology of the US district court judges in a state has unusual results across the subsets. In Table 5.1, we see positive and statistically significant interaction effects in models (1), (2), and (3).The direction of the relationship flips in model (4) and does not approach statistical significance. In general, this results are what we would expect to see: liberal judges, more friendly to employees and people of color, increase the expected benefits of filing.

In Table 5.3, we would expect to see results similar to the results of the models for Black claims. Instead, we see negative and mostly statistically significant interaction effects. This result is one of the projects most puzzling.

Finally, in the models for White discrimination claims, we see a similarly puzzling result. Perceived discrimination leads to more filing when a state' federal district court judges are more liberal. The interaction is positive and statistically significant in all four models. Whereas a Democratic president seems to keep White folks with perceptions of racial discrimination from the EEOC, a more liberal set of federal district court judges has just the opposite effect. This result is in conflict with well-

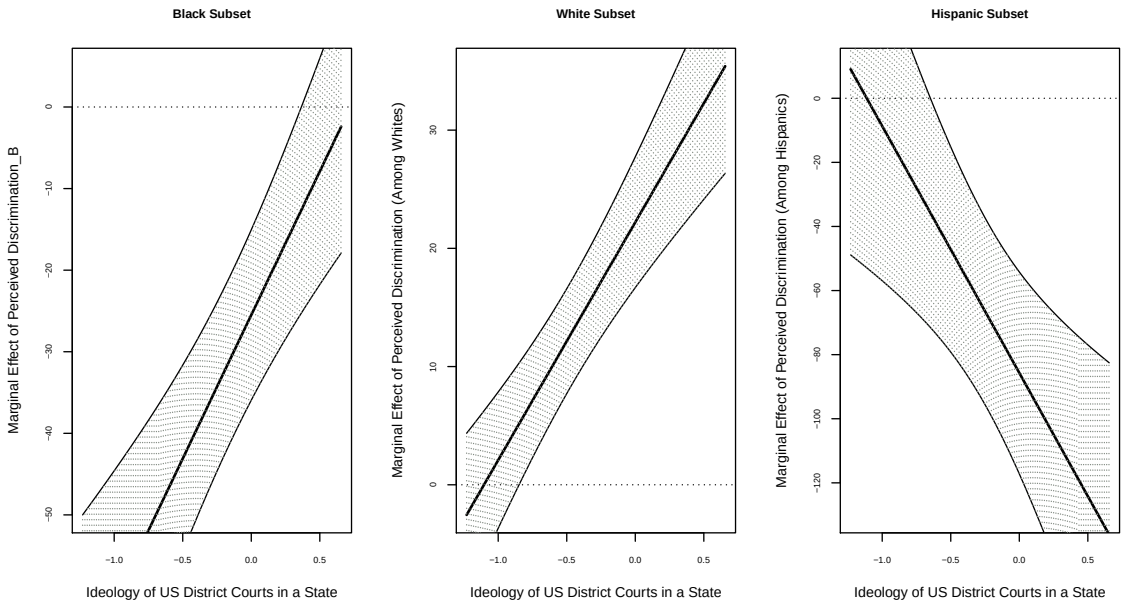

Figure 5.3: The marginal effect of perceived discrimination at different levels of judicial ideology from models (3): the OLS model with region and year fixed effects. Judicial ideology is an average of federal district court judges' ideology using Bonica and Sen's DIME ideology scores, reversed for interpretation purposes. Higher values of ideology reflect more liberal ideology. EEOC Claims Per Capita from Models (3): the OLS model with region and year fixed effects. The bars reflect the 95% confidence intervals.

supported expectations about adjudicator ideology.

Figure 5.3 illustrates the marginal effect of Perceived Discrimination on EEOC filing at different averages for judicial ideology in a state's US district courts. These marginal effects plots only highlight the confusing role ideology is playing in these models.

The first plot of Figure 5.3 visualizes the marginal effect in the Black subset. When a state's US District courts are at their most conservative, the negative effect of Perceived Discrimination (among Blacks) on EEOC filing is at its largest. As the state's federal trial courts become more liberal, the negative effect weakens until, in the states with the most liberal federal District courts, Perceived Discrimination has no effect on filing.

In the second plot, Perceived Discrimination (among Whites) has no effect on filing

in states housing the federal trial court judges with the most conservative averages. As the averages increase, becoming more liberal, Perceived Discrimination's marginal effect increases, showcasing a large positive effect of Perceived Discrimination on filing in the states with the most liberal averages for federal district judge ideology.

In the final plot in Figure 5.3, we observe a negative relationship between Perceived Discrimination and filing in the Hispanic subset that only becomes larger as the federal district court averages become more liberal.

What's driving these confusing results for the interaction between judicial ideology and Perceived Discrimination? Unfortunately, it is difficult to find one theory that explains the results across the three subsets. One explanation for the White subset is based in the differing roles that the EEOC plays in employment dispute resolution: some individuals may file because they want the EEOC to be their dispute-resolving body. Other individuals may be filing because the act is a necessary precondition to filing a lawsuit. In other words, the EEOC is just a waiting room and they want a U.S. district court to be their dispute-resolving body. Moreover, whether an individual wants a resolution from one body or the other is likely a function of the institutions' ideologies. Either way, both motivations look observationally equivalent in the dependent variables of these analysis. Whether one wants the EEOC to resolve the claim or the federal courts to do it, both result in a charge filed at the EEOC.[7]

[7]One step forward from here: one could remove ideological diversity between the two branches from the table. When BOTH the president's administration is liberal and the average ideology of the federal judges in your state is liberal, we would expect these institutions would make people of color with perceived discrimination more likely to file. When both the agency and your states' federal judges are conservative, perceptions of discrimination will have less effect on filing for people of color. For the White subset, we would expect the reverse. Tables A.1, A.2, and A.3 show the results of this alternative model. Mostly, the results for the ideology interactions are null, except for the White subset. In the White subset, when both the president and the federal judiciary are liberal, then perceived discrimination's affect on filing is reduced. When both institutions are conservative, then perceived discrimination's affect on filing is positive.

Table 5.1: OLS Results for Black Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Black population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are Black and the total population that is Black

	Dependent variable: EEOC claims per capita (Black Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	1.60	3.56	-25.50^{***}	-1.74
	(5.61)	(5.62)	(6.35)	(7.93)
Support Structure for Legal Mobilization	-0.64^{***}	-0.56^{***}	0.01	0.30
	(0.14)	(0.14)	(0.14)	(0.19)
US District Courts Ideology	-0.50^{***}	-0.46^{***}	-0.50^{***}	-0.97^{***}
	(0.13)	(0.13)	(0.13)	(0.26)
Democratic President	0.47^{***}	0.85^{***}	1.34^{***}	0.45
	(0.07)	(0.25)	(0.25)	(0.34)
State Institution Ideology	-0.0004	0.001	0.003^{**}	0.003^{**}
	(0.001)	(0.001)	(0.001)	(0.001)
Management Disparity	0.16^{***}	0.17^{***}	0.13^{***}	0.05
	(0.04)	(0.04)	(0.04)	(0.04)
Perceived Discrimination: SSLM	21.74^{*}	24.12^{**}	33.98^{***}	22.77^{*}
	(11.33)	(11.29)	(10.98)	(13.45)
Perceived Discrimination: US District Courts Ideology	33.20^{***}	31.62^{***}	35.21^{***}	-15.72
	(9.14)	(9.10)	(8.84)	(13.40)
Perceived Discrimination: Democratic President	17.07^{***}	14.66^{***}	16.65^{***}	17.10^{***}
	(5.35)	(5.40)	(5.14)	(4.25)
Observations	1,100	1,100	1,100	1,100
R^2	0.15	0.18	0.26	0.53
Adjusted R^2	0.14	0.16	0.24	0.49
Residual Std. Error	1.07	1.06	1.01	0.82
F Statistic	15.55^{***}	7.30^{***}	10.73^{***}	14.18^{***}
Note:				*p<0.1; **p<0.05; ***p<0.01

Table 5.2: OLS Results for White Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of White population who'd say they had a personal experience with discrimination because of their race. Observed Racial Disparity refers to the relative difference in the percent of managers who are White and the total population that is White

	Dependent variable:EEOC claims per capita (White Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	23.91***	23.05***	22.21***	2.85
	(3.08)	(3.05)	(3.36)	(8.64)
Support Structure for Legal Mobilization	−0.73***	−0.63***	0.27	0.31
	(0.18)	(0.18)	(0.18)	(0.22)
US District Courts Ideology	−0.77***	−0.89***	−0.74***	−0.77**
	(0.19)	(0.19)	(0.18)	(0.32)
Democratic President	0.50***	1.12***	0.97***	0.68*
	(0.09)	(0.32)	(0.31)	(0.36)
State Institution Ideology	0.004***	0.01***	0.01***	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
Management Disparity	7.38***	7.66***	7.00***	0.16
	(0.72)	(0.71)	(0.75)	(1.02)
Perceived Discrimination: SSLM	−14.08***	−13.65***	−21.97***	−11.72*
	(4.80)	(4.76)	(4.52)	(6.65)
Perceived Discrimination: US District Courts Ideology	24.77***	24.34***	20.12***	22.07***
	(4.53)	(4.52)	(4.25)	(8.16)
Perceived Discrimination: Democratic President	−6.60***	−7.06***	−7.35***	−6.98***
	(2.45)	(2.41)	(2.23)	(1.61)
Observations	1,100	1,100	1,100	1,100
R^2	0.49	0.52	0.59	0.81
Adjusted R^2	0.49	0.50	0.57	0.79
Residual Std. Error	1.39	1.37	1.26	0.88
F Statistic	88.00***	35.73***	43.47***	53.03***
Note:				*p<0.1; **p<0.05; ***p<0.01

Table 5.3: OLS Results for Hispanic Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Hispanic population who'd say they had a personal experience with discrimination because of their ethnicity Observed Racial Disparity refers to the Relative Difference in the percent of managers who are Hispanic and the total population that is Hispanic

	Dependent variable:EEOC claims per capita (Hispanic Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	-98.26^{***}	-94.41^{***}	-85.69^{***}	-34.93^{*}
	(19.72)	(19.48)	(19.15)	(18.94)
Support Structure for Legal Mobilization	-0.93^{***}	-0.81^{***}	-0.30	0.24
	(0.19)	(0.19)	(0.20)	(0.29)
US District Courts Ideology	-0.59^{***}	-0.51^{***}	-0.28	-0.09
	(0.17)	(0.17)	(0.18)	(0.35)
Democratic President	0.30^{***}	0.89^{***}	0.65^{*}	0.32
	(0.10)	(0.34)	(0.34)	(0.49)
State Institution Ideology	-0.001	0.0003	0.003	0.01^{**}
	(0.002)	(0.002)	(0.002)	(0.002)
Management Disparity	0.18^{***}	0.18^{***}	0.16^{**}	0.05
	(0.07)	(0.07)	(0.06)	(0.06)
Perceived Discrimination: SSLM	153.16^{***}	153.32^{***}	123.47^{***}	81.38^{**}
	(37.54)	(36.86)	(35.91)	(35.66)
Perceived Discrimination: US District Courts Ideology	-78.02^{**}	-89.91^{***}	-77.00^{**}	-46.56
	(31.82)	(31.55)	(30.65)	(32.42)
Perceived Discrimination: Democratic President	40.45^{**}	31.08	23.28	11.58
	(19.06)	(18.95)	(18.36)	(16.26)
Observations	1,100	1,100	1,100	1,100
R^2	0.20	0.25	0.30	0.49
Adjusted R^2	0.19	0.22	0.27	0.45
Residual Std. Error	1.48	1.45	1.40	1.22
F Statistic	22.03^{***}	10.84^{***}	12.81^{***}	12.03^{***}
Note:				*p<0.1; **p<0.05; ***p<0.01

5.4 Conclusion

In this culminating chapter, we used measures developed in chapter three and four, along with existing scales for ideology developed in previous scholarship, to test the theory proposed in chapter two. We found some support for the conditional relationship between Perceived Discrimination and Support Structure for Legal Mobilization. We also observed a strong negative relationship between the two variables in the case of reverse discrimination that I did not account for in my theory.

The conditional relationship between Perceived Discrimination and the Party of the President found support in two out of three subsets of claims. While the conditional relationship between Perceived Discrimination and the average ideology of the US district court judges in a state reached conventions of statistical significance in most cases, the results warrant serious consideration. They do not adhere to our well-supported expectations about ideology.

In the following chapter, I discuss these limitations and steps for addressing them in future research. In addition, I discuss how the evidence in support of a positive interactive effect between perceived discrimination and Support Structure for Legal Mobilization could influence other research questions and policy areas.

Chapter 6 Conclusion

Legal scholars often refer to the delegation of policy enforcement to private individuals as "deputizing private attorneys general," (e.g. Rubenstein 2004, Engstrom 2012, Albiston and Nielsen 2007). They employ "deputizing" in the American Wild West sense of the term. That is, Congress pins a tin star to everyday folk, transforming them into "citizen deputies"—temporary representatives of a faraway state with the authority to enforce the law on its behalf. In the Wild West, however, the sheriff's deputies are usually local white male gunslingers who want to help the helpless. In these stories, the victims of lawless behaviors are not tasked with enforcing the law in their own cases, but federal law surrounding employment discrimination does just that. Pamela Bucy's typology for private justice refers to this situation as the "victim" private justice model (Bucy 2002). With these victims-*cum*-deputies charged with statutory enforcement, the quality and extent of public policy enforcement becomes a function of whether private individuals choose to act and how well-armed they are when they do.

6.1 A Theory of Legal Mobilization of Private Policy Enforcers

This dissertation asks what does it take for an aggrieved individual to file a rights-claim against another private party, particularly when that individual is not motivated by larger policy concerns. A rich literature has addressed when and why actors outside of the political institutions—private individuals, cause lawyers, and interest groups, for example—file private lawsuits, mobilizing to change policy through the courts (Scheingold 1974, Epp 1998, McCann N.d., Frymer 2003, Sarat and Scheingold 1998). This legal mobilization scholarship has been crucial to my understanding of the role

that rights organizations, legal aid organizations, lawyers and their organizations play in supporting private litigation.

The question I set out to address, however, included a condition that this literature did not confront: what if the individual is not motivated by larger policy concerns? What if she just wants a remedy for her dispute and any larger social good is just a by-product of her actions? To answer these questions, I turned to the theories of legal mobilization at the individual-level, and was particularly influenced by legal scholarship that formally modeled the microeconomics of litigation (Posner 1972, Rubin 1977, Priest and Klein 1984). Within this tradition, scholars start with a common framework. The potential plaintiff and the defendant are participating in a sequential "game," and their choices—whether to file, whether and how to settle—are driven by their desire to maximize their personal payoffs in light of the other actor's choices and the probability of outcomes decided by outside forces or "nature" (i.e. the judge or jury evaluating their case and deciding the award amount, if the plaintiff is successful).

While these authors agree to this common framework, they disagree about the implications of this interaction to judge-made law and, as a result, future potential plaintiffs' behavior when they face the same set of choices. Some authors are more confident of the efficiency of the interaction to the creation of legal doctrine (Posner 1972, Rubin 1977), while others are more concerned that personal maximizing decisions of the parties may have long term deleterious effects on how the law develops (Priest and Klein 1984).

Within political science, we see the common framework's influence and similar tensions. For example, Farhang (2010) employs the microeconomics of litigation in his argument about when Congress decides to delegate policy enforcement to private citizens through lawsuits over bureaucratic agencies. Within his argument, the institutions are functionally equivalent to the potential plaintiffs so long as Congress

tweaks the potential plaintiff's payoff function accordingly. Through federal statute, civil court can be made less risky (by changing the burden of proof, for example) or more profitable (by allowing for punitive damages, for example). On the other side of the spectrum, Galanter (1974) does not have confidence in litigation's ability to fairly resolve disputes between employees and employers. Employers' have an interest in how the law surrounding employment discrimination develops because they anticipate being a party to these types of disputes in the future. Employees, on the other hand, do not include future cases in their payoff function because they do not anticipate that they will be a party in future disputes. The consequence of this difference is that the employer is motivated to go to court when the case factors or extralegal factors make it likely that the employer will win, and precedent will move slowly to favor employers over employees.

These disputes highlight the versatility of the rational actor framework for legal mobilization. Like these authors, I adopt the framework with particular attention to the potential plaintiff's decision calculus. Like other potential plaintiffs, private employees considering a rights-claim evaluate the costs of pursuing the charge, the expected benefits associated with winning, and the probability of their success. A number of factors influence these payoff terms, including the facts of their case and existing case-law and statutory law surrounding employment discrimination. I focus on two extralegal factors that influence these payoff terms. the ideology of the adjudicator affects the likelihood of success and the size of an award if the plaintiff is successful. More liberal adjudicators are expected to be more friendly to employees and people of color, while more conservative adjudicators are expected to be more friendly to employers (Farhang and Wawro 2004, Sunstein et al. 2006, Songer, Haire and Davis 1994).

The second extralegal factor is support structure for legal mobilization, which refers to the presence of NGOs, willing and able attorneys, and sources of finan-

cial assistance for potential plaintiffs (Epp 1998). Plaintiffs have access to varying amounts of the support structure for legal mobilization. When these resources are easily accessed, they can bring down the costs of legal mobilization (if organizations provide financial assistance or pro bono legal labor). They can also improve the likelihood of success and the size of a damages award because whether a party has a legal team and the quality of that legal team improves legal outcomes for individuals (Sandefur 2015).

I remain agnostic as to importance of these two factors when compared to the other factors influencing the costs, expected benefits, and probability of success of a rights claim. Rather I focus on these two because I anticipate that they vary across the states, and this possibility leads back to the normative concerns that drove me to this project: what if similarly situated employees with similar experiences with racial discrimination are incentivized to behave differently because of their geography?

If an employee with a claim in Idaho decides that it is not worth it for her to claim and a similarly situated employee in Washington decides that it is worth it for her to claim, the consequences go beyond those two individuals. The threat of getting caught for bad behavior is more real to the employer in Washington, so the racial climate of that workplace may improve for other workers. The threat of getting caught for bad behavior is also more real for other area employers because they have seen it happen to another organization, so employers outside the dispute may work to ensure a better workplace environment too. Arguments for efficacy of privatizing public policy enforcement rely on this dissemination process (CITE).

When an individual makes a rights-claim, her action can influence more than just employers. Whether through interpersonal networks, local lawyers and NGOs, or public coverage of a dispute, other area employees may receive new information and a new interpretive lens with which to view their own negative experiences in the workplace. This process circles back to the other condition of legal mobilization of

private citizen enforcers: they must perceive of their negative experience as racial discrimination and, therefore, a violation of their rights and the law (Felstiner, Abel and Sarat 1980, Scheingold 1974). Before any individual can evaluate the costs and potential benefits of pursuing a rights-claim, they must first perceive of the event in these terms.

6.2 Findings

In chapter three, we explored conditions under which a person perceives of an event as a personal experience with racial discrimination. In particular, we learned that geography and demographic features of individuals may play a large role in how they perceive events. Similar to previous research on perceptions of discrimination, Black individuals report personal experiences with discrimination most frequently, followed by Hispanics (of all races), and finally White individuals.

White populations have their highest rates of perceived racial discrimination in states in the South. In addition, some interesting geographic diversity emerges with states like New York, New Jersey, and Illinois closely following the states in the South. The states with the lowest percentages among White populations are usually rural, with small populations over all and in terms of people of color, such as Vermont, Maine, Idaho, and Montana.

These same rural, low population states are where Black populations have their highest rates of perceived discrimination. There also seems to be a regional component—Western states seem to have higher rates of perceived discrimination among Blacks. In direct contrast to the trends among White populations, the racially diverse States in the South have the lowest percentages of perceived discrimination among Black populations.

Perceived discrimination rates in the South deserve further investigation. The trends could be the result of more people of color in supervisory roles in these states

(simply because more Black people live and work in these states). Black people are less likely to see a negative employment experience as motivated by racial discrimination if their employer was also Black, but employees of employers of a difference race are more likely to see racial discrimination in employers' actions (Avery, McKay and Wilson 2008). If this explanation is supported in further studies, then there is less reason for concerns about policy enforcement in the region. Essentially, it would mean Black folks are reporting less personal experiences with racial discrimination because they are having fewer experiences with racial discrimination.

On the other hand, what if Black employees have just as many or more experiences with racial discrimination in the South relative to other states? We might expect as much because of these states have long histories of discriminatory policies and, based on modern voter identification laws and restrictive immigration laws, continue to be prone to adopting policies that disproportionately affect minority race and ethnic groups. The implication of this alternative explanation is that employment discrimination law could be enforced less for people of color in states with the greatest need for policy enforcement.

In chapter four, I developed a measure of the concept of support structure for legal mobilization (Epp 1998), tailored for the concept as it applies to legal mobilization of private policy enforcers of employment discrimination law in the United States. A principal components analysis of observable indicators of the concept, including minority rights NGOs, legal aid organizations, legal profession organization, and the diversity of the legal profession, suggested that a measurement strategy that treated the concept as unidimensional did not fit these data. In a similar vein, measurement strategies that use a single or double indicator of the concept are difficult to justify, given systemic geographic variation between indicators of willing and able attorneys, legal aid support, and minority rights organizations.

I proposed an additive index to combine the indicators of the concept, giving each

subconcept equal weight in the final score. The Support Structure for Legal Mobilization Index scores state-years from 0 to 1, where 1 is the most Support Structure for Legal Mobilization. States had limited temporal variation, but states that did show changes over time generally moved in an upward direction. Rural states in the West along with states in the South ranked among the lowest. When scores are averaged for each state over 22 years, the top ten states are New York, Connecticut, Minnesota, Maryland, Massachusetts, California, Illinois, Vermont, New Jersey, and Louisiana. The list does include geographic diversity, which could be leveraged in future studies.

In chapter five, the quantitative measures developed earlier were put to work. The chapter returned to the theory of legal mobilization for private policy enforcers and considered whether the case of employment discrimination law in the United States supported it. Using ordinary least squares regression with fixed effects, I investigated the rates of Equal Employment Opportunity Commission charges filed on the basis of racial discrimination against Blacks and Whites and national origin discrimination against Hispanic people and people of Mexican heritage.

I found some preliminary support for the interaction I proposed in Chapter 2: Support Structure for Legal Mobilization changes how Perceived Discrimination affects filing rates. Unexpectedly, I found that, in the absence of Support Structure for Legal Mobilization, Perceived Discrimination in Black and Hispanic populations may be negatively related to filing rates for these groups. Consquently, rather than increasing the strength of a positive effect of Perceived Discrimination on filing, SSLM seemed to be mitigating a negative effect.

In the absence of Support Structure for Legal Mobilization, Perceived Discrimination (in White populations) has its strongest effect on EEOC charges filed for racial discrimination against Whites (Reverse discrimination). Unlike the other two groups, perceptions appear to have a direct and positive relationship with filing rates. Support Structure for Legal Mobilization weakens this effect, so that in the states with

the most Support Structure for Legal Mobilization, Perceived Discrimination among whites does not affect filing rates. Chapter two didnot account for how Whites might behave differently than people of color because of the conservative worldview corresponding with claims of "reverse discrimination."

The ideology of the executive branch works in the anticipated way. When the president is a Democrat, any negative effect of Perceived Discrimination among Blacks is mitigated. More EEOC claims are filed when the EEOC is part of a Democratic administration. Conversely, under a Democratic administration, EEOC charges for racial discrimination against White people goes down. Perceptions of discrimination (in White populations) is a weaker predictor of rates of filing in this political context.

The effect of federal district court ideology, on the other hand, does not behave in a predictable way. I expected that a more liberal federal district court average would promote more claiming by Black and Hispanic employees because, if their cases end up in the federal district court, the adjudicators would be more friendly to their claims. Liberal district court averages would have the opposite effect on White employees because of conservative nature of reverse discrimination claims. The model showed no support for a relationship between judicial ideology and perceived discrimination among Blacks and Hispanics. Among Whites, the judicial ideology and perceived discrimination interaction was consistently statistically significant in the opposite direction we would expect. A liberal ideology average for a state's US district court judges increased the positive effect perceived discrimination had on charges filed for discrimination against White employees.

6.3 In Conclusion

Social scientists, legal scholars, and even journalists and essayists have long sought to explain why Americans resort to the legal system to resolve private conflicts with their neighbors, their employers, and the businesses they frequent. Americans have

been thought of as a particularly litigious culture. Alexis de Tocqueville even commented on this feature in Democracy in America when he wrote that "scarcely any question arises in the United States which does not become, sooner or later, a subject of judicial debate," (Tocqueville, 1838). Could the values recognized by Martin Lipset (1996) be to blame? Could our "long-standing emphasis on individualism and mistrust of government" explain why Americans invoke the law when citizens of other industrialized nations look to state bureaucracies, ombudsman, and social insurance programs?

Robert Kagan (2003) used this cultural tradition as the basis for an institutional explanation for American reliance on courts. As a result of values like individualism and self-reliance, Americans tend to be distrustful of centralized "big government" solutions to social problems. This lead to the development of weak state institutions. In the 20th century, Americans began to expect more from their governments, much like the rest of the developed world. Because of the long-standing emphasis on individualism and self-reliance, Kagan argued, Americans had not developed the institutions necessary to build the modern welfare state and many remained suspicious of such "big government" institutions. With these new expectations on the role of the state and unwillingness to build state capacity, Americans have turned to the courts to claim rights.

Kagan's work reframed the litigiousness problem. Rather than conceiving of Americans as frivolous or opportunistic people who "can't tolerate more than five minutes of frustration without submitting to the temptation to sue" (Auerbach 1976), they were rights-seekers. More importantly, they were rights-seekers operating under limited institutional options. Scholarship that followed Kagan often sought to explain which institutional options developed and the long-term policy implications of the choice (Burke 2002, Farhang 2010, Barnes 2011, Derthick 2002, Engstrom 2010, Stephenson 2006).

This work is similarly motivated. What are the long-term effects of the decision to put policy enforcement in the hands of private citizen deputies, particularly when the deputy may herself be the victim of the policy violation? To what extent do geographic and demographic features of private citizen deputies drive policy enforcement? As this research agenda moves forward, I hope to find clearer answers to these important questions.

Appendix A Appendix

A.1 Personal Experiences with Racial Discrimination Questions from Polls

Question	Survey Sponser	Year	Respondents (to discrim-ination question)
Have you ever been discriminated against in getting a job or promotion because of your race?	CBS News and The New York Times	1991	1519
Have you, yourself, ever been discriminated against because of your race or ethnic background when you were seeking a job or educational opportunity, or have you never been discriminated against?	Los Angeles Times	1991	1623
In the past five years, have you, yourself, ever been discriminated against because of your race or ethnic background when you were seeking a job, promotion or employment opportunity, or have you not been discriminated against because of race?	Los Angeles Times	1994	939
Have you personally been a victim of racial or ethnic discrimination?	NBC News and The Wall Street Journal	1994	1255
Do you feel that you personally have ever been denied a job or promotion because of your race?	ABC News and The Washington Post	1995	1517
Have you ever been discriminated against in getting a job or promotion because of your race?	CBS News and The New York Times	1995	1089
In getting a job or promotion, has your RACE ever helped you, ever hurt you, or hasn't your race ever been much of a factor?	CBS News and The New York Times	1995	1178
Please tell me if you believe that any of the following things have ever happened to you as a result of affirmative action programs that favor minorities ... First, as a result of affirmative action, you were passed over for a promotion that went to a racial minority. OR Please tell me if you believe that any of the following things have ever happened to you because of racial discrimination ... First, as a result of racial discrimination, you were passed over for a promotion that went to a white.	CNN, Gallup, and USA Today	1995	1158
Have you, yourself, ever been discriminated against because of your race or ethnic background when you were seeking a job or educational opportunity, or have you never been discriminated against?	Los Angeles Times	1995	1249
Have you personally faced discrimination in the job market? IF YES: Was that discrimination based on sex, race, age, religious or ethnic background, physical disability, or something else? (ACCEPT UP TO TWO TYPES OF DISCRIMINATION)	NBC News and The Wall Street Journal	1995	1009

Question	Survey Sponser	Year	Respondents (to discrim-ination question)
During the last 10 years, have/has (READ ITEM) experienced discrimination because of your/their racial or ethnic background, or not? A. You B. A family member C. A close friend	Washington Post	1995	1959
In your opinion, have you personally or has someone you know ever been a victim of job discrimination because of your race or gender? OR In your opinion, have you personally or has someone you know ever been discriminated against because of an affirmative action program for women or minorities? A. Yes, personally B. Yes, someone else C. No D. Not sure	Yankelovich, Time Magazine, and CNN	1995	1060
In getting a job or promotion, has your RACE ever helped you, ever hurt you, or hasn't your race ever been much of a factor?	CBS News	1996	1001
In getting a job or promotion, has your RACE ever helped you, ever hurt you, or hasn't your race ever been much of a factor?	CBS News and The New York Times	1997	1258
During the last 5 years, have you, a family member, or a close friend experienced discrimination because of your racial or ethnic background, or not? IF YES: Was that you personally or was that someone else?	Kaiser Family Foundation and The Washington Post	1999	4611
In getting a job or promotion, has your RACE ever helped you, ever hurt you, or hasn't your race ever been much of a factor?	CBS News	2000	1499
Was there ever a specific instance when you felt discriminated against because of your race? IF YES: What happened?	The New York Times	2000	2165
Has there been any instance in the last year where you felt you were treated unfairly at your workplace because of your race or ethnicity?	Academic (Work Trends Poll at Rutgers University)	2001	903

Question	Survey Sponser	Year	Respondents (to discrim-ination question)
Have you ever NOT been hired or promoted for a job because of your race or ethnic background?	Kaiser Family Foundation and The Washington Post	2001	1653
Has there ever been a time when you have NOT been hired or promoted for a job because of your race or ethnic background, or has this not happened to you?	Kaiser Family Foundation and the Pew Hispanic Center	2002	4134
Have you personally ever felt that you were being discriminated against because of your race? IF YES: Has that happened often, occasionally or rarely?	ABC News and The Washington Post	2003	1128
Was there ever a specific instance when you felt discriminated against because of your race or ethnic background? IF YES: What happened?	CBS News and The New York Times	2003	3092
Have you yourself ever been a victim of discrimination because you are black/African-American? OR Have you yourself ever been a victim of discrimination because you are white?	Time Magazine and CNN	2003	1106
Do you think you have ever been denied a job or a promotion because of your racial or ethnic background?	Academic (21st Century Americanism Survey)	2004	2742
In the past 5 years, have you or a family member experienced discrimination?	Kaiser Family Foundation and the Pew Hispanic Center	2004	2256
Have you yourself ever been a victim of discrimination because you are black or not? OR Have you yourself ever been a victim of discrimination because of your race or ethnic group or not?	CNN and Essence Magazine	2008	2172
How much discrimination or unfair treatment do you think YOU have faced in the U.S. because of your ethnicity or race?	National Politics Study	2008	1477
Have you personally faced discrimination in the job market? IF YES: Was that discrimination based on sex, race, age, religious or ethnic background, physical disability, or something else?	NBC News and The Wall Street Journal	2008	1071

Question	Survey Sponser	Year	Respondents (to discrim-ination question)
Have you personally ever felt that you were being discriminated against because of your race? IF YES: Has that happened often, occasionally or rarely?	ABC News and The Washington Post	2009	1077
Have you yourself ever been a victim of discrimination because of your race or ethnic group or not?	CNN	2010	1466
How much discrimination have YOU personally faced because of your ethnicity or race? A great deal, a lot, a moderate amount, a little, or none at all?	Academic (The American National Election Studies)	2012	5491
In the past 12 months, did any of the following things happen to you or not … d. You faced discrimination at the workplace	NPR and the Robert Wood Johnson Foundation	2013	1478
During the past 12 months, have you personally experienced discrimination or been treated unfairly because of your race or ethnic background, or not?	Pew Research Center	2013	2214

A.2 Bayesian Measurement Model for support structure for legal mobilization

I adopt the Linzer and Staton technique for graded response models. I produce estimates of the latent concept support structure for legal mobilization in the fifty states and District of Columbia over a twenty-one year period. To produce these estimates, I employ the model specification developed by Linzer and Staton to combine cross-national indicators of judicial independence into a single latent measurement of the concept. Their model has several features that are valuable for my estimation. In particular, their model incorporates temporal dependence of the indicators. That is, it incorporates the fact that an observation in a state k in year t is, in part, dependent on the observation in state k in year $t-1$. One result of this specification is much smoother estimates from year to year in a state.

Another valuable feature of their model is that it creates a boundary for values of the latent variable. In other words, the model limits the highest and lowest values of *support structure for legal mobilization.* This restriction reflects a substantive understanding of the concept: a state can have "complete access" and "no access whatsoever." These boundaries make more sense than the idea that there is always more (in fact, infinite) amounts of access that a region can achieve and, conversely, bad regions can always get lower on the scale.

The Linzer and Staton approach maps the relationship between my proxy indicators and the underlying concept of which they are manifestations with the following model, using the inverse logit function as the mathematical link:

$$Pr(y^r_{kt} = m) = logit^{-1}\beta_r(\tau_{rm} - x_{kt}) - logit^{-1}\beta_r(\tau_{r(m-1)} - x_{kt})$$

This model estimates the probability that an observation for indicator y^r in year t for state k falls into outcome category m. Whether an observation y^r_{tk} falls into an

outcome category is a function of the latent variable x, support structure for legal mobilization, which is weighted based on how closely associated the indicator y^r is with the latent concept. *Support structure for legal mobilization* or x is treated as an unobserved continuous variable between 0 and 1. It is indexed by k for the region and t for the year. In this application, the regions are the fifty American states. The years are 1989 through 2013.

I make the following assumption about the data generating process of the unobserved variable x: in a given state-year kt, x comes from a normal distribution. To produce time dependent estimates of x, the mean of this normal distribution is the estimate for x in the previous year $t-1$.[1] The variance of this normal distribution is estimated for each state, σ_k^2. This modeling choice allows for states to vary from each other in the degree of smoothness from one year to the next. While one state, say Massachusetts, may vary little over the given time period, another state, say Missouri, might experience a radical change in accessibility from one year to the next. Estimating σ^2 for Missouri independently avoids the problem of too much smoothing, or inaccurately characterizing a sudden shift in access as a slow progression.

After this transformation, each indicator is linked to a set of ordered categories, individually denoted as m. Between one category y_{rm} and the next category $y_{r(m+1)}$ is a threshold value, which is denoted as τ above.

A β coefficient is estimated for each indicator. This coefficient is referred to as the discrimination parameter in IRT and GRM models. It provides a weight to indicator y^r. The discrimination parameters provide information about which indicators the model relied on most heavily to produce the accessibility scores. The closer β is to zero, the less the model relied on that indicator to discriminate between accessible and inaccessible districts. Larger values suggest the indicator was more useful and that the sampler relied more heavily on this indicator in its estimates of accessibility.

[1] In the first year of the data, x is drawn from a normal distribution with a mean of 0.5

I assigned β a moderately informative prior: $\beta_r \sim N(0, 10)I(0,)$. β is also distributed normally, but I restricted it to positive values. This assumes that the relationship between the indicators and the latent concept is a positive one.

Figure A.1 visualizes the results of the graded response model. The scores are bounded between 0 and 1, with 1 being the highest degree of support structure. While we see movement in a couple of states in the figure, the results suggest that states have remained relatively static over the last twenty years.

Figure A.2 visualizes how states vary from each other in their Support Structure for Legal Mobilization in one year: 2005.

Figure A.3 provides information about which indicators the model relied on most to make the latent concept estimates. Indicators related to the total attorney population in a state-year were most heavily relied on, while indicators from the law school graduates dataset were the least relied on.

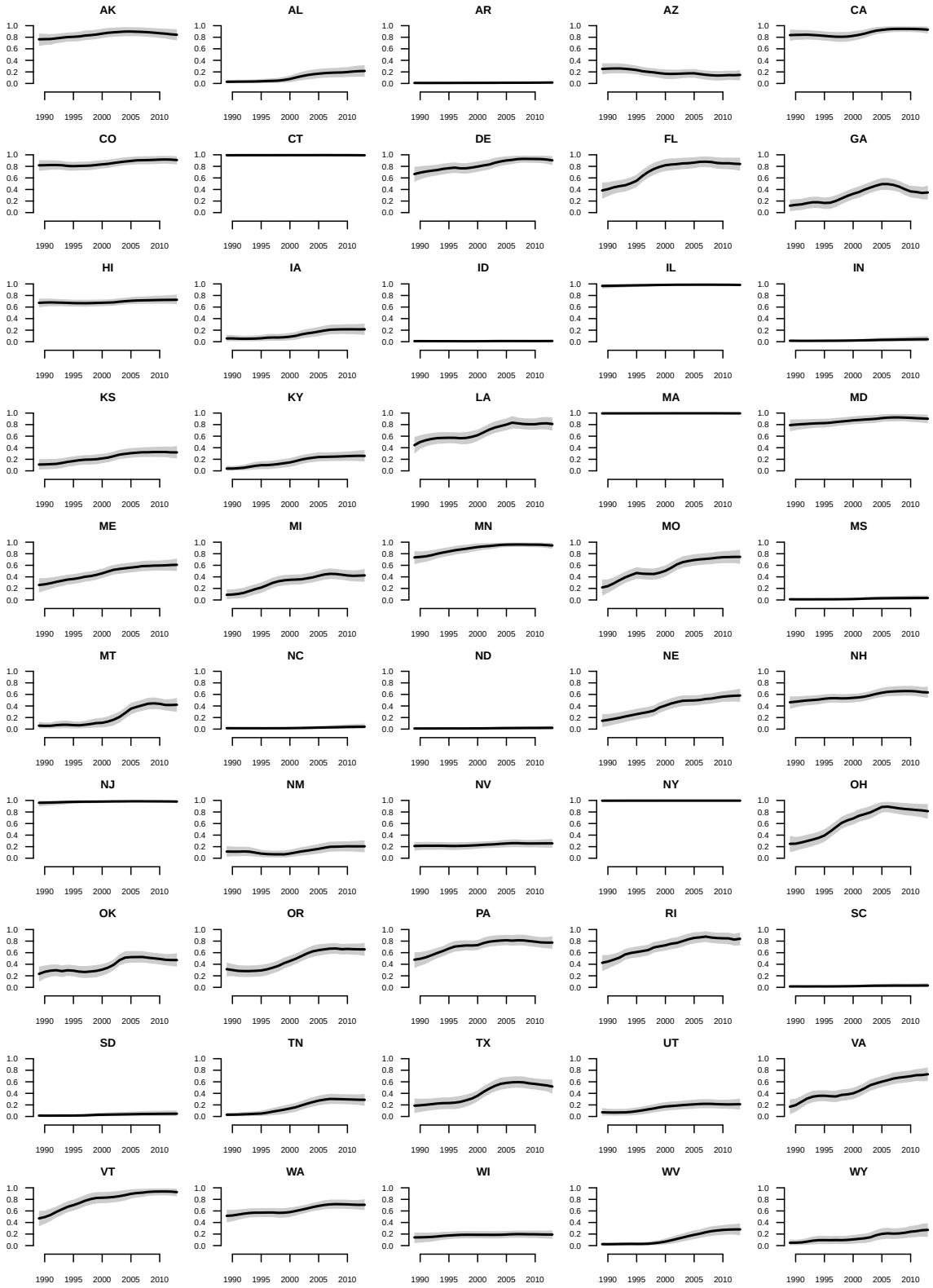

Figure A.1: Support structure for legal mobilization from 1992-2013.

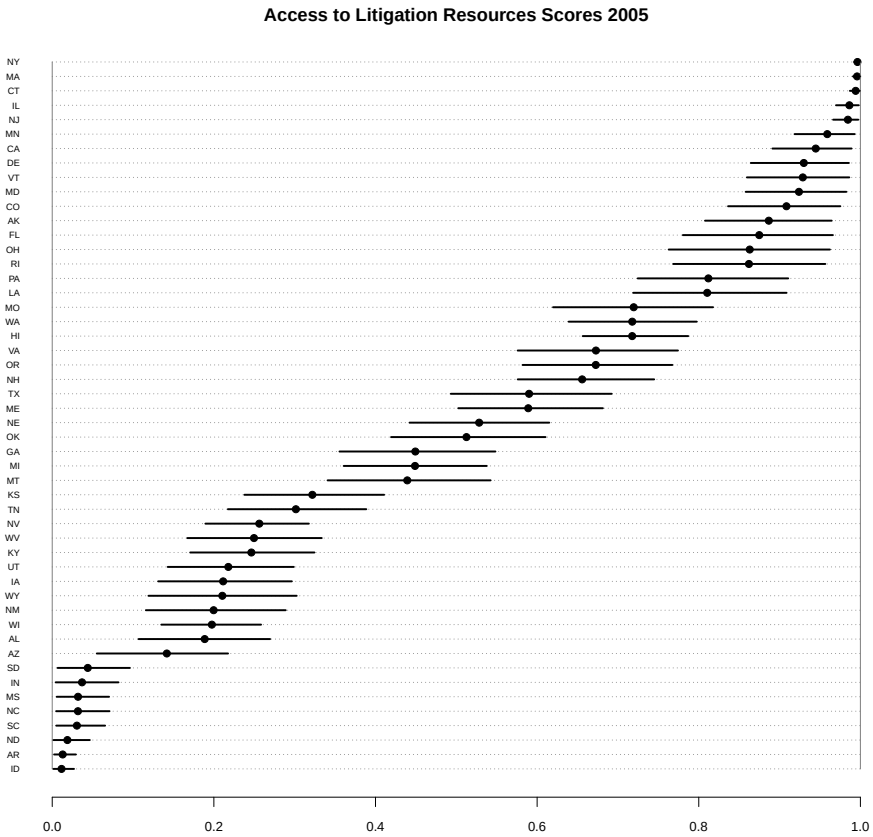

Figure A.2: Estimates of support structure for legal mobilization by state in 2005. Error bars reflect 80% posterior credible intervals.

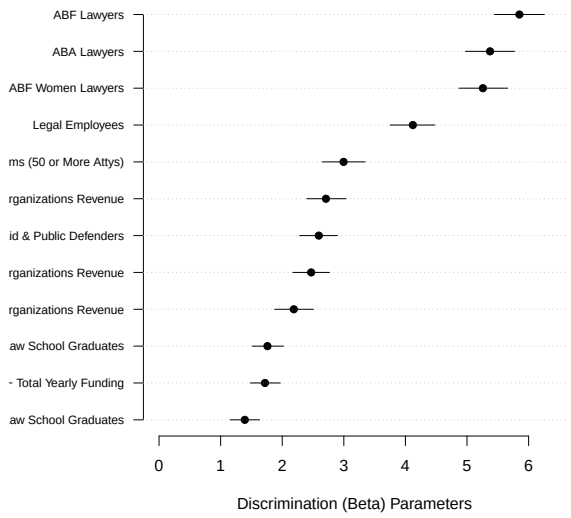

Figure A.3: discrimination parameter for the indicator variables

A.3 Alternative Model for Ideology Interaction

Table A.1: OLS Results for Black Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Black population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the relative difference in the percent of managers who are Black and the total population that is Black

	Dependent variable:EEOC claims per capita (Black Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	6.29	4.58	-20.86^{***}	3.46
	(4.84)	(4.87)	(5.74)	(7.57)
Support Structure for Legal Mobilization	-0.66^{***}	-0.64^{***}	-0.06	0.26
	(0.13)	(0.14)	(0.14)	(0.20)
Liberal Federal Institutions (Dummy)	0.14^{*}	-0.03	0.002	-0.07
	(0.08)	(0.09)	(0.09)	(0.11)
Conservative Federal Institutions (Dummy)	-0.52^{***}	-0.31^{***}	-0.32^{***}	-0.12
	(0.10)	(0.11)	(0.11)	(0.12)
State Institution Ideology	-0.001	0.0003	0.003^{**}	0.002
	(0.001)	(0.001)	(0.001)	(0.001)
Management Disparity	0.19^{***}	0.19^{***}	0.15^{***}	0.06
	(0.04)	(0.04)	(0.04)	(0.04)
Perceived Discrimination: SSLM	33.09^{***}	35.60^{***}	44.40^{***}	18.96
	(11.28)	(11.15)	(10.92)	(13.84)
Perceived Discrimination: Lib. Fed. Institutions (Dummy)	1.28	2.50	2.57	10.90^{**}
	(5.94)	(5.93)	(5.68)	(5.04)
Perceived Discrimination: Con. Fed. Institutions (Dummy)	7.38	9.02	8.43	-4.85
	(8.04)	(7.96)	(7.62)	(6.67)
Observations	1,100	1,100	1,100	1,100
R^2	0.12	0.16	0.24	0.52
Adjusted R^2	0.11	0.14	0.22	0.48
Residual Std. Error	1.09	1.07	1.02	0.83
F Statistic	12.04^{***}	6.33^{***}	9.41^{***}	13.24^{***}
Note:				*p<0.1; **p<0.05; ***p<0.01

Table A.2: OLS Results for White Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of White population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are White and the total population that is White

	Dependent variable:EEOC claims per capita (White Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	16.23***	16.11***	14.27***	−6.87
	(2.43)	(2.47)	(2.77)	(8.59)
Support Structure for Legal Mobilization	−0.80***	−0.74***	0.21	0.32
	(0.17)	(0.18)	(0.18)	(0.22)
Liberal Federal Institutions (Dummy)	0.36***	0.35***	0.29**	0.08
	(0.11)	(0.13)	(0.12)	(0.12)
Conservative Federal Institutions (Dummy)	−0.51***	−0.43***	−0.37**	−0.26*
	(0.14)	(0.16)	(0.15)	(0.14)
State Institution Ideology	0.004**	0.01***	0.01***	0.002
	(0.002)	(0.002)	(0.002)	(0.002)
Management Disparity	7.26***	7.70***	7.43***	−0.05
	(0.73)	(0.73)	(0.76)	(1.03)
Perceived Discrimination: SSLM	−5.89	−6.89	−17.11***	−12.32*
	(4.46)	(4.44)	(4.19)	(6.76)
Perceived Discrimination: Lib. Fed. Institutions (Dummy)	−7.48***	−8.33***	−7.78***	−5.56***
	(2.76)	(2.79)	(2.56)	(1.90)
Perceived Discrimination: Con. Fed. Institutions (Dummy)	6.70	7.60*	7.49*	7.09**
	(4.35)	(4.32)	(3.97)	(3.01)
Observations	1,100	1,100	1,100	1,100
R^2	0.47	0.49	0.57	0.80
Adjusted R^2	0.46	0.48	0.56	0.79
Residual Std. Error	1.42	1.40	1.29	0.89
F Statistic	79.58***	31.37***	39.77***	50.67***
Note:				*p<0.1; **p<0.05; ***p<0.01

Table A.3: OLS Results for Hispanic Subset. The coefficients for fixed effects, constant, the logged total state population, median income, and the unemployment rate are excluded from the table. Perceived Discrimination refers to the percent of Hispanic population who'd say they had a personal experience with discrimination because of their race. Management Disparity refers to the Relative Difference in the percent of managers who are Hispanic and the total population that is Hispanic

	Dependent variable:EEOC claims per capita (White Subset)			
	No Fixed Effects	Year Fixed Effects	Region & Year Fixed Effects	State & Year Fixed Effects
	(1)	(2)	(3)	(4)
Perceived Discrimination	−62.79***	−68.96***	−66.92***	−28.40*
	(17.06)	(16.78)	(16.38)	(16.40)
Support Structure for Legal Mobilization	−1.02***	−0.87***	−0.29	0.24
	(0.18)	(0.19)	(0.20)	(0.29)
Liberal Federal Institutions (Dummy)	0.20*	0.18	0.14	−0.03
	(0.11)	(0.13)	(0.13)	(0.16)
Conservative Federal Institutions (Dummy)	−0.36***	−0.29*	−0.24	−0.14
	(0.13)	(0.15)	(0.15)	(0.18)
State Institution Ideology	−0.001	−0.0000	0.003	0.01**
	(0.002)	(0.002)	(0.002)	(0.002)
Management Disparity	0.18***	0.18***	0.16**	0.05
	(0.07)	(0.07)	(0.07)	(0.06)
Perceived Discrimination: SSLM	132.93***	132.29***	102.11***	69.30**
	(36.57)	(35.92)	(34.86)	(35.16)
Perceived Discrimination: Lib. Fed. Institutions (Dummy)	21.45	31.52	27.48	20.17
	(21.18)	(20.90)	(20.16)	(18.48)
Perceived Discrimination: Con. Fed. Institutions (Dummy)	−43.72	−35.23	−21.43	0.08
	(27.30)	(27.14)	(26.22)	(23.89)
Observations	1,100	1,100	1,100	1,100
R^2	0.19	0.24	0.29	0.49
Adjusted R^2	0.18	0.21	0.27	0.45
Residual Std. Error	1.49	1.46	1.40	1.22
F Statistic	20.87***	10.11***	12.29***	11.87***
Note:				*p<0.1; **p<0.05; ***p<0.01

Bibliography

Albiston, Catherine R and Laura Beth Nielsen. 2007. "Procedural Attack on Civil Rights: The Empirical Reality of Buckhannon for the Private Attorney General, The." *UCLA Law Review* 54(5):1087–1134.

Avery, Derek R., Patrick F. McKay and David C. Wilson. 2008. "What Are the Odds? How Demographic Similarity Affects the Prevalence of Perceived Employment Discrimination." *Journal of Applied Psychology* 93(2):235–249.

Barnes, Jeb. 2011. *Dust-Up: Asbestos Litigation and the Failure of Commonsense Policy Reform*. Georgetown University Press.

Bastos, Joao Luiz, Roger Keller Celeste, Eduardo Faerstein and Aluisio J.D. Barros. 2010. "Racial discrimination and health: A systematic review of scales with a focus on their psychometric properties." *Social Science and Medicine* 70(7):1091–1099.

Berrey, E., R.L. Nelson and L.B. Nielsen. 2017. *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality*. University of Chicago Press.

Broudy, Risa, Elizabeth Brondolo, Vonetta Coakley, Nisha Brady, Andrea Cassells, Jonathan N. Tobin and Monica Sweeney. 2007. "Perceived Ethnic Discrimination in Relation to Daily Moods and Negative Social Interactions." *Journal of Behavioral Medicine* 30(1):31–43.
URL: *https://doi.org/10.1007/s10865-006-9081-4*

Brown, Tony N. 2001. "Measuring self-perceived racial and ethnic discrimination in social surveys." *Sociological Spectrum* 21(3):377–392.

Bucy, Pamela. 2002. "Private Justice." *Southern California Law Review* 76(1):2–160.

Burke, T F. 2002. *Lawyers, Lawsuits, and Legal Rights: The Battle over Litigation in American Society*. California Series in Law, Politics, and Society University of California Press.

Canon, Bradley C. and Charles A. Johnson. 1999. *Judicial Policies: Implementation and Impact*. CQ Press.

Clark, Rodney and Philip Gochett. 2006. "Interactive effects of perceived racism and coping responses predict a school-based assessment of blood pressure in black youth." *Annals of Behavioral Medicine* 32(1):1–9.

Cross, Frank B. 2003. "Decisionmaking in the U.S. Circuit Courts of Appeals." *California Law Review* 91(6):1457–1515.
URL: *http://www.jstor.org/stable/3481397*

Derthick, M. 2002. *Up in Smoke: From Legislation to Litigation in Tobacco Politics*. CQ Press.

Dixon, K. A., Duke Storen and Carl E. Van Horn. 2002. A Workplace Divided: How Americans View Discrimination and Race on the Job. Technical report John J. Heldrich Center for Workforce Development, Rutgers, The State University of New Jersey New Brunswick, NJ: .

Engstrom, David Freeman. 2010. "The Lost Origins of American Fair Employment Law: Regulatory Choice and the Making of Modern Civil Rights, 1943-1972." *Stanford Law Review* 63.

Engstrom, David Freeman. 2012. "Harnessing the private attorney general: Evidence from qui tam litigation." *Columbia Law Review* 112(8):1244–1325.

Epp, Charles R. 1990. "Connecting Litigation Levels and Legal Mobilization: Explaining Interstate Variation in Employment Civil Rights Litigation." *Law {&}*

Society Review 24(1):145–163.

URL: *http://www.jstor.org/stable/3053790%7B%25%7D5Cnhttp://www.jstor.org/stable/pdfplus*

Epp, Charles R. 1998. *The Rights Revolution : Lawyers, Activists, and Supreme Courts in Comparative Perspective*.

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. CQ Press.

Epstein, Lee and Joseph F. Kobylka. 2000. *The Supreme Court and Legal Change: Abortion and the Death Penalty*. Thornton H. Brooks series in American law and society University of North Carolina Press.

Farhang, Sean. 2008. "Public regulation and private lawsuits in the American separation of powers system." *American Journal of Political Science* 52(4):821–839.

Farhang, Sean. 2010. *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* Princeton Studies in American Politics: Historical, International, and Comparative Perspectives Princeton University Press.

Farhang, Sean and Douglas M Spencer. 2014. "Legislating Incentives for Attorney Representation in Civil Rights Litigation." *J. Law & Courts* 2(Fall 2014):1–47.

Farhang, Sean and Gregory Wawro. 2004. "Institutional Dynamics on the U.S. Court of Appeals: Minority Representation Under Panel Decision Making." *The Journal of Law, Economics, and Organization* 20(2):299–330.

Felstiner, William L.F., Richard L. Abel and Austin Sarat. 1980. "The Emergence and Transformation of Disputes : Naming , Blaming , Claiming." *Law & Society Review* 15(3/4):631–654.

Forman, T.A., D.R. Williams and J.S. Jackson. 1997. *Race, Place, and Discrimination*. JAI Press pp. 9: 231–261.

Frymer, Paul. 2003. "Acting When Elected Officials Won ' t : Federal Courts and Civil Rights Enforcement in U . S . Labor Unions , 1935-85." *The American Political Science Review* 97(3):483–499.

Galanter, Marc. 1974. "Why the haves come out ahead : Speculations on the limits of legal change." *Law & Society Review* 9(1):165–230.

Gary, Lawrence E. 1995. "African American Men's Perceptions of Racial Discrimination: A Sociocultural Analysis." *Social Work Research* 19(4):207–217.

Giles, Micheal W. and Thomas D. Lancaster. 1989. "Political Transition, Social Development, and Legal Mobilization in Spain." *American Political Science Review* 83(3):817833.

Gleeson, Shannon. 2009. "From rights to claims: The role of civil society in making rights real for vulnerable workers." *Law and Society Review* 43(3):669–700.

Gomez, John P. and Steven J. Trierweiler. 2001. "Does Discrimination Terminology Create Response Bias in Questionnaire Studies of Discrimination?" *Personality and Social Psychology Bulletin* 27(5):630–638.

Green, Nanny L. 1995. "Development of the Perceptions of Racism Scale." *The Journal of Nursing Scholarship* 27(2):141–146.

Haynie, Stacia L. 1994. "Resource Inequalities and Litigation Outcomes in the Philippine Supreme Court." *The Journal of Politics* 56(3):752–772.
URL: *http://www.jstor.org/stable/2132191*

Haynie, Stacia L. and Kaitlyn L. Sill. 2007. "Experienced Advocates and Litigation Outcomes: Repeat Players in the South African Supreme Court of Appeal." *Political Research Quarterly* 60(3):443–453.
URL: *http://www.jstor.org/stable/4623844*

Hettinger, Virginia A., Stefanie A. Lindquist and Wendy L. Martinek. 2004. "Comparing Attitudinal and Strategic Accounts of Dissenting Behavior on the U.S. Courts of Appeals." *American Journal of Political Science* 48(1):123–137.

Horowitz, Donald L. 1977. *The Courts and Social Policy*. Brookings Institution.

Kagan, Robert A. 2009. *Adversarial Legalism: The American Way of Law*. Harvard University Press.

Kastellec, Jonathan P, Jeffrey R Lax and Justin H Phillips. 2010. "Public Opinion and Senate Confirmation of Supreme Court Nominees." *The Journal of Politics* 72(03):767–784.

Kastellec, Jonathan P, Jeffrey R Lax and Justin Phillips. 2014. "Estimating State Public Opinion With Multi-Level Regression and Poststratification using R.".

Kessler, Daniel P. 2010. Introduction. In *Regulation vs. Litigation: Perspectives from Economics and Law*. pp. 1–9.

Kornhauser, Lewis A . 1992*a*. "Modeling Collegial Courts . II . Legal Doctrine." *Journal of Law, Economics, and Organization* 8(3):441–470.
URL: *http://www.jstor.org/stable/764863*

Kornhauser, Lewis A. 1992*b*. "Modeling collegial courts I: Path-dependence." *International Review of Law and Economics* 12(2):169–185.

Kressin, Nancy R., Bei-Hung Chang, Jeff Whittle, Eric D. Peterson, Jack A. Clark, Amy K. Rosen, Michelle Orner, Tracie C. Collins, Linda G. Alley and Laura A. Petersen. 2004. "Racial Differences in Cardiac Catheterization as a Function of Patients Beliefs." *American Journal of Public Health* 94(12):2091–2097. PMID: 15569959.

Kressin, Nancy R., Kristal L. Raymond and Meredith Manze. 2008. "Perceptions of Race/Ethnicity-Based Discrimination: A Review of Measures and Evaluation of Their Usefulness for the Health Care Setting." *Journal of Health Care for the Poor and Underserved* 19(3):697–730.

Kritzer, Herbert M. 1997. "Contingency Fee Lawyers as Gatekeepers in the Civil Justice System." *Judicature* 88(1):22–29.

Landes, William M. 1971. "An Econominc Analysis of the Courts." *The Journal of Law and Economics* 14:61–107.

Lax, Jeffrey R. 2011. "The New Judicial Politics of Legal Doctrine." *Annual Review of Political Science* 14(1):131–157.

Lax, Jeffrey R and Justin H Phillips. 2009*a*. "Gay Rights in the States: Public Opinion and Policy Responsiveness." *American Political Science Review* 103(03):367–386.

Lax, Jeffrey R. and Justin H. Phillips. 2009*b*. "How Should We Estimate Public Opinion in the States?" *American Journal of Political Science* 53(1):107–121.

Lax, Jeffrey R and Justin H Phillips. 2012. "The democratic deficit in the states." *American Journal of Political Science* 56(1):148–166.

Lewis, Tene T., Courtney D. Cogburn and David R. Williams. 2015. "Self-Reported Experiences of Discrimination and Health: Scientific Advances, Ongoing Controversies, and Emerging Issues." *Annual Review of Clinical Psychology* 11:407–440.

McCann, Michael. 2008. Litigation and Legal Mobilization. In *The Oxford Handbook of Law and Politics*, ed. Keith E Whittington, R Daniel Kelemen and Gregory A Caldeira.

McCann, Michael W. N.d. University of Chicago Press.

McCubbins, Mathew D and Thomas Schwartz. 1984. "Congressional Oversight Overlooked : Police Patrols versus Fire Alarms." *American Journal of Political Science* 28(1):165–179.

McGuire, Kevin T. 1995. "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *The Journal of Politics* 57(1):187–196. **URL:** *http://www.jstor.org/stable/2960277*

McNeilly, MD, NB Anderson, CA Armstead, R Clark, M Corbett, EL Robinson, CF Pieper and EM Lepisto. 1996. "The Perceived Racism Scale: a Multidimensional Assessment of the Experience of White Racism among African Americans." *Ethnicity & Disease* 6(1-2):154–166.

Milgrom, Paul R, Douglass C North and Barry R Weingast. 1990. "The Role of Institutions in the Revival of Trade: the Law Merchant, Private Judges, and the Champagne Fairs." *Economics and Politics* 2(1):1–23.

Moyer, Laura P and Holley Tankersley. 2012. "Judicial Innovation and Sexual Harassment Doctrine in the U.S. Courts of Appeals." *Political Research Quarterly* 65(4):784–798.

Murphy, Walter. 1973. *Elements of Judicial Strategy.* University of Chicago Press.

Park, David K., Andrew Gelman and Joseph Bafumi. 2004. "Bayesian multilevel estimation with poststratification: State-level estimates from national polls." *Political Analysis* 12(4):375–385.

Peltason, Jack Walter. N.d. *Fifty-eight Lonely Men: Southern Federal Judges and School Desegregation.*

Posner, Richard A. 1972. *Economic Analysis of Law.* Little, Brown.

Posner, Richard A. 2010. Regulation (Agencies) versus Litigation (Courts): An Analytical Framework. In *Regulation vs. Litigation: Perspectives from Economics and Law*.

Pound, Roscoe. 1914. "The End of Law as Developed in Legal Rules and Doctrines." *Harvard Law Review* 27(3):195–234.

Priest, George L. 1980. "Selective Characteristics of Litigation." *The Journal of Legal Studies* 9(2):399–421.

Priest, George L and Benjamin Klein. 1984. "The Selection of Disputes for Litigation." *The Journal of Legal Studies* 13(1):1–55.

Rosenberg, Gerald N. 2008. *The Hollow Hope: Can Courts Bring About Social Change? Second Edition*. American Politics and Political Economy Series University of Chicago Press.

Rowland, C. K. and Robert A. Carp. 1996. *Politics and Judgment in Federal District Courts*. University of Kansas Press.

Rowland, C. K., Robert A. Carp and Ronald A. Stidham. 1984. "Judges' Policy Choices and the Value Basis of Judicial Appointments: A Comparison of Support for Criminal Defendants among Nixon, Johnson, and Kennedy Appointees to the Federal District Courts." *The Journal of Politics* 46(3):886–902.
URL: *http://www.jstor.org/stable/2130860*

Rubenstein, William B. 2004. "On What A "Private Attorney General" Is – And Why It Matters." *Vanderbilt Law Review* 57(6):2129–2173.

Rubin, Paul H. 1977. "Why Is the Common Law Efficient?" *The Journal of Legal Studies* 6(1):51–63.

Sandefur, Rebecca L. 2007. "Lawyers' Pro Bono Service and American-Style Civil Legal Assistance." *Law & Society Review* 41(1):79–112.

Sandefur, Rebecca L. 2015. "Elements of Professional Expertise: Understanding Relational and Substantive Expertise through Lawyers' Impact." *American Sociological Review* 80(5):909–933.

Sarat, A. and S.A. Scheingold. 1998. *Cause Lawyering: Political Commitments and Professional Responsibilities*. Oxford socio-legal studies Oxford University Press.

Scheingold, Stuart A. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven: Yale University Press,.

Segal, Jeffrey A. 1997. "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *The American Political Science Review* 91(1):28–44.

Segal, Jeffrey A and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge University Press.

Segal, Jennifer A. 2000. "Representative decision making on the federal bench: Clinton's district court appointees." *Political Research Quarterly* 53(1):137–150.

Shapiro, Martin. 1981. Courts: A Comparative and Political Analysis. Chicago and London: The University of Chicago Press chapter 1, pp. 1–64.

Sheehan, R S and K A Randazzo. 2012. "Explaining Litigant Success in the High Court of Australia." *Australian Journal of Political Science* 47(2):239–255.

Sheehan, Reginald S., William Mishler and Donald R. Songer. 1992. "Ideology, Status, and the Differential Success of Direct Parties Before the Supreme Court." *The American Political Science Review* 86(2):464–471.
URL: *http://www.jstor.org/stable/1964234*

Sigelman, Lee and Susan Welch. 1991. *Black Americans' Views of Racial Inequality: The Dream Deferred*. Cambridge University Press.

Sisk, Gregory C, Michael Heise and Andrew P Morriss. 1998. "Judicial Mind : an Empirical Study." 1.

Smith, Tom W. 2002. Measuring Racial and Ethnic Discrimination. Technical Report GSS Methodological Report No. 96 National Opinion Research Center, University of Chicago.

Songer, Donald R. and Reginald S. Sheehan. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals." *American Journal of Political Science* 36(1):235–258.
URL: *http://www.jstor.org/stable/2111431*

Songer, Donald R, Susan Haire and Sue Davis. 1994. "A Reappraisal of Diversification in the Federal Courts: Gender Effects in the Courts of Appeals." *The Journal of Politics* 56(2):425–439.

Stephenson, Matthew C. 2006. "Legislative allocation of delegated power: Uncertainty, risk, and the choice between agencies and courts." *Harvard Law Review* 119(4):1035–1070.

Sunstein, Cass R, David Schkade, Lisa Ellman and Andres Sawicki. 2006. *Are judges political? An empirical investigation of the federal judiciary*. Brookings Institution.

U.S. 2007. "Ledbetter v. Goodyear Tire & Rubber Co.".

Utsey, Shawn O. 1998. "Assessing the Stressful Effects of Racism: A Review of Instrumentation." *Journal of Black Psychology* 24:269–288.

Vines, Anissa I., Maya Dominguez McNeilly, June Stevens, Irva Hertz-Picciotto, Michael Bohlig and Donna D. Baird. 2001. "Development and reliability of a

Telephone-Administered Perceived Racism Scale (TPRS): A tool for epidemiological use." *Ethnicity and Disease* 11(2):251–262.

Wheeler, Stanton Cartwright, Bliss Kagan Robert A. Friedman Lawrence M. 1987-1988. "Do the Haves Come out Ahead - Winning and Losing in State Supreme Courts, 1870-1970." *Law and Society Review* 21:403.

Wood, B. Dan. 1990. "Does Politics Make a Difference at the EEOC?" *American Journal of Political Science* 34(2):503–530.
URL: *http://www.jstor.org/stable/2111459*

Zemans, Frances Kahn. 1982. "Framework for Analysis of Legal Mobilization." *American Bar Foundation Research Journal* 7(4):989–1071.

Zemans, Frances Kahn. 1983. "Legal mobilization: The neglected role of the law in the political system." *The American Political Science Review* 77(3):690–703.
URL: *http://www.jstor.org/stable/10.2307/1957268*

Zorn, Christopher and Jennifer Barnes Bowie. 2010. "Ideological influences on decision making in the federal judicial hierarchy: An empirical assessment." *Journal of Politics* 72(4):1212–1221.