STATE OF THE ART

MAKING A CIVIL RIGHTS CLAIM FOR AFFIRMATIVE ACTION

BAMN's Legal Mobilization and the Legacy of Race-Conscious Policies

Ellen Berrey
Department of Sociology and Criminology, University of Denver

Abstract

The politics of affirmative action are currently structured as a litigious conflict among elites taking polarized stances. Opponents call for colorblindness, and defenders champion diversity. How can marginalized activists subvert the dominant terms of legal debate? To what extent can they establish their legitimacy? This paper advances legal mobilization theory by analytically foregrounding the field of contention and the relational production of meaning among social movement organizations. The case for study is two landmark United States Supreme Court cases that contested the University of Michigan's race-conscious admissions policies. Using ethnographic data, the paper analyzes BAMN, an activist organization, and its reception by other affirmative action supporters. BAMN had a marginalized allied-outsider status in the legal cases, as it made a radical civil rights claim for a moderate, elite-supported policy: that affirmative action corrects systemic racial discrimination. BAMN activists pursued their agenda by passionately defending and, at once, critiquing the university's policies. However, the organization's militancy remained a liability among university leaders, who prioritized the consistency of their diversity claims. The analysis forwards a scholarly understanding of the legacy of race-conscious policies.

Keywords: Affirmative Action, College Admissions, Civil Rights, Constitutive Theory of Law, Legal Mobilization, Social Movements, *Gratz*, *Grutter*

INTRODUCTION

"It is time to hear the voice of truth again with a new civil rights movement!" called out Shanta Driver, the national spokesperson for the Coalition to Defend Affirmative Action and Integration and Fight for Equality By Any Means Necessary (BAMN). It was the January 2003 Dr. Martin Luther King, Jr. holiday. BAMN activists had organized a three-day conference at the University of Michigan that culminated in this rally, headlined by the Reverend Jesse Jackson. The activists wanted to build support

Du Bois Review, 12:2 (2015) 1–31.
© 2015 Hutchins Center for African and African American Research 1742-058X/15 $15.00
doi:10.1017/S1742058X15000156

for affirmative action, which was being challenging in two major United States Supreme Court cases against the university, *Gratz v. Bollinger* (2003) and *Grutter v. Bollinger* (2003). BAMN had led an intervention in *Grutter*, which enabled them to be a third party in the lower courts. It simultaneously had organized a string of conferences and mass protests that would culminate in the upcoming April 1, 2003 March on Washington, on the day of the Supreme Court oral arguments.

Driver, an energetic biracial woman in her forties, was the first speaker at the rally.[1] Hundreds of people had packed into a university lecture hall. Most were African American and high school aged, although many were college aged and older; many were White or Latino. The crowd's enthusiastic cheers repeatedly drowned out Driver's words. She spoke of the history of the abolitionist fight against slavery and the Reconstruction period after the Civil War, when many forms of equality were established for Black people. She warned of what happened next: "Reconstruction came to an end because it was possible for a small group of segregationists to triumph because there was not organized opposition." Driver drew parallels to the current moment. Affirmative action programs are "integration programs for higher education," she said, but they now are "under attack by the Far Right." She continued, asserting that the mobilization of everyone in the room was necessary to hold back this attack. Such mobilization also was needed to counter the complacency of mainstream civil rights leaders and their allies: "We're in the situation we're in in America because the leaders of my movement failed you. … We told you to rely on politicians, corporations, rich people, [President] George Bush to do your fighting for you!" As she closed her speech, the audience members jumped to their feet, clapping and cheering: "We can send this country on the road to justice again! … This nation needs your leadership. It's time to take the reins of history in your hands!"

Over the past fifty years, the politics of affirmative admissions have solidified into a high stakes, morally-inflamed legal and philosophical debate between adversarial parties. Each side, dominated by elites, marshals arguments and evidence in its favor (Edley 1996; Hochschild 2002). Opponents claim that admissions criteria should be colorblind. Supporters herald the benefits of diversity. These positions have become the dominant frame of affirmative action debates, and this dynamic of conflict has been channeled into formal legal channels—namely, litigation. BAMN activists understood the issue of affirmative action very differently. They viewed it as cause for a mass uprising, in defense of a civil rights policy that corrects systemic racial discrimination and furthers equality and integration. This meant that BAMN activists had an unusual allied-outsider status: they made a radical argument in defense of a moderate, elite-supported policy reform. By taking on such an agenda, and in such a militant fashion, the organization was marginalized in the litigation and the political activity surrounding the legal cases.

What strategies can marginalized activists use to subvert the dominant terms of conflict over race-conscious policy, and what obstacles do they confront? To what extent can they establish their legitimacy? This paper explores these questions by analyzing an ethnographic case study of BAMN and the organization's relationships with other affirmative action supporters.

Current scholarship fails to sufficiently explain the contemporary movement politics of affirmative action. Analyses of affirmative action tend to be oriented toward taking and substantiating sides in policy and legal debates. Legal mobilization scholarship provides useful analytic tools for studying such contention, as it foregrounds the constitutive role of law in people's efforts to create social change (Barclay et al., 2011; McCann 2006). However, it has largely attended to movements that organize on behalf of disempowered minorities against resistant, powerful authorities. Thus, that scholarship,

and much research on social movement activism in general, falls short of accurately capturing the *intramovement* relations between insider and outsider political actors. Its formulation of movement politics—as bottom-up challenges to elites—belies the realities of affirmative action politics: the policy was originally invented by centrist higher education leaders who have been joined by traditionally conservative corporate and military supporters as well as by progressive activists, all in defense against an oppositional conservative movement. These defenders are in the relatively unusual position of supporting a policy that channels valuable resources to a disadvantaged population.

This paper forwards legal mobilization scholarship by drawing on a new subfield of research that highlights the relational dynamics in the field of collective strategic action (Fligstein and McAdam, 2012; Goldstone 2003). A relational, field-level examination usefully explains movements with elite foundations, and it provides insight into the complex relationship between outsider activists and institutional insiders. In addition, it improves upon frame analysis (e.g., Benford and Snow, 2000), which is the primary analytic approach that legal mobilization scholars now use to explain how political actors symbolically assert their goals. A relational perspective clarifies the bounds of discourse and the exercise of power over meaning making.

As this paper argues, the BAMN activists managed their marginalization by asserting their legitimacy as both defenders and critics of the status quo. They passionately defended affirmative admissions policies (evident, at the rally, in Driver's warnings about segregationists) and, at once, they critiqued the university and its allies (as did Driver at the rally). Their combination of defensive and offensive politics was apparent in their multi-prong strategy of taking formal legal action (mostly unsuccessfully) and mobilizing mass protests (successfully). Those politics were evident in BAMN's legal and political discourse, as well. The organization replicated some elements of the prevailing discourse on affirmative action and law, such as the reification of legal expertise, while they challenged other elements through the content of their claims and their techniques of critical pedagogy.

BAMN's militancy was always a liability, though. University administrators hoped to achieve public credibility and ultimately win in court. So, they prioritized the consistency of their diversity claims. They distanced themselves from BAMN while capitalizing on the activists' successful mobilization of mass demonstrations. BAMN organizers further lost influence when blocked from formal legal channels and when they could no longer monopolize pro-affirmative action activism on Michigan's campus. The organization's marginalization was ultimately officiated by the Supreme Court justices' opinions, which made little mention of its claims.

This paper follows political scientist Michael McCann's call for research that investigates the legacies of legal mobilization efforts (2006). It forwards a scholarly understanding of the political aftermath of the race-conscious affirmative action policies established in the 1960s and 1970s. Affirmative action has, as sociologist John Skrentny observes (1996), taken on the meaning of civil rights. The legacy politics of affirmative action—what I conceptualize as the inverted politics of racial justice—are characterized by centrist elite support for what is now commonly perceived as a victory of the civil rights movement and by conservative opposition that portrays the policy as a perversion of civil rights. Elite advocates justify affirmative action as an instrumentally effective means of achieving diversity. This creates a very constricted political terrain for those activists who understand such policies as a morally righteous means of achieving racial equality.

The remainder of the paper establishes the finding that the political legacy of the civil rights movement has put radical and progressive activists in a position of

defending moderate, elite-based, incremental policies. The paper begins by defining affirmative action in college admissions and characterizing it as contentious movement politics. It introduces legal mobilization theory and elaborates a relational perspective on social movement and discursive fields. An explanation of the case, research design, and methods follows. The findings section begins by explaining the institutional and legal conditions that structured BAMN's marginalization, such as legal doctrine. It then uses ethnographic evidence to detail BAMN's mobilization in *Gratz* and *Grutter* and the organization's reception on campus. The conclusion discusses the inverted politics of racial justice, including the parallels between BAMN's activism and the anti-affirmative action mobilization, as well as BAMN's leading role in the *Schuette v. Coalition to Defend Affirmative Action* (2013) case.

AFFIRMATIVE ACTION AND ITS CONTENTIOUS POLITICS

Affirmative action is a policy strategy of taking proactive measures to minimize the exclusion of people of color and women. Such initiatives have been used in college admissions, workplace hiring and promotions, government and private sector contracting with minority businesses, and court ordered busing and magnet schools in K-12 education (Harper and Reskin, 2005).

Affirmative action in college admissions is the quintessential government-sanctioned race-conscious intervention. Affirmative admissions (c.f. Skrentny 1996) seek to improve racial minorities' chances of being accepted by, attending, and graduating from universities and colleges. It is only operative at selective universities, which by definition reject some portion of applicants. There it is practiced widely (Grodsky 2007). It has the support of national educational organizations such as the American Association of University Professors and the College Board (Lipson 2007), and it is considered by accreditation organizations when they evaluate colleges and universities (Welch and Gruhl, 1998). In practice, affirmative admissions has been demonstrably successful at moving small but meaningful numbers of people of color into college and the professional workforce (Bowen and Bok, 1998; Espenshade and Radford, 2009). It creates opportunity and outcomes that otherwise would not be achieved.

That said, affirmative admissions is fundamentally a moderate, incremental policy reform. It adapts the objective of racial minority integration to the institutional logics of higher education (such as status-oriented priorities), a college or university's identity, and the interests, worldviews, and desires of administrative leaders and their most important constituents (Berrey 2015). Since their inception, affirmative admissions policies have been relatively narrow in scope, first confined primarily to admissions outreach and decisions and only later as financial aid and academic support services targeted to students of color who struggle academically.

Likewise, affirmative admissions policies are an addendum to a broader system of admissions that reproduces race-class inequality. Selective colleges and universities' decision-making relies foremost on applicants' standardized test scores, grade point averages, and factors such as the quality of an applicant's high school curriculum—what legal scholars Susan Sturm and Lani Guinier (1996) call wealth preferences because they favor predominantly White, affluent families. Affirmative admissions leaves intact those systemic preferences.

Affirmative admissions policies have long been embroiled in political and legal controversy (Brown et al., 2003; Thernstrom and Thernstrom, 1997). Popular support is extremely mixed and varies depending on the wording of the question and the policy strategy referenced.[2] A 2013 Gallup poll found that two-thirds of Americans

disapproved of taking race into account in college admissions but a majority, including 51% of White respondents, "generally favor" affirmative action programs for racial minorities (Jones 2013). Furthermore, as elaborated throughout this paper, these programs have been the focus of much political organizing. While progressive student organizers have pressured university administrations to more aggressively improve the numbers and experiences of students of color, the major campaigns since the 1970s have been led by conservative and libertarian activists off campus who oppose—in their terms—racial preferences.

The controversies over affirmative action that have evolved over the past forty years are contentious movement politics (McAdam et al., 2001). Those who wish to spark change need to mobilize. They do so in order to alter existing power arrangements and authorities' decision-making (Meyer and Tarrow, 1998; Tarrow 1998). They engage in episodic collective political struggle (McAdam et al., 2001). Such struggle is characterized by interaction among those who mobilize claims and their opponents, with government involved in some form (as a target, mediator, or claimant). The effect is that, if those who mobilize are successful, at least one party's interests are affected.

As decades of social movement scholarship has established, activists take advantage of political opportunities that create incentives for collective action, such as the openness of their targets (McAdam 1982; Tarrow 1998), and by garnering resources such as money or numbers of people (McCarthy and Zald, 1977). Movement organizations also participate in symbolic struggles by which they try to redefine the meanings of social conditions and garner support for their efforts (Benford and Snow, 2000; Johnston and Klandermans, 1995).

These various dynamics—of mobilizing resources, engaging political opportunities, and culturally reinterpreting social reality—are evident in the contentious movement politics of affirmative action. Law is also central to these politics, but it is an aspect of mobilization that sociologists who study social movements have not adequately analyzed. Sociolegal scholars have worked to address that lacuna by explaining the dynamics unique to movements that draw on law as a mechanism of social change.

LEGAL MOBILIZATION, INCUMBENTS, AND OUTSIDERS

A tenet of law and society scholarship is that law is never simply doctrine "on the books." Law also exists "in action" (Llewellyn 1930; Pound 1910). Law can take many forms— such as legal doctrine, knowledge, procedures, institutions, officials, forms of knowledge, or rhetorical devices—and therein can structure social life. It is a part of political systems, social organizations, and people's lived experiences, in which its importance and meaning are indeterminate yet consequential.

One line of sociolegal research, on legal mobilization, examines how people turn to law as well as law's impact on social change (Ewick and Silbey, 1998; Stryker et al., 1999; Zemans 1983). Much of this research is about the collective action taken by comparatively powerless "ordinary" individuals or marginalized groups and their use of law (understood broadly). Scholars have focused primarily on how these actors challenge the state and other powerful authorities, particularly through class action litigation and various combinations of legal and political strategies (McCann 2006). An assumption here is that law can be a resource that political actors mobilize instrumentally to advance goals and negotiate conflict. Influenced by the sociology of social movements, this stream of scholarship commonly treats the litigation system as an opportunity structure. Lawsuits are conceptualized as a movement strategy pursued

within formal legal channels that can bring about change beneficial for disadvantaged groups (Albiston 2005; Burstein 1991; see also Nielsen et al., 2010).

Legal mobilization scholars also understand that law is more than a resource put to pragmatic use. Law also constitutes social life (McCann 2006). According to constitutive theory, law is knowledge and linguistic practice. It is an interpretive lens by which social actors make sense of and impact the world (Marshall 2003) that is bound up in social interaction (Sewell 1999). People imbue law with meaning. In turn, legal symbols, discourses, and constructs inform people's very ability to imagine both current sociopolitical realities and the alternatives (Fluery-Steiner and Nielsen, 2006). Through myriad micro- and macro-level processes, there is ongoing contestation over the hegemonic meanings of social life and the orchestration of power (e.g., Obasogie 2014). Law both enables and constrains that contestation. Even more fundamentally, law makes contestation knowable and, therefore, possible in the first place (Silbey 2005).

Movement activists engage in legal advocacy for institutional and symbolic leverage (McCann 2006). Their mobilization can entail formal legal action but need not. For activists who engage law, success may come by, say, securing a policy reform or obtaining a response from those in power (Albiston 2005). But a win might not be so immediately evident. It might be the symbolic impact achieved by publicizing grievances or securing elite support (Barclay et al., 2011; Goldberg-Hiller 2004), or the success of introducing new words, concepts, and legal categories, such as "sexual harassment" or "hate crime" (Saguy 2003).

Much research on legal mobilization has used frame analysis to explain how people construct law's meanings. As elaborated by sociologists Robert Benford and David Snow (2000; Snow et al., 1986), framing is a means by which movement participants negotiate common understandings about what needs to change, why, how that change should be achieved, and by whom. Activists draw on frames to diagnosis problems, identify lines of action, and, especially, to motivate involvement (Snow and Benford, 1988). They engage in frame contests with their opponents and frame disputes within their own movement. Legal mobilization scholars' interest in antagonistic, bottom-up challenges lends itself to frame analysis (e.g., Pedriana 2006).

The study of legal mobilization usefully draws attention to contentious dynamics involving law and the constitutive nature of law. Yet there are a few widespread premises in this body of work that make it incomplete for explaining affirmative action politics. One premise is that the state and elites largely sustain the oppression of marginalized groups and that social movement activists mobilize law to contest that oppression. Another premise is that social movements develop as outsiders' discernable challenges to institutional politics. The scholarship portrays a largely antagonistic divide with outsider activists confronting insider incumbents and those incumbents resisting or actively repressing activists' advances (c.f. NeJaime 2011). Yet another premise is that much symbolic communication occurs through framing processes, in which various parties with contrasting visions of social reality take part in representational contests. These same premises characterize much (but certainly not all) sociological scholarship on social movements in general. One authoritative synthesis of the legal mobilization and social movement literatures describes what both areas of research have shown as "the central tensions" between law and activism: "social movements use law in their emancipatory struggles to challenge oppressive conditions that are, in turn, so often sustained by legal rules and institutions" (Barclay et al., 2011, p. 2).

While these assumptions may hold true for much legal mobilization, they do not neatly apply to the contentious politics of race-conscious initiatives. For example, in both the workplace and higher education, the creation of affirmative action was an elite-led policy reform (Skrentny 1996).[3] This differs from the prevailing pattern of

elite policy making; institutional authorities typically perceive racial minority group interests as illegitimate and do not act in favor of those groups' interests. A relational analysis of the field of movement activity and discourse is a useful analytic framework that addresses some of these shortcomings. For the purposes of this paper, such analysis sheds light on BAMN's efforts to engage politically and its intramovement relationship with elite defenders of affirmative action.

TOWARD A RELATIONAL ANALYSIS OF AFFIRMATIVE ADMISSIONS POLITICS

In a new development within sociology, a number of social movement scholars have begun to analyze collective action relationally and at the field level; they do so in order to integrate analyses of organizations, institutions, and social movement contestation (Alimi et al., 2012; Armstrong and Bernstein, 2008; Davis et al., 2005; Fligstein and McAdam, 2012).[4] Fields are socially constructed, mesolevel arenas of action characterized by complex, contingent interaction among individuals, groups, and institutional brokers that vie for advantage.[5] The concept of field directs attention to local orders of activity located within a broader external context (Dimaggio and Powell, 1991). Fields define and structure the relationships among participants. Social actors within a field know of and interact with each other according to their common understandings of the purposes of the field, the intergroup relationships, and standards for legitimate action. Participants have differential control of resources, rewards, and respect, which influences their ability to exercise power.

Jack Goldstone (2003; 2004) calls for relational analysis that starts with a certain movement and the effects and interactions specific to that movement. According to Goldstone, the analysis should explain mobilization by focusing on the controversial issue at hand and the implications for political mobilization. Such an analysis attends to the various factors in play, which may include the political and economic institutions that structure activists' activities (Alimi et al., 2012); the derivation of an organization's political orientation within its social structural context (Walder 2009); the inter- and intramovement dynamics among participants (Lind and Stepan-Norris, 2011); and the available symbolism, values, and ideology that inform a movement's claims making (Williams 2004).

As relational, field-level research has shown, there are not simply "in" groups (incumbents) that protect privileged interests through institutionalized politics and "out" groups (outsiders) that challenge elites through contentious protest. Rather, the boundary between outsider and institutionalized politics is often blurred in democratic societies (Duffy et al., 2010). Challenger activists and institutional actors have a multifaceted relationship and engage in coordinated action. For instance, there may be "institutional activists" who hold formal positions and work on behalf of movement goals (Santoro and McGuire, 1997). At the same time, incumbents exercise disproportionate influence over the field, so they can oppose and sideline problematic opponents and allies. Outsiders, in turn, need to manage their exclusion.

A relational, field-level analysis also usefully conceptualizes discourse in contentious politics as dynamic, interactive meaning making bounded by a discursive field. Discursive fields, as conceived by Pierre Bourdieu and elaborated by cultural analysts (Crossley 2002; Steinberg 1999), establish what is intelligible and what is legitimate. Actors give meaning to their social realities purposefully and creatively, but always within the limits of publically available symbolism, institutional arrangements, power dynamics, and material constraints (Williams 2004).

A relational perspective on political discourse provides a more thorough account of political communication than does frame analysis (Steinberg 1999). Frame analysis treats communication as a fairly simplistic exchange in which political actors participate in "the wholesale process of pitting one discursive construction of social life and politics against a completely different alternative" (Steinberg 1999, p. 747; see also Williams 2004). It overdetermines the agency of challenger groups. Relational discourse analysis, in contrast, appropriately foregrounds how political actors formulate discourse in relation to others. Relationalism recognizes the uneven field upon which political discourse is communicated. Discursive fields ground hegemony and organize contestation of it. Those in power impose certain interpretations, constructs, forms of knowledge, and terminology as common sense (Edelman 1985 [1964]; Gramsci 1971). Activists must reinterpret and appropriate dominant meaning to convey their counter-hegemonic visions of justice and equity, within a larger imposed structure (Steinberg 1999). Because of the constraints of asymmetrical power relations, their claims are always in some ways delimited and reactionary.

A relational, field-level analysis of the pro-affirmative action mobilization can shed light on the dynamics by which affirmative admissions politics have taken on the meaning of civil rights and become subject to contentious debate and litigation. Those politics have been characterized, in part, by a complex relationship between the incumbents who support affirmative action and BAMN activists.

CASE STUDY

BAMN is a national pro-affirmative action organization headquartered in Detroit. It is a militant offshoot of the pro-affirmative action movement. Since its founding in the mid-1990s, BAMN has focused on either California or Michigan. Like many other progressive-radical organizations in the United States, BAMN stresses participatory democracy, egalitarian membership based on involvement, and bottom-up leadership (Fitzgerald and Rodgers, 2000). At the time of this study (2002-2005), the visible national leadership was racially mixed but majority White, while the organization's local leadership and membership were racially mixed but predominantly African American high school and college students. In 2002, the organization had more than 1000 student members from forty-five high schools across the United States and approximately thirty-five colleges and universities. The BAMN chapter on Michigan's campus had a small core of leaders and was connected to the Defend Affirmative Action Party, which regularly had a few seats in the Michigan student government. Affirmative action in higher education has been BAMN's primary concern, although it has worked on issues such as problems in the Detroit Public Schools and banning the SAT.

In many ways, BAMN was (and still is) a radical social movement organization. It has been characterized by an extreme ideology, militant rhetoric, an oppositional agenda of restructuring social institutions, and a reliance on strategies outside traditional channels (Fitzgerald and Rodgers, 2000). Like many other radical organizations, its activism has run parallel to its moderate counterparts (Tarrow 1998). BAMN activists call for the liberation of disadvantaged groups—especially people of color but also poor and working class people, women, immigrants, Muslims, and gays and lesbians—through mass mobilization. One of BAMN's twenty-two principles avows:

> BAMN will employ the methods of independent mass organizing and struggle, of mass education and action, of democratic discussion and decision making,

> of telling the truth and only the truth, of rooting our fights in the courts or in elections in the growing movement on the streets, of building the leadership of the disenfranchised and oppressed.[6]

Despite BAMN's name, most of its tactics were nonviolent: marches, conferences, training sessions for student organizers, and legal filings. BAMN activists characterized their objectives by drawing on ideologies of compensatory racial justice and civil rights as well as modified versions of Black nationalism and socialist-Marxism. The organization's very name suggested a connection to various political struggles: "By any means necessary" is a phrase coined by Malcolm X, the Black Muslim minister known for advocating Black separatism and self determination. BAMN's slogans also called for equality and integration in the civil rights tradition associated with Dr. Martin Luther King, Jr.

BAMN had a tense, complicated relationship with the University of Michigan and with Michigan students (and before *Gratz* and *Grutter*, a complicated relationship with affirmative action proponents in California). The organization is not completely indigenous to Michigan's campus. Unlike many movements involved in higher education, it had both goals specific to Michigan and non-academic goals (Rojas 2012). It sought to change practices within the university while it also used the university as a symbolic example and object of societal change.

Furthermore, since its inception, BAMN has had a reputation as being divisive and antagonistic. According to many sources—newspaper reports from the 1990s; activists at the University of Michigan and the University of California, Berkeley; a few former BAMN members; and a publicly visible blogger at Michigan, Rob Goodspeed—BAMN activists disrupted meetings, took credit for work that other organizations had done, and derailed pro-affirmative action organizing efforts by Michigan's Black Student Union and UC-Berkeley's Diversity in Action (Hogarth 1998; Stohr 2004). According to these sources, BAMN activists stole student newspapers and even incited violent confrontations, including physical attacks on Ku Klux Klan members and others they deem racist. These critics also observed that BAMN did not include many Michigan students. In these ways, BAMN established an outsider status and contributed to its own political marginalization.

RESEARCH DESIGN AND METHODS

The empirical data presented in this paper are from a historical ethnography of the *Gratz* and *Grutter* lawsuits and the immediate aftermath at the university (see also Berrey 2011, 2015). I conducted the fieldwork from spring 2002 to winter 2005, primarily on Michigan's Ann Arbor campus but also in Detroit, Chicago, and Washington, D.C. The first phase of data collection, which is most relevant for this paper, was between spring 2002 and the Supreme Court's decisions in *Gratz* and *Grutter* in June 2003. I investigated the university's public activities around the lawsuits as well as activists' campus organizing. I observed events such as educational panels, rallies, and a bus trip from Ann Arbor to D.C. the night before the Supreme Court oral arguments as well as the April 1, 2003 March on Washington. During the second phase of research, I studied changes in the Office of Undergraduate Admissions. I interviewed a cross-section of thirty organizational participants and analyzed texts such as organizations' flyers and the legal filings.

My fieldwork then and my analysis now focus on the final stages of the legal cases. This may introduce bias, as BAMN's influence on the litigation politics may have been

more pronounced in earlier stages. That bias, I believe, is offset by the importance of the culmination of the litigation in spring 2003, which was the point in time when the cases were most publicly visible and when the Supreme Court made its very consequential decisions. This paper reports the real names of individuals who gave written permission to do so, have public identities that could not be concealed, and/or made comments on the public record.

In-depth study of a single case is useful for establishing the existence, emergence, and evolution of a process or practice (Glaser and Strauss, 1967) and for making sociological explanations more specific and more complex (Lamont and White, 2009). I developed the theoretical framework, analytic approach, and argument through an iterative process of inductively analyzing the empirical data and deductively drawing from social scientific theory.

FINDINGS

In their attempt to subvert the dominant debate over affirmative action, BAMN activists combined defensive and offensive politics. They worked to both support and criticize an elite-supported, moderate policy. To understand BAMN's mobilization, it is necessary to understand the field-level, contextual factors and relations that delineated the resources, strategies of action, and cultural symbolism upon which the activists could draw. The three most important, interrelated factors marginalizing BAMN were the historically-grounded relations that originated among affirmative action supporters in higher education and at Michigan in particular, the legal doctrine on race-conscious policy, and the polarized dynamics of the *Gratz* and *Grutter* litigation.

The Field-Level Origins of Affirmative Action Politics

Institutional incumbents launch social change more often than do challengers (Goldstone 2003), and this much is true of affirmative action's origins. University presidents and other top administrators initiated the creation of affirmative admissions policies in the early and mid-1960s, in tandem with the burgeoning civil rights movement and the federal government's establishment of a new regime of civil rights law. These university leaders were inspired by the southern civil rights movement (Stulberg and Chen, 2014). This was the case at the University of Michigan, which was one of the very first universities to practice affirmative admissions. In 1964, Provost Roger W. Heyns felt morally compelled to take action, writing in a letter to the Michigan faculty that the university was obligated "to participate appropriately in the national movement to improve the status of the American Negro in our society" (Stulberg and Chen, 2014, p. 41). (At universities that adopted the policy relatively later, starting in 1965, the threat of campus protest and urban riots factored into administrations' calculations, as did the support or resistance of alumni and other key stakeholders [Stulberg and Chen, 2014].)

Administrators at Michigan, as at many other selective universities, described affirmative admissions using a discourse of redistribution—specifically, describing it as a corrective remedy to societal inadequacies (Berrey 2011; Stulberg and Chen, 2014). Officials cited such rationales as creating educational "opportunity," "correcting social wrongs," and "improving the position of Black students as well as that of other minority and disadvantaged groups."[7]

The Black campus movement emerged in the United States in the late 1960s and early 1970s (Rogers 2012; Rojas 2007). It protested for more aggressive interventions to boost Black student representation, scholarship, faculty, curriculum, and services and

facilities to serve racial minorities. At Michigan, the Black Action Movement (BAM) and its allies organized an eighteen-day "smash racism strike." They demanded that 10% of the student body be Black by 1973 and that the administration take other remedial measures such as addressing entrenched discrimination on campus (Glenn 2010). They made these claims by drawing on the civil rights tradition of inclusive multiracial coalitions, nonviolent direct action, and—with their fists raised in the air—Black Power militancy.

The Black student movement followed the classic movement dynamics of disruptive protest that challenges established institutional routines and interests. Yet activists like those at Michigan were advocating the expansion of an already-established reformist policy, not its undoing (see Rojas 2012). There were some similarities in the discourse used by the administration and the Michigan student activists, as well. The activists, too, made claims for race-based remedies. They described affirmative action as one of many ways to correct societal injustice, although they characterized that injustice in more strident terms than the administration and as including discrimination by the administration itself.

Legal Doctrine and the Marginalization of a Civil Rights Claim

Between the 1970s and the early 2000s, the dynamics of contention over race-conscious interventions became increasingly narrow and, as opponents mobilized, disputes were channeled into legal contests. Engagement in affirmative action politics became defined around the institutional structure of litigation, the instrumental actions of the parties, and discourses that law codifies (Haltom and McCann, 2004). Civil rights-based arguments for affirmative action were simultaneously marginalized.

Litigation over affirmative action began in the 1970s. The first major Supreme Court case was *Regents of the University of California v. Bakke* (1978). *Bakke* formalized affirmative action politics as a litigious conflict. With some support from the nascent conservative movement (MacLean 2006), Allan Bakke, a White man, legally contested the practice by the University of California at Davis Medical School of admitting only students of color into a program that designated sixteen seats for racial minority and/or economically disadvantaged applicants. Bakke charged that the special admissions program operated as an unconstitutional quota. The university's defense included claims about both compensatory racial justice and diversity. It argued that its race-sensitive admissions policy was a means of "reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession" and obtaining the educational benefits that result from a diverse student body (*Bakke* 1978, p. 32).

The court's decision in *Bakke* was divided and complicated, but majorities agreed that racial quotas were forbidden and that race could still be considered in admissions decisions. Five of the nine justices found the UC-Davis program a quota because it used racial discrimination to achieve a race-based outcome. Four of those five justices took a colorblind stance that race-conscious interventions, even when intended to counter discrimination, were unacceptable. Four other justices—the "Brennan Four"—found affirmative action an acceptable remedy for racial minority disadvantage. Articulating an argument for a civil rights-based, historically-oriented policy (Chang 1997), the Brennan Four stated that the government "may adopt race-conscious programs designed to overcome substantial, chronic minority under-representation where there is reason to believe that the evil addressed is a product of past racial discrimination."

An alternative defense of race-conscious admissions was elaborated in a solo-authored opinion by Justice Lewis Powell. Powell was one of the five justices who objected to the UC-Davis policy as a quota, but he also agreed with the Brennan Four

that race-conscious programs were sometimes permissible. Drawing on a brief submitted by Harvard University and a few other elite institutions, he wrote that college admissions offices could consider an applicant's race so long as they treated it as a "plus" factor and did so with the objective of "diversity," which he described as socially and educationally beneficial. As Powell explained, diversity encompassed a broad "array of qualifications and characteristics, of which racial or ethnic origin is but a single, though important, element." He couched his justification in terms of the educational mission: "The atmosphere of 'speculation, experiment and creation'—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body" (*Bakke* 1978).

Powell's concept of diversity was a non-remedial defense of affirmative action. It was a liberal alternative to colorblindness and a moderate alternative to civil rights-based racial justice. His notion of diversity centered on the instrumental utility of minority inclusion, with a forward-looking orientation. Societal inequality and the history of race were not relevant. Because Powell's opinion set the most restrictive parameters on affirmative admissions, it was the safest for universities and colleges to follow if they wanted to practice race-conscious admissions. Admissions officers across the country adopted his conception of diversity in their public discourse and construed affirmative action as diversity management (Lipson 2007). The institutionalization of affirmative action was facilitated by other field-level factors in addition to the Court's decisions, such as isomorphic pressures on admissions offices and administrators' professional norms (Lipson 2007), the demands of bureaucratized decision making (Hirschman et al., forthcoming), and universities' efforts to sell applicants on universities (Berrey 2011; Stevens 2007)—and sometimes in response to campus activism.

Just as affirmative action was becoming more entrenched in elite higher education, opponents were gaining political power (Ebert 2014). These opponents were part of burgeoning conservative movement, which was fueled in large measure by its mobilization of White antipathy against Black people (Edsall 1992) and buttressed by the administrations of Presidents Ronald Reagan and George H.W. Bush and the increasingly conservative judiciary. A series of Supreme Court cases, *Bakke* among them, limited or banned affirmative action policies altogether. Of particular importance was the 1989 decision in *City of Richmond v. Croson*, in which the majority found that remedying past societal discrimination was not a viable argument for a race-conscious program. In the 1990s, anti-affirmative action advocates mobilized challenges in court and in state referenda. They won significant successes, including Proposition 209, which banned affirmative admissions in public colleges and universities in California, and the Fifth Circuit Court of Appeal's 1996 decision in *Hopwood v. State of Texas*, which prohibited voluntary, race-based affirmative admissions rooted in the diversity rationale in Texas, Mississippi, and Louisiana.

Through such actions, affirmative action opponents succeeded in establishing colorblindness as a legal theory (Haney-López 2006; Siegel 2011). According to the colorblind position, race-conscious, equality-seeking policies grant people of color greater access to resources based solely on their racial group membership, and this violates the U.S. Constitution's protections for individuals. Political supporters of colorblindness have framed their positions as protecting individual rights and preventing government overreach. Their actions have had the effect of redirecting government funding and priorities away from social objectives—particularly the redistribution of resources to disadvantaged racial minorities—and toward individualistic or private interests (Duam and Ishiwata, 2010).

The successes of affirmative action opponents reconstructed the field of contestation. These opponents differed from what scholars typically identify as outsider activists.

While they were from outside the academy, they had support from elite conservative funders. They were challenging academic practices for doctrinal, institutional, and symbolic purposes (Rojas 2012), with a single-minded focus on affirmative admissions policies. They worked to challenge egalitarian social reforms, not to expand rights for the disadvantaged. The discursive field also changed. As political scientist Daniel Lipson (2008) notes, institutional supporters of affirmative action ceded talk of equality. They squarely eschewed a civil rights framework of pursuing justice through the inclusion of a marginalized group (see also Keck 2006). Instead, they used a legal argument and scripted public rhetoric centered on diversity's benefits. This created a vacuum that opponents of racial preferences could capitalize on, particularly through their talk of equality and individual rights.

The field-level dynamics rooted in legal doctrine set the stage for the *Gratz* and *Grutter* litigation and BAMN's marginalization therein. A related factor—the structure of the litigation itself—also organized the field of action in ways that made BAMN a political and legal outsider allied with elites.

Gratz, Grutter, and the Colorblind versus Diversity Debate

The *Gratz* and *Grutter* cases began in 1997 when the Center for Individual Rights (CIR)—a libertarian public interest law firm that was networked with the growing conservative legal movement and had successfully represented the plaintiffs in *Hopwood*—filed two legal cases challenging Michigan's race-conscious admissions policies. *Gratz* contested the mechanistic point system that the University used at the undergraduate level in the College of Literature, Sciences, and Arts (LSA). That policy awarded African American, Latino, and Native American applicants additional points for their racial status. *Grutter* contested the law school's policy, which instructed admissions officers to consider an applicant's race as part of a holistic review of each individual's application.[8] Arguing for colorblindness, the plaintiffs charged that these race-conscious admissions policies violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U. S. C. §1981.

The University of Michigan administration defended its policies. Given Powell's opinion in *Bakke*, the only legally tenable argument that the administration could make was one based on diversity's benefits. Citing *Bakke*, the university administration argued what commonly is called the diversity rationale: that student learning improves and other benefits accrue when students interact with peers of other backgrounds, which includes but is not limited to race and ethnicity. Given the hegemony of legal doctrine, this was a predictable and appropriate argument for the university to make.

The outcome of the case was uncertain. The university needed to convince the court that Powell's solo-authored opinion was the governing standard (at the time, this was not clear) and that its race-attentive policies passed the most stringent judicial test—in legal terminology, called strict scrutiny. This meant that in order to use racial classifications lawfully (and continue receiving federal support), the university had to show that its policies served a "compelling governmental interest" and were "narrowly tailored," or designed, to serve that ends. As the university's lead attorney in *Grutter* told the Supreme Court justices during oral arguments: "There is a compelling interest in having an institution that is both academically excellent and racially diverse, because our leaders need to be trained in institutions that are excellent, that are superior academically, but they also need to be trained with exposure to the viewpoints, to the perspectives, to the experiences of individuals from diverse backgrounds."[9]

Gratz and *Grutter* proved to be the most important cases on affirmative admissions since *Bakke*. Michigan and its supporters bolstered the university's diversity defense with an extensive campaign that garnered support from both parties, including former Republican President Gerald Ford, as well as large corporations, retired military officials, lawmakers, and other allies (Green 2004). More *amicus* briefs, or friend of the Court briefs, were filed for a single side (the University) than in any other Supreme Court case in prior history. On April 1, 2003, the day of the oral arguments, tens of thousands of people participated in the BAMN-led March on Washington.

In its 5–4 decision in *Grutter*, announced in June 2003, the Supreme Court codified the diversity rationale as *the* acceptable defense of voluntary affirmative admissions. It found that diversity's benefits were a compelling governmental objective and could be lawfully achieved through the law school's policy which was narrowly tailored. The court's majority opinion, written by Justice Sandra Day O'Connor, cited the institutional benefits of diversity such as an enhanced educational environment, better national leadership, stronger national security, and greater competitiveness in the global economy. Affirmative admissions could continue, but only under the pretense of pursuing diversity's benefits and through holistic review. In a 6–3 decision in *Gratz*, announced at the same time, the court decided against the university. It found unconstitutional the additional points that the undergraduate college assigned to racial minority applicants.

With *Gratz* and *Grutter*, the issue of affirmative action was firmly entrenched as a high stakes legal contest, with an oppositional colorblind position pitted against a defense based on diversity's instrumental benefits (not on remedying past or present discrimination). Prior to the litigation, there had been relatively more ideological pluralism in popular debates over affirmative action (Gamson and Modigliani, 1987; Richardson and Lancendorfer, 2004). As studies of media framing have shown, in television, newspaper, and other popular media sources between the late 1960s and mid-1980s, advocates of affirmative action typically framed the policy as positive remedial action and opponents framed it as undesirable preferential treatment (Gamson and Modigliani, 1987). A major shift in the news media happened in 2003 (Richardson and Lancendorfer, 2004). Following the Court's decisions in *Gratz* and *Grutter*, editorials began to overwhelmingly favor affirmative action on the grounds that it furthered the instrumental benefits of diversity.

In sum, these conditions—the origins of affirmative admissions policies at Michigan, legal doctrine on race conscious policies, and the social organization of the *Gratz* and *Grutter* litigation—created a field of political contestation in which BAMN faced limited options for advancing its radical civil rights agenda.

BAMN's Defense and Critique of the Status Quo

In the *Gratz* and *Grutter* litigation and the politics surrounding the cases, BAMN had a distinctive status: it was simultaneously an ally and an outsider within the pro-affirmative action movement. BAMN was allied in that it shared with Michigan and Michigan's supporters a core policy stance: it favored affirmative admissions. But BAMN was also an outsider in numerous, important respects. Foremost, BAMN activists claimed that the practice of affirmative admissions is rooted in civil rights—a means of redressing racial and economic inequality. The policy, they argued, is at once corrective and transformative, backwards-looking and forward-oriented. According to BAMN activists, the policy offsets discrimination—most importantly, in the university's admissions criteria—and also is proactive, as it advances the principles of integration and equality. At BAMN marches and rallies, activists carried the organization's signature red and

white posters: "DEFEND Affirmative Action and Integration. FIGHT for Equality." The activists also saw affirmative action and the fight for it as a much broader struggle for social transformation. This argument put BAMN on the margins, as such claims had been thoroughly discredited in the courts and had fallen out of favor with pro-affirmative action elites. BAMN was marginalized in other ways as well. It was not a formally-recognized legal party throughout much of the case, and other affirmative action supporters avoided it because of its militancy, as discussed below.

To engage in *Gratz* and *Grutter* politics and establish their legitimacy, BAMN activists simultaneously defended and critiqued the status quo, both within and outside formal channels. They hoped to subvert the terms of debate over affirmative admissions by making a civil rights-based claim. They pursued two main tactics: leading the legal intervention in the *Grutter* case in the lower courts and organizing mass demonstrations. These tactics were closely interwoven. BAMN's formal claims in court were in many respects moralistic and politicized, meant to put forth a compelling argument but not actually a strategy of winning an official court decision. At once, the activists' protest demonstrations brought attention to their formal involvement and referenced that involvement to bolster their legitimacy. And as they took these actions, they drew on discourses that both replicated and challenged the prevailing meanings of law and affirmative action. I turn first to the organization's legal intervention.

BAMN's Legal Intervention and Argument for Civil Rights Justice

BAMN translated its political claims for civil rights, equality, and integration into a legal argument by coordinating the intervention in *Grutter* in the lower courts. Through this intervention, the activists aligned themselves with the University of Michigan but also simultaneously challenged it.

The named *Grutter* intervenors were forty-one prospective and current law students of different racial backgrounds along with BAMN, United for Equality and Affirmative Action, and Law Students for Affirmative Action. BAMN spearheaded the intervention and often suggested that the intervention was its own. Shanta Driver was an attorney at Scheff & Washington, the law firm that represented the intervenors. She developed the intervention strategy with Miranda Massie, another attorney at the firm who became the intervenors' lead counsel (see Stohr 2004). The intervenors enlisted support from fifteen expert witnesses, including prominent scholars such as Columbia University historian Eric Foner. Through intervention, the activists were able to join the defendants as an additional party in the case in the Sixth Circuit Court of Appeals.[10] Because the appellate court upheld the law school's policy, these intervenors did not petition to be heard by the Supreme Court, but they did file an *amicus* brief as a party (Parker 2007).

Broader field-level relations and uneven power dynamics constricted the intervenors' ability to engage in affirmative action politics—including the fundamental fact that they needed to somehow be involved with the litigation in order to meaningfully engage at all. Like the university, they were reacting to the plaintiffs' charges, yet they had virtually none of the resources or legal leverage that the university enjoyed. The university established the dominant pro-affirmative action position. In their allied-outsider status, the *Grutter* intervenors made their legal claims in reaction to—and usually as counterhegemonic challenges to—the university, the plaintiffs, and prior court decisions. They had to do so through a system of litigation that is biased toward narrowly defined parties and repeat players, representation by legal experts, legal argumentation based on established doctrine, and prevailing cultural concepts of law (Berrey et al., 2012; Galanter 1974; Nielsen and Nelson, 2005).

Yet within those many constraints, the intervenors had the opportunity to articulate a fully elaborated legal argument, elements of which overlapped with the university's argument. Like the university, the *Grutter* intervenors made a passionate defense of affirmative action. Like the university, they argued that *Bakke* was precedent and that the court should reaffirm it. Like the university, they criticized the plaintiffs' argument for its reliance on the concept of abstract equality, which was originally articulated by the framers of the U.S. Constitution. The university asserted, in a measured tone, that the concept of abstract equality ignores the reality that America remains very segregated. Meanwhile, the intervenors used more incendiary language to argue that the plaintiffs' position was outright manipulative. Their brief to the Supreme Court claimed that the colorblind legal concept of abstract equality veils "the reality of . . . institutionalized racism and inequality of segregation" (*Grutter* 2003, p. 16).

Yet key elements of the *Grutter* intervenors' argument contrasted sharply with Michigan's diversity defense. The intervenors argued for affirmative action on civil rights grounds. They identified two central reasons for it: past and ongoing racial inequality—particularly racial discrimination in the university's admissions criteria—and the need to proactively unite Americans through equality and integration. They emphasized, as legal precedent, *Brown v. Board of Education*, the landmark 1954 Supreme Court case. *Brown* affirmed the importance of racial integration by ending the overt state sanctioning of racial segregation in public schools. To make their points, the intervenors' doctrinal argument detailed racism in U.S. history and cited extensively Justice Thurgood Marshall's dissenting opinion in *Bakke*. In that opinion, Marshall argues that, because of pervasive past and present racism, affirmative action is a constitutionally acceptable remedy—even in cases without evidence showing that beneficiaries of affirmative action have been targets of discrimination. Marshall reasoned that the policy was necessary for the struggle to achieve "genuine equality" (*Bakke* 1978, p. 398).

By arguing about the history of discrimination and the effects of segregation, the *Grutter* intervenors strayed far from the parameters established by prior court decisions. Their position directly contradicted *Croson*. They were well aware of this. As journalist Greg Stohr observes, Massie's arguments before the lower courts were "heavy on symbolism" and highly politicized (2004, p. 164). For instance, Massie brought petitions to court that, predictably, were dismissed by the court as unacceptable evidence.

Crucially, the intervenors directly critiqued the law school's admissions policy. They argued that an affirmative admissions policy is necessary to correct the racial bias of undergraduate grades and, especially, LSAT scores, which are the primary criteria for law school admission. Citing social scientific research on the bias of the LSAT against African American, Latino, and Native American students, their brief explained, "Taking account of race is the only way to offset this double standard and to move toward admissions policies that are fair to applicants of all races" (*Grutter* 2003, p. 41). They argued that Barbara Grutter used spurious evidence—the seemingly objective criteria of her grades and LSAT score—to claim that she had experienced discrimination; to the contrary, they asserted that such criteria *protect* White privilege.

The intervenors criticized the doctrinal basis of the university's argument, as well. Even as they acknowledged Powell's opinion as precedent, they maintained that the diversity rationale was flawed. They wrote that Powell's opinion had "helped slow down progress towards genuine equality" because it "obscured affirmative action's fundamental nature as a means of achieving integration and equality; and left university administrations with only a single partial . . . defense—intellectual diversity" (*Grutter* 2003, p. 30).

Alongside their formal legal participation, BAMN activists embarked on an extensive protest mobilization. This too was part of their strategy of making, managing, and legitimating their allied-outsider status.

BAMN'S Political Mobilization and Claims to the Civil Rights Movement Legacy

BAMN politically mobilized mass demonstrations that coincided with key moments in the *Gratz* and *Grutter* cases, most significantly with the 2003 Supreme Court oral arguments. Toward this objective, the organization initiated a series of large national civil rights conferences at Michigan. They raised funds and endorsements from over 175 organizations and individuals, including Jesse Jackson's Rainbow/PUSH Coalition, United Automobile Workers International Union, Detroit City Council, and the United Church of Christ. Participants traveled from as far away as Washington, D.C., West Virginia, New York, and California. At these conferences, high school and college organizers taught workshops on how to motivate fellow students, canvas, and fundraise. For the D.C. march, BAMN leaders organized buses from Ann Arbor and Detroit and coordinated many of the 250-plus universities, colleges, high schools, and middle schools that participated in the march. The April 1 march, on a chilly spring afternoon with cherry blossoms in bloom, was a peaceful event attended by thousands of people.

In their political mobilization activities, BAMN leaders claimed that the organization was the rightful legacy of the civil rights movement. They would often say that BAMN was using the legal cases "to build a powerful, new, youth-led, integrated civil rights movement" (although the most visible leaders, such as Driver, were not youth). When Driver concluded her speech at the Martin Luther King Day rally in 2003, she said, "Now, the torch that burns bright with the flame of freedom has been passed to the people who are in this room!" She and other leaders characterized the organization as in the tradition of the long struggle for Black liberation, following "the great abolitionist, civil rights, and antiracist movements of the past" (BAMN 2015a). They construed BAMN's many marches and protests as civil rights marches—their April 1, 2003 "National Civil Rights March on Washington" as a modern-day version of the 1963 March on Washington for Jobs and Freedom.

BAMN activists also had a shrewd critique of popular diversity rhetoric, one that I characterize elsewhere as street-level semiotics (Berrey 2015). They dissected the words and ideas that both the plaintiffs and the university leaders preferred. This rhetorical and educational tactic follows the tradition of critical pedagogy (Friere 1970), according to which every individual can recognize and challenge the injustices of existing power arrangements. For instance, shortly before the April 1 march, BAMN held a recruitment event in the cafeteria of a Chicago-area university. One of the BAMN organizers who led the event was Jodi Masley, a White Michigan alumna and an attorney for the *Grutter* intervenors. During the question and answer session, an audience member asked Masley, "When is it acceptable for a school to say we need diversity to get a better education?" She replied that BAMN was grudgingly willing to use the term. "Diversity has been kind of a code word for a few but not everyone. . . . At first I found the diversity concept kind of insulting. It says: 'If you're White, young, male you might as well have some women around, some Black people around.'"

Jodi, like other BAMN organizers, used street-level semiotics as a method of political argument and a technique of political training. They did so to cast doubts on the credibility of other political players and to establish their own authority as savvy truth tellers. With critical commentary, BAMN leaders indicated that they had incisive analysis and the gumption to expose others' biases, including the administration's coded but nefarious diversity rationale. This is akin to the classic technique of

counterframing, in which activists refute their opponents' logic, language, and solutions (Snow et al., 2014). Moreover, it is a product of the asymmetrical power relations with which the BAMN activists had to contend. Like their claims within court, such a technique is unavoidably piecemeal and parasitic on the discourses and institutional practices of those they challenged (Steinberg 1999).

Ultimately, in terms of shaping formal legal outcomes, the *Grutter* intervenors and BAMN activists had little effect. Their arguments about integration, the racism of standardized tests, and the limitations of the diversity rationale were far outside the centrist mainstream of the pro-affirmative action movement. Only one of the seventy-five briefs filed in support of Michigan at the Supreme Court recognized the problematic racial biases of standardized tests, although those biases have been well substantiated by social scientific research.[11] The Sixth Circuit's decision made no mention of the *Grutter* intervenors' arguments (although a concurring opinion by some of the judges did). Nor did the Supreme Court in its decision, which focused on the instrumental educational advantages of diversity and specifically acknowledged the influence of high profile corporate and military supporters (Brown-Nagin 2005a). Likewise, none of the liberal justices cited the intervenors' argument about biased tests (Brown-Nagin 2005a). Only conservative justice Clarence Thomas referred to that argument. In his dissenting opinion in *Grutter*, Thomas critiqued the LSAT for privileging White applicants and disadvantaging applicants of color, but he voted to oppose affirmative admissions (Brown-Nagin 2005b).

Nonetheless, BAMN's legal mobilization buttressed its political activism outside of court. Its civil rights-based agenda and rhetoric surely helped with its massive effort to organize the public to the April 1 March on Washington. That rhetoric had appeal among many constituents, among them older progressives who identified with the civil rights movement and youth of color who went to underresourced public schools. The legal intervention also gave some legitimacy to BAMN's arguments. During the period that the district court recognized the intervention, the activists were formally recognized as parties to the case. Their argument was codified as part of the legal record, although not as a consequential decision. The intervention gave the activists national visibility.

Moreover, the legal intervention enabled the BAMN-intervenor activists to mobilize the symbolic authority of law. To be credibly engaged in the formal process of litigation and the attendant political activity, all the political actors involved (not just BAMN) needed to demonstrate an understanding of law. Because of the intervention, BAMN activists could invoke the social and rhetorical power of their legal expertise. Outside the courts, the activists rarely distinguished the *Grutter* intervention from their political mobilization. The intervenors' attorneys, especially Driver, were BAMN leaders. They spoke at recruitment events, in the news, and on major panels. The attorney-activists helped to legitimatize BAMN as a political participant. Outside the courts, the activists could reference the legal intervention as evidence of their legal savvy and to amplify the significance of the intervention. The BAMN website characterized the intervenors' argument as "the broadest and deepest defense of affirmative action ever made in a court of law" (BAMN 2015b). Through such action, BAMN sought to reframe the terms of debate and legitimize its allied-outsider stance. Yet, BAMN's antagonistic approach and its agenda for social transformation contributed to its own marginalization. That marginalization was abetted by the intramovement dynamics within the pro-affirmative action mobilization.

The Intramovement Marginalization of BAMN

In the final six months of the *Gratz* and *Grutter* cases, the main campus advocates of affirmative action were university administrators and a group of students who formed

Students Supporting Affirmative Action (SSAA). As these actors engaged in legal and extralegal activities pertaining to the litigation, they dissociated themselves from the intervenors and shunned BAMN's radical politics.

The Administration's Prioritization of Its Diversity Claims

The objectives of the university, as a legal party, were to persuade the courts of its legal claims and to characterize the university's argument in terms that would appeal to mainstream audiences. Toward that end, administrators worked fastidiously to maintain the consistency of the university's diversity claim. Even before the court's final decisions, this priority was decisively endorsed by the retired generals and major corporations, who argued for instrumental diversity in military service and in business (these endorsements that were all the more legitimate given the broader political and social context of the war on terrorism and big government conservatism).

Throughout the cases, administrators took somewhat different positions in regards to the intervenors and the BAMN activists—that is, different positions to the extent these groups could be differentiated. University leaders treated the intervenors with a calculated neutral stance (Stohr 2004). Endorsing the intervention would imply the university's defense was incomplete, but objecting to it would set the university in conflict with the students it was supposed to be representing. Meanwhile, the administration more resolutely avoided BAMN activism in public activities around the cases. (Off the record, some university administrators commented that BAMN was admirably fighting for a moral cause but that its fight was self-sabotaging given the centrist diversity-based precedent for higher education.)

At the Supreme Court, one noteworthy decision that the administration made was to decline intervenors' request for five of its thirty minutes for oral arguments (The administration had shared time with the intervenors in the district and appellate courts, and the plaintiffs shared time at the Supreme Court with the U.S. Department of Justice at the Supreme Court). The university's decision conflicted with Massie's understanding, before the oral arguments, of how it would allocate that time (Brown-Nagin 2005a). BAMN activists responded by charging that the university was keeping the intervenors' argument out of the national spotlight. As Driver said in our interview, "That would have made all the difference in the world. . . . More people [would be] freed to talk about . . . how the tests are biased and discriminatory, that these programs compensate the discrimination in the admissions policies and processes." Both the *Gratz* and *Grutter* intervenors filed a motion with the Court for an additional ten minutes for each side but, unsurprisingly, the court denied the motion (Stohr 2004).

As a legal party, the university administration had no incentive and only disincentives to allow for an argument about racial bias and offsetting discrimination to be made before the Supreme Court. While technically it could have ceded oral argument time, it would have been an unusual move to make. From the university's perspective, the legal team needed to cover a lot of ground in a short time period to argue the diversity rationale, which was the legal basis for its programs.

In their public activities outside the courts, university administrators downplayed the role of the intervenors and altogether avoided BAMN. This strategy was evident in their sophisticated, multiyear education and public relations campaign to solicit support for their defense in *Gratz* and *Grutter*. The campaign included press releases, an extensive website, personal meetings, public speaking engagements by representatives such as the university president, and articles and books written by university faculty members.[12] It fueled the university's relentless messaging that translated the diversity rationale into sound bites (Berrey 2015). In this campaign, university officials

sometimes diplomatically recognized the intervenors. Some of the university-sponsored events, such as a large admissions update panel organized six months before oral arguments, included Massie. The factual information published on the communications office's comprehensive website included links to the legal filings for all parties and participants in the cases, the intervenors included. On the website, chronologies of the cases listed some of the intervenors' actions and related court decisions. Otherwise, though, the site provided minimal or no description of the intervenors' substantive argument.

In my interview with Julie Peterson, a White woman who was the associate vice president for media relations and public affairs, I asked about the administration's interactions with BAMN, SSAA, and campus groups opposed to affirmative action (all of which, as student organizations, received funds from the university). She responded that the university provided those groups with information while allowing them to voice their own positions. Making no direct reference to BAMN, she explained, "Personally, I liked the fact that the intervenors and then the SSAA students who came along later could say in their own voices the things about fairness that needed to be heard." She described those groups' arguments as positively appealing to a broader audience: "Even though we made a very strong legal argument about the educational importance of diversity, there are many people in our society who resonate strongly [with] fairness and justice [and] discrimination. . . . You can't talk about issues of race and never bring that up."

The university did not promote the intervenors or BAMN activists as campus spokespeople in press releases, such as those issued immediately after the Court's announcement on June 23, 2003. Likewise, in educational materials intended as official histories of the cases, the administration made limited or no references to the intervenors and BAMN or a civil rights claim. For example, the Office of Marketing Communications oversaw the creation of an award-winning, traveling multimedia exhibit about the cases, titled "Views and Voices: U-M's Case for Diversity." The signature logo, the full-color promotional brochure, and the exhibit itself featured photographs of older, middle- and working-class African American women at BAMN's April 1 March on Washington. The photos evoked imagery of the adult generation that participated in the 1960s civil rights movement. The women held BAMN's signature sign, with the tag line "DEFEND Affirmative Action" in clear view. The rest of the slogan—"and Integration. FIGHT for Equality"—was partially obscured by a gate. While the exhibit made reference to the 1970s BAM campus protests and a later mobilization known as BAM II, BAMN's name was not shown anywhere in the exhibit. The other exhibit materials made only a few references to the intervenors: one quote from an intervenor and two entries in a timeline that recorded major actions relevant to the cases.

Similarly, the intervenors and BAMN were omitted from the 2004 book written by university leaders, *Defending Diversity: Affirmative Action at the University of Michigan* (Gurin et al., 2004). Here, the university could potentially (and with little risk) elaborate a civil rights argument for affirmative action. The authors only mention such an argument in passing and as something of the past.

Most major civil rights organizations kept their distance from the *Grutter* intervenors and BAMN, too. Early on in the cases, the *Grutter* intervenors chose not to coordinate with the intervention in *Gratz*, which had been mobilized by a coalition led by the NAACP Legal Defense and Educational Fund (see Stohr 2004). Massie and Driver had misgivings about the *Gratz* intervenors' more moderate arguments. Theodore Shaw, who represented the *Gratz* intervenors, was skeptical about the viability of the *Grutter* intervenors' arguments. When BAMN was mobilizing for the

April 1 march, Rainbow/PUSH signed on as a supporter, but other large mainstream civil rights groups only endorsed BAMN events and donated funds after much cajoling. The NAACP national office decided to support the March on Washington just three weeks beforehand.

BAMN's Loss of Its Monopoly on Campus Activism

In the final months before the Supreme Court decision, BAMN lost its monopoly on pro-affirmative action campus activism. In January 2003, a group of student activists coordinated SSAA to diminish BAMN's influence and represent what they called "the student voice." SSAA's short-term mobilization had a very narrow goal: to demonstrate Michigan students' support for the university's admissions policies at the crucial final stages of *Gratz* and *Grutter*. SSAA was comprised of thirty campus organizations representing African American, Latino, and Asian American students as well as progressive student organizations with predominantly White membership, with much involvement by student government. In their privileged status as students of an elite university, SSAA activists received favorable treatment by the university administration and media. In the process, they supplanted BAMN's civil rights argument with more politically palatable claims.

Many SSAA leaders disliked BAMN intensely. They openly criticized the organization for its militancy. They disparaged BAMN as an illegitimate representative of Michigan students. At one meeting, a White male SSAA leader contrasted SSAA and BAMN: "We are the students. … They are not. We represent the University of Michigan students. They do not." SSAA activists sometimes referred to the organization as "BAM-N" to suggest that BAMN did not have a valid connection to BAM I and II. Some SSAA posters included the statement: "We are not BAM-N."

Robert Goodspeed, who played a pivotal role in researching BAMN's misbehavior at Berkeley and Michigan, was connected to SSAA. He publicized what he learned on his popular listserv/blog, the Goodspeed Report, and his website, www.nobamn.com.[13] As Goodspeed posted in 2004, "not only did [BAMN] publicize a narrowly conceived message, they do not work with the vast majority of student organizations on campus, and in student government use unnecessary and hostile tactics to generate conflict at virtually every opportunity." Goodspeed identified ties suggesting that BAMN was one of many front organizations for the Revolutionary Workers League (RWL), a small, militant Trotskyite organization in Detroit.[14] Many students saw these ties as further evidence of BAMN's nefarious ways.

Michigan students who were not involved with SSAA shared with me their mixed opinions of BAMN. Some were enthusiastic about BAMN's impressive mobilization. Others were turned off by its radicalism. At a BAMN counter protest by campus opponents of racial preferences, one young White man told me, "BAMN is universally scorned on campus."

SSAA's public messaging provided an alternative to BAMN's. Their central message, conveyed by their name—Students Supporting Affirmative Action—was simply that Michigan students favored affirmative action. The activists' T-shirts reflected and reinforced their public image as typical Michigan students. In the university's trademark colors, navy and gold, the T-shirts featured the school's "M" symbol overlaid by the word "justice."

The SSAA organizers deliberately did *not* endorse a singular ideological justification of affirmative admissions. This was evident in SSAA's press kits for the April 1 March on Washington, which included a range of student quotes about the importance

of affirmative action. Some of the students quoted spoke of the value of diversity. Some cited societal discrimination such as—in the words of the African American woman who was the student government vice president—the existence of "institutionalized racism and inequalities." Others echoed the *Grutter* intervenors' claims; as one SSAA leader put it, affirmative action was needed "to counter . . . so-called merit-based admissions criteria." This ambiguous public messaging was politically savvy. It enabled student participants to voice whatever justification for affirmative action they personally believed. It provided the media with a variety of quotes from which to choose. And it freed up the organizers from spending their limited time coordinating the varied positions of their member organizations.

SSAA leaders worked diligently to mobilize students from a range of racial backgrounds and to manage their public image. They went to considerable lengths to ensure that the demographically diverse composition of their membership and their cross-racial friendships were visible to the media and the broader public. This was evident, for example, in their selection of speakers for campus events and their coordination of seating assignments for the buses to Washington, which they tried to engineer so that no single bus would have a glaring majority of students of the same racial group (Berrey 2004).

The SSAA activists achieved their objectives: they were featured as representatives of pro-affirmative action Michigan students in the university's public relations efforts and in national news coverage. SSAA leaders' strategies and tactics differentiated their stance from BAMN. Further, the activists had nearly instant legitimacy, as they were formed from within the university and endorsed existing academic practices (Rojas 2012). They provided university officials with an unobjectionable ally. Their demographic composition and self-presentation embodied the university's diversity argument: these were smart, well-spoken students of different racial backgrounds who engaged in positive, educational cross-racial interactions, and their admission to Michigan had been possible thanks to the universities' policies. The first page of the brochure for the university's Views and Voices exhibit featured a picture of the multiracial leadership of SSAA holding a large sign with SSAA's name, dancing in celebration of the Supreme Court victory.

SSAA activists also were featured in the major media coverage of the Court's decisions in late June 2003, which was the peak moment when the cases received intense media attention. The front page of the *Philadelphia Inquirer*, *Atlanta Journal-Constitution*, and other newspapers across the country featured an Associated Press (AP) photograph of two SSAA activist-leaders—Jackie Bray, a White woman, and Michelle Lin, an Asian American woman—hugging joyfully. The news was replete with quotes from different SSAA activists (some of which were about diversity and were lifted directly from the university's press release). "'We won! We won! We won!'" cheered Bray (Goodman 2003), while CNN quoted Goodspeed praising the diversity rationale, "It's a matter of building a good student body" (*Newsnight* 2003). Although BAMN had received considerable attention around the April 1 March on Washington, none of the major news sources mentioned BAMN by name in late June. Only one BAMN activist-intervenor, a Black Michigan student named Agnes Aleobua, was quoted a few times by the AP and CNN, usually saying, "This is a tremendous victory … for the new civil rights movement" (e.g., Goodman 2003, omission in original).

Thus, in body, in spirit, and in words, SSAA became a poster child for the university's diversity. By discrediting BAMN and proffering less confrontational messages with media appeal, SSAA helped to displace BAMN in the public spotlight and diminish the salience of BAMN's claims.

CONCLUSION

Today, contestation over race-conscious policies is channeled into disputes worked out through formal legal and political channels. This is a legacy of the mid-twentieth century civil rights movement (McCann 2006). That movement and its ongoing aftermath have been institutionalized in a variety of forms, from civil rights law and public policy to the reconstructed narratives now told by lawmakers and museum curators. Therein, the meaning of the civil rights legacy is subject to perception, debate, and negotiation.

BAMN capitalized on this ambiguity with its rights-based agenda and its claim to be torchbearers of the movement. Yet its ability to pursue its claims was constricted because of the social and legal organization of contemporary conflict over affirmative action. The racial politics were inverted, with prominent White elite supporters championing a policy that empowers people of color, in defense against detractors who stand for reactionary White interests. In this context, BAMN needed to align, to some degree, with the elite institutional incumbents. Such dynamics pose considerable challenges for BAMN and others who support race-conscious policies as civil rights interventions that address racial inequalities. Those challenges become all the more legible through relational, field-level empirical analysis.

When the politics of racial justice are inverted, there are likely to be some striking similarities in the mobilization of conservative opponents and radical supporters of a policy. Although the differences between CIR and BAMN were many—including CIR's effect of representing the racialized interests of a privileged White majority—both organizations contested the well-institutionalized practices of centrist incumbent elites. In our interview, Curt Levey, CIR's director of legal and public affairs, characterized his organization's work as a David-and-Goliath fight. CIR leaders construed their work as a bottom-up challenge to large-scale government assaults on individual freedoms, and they felt they had been pushed aside by the majority of the Supreme Court and by Republican leaders. When I asked Levey about CIR's allies, he remarked, "Despite all the claims about a vast right wing conspiracy, it's really hard to answer that question because there are so few."

Another parallel between CIR and the BAMN-led intervenors was that both had to figure out how to deal with the near consensus among elites in favor of instrumental diversity. Even the Republican establishment of President George W. Bush and the justice department had effectively endorsed diversity's value. Like BAMN, CIR and its allies couched their objections in terms of the civil rights legacy, equality, and the problem of discrimination. Ward Connerly's American Civil Rights Institute is one such example. The congruencies between these different movement organizations are structured by their relationships with institutional insiders and those insiders' use of a moderate, race-conscious policy.

Some scholars argue that engaging in legacy politics through litigation is detrimental for radical activists. According to law scholar and historian Tomiko Brown-Nagin (2005a), the *Gratz* and *Grutter* litigation, dominated by elite interest groups, was fundamentally at odds with the BAMN-led intervenors' radical aims of social transformation. She claims that the activists had to narrow their lofty ambitions to a single-issue reform campaign that was bound to have little success. The intervenors, she writes, exemplify the treacherous territory that social movements enter when they define their issues in relation to law in the courts: they "risk undermining their insurgent role in the political process, thus losing their agenda-setting ability" (Brown-Nagin 2005a, p. 1443).

However, this paper, informed by constitutive theory and relational field level analysis, supports a somewhat different conclusion regarding BAMN's *Grutter* intervention. The organization's work within formal legal channels provided legitimacy to its protest mobilization. While the legal intervention consumed time and energy, it was one of the organization's key plays in establishing the credibility of a political claim for civil rights. It provided a forum for articulating the activists' twin defense of affirmative admissions and its critique of the university's application of the policy. Surely, the activists were well aware that it was highly unlikely that the Supreme Court would recognize its claim. But they could capitalize on the symbolic power of law to define a field of discourse.

A decade after *Gratz* and *Grutter*, the Supreme Court heard two additional affirmative action cases, *Fisher v. University of Texas* (2013) and *Schuette v. Coalition to Defend Affirmative Action* (2014). In the interim years since *Grutter*, the court had become even more conservative, more hostile to race-conscious decision making, and more willing to overturn prior court decisions. National politics were characterized by the rise of the libertarian-conservative Tea Party and a climate of racist backlash against President Barack Obama, elected in 2008. The *Fischer* case was brought by a newly-formed conservative advocacy organization. It asked the court to either find UT's race-conscious admissions policy inconsistent with *Grutter* or to overrule *Grutter* altogether. In 2013, in a 7–1 decision (with Justice Elena Kagan abstaining), the court upheld *Grutter*. However it returned the case to the lower court on grounds that suggested that it was setting the legal standard for affirmative action that much higher.

The political and doctrinal terrain of *Schuette* was quite different. Through the 2000s, Connerly and Jennifer Gratz had led a misleadingly named ballot initiative, the Michigan Civil Rights Initiative (Proposal 2), to end affirmative action in the state of Michigan. BAMN mobilized in opposition to Proposal 2 on civil rights ground. One United Michigan, a coalition of major businesses and universities, also mobilized; it framed affirmative action as a diversity objective with elite support and played up women's issues while minimizing racial ones (Lipson 2008). In 2006, 58% of the Michigan residents who voted approved Proposal 2, thus creating a state constitutional amendment that prohibited the state government from granting preferential treatment based on race, sex, color, ethnicity, or national origin in public education, employment, and contracting. Michigan had to altogether stop considering race in admissions decisions, which resulted in notable drops in the enrollment of students of color.

What *Fischer* was for the anti-racial preferences side (a weak case by a strident fringe group pushing a rights-based argument that insiders suspected would not persuade the court), *Schuette* was for affirmative action supporters. *Schuette*, led by BAMN and another group, contested the constitutionality of Proposal 2. The case did not directly concern university admissions, and strict scrutiny was not the primary standard. Rather, the challengers drew on political process doctrine, a thirty-year-old theory allowing people of color to advocate for public policies that support equality. According to BAMN, the Proposal 2 ballot initiative created a racially unfair political process: people of color, but not any other group, would have to engage in an expensive, long-term campaign to amend the Michigan constitution if they wanted to ensure that a university's admission policies reflect their interests. (A diversity argument was not even an option in *Schuette*. As made explicit in *Parents Involved in Community Schools v. Seattle School District No. 1* [2007], the diversity rationale applies only to voluntary affirmative action policies in higher education.)

In their brief to the Sixth Circuit Court of Appeals, the BAMN-led plaintiffs incorporated an argument about structural inequality and civil rights: “Proposal 2 is destroying *Brown’s* promise of an equal and integrated education. . . . [It] enshrines in the Michigan Constitution the false claim that any attempt to overcome racial inequality and exclusion is an attempt to win ‘preferential treatment,’ an attempt to maintain ‘discrimination.’ By its votes, the White majority has renamed the pursuit of equality as the pursuit of inequality” (*Schuette* 2014, pp. 3, 5).

BAMN’s legal advocacy in *Schuette* failed. In spring 2014, in a 6–2 decision (with Justice Kagan abstaining), the Supreme Court upheld Proposal 2. The majority opinion rejected the plaintiffs’ argument about political process doctrine. In doing so, it affirmed state-based voter initiatives to end affirmative action. Hence, there seems to be no viable argument that protects universities’ ability to voluntarily use affirmative admissions where lawmakers or a majority of voters oppose it.

Schuette is yet another example of the ongoing narrowing of the debate over the legacy of civil rights movement. It exemplifies the court’s steady dismantlement under Chief Justice John Roberts of the legal scaffolding that supports race-conscious, equality-seeking policies. The case solidified why the pro-affirmative action legal team and political moderates had marginalized BAMN in *Gratz* and *Grutter*.

BAMN’s loss in *Schuette* was not offset by successful political protest—and hence, Brown-Nagin’s observations about the pitfalls of litigation for movement activists aptly apply. The organization’s mobilization paled in comparison to its *Gratz* and *Grutter* activism. On the day of the *Schuette* oral arguments, an estimated two thousand people marched on the Supreme Court (compared to BAMN’s estimate of 50,000 on April 1, 2003). There are likely on-the-ground issues explaining why this was the case, although those cannot be known without first hand, in-depth investigation. Other factors are surely at play. *Schuette* was more a difficult case to explain to the public than *Gratz* and *Grutter*. The case did not uniquely concern the University of Michigan in the way that litigation naming the university president did, which had ignited Michigan campus activism. Hence, BAMN had less momentum to ride upon in *Schuette*. Its lack of political mobilization around the case suggests that, as an allied-outsider group, it had greater opportunities to promote its civil rights claims when the centrist pro-affirmative action movement was better mobilized.

A civil rights claim did get voiced in *Schuette*, though, in a dissenting opinion by Justice Sonia Sotomayor that was joined by Justice Ruth Bader Ginsberg. The dissent totaled fifty-eight pages and had a scathing critique. Sotomayor read from the bench: “Race matters … because of persistent racial inequality in society—inequality that cannot be ignored and that has produced stark socioeconomic disparities.” A dissent does not change a decision, although it is part of the legal record and may become part the political understanding of a case. In the days following the court’s decision, the blogosphere of affirmative action supporters circulated this and other quotes from Sotomayor’s dissent, referencing them as eloquent statements on the need for civil rights remedies and also as exemplary of the ever-entrenched, personalized conservatism of the court and the political divisions among the justices regarding race. This political interest in Sotomayor’s defense was perhaps the greatest success of BAMN’s legal action, albeit it was not associated with BAMN.

The court’s *Schuette* decision further solidifies both an interpretation of the Equal Protection Clause as mandating colorblindness and the colorblind assertion that routine politics are racially neutral so long as they are not explicitly racialized. Given the

political conservatism across the branches of the federal government, ongoing activism against racial preferences, and the growing enthusiasm for class-based preferences in admissions (as advocated by public intellectuals such as Richard Kahlenberg), it seems likely that race-based affirmative action will soon be a relic of the past—another instance in which the legal and policy apparatus erected in the wake of the civil rights movement is being undone.

Corresponding author: Professor Ellen Berrey, Department of Sociology and Criminology, University of Denver, Sturm Hall, Room 446, 2000 E. Asbury Ave, MSC 0942, Denver, CO 80208. E-mail: Ellen.Berrey@du.edu

ACKNOWLEDGMENT

I thank the people who participated in this study for their time and insight, which made this research possible. This paper benefited from feedback from Kim Ebert, Daniel Lipson, and Chris Mele. Sarah Glann provided helpful research assistance. The research was supported by the American Bar Foundation, the National Science Foundation (Grant No. 0418547), the Northwestern University Center for Legal Studies, and the Northwestern University Graduate School.

NOTES

1. One of Driver's parents is African American and the other an immigrant from India.
2. For reviews, see Lawrence Bobo and Camille Charles (2009) and Charlotte Steeh and Maria Krysan (1996).
3. But see Nancy MacLean (2006).
4. While there are differences among scholars' approaches to studying social movement fields, the aim of this paper is not to adjudicate or resolve those tensions.
5. On relationalism, see also Marco Diani and Doug McAdam (2003) and Mustafa Emirbayer (1997).
6. See BAMN 2015a.
7. University of Michigan, Board of Regents (1970).
8. The Law School revised its policy in the early 1990s to align with *Bakke*.
9. See http://www.supremecourt.gov/oral_arguments/argument_transcripts/02-241.pdf for the transcript of the oral arguments, pp. 32-33. (accessed July 21, 2015),
10. There was a separate intervention in *Gratz*. A coalition led by the National Association for the Advancement of Colored People (NAACP) Legal Defense and Educational Fund intervened in *Gratz* and also was heard in the Sixth Circuit. It argued that affirmative action compensated for past (but not current) discrimination against African Americans and Latinos. With a more moderate political orientation and no ambition to mobilize a movement, the *Gratz* intervenors received far less attention from the media and other court observers. See Stohr (2004).
11. Other than the intervenors' brief, the only legal filing in *Grutter* that criticized standardized tests was an *amicus* brief submitted by five organizations representing social scientists and other academics: the American Sociological Association, Law & Society Association, Society for the Study of Social Problems, Association of Black Sociologists, and Sociologists for Women in Society. The author of this article is a member of two of these organizations.
12. See www.vpcomm.umich.edu/admissions/ (accessed June 4, 2015).
13. See http://web.archive.org/web/20050317181348/http://www.goodspeedupdate.com/2004_01_01_archive.html#107518209470378843 (accessed June 4, 2015).
14. For example, BAMN and RWL shared IP addresses, phone numbers, and P.O. boxes http://web.archive.org/web/20080828164859/http://www.goodspeedupdate.com/bamn/BAMN00.htm#_RESOURCES_1 (accessed June 4, 2015). Also see http://web.archive.org/web/20031022182930/http://www.nobamn.com/ (accessed June 4, 2015).

REFERENCES

Albiston, Catherine (2005). Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights. *Law and Society Review*, 39(1): 11–49.

Alimi, Eitan Y., Lorenzo Bosi, and Chares Demetriou (2012). Relational Dynamics and Processes of Radicalization: A Comparative Framework. *Mobilization*, 17(1): 7–26.

Armstrong, Elizabeth A., and Mary Bernstein (2008). Culture, Power, and Institutions: A Multi-Institutional Politics Approach to Social Movements. *Sociological Theory*, 26(1): 74–99.

Barclay, Scott, Lynn C. Jones, and Anna-Maria Marshall (2011). Two Spinning Wheels: Studying Law and Social Movements. *Studies in Law, Politics, and Society*, 54: 1–16.

Benford, Robert D., and David A. Snow (2000). Framing Processes and Social Movements: An Overview and Assessment. *Annual Review of Sociology*, 26: 611–639.

Berrey, Ellen C. (2004). Field Note: The Drive for Diversity. *Contexts*, 4(1): 60–61.

Berrey, Ellen C. (2011). Why Diversity Became Orthodox in Higher Education, and How It Changed the Meaning of Race on Campus. *Critical Sociology*, 37(5): 573–596.

Berrey, Ellen C., Steve G. Hoffman, and Laura Beth Nielsen (2012). Situated Justice: A Contextual Analysis of Fairness and Inequality in Employment Discrimination Litigation. *Law & Society Review*, 46(1): 1–36.

Berrey, Ellen C. (2015). *The Enigma of Diversity: The Language of Race and the Limits of Racial Justice*. Chicago, IL: University of Chicago Press.

Brown v. Board of Education of Topeka (1954). 347 U.S. 483.

Bobo, Lawrence D., and Camille Z. Charles (2009). Race in the American Mind: From the Moynihan Report to the Obama Candidacy. *ANNALS of the American Academy of Political and Social Science*, 621: 243–259.

Bowen, William G., and Derrick Bok (1998). *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. Princeton, NJ: Princeton University Press.

Brown, Michael K., Martin Carnoy, Elliott Currie, Troy Duster, David B. Oppenheimer, Marjorie M. Shultz, and David Wellman (2003). *White-Washing Race: The Myth of the Color-Blind Society*. Berkeley, CA: University of California Press.

Brown-Nagin, Tomiko (2005a). Elites, Social Movements, and the Law: The Case of Affirmative Action. *Columbia Law Review*, 105: 1436–1528.

Brown-Nagin, Tomiko (2005b). The Transformative Racial Politics of Justice Thomas?: The *Grutter v. Bollinger* Opinion. *University of Pennsylvania Journal of Constitutional Law*, 7: 787–808.

Burstein, Paul (1991). Legal Mobilization as a Social Movement Tactic: The Struggle for Equal Employment Opportunity. *American Journal of Sociology*, 96(5): 1201–1225.

Chang, Lisa E. (1997). Remedial Purpose and Affirmative Action: False Limits and Real Harms. *Yale Law & Policy Review*, 16(1): 59–107.

City of Richmond v. J.A. Croson Co. (1989). 488 U.S. 469.

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN) (2015a). BAMN Principles. <http://www.bamn.com/bamn-principles> (accessed July 21, 2015).

Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN) (2015b). A Brief History of BAMN. <http://216.25.88.127/1/brief-history.asp> (accessed July 21, 2015).

Crossley, Nick (2002). *Making Sense of Social Movements*. Philadelphia, PA: Open University Press.

Davis, Gerald F., Doug McAdam, W. Richard Scott, and Mayer N. Zald (2005). *Social Movements and Organization Theory*. New York: Cambridge University Press.

Diani, Marco, and Doug McAdam (Eds.) (2003). *Social Movements and Networks: Relational Approaches to Collective Action.* New York: Oxford University Press.

Dimaggio, Paul, and Walter Powell (Eds.) (1991). *The New Institutionalism in Organizational Analysis.* Chicago, IL: University of Chicago Press.

Duam, Courtenay W., and Eric Ishiwata (2010). From the Myth of Formal Equality to the Politics of Social Justice: Race and the Legal Attack on Native Entitlements. *Law & Society Review*, 44(3/4): 843–875.

Duffy, Meghan M., Amy J. Binder, and John Skrentny (2010). Elite Status and Social Change: Using Field Analysis to Explain Policy Formation and Implementation. *Social Problems*, 57(1): 49–73.

Ebert, Kim (2014). Legitimating Contexts, Colorblindness, and Racially Conservative Organizations in the Post-Civil Rights Era. Unpublished Manuscript, Department of Sociology, North Carolina State University.

Edelman, Murray (1985 [1964]). *The Symbolic Uses of Politics*. Urbana, IL: University of Illinois Press.

Edley, Christopher (1996). *Not All Black and White: Affirmative Action, Race, and American Values*. New York: Hill and Wang.

Edsall, Thomas Byrne (1992). *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics*. New York: W. W. Norton.

Emirbayer, Mustafa (1997). Manifesto for a Relational Sociology. *American Journal of Sociology*, 103(2): 281–317.

Espenshade, Thomas J., and Alexandria Walton Radford (2009). *No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life*. Princeton, NJ: Princeton University Press.

Ewick, Patrick, and Susan S. Silbey (1998). *The Common Place of Law: Stories from Everyday Life*. Chicago, IL: The University of Chicago Press.

Fitzgerald, Kathleen J., and Diane M. Rodgers (2000). Radical Social Movement Organizations: A Theoretical Model. *Sociological Quarterly*, 41(4): 573–592.

Fisher v. University of Texas (2013). 570 U.S. ___ .

Fligstein, Neil, and Doug McAdam (2012). *A Theory of Fields*. New York: Oxford University Press.

Fluery-Steiner, Ben, and Laura Beth Nielsen (2006). A Constitutive Perspective of Rights. In Ben Fluery-Steiner and Laura Beth Nielsen (Eds.), *New Civil Rights Research: A Constitutive Approach*, pp. 1–16. Williston, VT: Dartmouth/Ashgate Press.

Friere, Paulo (1970). *Pedagogy of the Oppressed*. London: Continumuum Publishing.

Galanter, Marc (1974). Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change. *Law and Society Review*, 9(1): 95–160.

Gamson, William A., and Andre Modigliani (1987). The Changing Culture of Affirmative Action. In Richard G. Braungart (Ed.), *Research in Political Sociology* vol. 3, pp. 137–177. Greenwich, CT: JAI.

Glaser, Barney G., and Anselm Strauss (1967). *The Discovery of Grounded Theory: Strategies of Qualitative Research*. London: Weidenfeld and Nicolson.

Glenn, Alan (2010). "Open It Up or Shut It Down:" The 1970 Black Action Movement Strike at Michigan. *Ann Arbor Chronicle*, March 30. Accessed June 4, 2015. <http://annarborchronicle.com/2010/03/30/open-it-up-or-shut-it-down/>

Goldberg-Hiller, Jonathan (2004). *The Limits to Union: Same-Sex Marriage and the Politics of Civil Rights*. Ann Arbor, MI: University of Michigan Press.

Goldstone, Jack A. (2003). Bridging Institutionalized and Noninstitutionalized Politics. In Jack A. Goldston (Ed.), *States, Parties, and Social Movements*, pp. 1–26. New York: Cambridge University Press.

Goldstone, Jack A. (2004). More Social Movements or Fewer? Beyond Political Opportunity Structures to Relational Fields. *Theory and Society*, 33(3/4): 333–365.

Goodman, David (2003). Split Court Ruling Relief to Affirmative Action Backers. *Associated Press State and Local Wire*, June 24.

Goodspeed, Robert (2004). Goodspeed Update. BAM-N Update. January 27. <http://goodspeedupdate.com/2004/908> (accessed July 21, 2015).

Gramsci, Antonio (1971). *Selections from the Prison Notebooks*. New York: International Publishers.

Gratz v. Bollinger (2003). 539 U.S. 244.

Grutter v. Bollinger (2003). 539 U.S. 306. <http://diversity.umich.edu/admissions/legal/grutter/gru-stu-int-ussc.pdf > (accessed July 23, 2015).

Green, Denise O'Neil (2004). Fighting the Battle for Racial Diversity: A Case Study of Michigan's Institutional Responses to *Gratz* and *Grutter*. *Educational Policy*, 18(5): 733–751.

Grodsky, Eric (2007). Compensatory Sponsorship in Higher Education. *American Journal of Sociology*, 112(6): 1662–1712.

Gurin, Patricia, Jeffrey S. Lehman, and Earl Lewis (2004). *Defending Diversity: Affirmative Action at the University of Michigan*. Ann Arbor, MI: University of Michigan Press.

Haltom, William, and Michael McCann (2004). *Distorting the Law: Politics, Media, and the Litigation Crisis*. Chicago, IL: University of Chicago Press.

Haney-López, Ian F. (2006). A Nation of Minorities: Race, Ethnicity, and Reactionary Colorblindness. *Stanford Law Review*, 59: 985–1064.

Harper, Shannon, and Barbara Reskin (2005). Affirmative Action at School and on the Job. *Annual Review of Sociology*, 31: 357–379.

Hirschman, Dan, Ellen Berrey, and Fiona Rose-Greenland (forthcoming). Dequantifying Diversity: Affirmative Action and Admissions at the University of Michigan. *Theory and Society*.

Hochschild, Jennifer (2002). Affirmative Action as Culture War. In David Theo Goldberg and John Solomos (Eds.), *A Companion to Racial and Ethnic Studies*, pp. 282–303. Malden, MA: Blackwell.

Hogarth, Paul (1998). Infighting at Berkeley over Style of Protests. *The New York Times*, January 4. EL15.

Johnston, Hank, and Bert Klandermans (1995). The Cultural Analysis of Social Movements. In Hank Johnston and Bert Klandermans (Eds.), *Social Movements and Culture*, pp. 3–24. Minneapolis, MN: University of Minneapolis Press.

Jones, Jeffrey M. (2013). In U.S., Most Reject Considering Race in College Admissions. *Gallup*, July 24. <http://www.gallup.com/poll/163655/reject-considering-race-college-admissions.aspx> (accessed June 4, 2015).

Keck, Thomas (2006). From *Bakke* to *Grutter*: The Rise of Rights-Based Conservatism. In Ronald Kahn and Ken I. Kersch (Eds.), *The Supreme Court and American Political Development: The Interplay of the Internal and External in Supreme Court Decision-Making*, pp. 414–442. Lawrence, KS: University of Kansas Press.

Lamont, Michèle, and Patricia White (2009). *Workshop on Interdisciplinary Standards for Systematic Qualitative Research*. Washington, DC: National Science Foundation.

Lind, Benjamin, and Judith Stepan-Norris (2011). The Relationality of Movements: Movement and Countermovement Resources, Infrastructure, and Leadership in the Los Angeles Tenants' Rights Mobilization, 1976-1979. *American Journal of Sociology*, 116(5): 1564–1609.

Lipson, Daniel N. (2007). Embracing Diversity: The Institutionalization of Affirmative Action as Diversity Management at UC-Berkeley, UT-Austin, and UW-Madison. *Law & Social Inquiry*, 32(4): 985–1026.

Lipson, Daniel N. (2008). Where's the Justice? Affirmative Action's Severed Civil Rights Roots in the Age of Diversity. *Perspectives on Politics*, 6(4): 691–706.

Llewellyn, Karl (1930). A Realistic Jurisprudence—the Next Step. *Columbia Law Review*, 30: 431–465.

MacLean, Nancy (2006). *Freedom Is Not Enough: The Opening of the American Workplace*. New York: Russell Sage Foundation.

Marshall, Anna-Maria (2003). Injustice Frames, Legality, and the Everyday Construction of Sexual Harrassment. *Law and Social Inquiry*, 28: 659–689.

McAdam, Doug (1982). *Political Process and the Development of Black Insurgency 1930-1970*. Chicago, IL: The University of Chicago Press.

McAdam, Doug, Sidney Tarrow, and Charles Tilly (2001). *Dynamics of Contention*. Cambridge, UK: Cambridge University Press.

McCann, Michael (2006). Law and Social Movements: Contemporary Perspectives. *Annual Reviw of Law and Social Science*, 2: 17–38.

McCarthy, John D., and Meyer Zald (1977). Resource Mobilization and Social Movements: A Partial Theory. *American Journal of Sociology*, 82(6): 1212–1241.

Meyer, David S., and Sidney Tarrow (1998). *The Social Movement Society*. New York: Rowman & Littlefield Publishers.

NeJaime, Douglas (2011). Convincing Elites, Controlling Elites. *Studies in Law, Politics, and Society*, 54: 175–211.

Newsnight with Aaron Brown (2003). Supreme Court Rules on Affirmative Action. CNN. New York, NY. June 23.

Nielsen, Laura Beth, and Robert L. Nelson (2005). Scaling the Pyramid: A Sociolegal Model of Employment Discrimination Litigation. In Laura Beth Nielsen and Robert L. Nelson (Eds.), *Handbook of Employment Discrimination Research: Rights and Realities*, pp. 3–34. Dordecht, The Netherlands: Springer.

Nielsen, Laura Beth, Robert L. Nelson, and Ryon Lancaster (2010). Individual Justice or Collective Legal Mobilization? Employment Discrimination Litigation in the Post Civil Rights United States. *Journal of Empirical Legal Studies*, 7(2): 175–201.

Obasogie, Osagie K. (2014). *Blinded by Sight: Seeing Race through the Eyes of the Blind*. Palo Alto, CA: Stanford University Press.

Parents Involved in Community Schools v. Seattle School District No. 1 (2007). 551 U.S. 701.

Parker, Wendy (2007). The Story of *Grutter v. Bollinger*: Affirmative Action Wins. In Michael A. Olivas and Ronna Schneider (Eds.), *Education Law Stories*, pp. 83–110. St. Paul, MN: Foundation Press.

Pedriana, Nicholas (2006). From Protective to Equal Treatment: Legal Framing Processes and Transformation of the Women's Movement in the 1960s. *American Journal of Sociology*, 111(6): 1718–1761.

Pound, Roscoe (1910). Law in Books and Law in Action. *American Law Review*, 44: 12–36.
Regents of the University of California v. Bakke (1978). 438 U.S. 265.
Richardson, John D., and Karen M. Lancendorfer (2004). Framing Affirmative Action: The Influence of Race on Newspaper Editorial Responses to the University of Michigan Cases. *Press/Politics*, 9(4): 74–94.
Rogers, Ibram H. (2012). *The Black Campus Movement: Black Students and the Racial Reconstitution of Higher Education, 1965-1972*. New York: Palgrave Macmillan.
Rojas, Fabio (2007). *From Black Power to Black Studies: How a Radical Social Movement Became an Academic Discipline*. Baltimore, MD: Johns Hopkins University Press.
Rojas, Fabio (2012). Social Movements and Universities. In Michael Bastedo (Ed.), *The Organization of Higher Education: Managing Colleges for a New Era*, pp. 256–277. Baltimore, MD: Johns Hopkins University Press.
Saguy, Abigail C. (2003). *What Is Sexual Harassment?: From Capitol Hill to the Sorbonne*. Berkeley, CA: University of California Press.
Santoro, Wayne A., and Gail M. McGuire (1997). Social Movement Insiders: The Impact of Institutional Activists on Affirmative Action and Comparable Worth Policies. *Social Problems*, 44(4): 503–519.
Schuette v. Coalition to Defend Affirmative Action (2014). 572 U.S. ___.
Sewell, William H., Jr. (1999). The Concept(s) of Culture. In Victoria E. Bonnell and Lynn Hunt (Eds.), *Beyond the Cultural Turn: New Directions in the Study of Society and Culture*, pp. 35–61. Berkeley, CA: University of California Press.
Siegel, Reva (2011). From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases. *Yale Law Journal*, 120: 1278–1366.
Silbey, Susan S. (2005). After Legal Consciousness. *Annual Review of Law and Social Science*, 1(1): 323–368.
Skrentny, John David (1996). *The Ironies of Affirmative Action: Politics, Culture, and Justice in America*. Chicago, IL: University of Chicago Press.
Snow, David A., and Robert D. Benford (1988). Ideology, Frame Resonance, and Participant Mobilization. *International Social Movement Research*, 1: 197–218.
Snow, David A., Robert D. Benford, Holly J. McCammon, Lyndi Hewitt, and Scott Fitzergald (2014). The Emergence, Development, and Future of the Framing Perspective: 25+ Years since "Frame Alignment." *Mobilization*, 19(1): 23–45.
Snow, David A., E. Burke Rochford, Steven K. Worden, and Robert D. Benford (1986). Frame Alignment Processes, Micromobilization, and Movement Participation. *American Sociological Review*, 51: 464–481.
Steeh, Charlotte, and Maria Krysan (1996). Trends: Affirmative Action and the Public, 1970-1995. *Public Opinion Quarterly*, 60: 128–158.
Steinberg, Marc W. (1999). The Talk and Back Talk of Collective Action: A Dialogic Analysis of Repertoires of Discourse among Nineteenth-Century English Cotton Spinners. *American Journal of Sociology*, 105(3): 736–780.
Stevens, Mitchell (2007). *Creating a Class: College Admissions and the Education of Elites*. Cambridge, MA: Harvard University Press.
Stohr, Greg (2004). *A Black and White Case: How Affirmative Action Survived Its Greatest Legal Challenge*. Princeton, NJ: Bloomberg Press.
Stryker, Robin, Martha Scarpellino, and Mellisa Holtzman (1999). Whither Equal Opportunity Policies? The Rhetorical Drum Beat of Quotas and the Framing of the Civil Rights Act of 1991. *Special Issue, The Future of Affirmative Action. Research in Social Stratification and Mobility*, 17: 33–106.
Stulberg, Lisa M., and Anthony S. Chen (2014). The Origins of Race-Conscious Affirmative Action in Undergraduate Admissions: A Comparative Analysis of Institutional Change in Higher Education. *Sociology of Education*, 87(1): 36–52.
Sturm, Susan, and Lani Guinier (1996). The Future of Affirmative Action: Reclaiming the Innovative Ideal. *California Law Review*, 84(4): 953–1036.
Tarrow, Sidney (1998). *Power in Movement: Social Movements and Contentious Politics*. New York: Cambridge University Press.
Thernstrom, Stephen, and Abigail Thernstrom (1997). *America in Black and White: One Nation, Indivisible*. New York: Simon and Schuster.
University of Michigan, Board of Regents(1970). *Proceedings of the Board of Regents*. March. Ann Arbor, MI. <http: //www.hti.umich.edu/u/umregproc/> (accessed July 21, 2015).
Walder, Andrew (2009). Political Sociology and Social Movements. *Annual Review of Sociology*, 35: 393–412.

Welch, Susan, and John Gruhl (1998). Affirmative Action and Minority Enrollments in Medical and Law Schools. Ann Arbor, MI: University of Michigan Press.

Williams, Rhys H. (2004). The Cultural Contexts of Collective Action: Constraints, Opportunities, and the Symbolic Life of Social Movements. In David A. Snow, Sarah A. Soule, and Hanspeter Kriesi (Eds.), *The Blackwell Companion to Social Movements*, pp. 91–115. Malden, MA: Blackwell.

Zemans, Frances Kahn (1983). Legal Mobilization: The Neglected Role of the Law in the Political System. *American Political Science Review*, 77(3): 690–703.