When Protest Makes Policy

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Do social movements offer a pathway to a more inclusive democracy or toward a more polarized, fragmented, elite-dominated polity? In this conclusion, I argue that social movements do more to deepen democracy than to divide democratic publics. Indeed, under some conditions, states ought to actively support the development of social movements as a way of creating a more inclusive polity. Let me show how the research presented so far illuminates those conditions. I will also argue that a social-structural and intersectional approach reveals fundamental and otherwise obscured aspects of politics and policy. I then turn to illuminating the policy implications of this argument, drawing on concrete examples from Canada and the United States.

Favorable Conditions for Social Movement Representation

The research presented thus far suggests that social movements are the most effective avenues of representation (more influential than political parties or intralegislative descriptive representation) under the following conditions: (1) when the social group is a systematically disadvantaged one, (2) when the group is not recognized or organized through an existing institutional mechanism (e.g., an ethnic or labor party), and (3) when the policy or state action in question requires or promotes social transformation.

Types of Disadvantaged Group

This research has focused on the representation of systematically disadvantaged groups (as opposed to those that are temporarily disadvantaged or disadvantaged in negligible and/or isolated ways). Recall that by referring to “systematically disadvantaged groups,” I here mean social groups that have historically been subject to discrimination and continue to suffer objectively demonstrable disadvantage in multiple spheres (social, economic, political) and to whom negative meanings are ascribed by the broader society and culture (Williams 1998). Group membership is experienced as objective and immutable (Williams 1998; Young 1990, 2000). This conceptualization includes
groups defined by gender, race, ethnicity, and sexuality, among other dimensions. Although class, religion, and citizenship may not seem like such immutable characteristics, they are often experienced as such by the members of such groups. Williams (1998) demonstrates that in the United States, women and African Americans are marginalized groups. In the previous chapters, I have shown that for women, women of color, and workers, civil society avenues of representation such as social movements are the best routes to policy influence. In this regard, I do not compare women to men or people of color to whites. It is possible that social movements are the best avenue of representation for everyone. But I have shown here that at least for some disadvantaged groups (women, workers, women workers, women of color), social movements offer the best avenue of representation.

An examination of policies on violence against women cross-nationally and across the U.S. states reveals that women’s movements are critical to sparking policy action in this critical area of women’s rights. For women of color, separate organization as part of broader social movements seems the most effective avenue of policy influence, at least in the area of violence against women. Such representation is more effective than increasing numbers of women or women of color in elective office.

Such separate organization of women or women of color does not appear to fragment or weaken social movements or to distract from material issues such as economic inequality or welfare reform. As the study of the U.S. states shows, women’s movement organizations are an important source of pressure for policy development addressing women’s economic concerns, for policies related to unemployment insurance, minimum wage, child care spending, and the like. Moreover, at least in the case of Chicago, it seems that even organizations focusing on what may not at first blush appear to be economic issues (domestic violence, divorced women) do make material well-being a priority. Women’s organizations work as a network to achieve policy influence both through direct efforts, such as lobbying, and through indirect efforts, such as mobilizing women and raising the awareness of the general public about gender issues.

Social movements are especially important for those groups for whom group membership is more fluid at the individual level, such as class or immigration status. Although descriptive representation is not completely ineffective for such groups, the greater mutability of group membership does pose some problems. For example, electing working-class people to legislative office literally transforms their class position. This suggests that legislators from
working-class backgrounds of families must rely on memory and preexisting social networks more than on reflection on current circumstances in order to translate descriptive representation into substantive representation. Not every legislator is so reflective and committed to past allegiances and relationships. Because descriptive representation by class confronts these obstacles, social movement representation is even more important for class groups than for groups defined by, say, race or gender.

**INSTITUTIONAL MECHANISMS, INTERNAL MINORITIES, AND CONFLICTS OF INTEREST**

In the analysis of state-level labor policies across the United States, it appears that workers in traditionally male forms of employ are better represented by unions than are women workers. In addition, in the North, where the Democratic Party has a closer relationship with labor, political parties appear to be an important avenue for workers in traditionally male fields of employ. In the South, however, where there is no political party that reliably represents labor, social movements (unions and other civil society groups representing labor) were more important. Where women's movements and unions were weak, other civil society avenues and even generalized social capital became more important. This suggests that where parties form to represent specific constituencies (women's parties, labor parties, ethnic parties) or when there are specific electoral mechanisms to represent those groups (e.g., separate electorates or the like), civil society groups become less important avenues of representation. Where group differences are institutionalized and groups have mechanisms providing a guarantee that they can speak as part of democratic policy-making processes, these civil society avenues fade in importance.

However, if an issue is perceived to affect only a disadvantaged subgroup (working-class women or women of color), institutional recognition of the broader group may not mitigate the need for social movement representation. For example, the analysis in chapter 3 showed that even in the North, when political parties aimed to represent organized labor, unions and left political parties were chiefly effective on the issues of the traditionally dominant male worker. Separate organization in women's movements still significantly improved the representation of working women. More generally, for these issues framed as internal minority ones, the separate organization of that group (whether within or outside of broader social movements) becomes important to social movement action on that issue. For example, it was through separate organization that women of color were able to identify and articulate the dis-
Distinctive concerns of women of color in relation to violence. This separate organization had an indirect effect on policy outcomes (affecting the broader women’s movement), and it is unlikely that these issues would have been articulated were it not for the separate organization of these women. The importance of such separate organization of marginalized constituencies is reflected in the political practice of contemporary labor movements and women’s movements. For issues affecting privileged minorities, however, we would not expect such separate organization to be necessary. Because privileged minorities are either adequately represented or overrepresented in these organizations and their leadership, they tend to be able to raise these issues and even frame them as universal or majority issues quite effectively (Strolovitch 2007).

Separate organization is especially important for issues where there is a conflict of interest between the dominant subgroup and the marginalized subgroup (see chapter 4 in the present study; Williams 1998). In these cases, autonomous organization of the intersectionally marginalized group may be more important. In cases where distinctive marginalized interests are compatible with dominant interests or are overlooked mainly due to oversight or insensitivity, organizational autonomy may be less important.

**Types of Issue: Issue Frames and Social Transformation**

We learn more about when and how social movements are most effective as representatives when comparing across different policies affecting women—policies on violence against women, parental leave, minimum wage, child care, and the like. Although women’s movements are critical to policy action on violence against women, they are less critical for the development of generous policies of maternity and parental leave. Moreover, it appears that patterns of class politics are more determinative of the generosity of provisions for maternity leave than are the dimensions of gender politics, such as women in government, women’s bureaus, and women’s movements. But further examination of the politics of leave policies finds that policies for maternity and parental leave vary widely in the degree to which they challenge gender roles. In their canonical work, Gelb and Palley (1996) distinguish between policies that change or maintain gender roles. Some family leave and workplace policies challenge gender roles, and some seek to maintain gender roles—for example, making parental leave available only to women. Women’s movement activity turns out to be critical for ensuring policies that promote role change,
while labor mobilization is critical for advancing generous, state-funded leave, a dimension of leave policy that poses a challenge to class hierarchies more than to gender hierarchies (in that it leaves the gender division of labor untouched). More generally, social movements are particularly important for advancing policies that seek social transformation, and social movements tend to specialize in different types of social transformation. So different social movements are likely relevant for different policies and can even determine different aspects of the same policy.

As this consideration of parental leave suggests, many policy issues are of interest to multiple constituencies. For example, spending on child care, minimum wage laws, and provisions for maternity leave are both women’s issues and labor issues. As such, one would expect these issues to be of concern to both women’s movements and labor movements. One can determine how movements will matter by asking which aspect of a proposed policy most challenges the prevailing policy regime. In the United States, for example, although ensuring access to unemployment insurance for pregnant women and women victims of domestic violence is an issue of greatest salience to working-class women, such a policy does not challenge the prevailing model of class relations. Ensuring access to unemployment insurance for such women does challenge the gender basis of the social policy regime, since such insurance has generally been seen as a program primarily benefiting male workers (Sapiro 1990; Nelson 1990). Increasing social spending, in the U.S. context, however, does challenge the prevailing model of class relations, and labor movements are likely to be more important here. So social movements are critical for policies requiring or advancing social transformation, and it matters which aspect of social inequality is being challenged.

Conditions Favorable to Intralegislative Descriptive Representation

Although the argument and research has emphasized the greater importance of social movements for translating descriptive representation into substantive representation, this analysis also reveals some conditions under which descriptive representation by elected officeholders is particularly effective. The research in this book shows that women in government did seem to have an important effect on the likelihood that paid pregnancy, maternity, and parental leaves would be adopted. This is consistent with emerging research on this issue (Schwindt Bayer and Mishler 2005; Kittilson 2008), but it suggests
that maternity leave is different from other women’s rights issues in some important way.

One important aspect of maternity leave is that such policies (which affirm the importance of women’s maternal obligations) do not require women representatives to envision massive social transformation. Another important aspect is that combining work and childbirth (or care for a young infant) is an issue that confronts a majority of women, including many women who are in public office. In other words, a working mother (e.g., a legislator) does not need a feminist analysis to see that a maternity leave is in her interest. It is not only feminists who are complaining about work-family balance. So even where this is an uncrystallized interest, an issue on which there has been little social debate, women can speak from their own lives, while affirming traditional gender roles, in advocating for maternity leave. In this way, it seems, this research confirms that the ability of descriptive representatives to draw on their own experiences is especially valuable (1) when interests are uncrystallized and (2) when they are in fact representative of a broader group in some way (Mansbridge 1999; Phillips 1995). However, if such descriptive representatives are seeking to advance policies of social transformation, involvement with and support by a broader social movement is still critical for success.

More Democracy or More Division?

For marginalized groups seeking social transformation (especially intersectionally marginalized ones), mobilization in social movements offers a way to participate and be represented in democratic politics that is more accessible and effective than merely voting for a particular party or electing more people who “look like” they are from the group in question. Separate organizing as women or women of color does not appear to weaken social movements or distract from important issues of material conditions, nor does it seem to result in a focus on primarily “cultural” or “identity-related” concerns. Moreover, although social movements, like other avenues of representation, reflect the social dominance of particular groups to some degree, they appear to be particularly accessible and amenable to organization by intersectionally marginalized groups, making them uniquely valuable as avenues for integrating these hard-to-reach groups into our democracies. Last, the proliferation of social movement organizations need not signal a hollowing out of associational life or a lack of participation, and it improves civil society representation for systematically disadvantaged groups.
Social Structures and Intersectional Analysis

More generally, this analysis suggests that attending to the ways that social structures shape processes of representation (and political life more generally) reveals political phenomena (and, potentially, ways of deepening democracy) that are only visible at a macro level. This is even true for the intersectional analysis of policy and politics, which has often been taken to imply the study of disadvantaged social groups that are ever more narrowly defined. In contrast, this analysis supports the emerging scholarly movement toward comparing different social groups, of varying degrees and kinds of advantage and disadvantage, in their relationships with political institutions (Hancock 2007; Strolovitch 2007; Weldon 2006, 2008). Such an analysis provides concrete evidence of the value of disaggregating our analysis, revealing political dynamics that are otherwise obscured.

The Advocacy State: Implications for Public Policy

If social movements play or could play such an important role in democratic representation, especially for disadvantaged groups, this suggests that democratic states should take an active role in fostering and encouraging independent mobilization by disadvantaged groups. States that provide more openings for input from such independent groups, for example, will have more inclusive policy processes—processes that are more reflective of the diversity of opinion and experience that characterizes the population. Groups whose ideas and views would otherwise be excluded from public discussions may participate in policy deliberations. Greater inclusivity and political equality should further democracy (Young 2000; Cohen and Rogers 1992).

Can States Foster Social Movements Without Undermining Them?

In a study of the environmental movement in four countries, Dryzek and others (2003) argue that inclusive states—states that provide a forum for social movements within the state—actually deplete civil society and undermine democracy. State intervention, they argue, suppresses the heterogeneity that otherwise characterizes social movements, and it makes democratic authenticity and critical distance more difficult to maintain. Inclusion too often becomes co-optation, and movements are unable to maintain the critical edge that makes them so powerful. Passively exclusive states—that is, governments
that provide no openings for social movements—are more conducive to the
development of a burgeoning civil society than to inclusive states. The experi-
eence of the environmental movement in these four states, they argue, “pours
cold water over political theorists who see the main democratic task of the
state in terms of effectively organizing groups—especially disadvantaged
groups—into the state” (111).\(^2\)

Can states actively support and foster social movements of disadvantaged
groups without inadvertently co-opting organizations or crowding out more
critical, independent organizations? There are many tensions that arise in state
efforts to promote mobilization that must be somewhat independent of the
state in order to maximize the representational benefits. Indeed, it is important
to recognize the dangers of state involvement in fostering such organizations.
Sometimes, this can result in too much government control of these organiza-
tions, dulling their critical edge (Young 2000). At the same time, as Warren
(2001, 216–17) points out, it is not as if the state can avoid shaping civil soci-
ety in modern democracies: “States are deeply and inextricably involved in
constituting the associational life of today’s societies, not only through regu-
lation, but through devolution of social services to associations, tax incentives,
the structuring and devolving of political processes, partnerships, and alter-
ations in the bargaining powers of social actors.” States also intervene directly
in civil society by supporting (and, in some cases, creating) nongovernmental
associations. So the question cannot be “whether the state should be involved,
but rather how it should be involved” (Warren 2001, 217). Moreover, states
vary in terms of whether they are inclusive or exclusive of civil society de-
pending on the group or issue in question (Tarrow 1998, 81–83), and every
form of organization advantages some categories over others (Bachrach and
Baratz 1969). So perhaps the question should not be whether the state should
privilege or advantage particular groups in civil society but which ones should
be so privileged.

The literature on associative democracy suggests a number of principles
and measures for state action that are relevant here (though scholars are quick
to note that the specific political context must be taken into account) (Warren
2001; Dryzek et al. 2003). First, states should guarantee certain “negative” free-
doms or rights necessary for citizens to be able to form associations—namely,
freedom of speech, conscience, assembly, and privacy (Warren 2001, 217).
States may also regulate associations to some degree. Regulation in terms of
guaranteeing internally democratic processes of organizations is most approp-
riate when organizations are compulsory and when they are imbued with
statelike responsibilities, such as providing services or coordinating other organizations. States should limit interference with voluntary organizations from which exit is relatively costless. States can also promote associations conducive to greater democracy by providing support directly (in cash or kind) or indirectly (through tax exemption) (Warren 2001; Cohen and Rogers 1992). States may also encourage private associations by seeking to create public-private partnerships (Warren 2001, chap. 7). In addition, states may undertake symbolic action that powerfully motivates citizens to organize, or they may offer opportunities in reaction to which citizens form associations.

Although states should interfere less in the internal matters of voluntary organizations, it does not follow that states should not encourage or foster such organizations. Indeed, the state should use all the tools at its disposal to foster associations of various kinds, in order to produce the wide variety of democratic effects that such associations have. The democratic state can locate or help create organizations of various underrepresented groups, such as poor people, minorities, or any other group whose perspectives might enrich public discussion but whose interests and concerns tend to be marginalized or excluded in public discussions (Young 2001; Cohen and Rogers 1992).

Cohen and Rogers (1992) propose that the state should directly subsidize the formation and/or maintenance of associations for the purposes of compensating for unequal influence on public policy; the state should identify those groups who are less well represented in the current associational terrain and use public policy to facilitate their self-directed organization. The state should encourage encompassing organizations, and these associations, on Cohen and Rogers’ view, should be involved in key areas of policy-making, particularly policies relating to the economy and welfare. Encompassingness (or completeness of representation) is determined by the proportion of the affected population that are members of the organization (Cohen and Rogers 1992, 429). In addition to this numerical measure of completeness, governments should also ask whether the full range of diversity among constituents is represented. In the case of compulsory organizations (e.g., unions), especially those that provide any statelike functions, governments must take steps to ensure fair processes internally (Warren 2001).

If we focus on the aim of representation for systematically disadvantaged groups, then, this suggests that governments can undertake a variety of measures that encourage mobilization and association. Governments can provide funding for these organizations and income support for individuals. Governments should distinguish those social groups (or subgroups) that are less well
organized and specifically seek to facilitate their self-organization. As Warren (2001) notes, universal forms of income support for individuals ensure that people have some ability to choose their associational ties without regard to survival: for example, they need not attend a church or synagogue in order to obtain social services and supports they need to live. Cohen and Rogers (1992) similarly note the importance of an adequate social wage in enabling organization of workers.

To guard against the concerns of co-optation raised by Dryzek and others (2003), which are particularly salient for contexts where state functions are devolved to civil society organizations, these government-sponsored groups and processes must always be seen as potentially incomplete in terms of their representativeness. Opportunities for intervention or appeal by those who feel unrepresented by the process must always be provided. This institutionalization of dissent is critical for ensuring inclusion (Weldon 1999, 2006; Young 1997).

In terms of support for organizations, there are many concrete examples of government funding successfully catalyzing autonomous organizations in Canadian public policy. One prominent activist in the Canadian women’s movement credits the community development programs of the 1960s, where the government provided funds for community development broadly construed, with creating a women’s movement with significant participation by working-class women (interview with a Canadian activist, 2003). Similarly, the Secretary of State Women’s Program in Canada has long funded women’s organizations that undertake various activities to promote the status of women; this program is considered an important resource by feminist activists in Canada and has been critical in sparking government action on violence against women (Weldon 2002). The Court Challenges Program, which funds “equality-seeking” groups to bring court cases based on the rights enumerated in the Charter of Rights and Freedoms, has also facilitated access by disadvantaged groups to government policy-making processes. Government action can also encourage or strengthen mobilization by providing infrastructure or opportunities for organizing. Finally, in her seminal article “How the Government Built the Women’s Movements,” Georgia Duerst-Lahti (1989) argues that the creation of a network of state-level women’s commissions was responsible for uniting the hitherto fragmented, local and disorganized U.S. women’s movement into a powerful, coordinated national movement.

States may also take symbolic action that encourages mobilization. For example, government rhetoric or resolutions may name particular groups as le-
gitimate participants in public discussion, thereby providing a positive valuation of that category of people, encouraging people to affirm that identity. An official day recognizing particular groups or issues can provide a focal point and legitimation for groups seeking to organize events drawing public attention. Local governments seeking input from particular communities or groups can have the same effect.

These examples include both nominally universal programs (like the Community Development Program) and programs targeted to disadvantaged groups. Democratic states should adopt both sorts of programs. Universal measures to support the development of a vital civil society likely improve democracy for all citizens. But if all citizens enjoy the same benefit, inequalities will be preserved, not challenged, even though the floor is raised (Cohen and Roger 1992; Bell 1987). In order to more directly attack social inequality, targeted programs to foster mobilization by disadvantaged groups are necessary. A state that works to promote self-organization of marginalized groups in both of these ways is what I am calling an *advocacy state*.

At present, the associational terrain tends to replicate inequalities in other areas of representation. This is partly because cultural and economic dominance provides some advantage in civil society as in other areas of political life. Adopting only universal programs to facilitate organizing will do little to alleviate these inequalities as advantaged groups as well as disadvantaged groups seek to avail themselves of these resources. In order to correct for these existing inequalities, public policy must undertake specific efforts both to encourage disadvantaged groups to mobilize and to support their efforts at self-organization.

Williams (1998) notes that where groups lack a sense of group consciousness, government efforts directed at representing these groups can smack of vanguardism. But this presents a particular problem for disadvantaged groups, who face more barriers in attempting the kind of mobilization and organization that creates and depends on group consciousness (Weldon 2006; Cohen and Rogers 1992). One way of addressing this issue is to provide resources specifically for mobilizing and organizing disadvantaged constituencies, without prejudging what those specific constituencies are.

**DEFINING GROUP DISADVANTAGE IN PUBLIC POLICY**

The major practical question that arises in thinking about how to design policies that support only systematically disadvantaged groups is how best to identify such groups. In democratic theory, the debate over how to identify sys-
tematically disadvantaged groups (which has mostly focused on distinguishing groups with a claim to special political representation) seems to have developed a consensus that distinguishing such groups in public policy is too difficult and fraught with peril to risk the attempt. Even the strongest proponents of efforts to improve representation for marginalized groups have backed away from recommending institutionalized political representation for specific groups, because of three problems that seem particularly pressing: (1) how to distinguish genuinely disadvantaged groups in practice without freezing social relations or essentializing social groups, (2) determining who would apply such criteria if they could be developed, and (3) how powerful groups could be persuaded to adopt measures to remedy inequality where those measures are likely to undermine their own power.

No proponent of group rights suggests that they should be extended to any group that claims to be disadvantaged, so groups must do more than just claim to be disadvantaged. Although some scholars have proposed criteria for distinguishing disadvantaged groups from other groups (Williams 1998; Young 1990, 2000), other scholars of group rights view these criteria as impractically broad or vague (Kymlicka 1995; Glazer 1983). In addition, difficulty in establishing who belongs to the group will make such group-specific measures difficult to implement (Young 2002).

Still more troubling is the question of who applies these criteria and decides when they are met. As Williams (1998, 214) notes (in a discussion of consociationalism):

There is also the troubling question of who will have the power to decide which groups will be included . . . It seems likely that this power will be wielded by those groups that are already relatively powerful compared to other groups that may have an equally defensible moral claim to inclusion, so that the resulting institutions may contribute little to the political equality of the historically marginalized groups about which we should be most concerned.

Moreover, institutionalization (e.g., legal recognition of disadvantaged groups) can freeze social relations (Young 2000). Institutions are relatively stable entities, while social group politics are fluid and constantly changing. What happens when groups fade or become less disadvantaged over time? Further, does recognizing groups in institutions exacerbate and perpetuate tensions among them, leading to “balkanization” (Phillips 1992, 294–95)?

These practical political problems lead noted proponents of group repre-
sentation to eschew measures to ensure the representation of disadvantaged groups, except under the direst circumstances. For example, Phillips (1992, 298) concludes, “My reservations refer exclusively to that more ambitious step of institutionalising group representation, for in exploring the possible extension of feminist arguments into a case for formal and substantial group representation, I have come to the conclusion that the potential risks outweigh the gains” (cf. Young 2000, 150; Williams 1998, 212).

The fluidity of social groups and the ease with which disadvantage may be ameliorated seem to me to be overdrawn in this discussion. For example, in Norway, where women are more than a third of the legislature (36.1 percent) and have been for two decades, where there are state agencies aimed at improving equality, and where there is an active women’s movement, the main institutions of society nevertheless remain male-dominated, and we would still consider women a disadvantaged group (Skeije and Teigen 2005). So although we want to recognize the dynamic, iterative relationship between state and society here and although we want to think about how easily state structures can adopt to changing social contexts, we should be careful not to overstate the likelihood of total, lasting social transformation in a short period of time (Eckstein 1988).

**Actual Policies Distinguishing Disadvantage: Lessons from Political Practice**

Perhaps this is a case where practice may guide theory. Some government policies have been effectively distinguishing disadvantaged groups using general criteria for some time. For example, take the Disadvantaged Business Enterprise Program adopted by the federal Department of Transportation in the United States (a similar program exists in Texas, called the Historically Underutilized Business [HUB] Program). The Court Challenges Program in Canada also successfully distinguished disadvantaged groups. Indeed, in some ways, this now-discontinued policy can serve as a model for the sort of measure envisioned here. Government-funded organizations represent the disadvantaged in challenging the government itself. Despite government funding, organizations have been able to maintain their independence and autonomy from government.

*The Court Challenges Program of Canada.* The Court Challenges Program in Canada was a program aimed at improving access to the Canadian legal system for members of historically disadvantaged groups who have a grievance
with federal law or policy. Specifically, the program provided funding to defray the cost of undertaking a lawsuit against the federal government. The case had to have the potential to be an important test case that would advance the substantive equality rights of disadvantaged groups. The substantive equality standard requires that a law be examined in terms of its differential impact, rather than in terms of achieving formal equality. Applicants must demonstrate that they have financial need for such funding, and for-profit entities are not eligible to apply. In their application, the organization or individual purporting to represent a group must aim for inclusiveness and accessibility: the diversity of interests in the community must be taken into account, and any meetings or consultations undertaken in preparation for the case must be as accessible as possible (e.g., held in handicapped-accessible buildings). The program also undertakes efforts to inform various communities about the existence of the program and to help them to apply for funding (Court Challenges Program 2003).

For the purposes of the Court Challenges Program, historically disadvantaged groups are defined as those groups specifically named in the Charter of Rights and Freedoms provisions for equality rights (see the discussion of section 15 that follows) or those groups that are analogously situated. In practice, this definition has included women; racial, ethnic, religious, and linguistic minorities; mentally and physically disabled people; and gays and lesbians. The program has funded many of the important Canadian Supreme Court cases advancing equality rights and is considered a very important program by a wide range of equality-seeking organizations, including women’s groups, groups representing the disabled, First Nations people (Aboriginal Canadians), visible minorities, and the like.3 In 2001–2, cases funded included two cases seeking judicial recognition of societal racism, two regarding social and economic rights, two regarding immigration law, one case regarding the treatment of same-sex couples, one regarding a divorced spouse’s rights to her husband’s pension, one advocating voting rights for prisoners, one regarding children’s rights, a case of discrimination based on religion, and one case based on deafness, among others. Many of these cases were Supreme Court cases (Court Challenges Program 2002).

Officially, the Court Challenges Program was originally established in 1978 to cover the costs incurred by those wishing to apply to the courts to clarify the extent of the minority language rights specified in the Constitution Act, 1867 (Court Challenges Program 1994). The program was probably also created as a way for the federal government under Pierre Trudeau to undermine the Parti
Québécois efforts to advance Bill 101, their signature language legislation for the province of Quebec (Brodie 2001). At the outset, the federal government made all decisions about which cases to fund (Court Challenges Program 1994). The program was broadened in response to the adoption of the Canadian Charter of Rights and Freedoms. When section 15, which governs equality rights, took effect in 1985, it was decided to broaden the mandate of the Court Challenges Program to allow disadvantaged groups to assert the equality rights they were guaranteed under the Constitution of Canada. Section 15 reads:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The decision to add challenges under the equality provisions of the Charter of Rights and Freedoms (section 15) to the Program mandate was a response to pressure by organizations representing women; the disabled, cultural, and racial minority communities; gays and lesbians; and other groups. These groups argued that without funding, the newly acquired rights would have a more limited impact, since they would remain inaccessible to the people they were supposed to protect. It was also an effort on the part of the Progressive Conservative Party to attract progressive voters (Brodie 2001).

Since the Court Challenges Program involved challenges to the federal government, it was important that funding decisions were made by a body that was independent of government. To this end, the Canadian Council on Social Development (CCSD) was given the task of administering the Court Challenges Program. Two independent panels were set up, one to study applications for assistance relating to language rights and the other to study applications relating to equality rights. These panels became the only bodies that could decide which cases were to be funded by the program. Between 1985 and 1992, the equality component of the program financed 178 cases at all levels of the legal system, including 24 cases in the Supreme Court. The government briefly eliminated the program's financing from 1992 to 1994 (Epp 1996, 770).
The program was reinstated in 1994 in response to public pressure. In 1993, the Canadian prime minister announced the government's intention to reestablish the program (Court Challenges Program 1995). Price Waterhouse was charged with supervising consultations with concerned groups (Court Challenges Program 1995). As a result of these consultations, the government basically adopted the same mandate that the former program had had. In addition, it was agreed that the reinstated program would be given the resources to enable it to approach various communities and groups. Participating organizations of women, Native Canadians, racial and ethnic minorities, the disabled, and other groups also agreed to create a new nonprofit organization that would be completely independent of the federal government. Language groups and equality-seeking groups were to be equally represented on the board of directors. Two separate panels were to be set up to decide which applications for funding would be accepted. An Equality Rights Panel, comprised of seven members in order to reflect the different membership of the various groups involved and to promote equality of representation, was established. At least one of the members of the Equality Rights Panel was to come from a racial minority, and another was to come from the groups representing disabled persons. A Language Rights Panel would also be created (Court Challenges Program 1995).

In late December 1994, more than 1,000 letters were sent to all the groups involved in the promotion of language rights, equality-seeking groups, institutions, associations of lawyers, human rights commissions, and other organizations. The letter informed groups that the program was in the process of reinstatement and sought applications for the program's two rights panels. Two selection committees were struck to choose the members of the panels. Panel members are appointed for up to three years. Each panel is responsible for independently selecting the cases to be funded and establishing the amount of this funding. Panel members are given a per diem honorarium and are reimbursed for travel and lodging (Court Challenges Program 2002; interview with a senior Canadian bureaucrat, 2003).

There are three categories of Court Challenges Program members: equality members, language members, and director members. The membership meets at the annual general meeting to conduct the program's business, including the election of board members. The membership groups have established an Equality Advisory Committee and a Language Advisory Committee. These committees serve as forums on program-related issues of interest to their members and provide advice to the board on policy issues throughout the
course of the year. The work of these committees and panels is supported by a staff located at the Court Challenges Program office in Winnipeg, Manitoba. On April 1, 2000, the Court Challenges Program’s membership was composed of 108 equality members and 19 language members. The membership was quite active: over 90 individuals participated in annual meetings (Court Challenges Program 2002; interview with a senior Canadian bureaucrat, 2003). The program was once again shut down, with little fanfare, in 2006, by the newly elected Conservative government. There has been widespread criticism and opposition to this move but, so far, no move to reconsider the decision.

The Disadvantaged Business Enterprise Program. The current procurement policies adopted by the U.S. Department of Transportation require that business owners belonging to disadvantaged groups have access to the competition for government contracts. Under a policy first introduced by President Reagan, the federal Department of Transportation sets goals for the inclusion of minority- and women-owned businesses in its procurement policy. States and primary contractors receiving federal money must demonstrate that they have made a good faith effort to include disadvantaged business enterprises as part of the bidding processes. If contractors fail to employ a representative number of subcontractors from Disadvantaged Business Enterprise (DBE) groups, the federal government requires evidence that they made a good faith effort to involve such groups.

The program was first conceived under the Carter administration, but the original DBE statute was passed under the Reagan administration. The original statute received little attention when it was added by a House representative. It did not specify women as a disadvantaged group. Women were designated as presumptively disadvantaged under a little-discussed rider on the 1987 reauthorization of the act. It seems that the move to add women was a response to women’s concerted lobbying efforts. The proposal came out of the Environment and Public Works Committee and was championed by Idaho Republican senator Steve Simms. The senator’s logic was reportedly that if minorities were to be so designated, women ought also to be designated (interview with a senior U.S. bureaucrat, 2003).

The Reagan and first Bush administrations were strangely silent on these programs. Under the second Clinton administration, however, there was much debate on the topic of how disadvantaged groups ought to be designated. Opponents attacked the process as illogical and capricious. The program also came under legal attack in the recent Supreme Court decision \textit{Adarand II}. 
However, it appears that the program has survived these attacks. Interestingly, despite the general discussion of affirmative action programs in universities, there has been little public discussion of these procurement programs.

Disadvantaged groups are defined as including socially and economically disadvantaged groups. The Department of Transportation defines these terms using the conditions laid out in the Small Business Act (15 U.S.C. 637(d)), which defines socially disadvantaged individuals as “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” Economically disadvantaged people are there defined as “those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged.” As the act stipulates, this general definition is translated into a list of specific groups through an administrative rule-making process: “All determinations made . . . with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development.”

Those groups who have been denied are entitled to a hearing. Groups may also petition the relevant administrator in the small business administration in order to receive a designation as a disadvantaged group. For example, South Asian Americans successfully petitioned the administration for inclusion, while a group of Hasidic Jews who petitioned to receive such a designation were denied (interview with a senior U.S. bureaucrat, 2003). The administration is also mandated actively to seek out disadvantaged groups and inform them of the program and to recruit participants.

Federally, the categories of “disadvantage” are established based on aggregate statistics about how women and minorities fare in contracting procedures. When the Disadvantaged Business Enterprise Program was established in 1978 to 1996, the percentage of women- and minority-owned construction firms that receive federal contracts increased from 1.9 percent to 14.8 percent (OSDBU 2003a). But women and minorities are still dramatically underrepresented in terms of both the percentage receiving contracts and the amount of money received. This is true even when the proportion of available and qualified women- or minority-owned businesses is taken as the baseline. Non-DBEs still control over 85 percent of highway construction funds provided through federal aid (OSDBU 2003a). Where state DBE programs have been canceled (as in Michigan), the proportion of contracts awarded to women and
minorities has dropped dramatically to nearly zero. There is much evidence that “old boys’ networks” persist, particularly in the area of construction, and that without these affirmative measures, DBEs would not have a chance to compete with non-DBEs on an equal playing field (OSDBU 2003a, 2003b). Note that the disadvantage that is documented (lack of access to government contracts) is closely related to the targeted measure in question (targeted policies in government procurement). This disadvantage is documented for the group in general and is presumed to be relevant for each enterprise owned by an individual from that group. Currently, groups presumed to be disadvantaged include citizens of the United States (or lawfully admitted permanent residents) who are women, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans. Applicants must submit a signed, notarized certification that each “presumptively disadvantaged” owner is, in fact, socially and economically disadvantaged.

The federal Department of Transportation maintains that since it is a federal body, it can use aggregate national statistics to evaluate its procurement practices and need not evaluate local variations in disadvantaged groups. Moreover, given recent legal challenges, the department now permits individuals to petition to be certified as DBEs even if they are not members of a disadvantaged group. Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. They must make a case-by-case determination of whether each individual whose ownership is relied on for DBE certification is socially and economically disadvantaged. The applicant firm has the burden of demonstrating that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $750,000 is not economically disadvantaged, according to the Code of Federal Regulations (49 CFR 26.67, 280–82).

*Lessons from the Court Challenges Program and the Disadvantaged Business Enterprise Program.* These two programs demonstrate that it is practically possible to design and implement policies that provide targeted benefits to disadvantaged groups without freezing social relations or essentializing social groups. Although these programs are subject to political struggle, the outcome of political decisions does not inescapably favor the powerful or dominant groups. It is possible, then, to deepen democracy by using similar criteria to provide support to organizational efforts of systematically disadvantaged
groups. Organizing these groups into the state has not, in these instances, depleted civil society or weakened social movements: in Canada and the United States, organizations of the disadvantaged groups that benefit from these policies (e.g., women and African Americans) continue to flourish and push for social justice for these groups. I say more about this in the section that follows.

CONCERNS ABOUT CO-OPTATION: THE WOMEN’S MOVEMENT IN CANADA

The concern about co-optation or crowding out of grassroots organizations is a recurrent one and is important to address at slightly greater length. The concern about co-optation is that inclusion in the state is superficial inclusion (e.g., inclusion on the margins of state activity, or symbolic inclusion) that nevertheless dulls the capacity for criticism, moderating activist language and claims as they seek to preserve their limited access, mistaking it for signs of real change. While there is a much broader discussion about these issues, I want to focus specifically on the question of whether state funding for movement activities necessarily weakens an organizations’ ability to continue its work advocating for a disadvantaged constituency and publicly criticizing government. While individuals vary in terms of their willingness to sacrifice their ideals for personal gain, social movements as a whole are notorious for being overly vigilant about such “sellouts,” making necessary compromise and moderation on the part of movement leaders difficult to combine with continued movement support. This means social movements (as opposed to particular activists) are not so easily co-opted (cf. Beckwith 2007).

It is not clear that state support for social movements necessarily weakens them and makes them dependent on the state. As noted, the Canadian women’s movement has enjoyed a wide variety of different kinds of state support but continues to flourish as one of the strongest and most vital women’s movements in the world. The federal government has provided funding to women’s organizations through the Women’s Program since the 1970s, yet Canada today has one of the largest numbers of women’s organizations per capita of any country in the world. Efforts to completely withdraw such funding were unsuccessful, as activists were able to mobilize considerable opposition to funding cuts.

Seasoned women’s movement activists are quite circumspect about relying entirely on government funding. Most organizations seek to maintain a diverse set of funding sources, even while drawing extensively on government support (interviews with Canadian antiviolence activists, 2003). Even if state
support has catalyzed a social movement, this should not be taken as implying that the state can permanently or ultimately control the result of this mobilization. Activists may ultimately capitulate to state demands for moderation and adjustment, or they may not, instead resisting these demands and developing “protective responses” (Coy and Hedeen 2005). One review of the Canadian government’s citizenship programs, which foster participation and organization by women and minorities, concludes that the state was never able to use these programs to manipulate civil society groups to its own strategic ends (Pal 1993). One cannot always easily put the genie back in the bottle (Brodie 2001).

As these examples suggest, maintaining support for these programs and maintaining sufficient independence to operate or survive when support is periodically canceled or reduced requires considerable effort. But this is not the same as being impossible. Dryzek (2000; cf. Dryzek et al. 2005) argues that policies to benefit disadvantaged groups will only be adopted when they coincide with a core state imperative. It is difficult to see what imperative is served by funding women’s organizations that criticize the government’s inaction on violence against women or that sue the government itself. But even if a political imperative motivates policymakers at the outset, that does not suggest that the policy will be ineffective. Certainly, when movement goals coincide with a core state imperative, cooperation with the state should be less fraught. But this does not imply that governments do not fund those organizations who criticize or challenge the state (Brodie 2001). In sum, these examples suggest that government programs that offer targeted subsidies and other forms of support to disadvantaged groups’ efforts to mobilize may be more feasible than is often presumed in the literature.

An advocacy state adopts both universal measures to foster voluntary associations, such as provisions requiring public consultation and openness on the part of government, and measures aimed to encourage and support self-organization by marginalized groups. Such measures can include funding for lawsuits (like the Court Challenges Program), for more specific program activities (like the Women’s Program), and for developing organizations and community services (like the community development programs of the 1960s), as well as providing administrative infrastructure and research support (like the women’s commissions in the United States and the Secretary of State citizenship programs—for example, the Women’s Program—in Canada). Such measures encourage groups to mobilize, articulate their views, and press them in the public sphere and on the government agenda itself. For organizations that
are compulsory or difficult to exit (like unions), the state should combine support with measures regulating the internal procedures of these groups.

Conclusion

Social movements are an important avenue of representation for systemically disadvantaged groups. Particularly for those groups who fall through the cracks of the system of institutionally recognized interests, social movements offer a more fluid and accessible channel of policy influence. In fact, social movements offer a solution to the deepest, most persistent problems of representation. On issues that affect only disadvantaged subgroups, social movements offer a mode of political mobilization that is effective and within reach for citizens seeking self-determination. Poor people and people who are not citizens can and do organize social movements. Political parties, interest groups, and electoral politics all fail to reach these segments of the population who vote and organize less frequently than citizens in other groups. Social movements constitute a critical avenue of policy influence for women, workers, and women of color, often more important than political parties, interest groups, or electing group members to government office (descriptive representation). Indeed, they are so important that we ought to further such mobilization wherever we can.