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Legalizing LGBT Politics:
Litigation and the Construction of Social Movement Agendas

by

Gwendolyn Manriquez Leachman

A dissertation submitted in partial satisfaction of the
requirements for the degree of

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UNIVERSITY OF CALIFORNIA, BERKELEY

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Professor Catherine Albiston, Co-Chair

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Fall 2014

Abstract

Legalizing LGBT Politics: Litigation and the Construction of Social Movement Agendas

by

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Doctor of Philosophy in Jurisprudence and Social Policy

University of California, Berkeley

Professor Catherine Albiston, Co-Chair

Professor Lauren Edelman, Co-Chair

This dissertation examines the impact of litigation on a social movement's dominant substantive goals and message. While scholars have devoted substantial attention to the study of social movement litigation, research in this area typically focuses on how social movements affect substantive law, or more broadly, how a movement's legal tactics bring about social change. By contrast, my focus in this dissertation is on how litigation affects the social movement itself. In particular, how does litigation as a tactic shape a social movement's collective agenda? How does it affect which perspective among possible competing visions comes to define the movement?

I investigate these dynamics through a case study of the lesbian, gay, bisexual, and transgender (LGBT) movement from 1985 to 2008. The study involves three phases of original empirical research, each of which investigates a potential mechanism that may privilege litigation over other tactics in its ability to set the LGBT movement's primary substantive agenda. First, I use a content analysis of newspaper coverage of LGBT politics to determine which movement tactics have received the most media visibility. Second, I perform a statistical analysis of LGBT organizations to determine which movement tactics have been most associated with organizational survival and stability. Third, I perform a qualitative analysis of a subset of those LGBT organizations to examine variation in the strategy-formation processes used by primarily litigation-, lobbying-, or protest-based movement groups.

The media content analysis revealed that litigation received more news coverage than any other LGBT movement tactic, suggesting that litigation had greater visibility than other tactics. In addition, the statistical analysis revealed that the movement organizations that used litigation had greater survival rates than other types of LGBT movement organizations, suggesting that litigation has been a particularly stable feature of LGBT politics. The qualitative analysis of LGBT organizations revealed further insights into how litigation may influence the agendas of non-legal movement actors. Whereas litigating LGBT movement groups proactively pursued preplanned organizational priorities, protest groups formed their agendas reactively, focusing on the issues covered by the mainstream media. This phenomenon appears to have diverted protest groups away

from their original priorities and toward the issues that the media found newsworthy. Given my findings that litigation coverage dominated news headlines, the processes identified here may enable litigation to dominate protest activism as well. Taken together, these findings suggest that the media visibility and stability of social movement litigation may contribute to the prominence of litigation and cause legal goals to dominate the movement's overall substantive agenda. I describe this process as the "legalization" of a social movement's agenda.

This dissertation makes a novel contribution to existing scholarship by exposing systemic processes that may privilege movement litigation relative to protest, elevating the issues being litigated to top movement priorities. Significant implications follow for theories of law and social change. Focusing on litigation narrows a movement's agenda because courts offer a forum for only those grievances that can be translated into legal claims. This may be particularly problematic for movements that base their legal claims in antidiscrimination law, which has become settled around quite limited understandings of equality as formal access to equal opportunity and discrimination as an intentional, individual harm. This interpretation not only denies remedies for the structural factors most responsible for perpetuating inequality, it also places the focus on preventing individual wrongdoing rather than producing substantive outcomes. Thus, when antidiscrimination litigation comes to define an equality movement's priorities, the movement may find itself privileging issues with little hope of creating substantive social transformation.

For Pennie and Tim Leachman.

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Chapter 1

Introduction: How Litigation Shapes Social Movements

Litigation has played a central role in the strategies of the largest and most visible contemporary social movements (Costain 1992; Handler 1978; Meyer & Boutcher 2007; Rosenberg 1991). Particularly in the major identity-based movements of recent history, activists have used litigation to advance their movements' most visible goals. The desegregation campaign in the early civil rights movement, abortion rights and wage equity in the 1970s feminist movement, and same-sex marriage in the LGBT movement—each of these campaigns was spearheaded by movement litigators (Tushnet 1987; Staggenborg 1991; Andersen 2005). While there has been substantial scholarly interest in social movement litigation, research in this area typically focuses on how social movements affect substantive law, or more broadly, how the movement's legal tactics bring about social change (see McCann 1994, Rosenberg 1991). By contrast, my focus in this dissertation is on how litigation affects the social movement itself. In particular, how does litigation as a tactic shape a social movement's collective agenda? How does it affect which perspective among possible competing visions comes to define the movement?

There is reason to believe that litigation is not simply one social movement tactic among many. Several studies, discussed below, have shown that litigation produces extralegal advantages like publicity, recruitment, funding, negotiation power, engagement with political elites, and public acceptance (Barclay & Marshall 2005; Coleman, Nee, & Rubinowitz 2005; Hull 2001; Hunt 1990; Levitsky 2006; McCann 1994; NeJaime 2011; Paris 2001; Pedriana 2006; Polletta 2000; Woods & Barclay 2008). The capacity of litigation to attract these advantages likely has consequences not only for movement actors who use litigation by increasing their visibility and standing, but it may also have significant effects for movement actors who use extralegal strategies as well. When litigation takes the limelight, it may detract attention from and deplete the resources of actors who use only extralegal strategies, marginalizing their perspectives and claims. Alternatively, litigation in the limelight may rally non-litigating movement actors around the issues being litigated. These potential effects on non-litigating movement actors suggests that the use of litigation can be a mechanism for coalescing movement action around the set of legal issues being pursued through movement litigation—the “legalization” of a social movement's political agenda.

It is crucial to investigate the potential for litigation to “legalize” a social movement's agenda, given the enormous implications for inequality and social change. When a movement's legal priorities come to define its agenda, the movement narrows the universe of possible grievances to the identities and interests that fit with legal classifications and legal doctrine (see Bower 1994: 1019). Yet, as critical race and queer theorists have documented, antidiscrimination law tends to frame discrimination as an individual harm rather than as structural subordination and generally favors remedies that provide formal, rather than substantive, equality. To the extent that protest-based activists originally seek structural resolutions or substantive change, legalizing the movement's agenda may displace activists' most transformative goals.

The LGBT movement is a particularly rich setting for examining the factors that foster intramovement consensus around legal issues as shared, first-order priorities. The LGBT movement during the time period of my analysis (1985-2008) was comprised of diverse, even oppositional, activist communities. Although large, national civil rights organizations eventually came to constitute the LGBT movement's mainstream, a critical faction of grassroots and protest-based activists initially took a more confrontational approach. These radical protest groups, which challenged the mainstream LGBT movement's focus on formal legal equality, diffused throughout the country in the early 1990s. Touting a radical, "queer" political identity, these protest groups articulated a set of structural goals, such as combating the widespread homophobia propagated by media images and religious organizations and transforming heterosexual-dominated public spaces. Yet despite the queer groups' radical rhetoric, the protest actions they organized ultimately came to focus on many of the same formal legal priorities that they critiqued (see Chapter 4). By examining the extralegal benefits garnered by LGBT movement litigation, this dissertation additionally speaks to the specific puzzle of how seemingly polarized queer and mainstream LGBT movement factions came to agree that legal issues are important, action-worthy items—the priorities of a common LGBT movement agenda.

I explore these issues of law and movement agenda setting through three original empirical studies, each of which investigates potential mechanisms that may privilege litigation over other LGBT movement tactics in its ability to set the primary substantive agenda of LGBT activists working outside the courtroom. The specific questions driving each study are as follows: First, which movement tactics—such as litigation, lobbying, or protest—have been most visible in the mainstream news media? Second, which movement tactics are most associated with organizational survival, such that the organizations that use them are most likely to survive and become longstanding movement players? Third, how do the strategy-formation processes used by primarily litigation-, lobbying-, or protest-based movement organizations vary regarding each organization's relative ability to drive its own agenda or the agendas of others in the movement? The overarching theory here is that if litigation produces media visibility and confers organizational stability, the organizations that litigate will likely rise to prominence in the movement, and their legal goals will likely come to dominate the movement's overall substantive agenda. It is this process that I describe as the "legalization" of a social movement's agenda.

I found that litigation received more media coverage than any other LGBT movement tactic, suggesting that litigation had greater visibility than other tactics (see Chapter 2). In addition, LGBT movement organizations that used litigation had greater survival rates than other types of LGBT movement organizations, suggesting that litigation has been a particularly stable feature of LGBT politics (see Chapter 3). A qualitative analysis of a small subset of LGBT movement organizations explores these findings in greater detail and reveals further insights into how litigation may influence the agendas of non-legal movement actors. Whereas litigating LGBT movement groups proactively pursued preplanned organizational priorities, protest groups formed their agendas reactively, focusing on the issues covered by the mainstream media. This phenomenon appears to have diverted protest groups away from their original priorities and toward the issues that the media found newsworthy. Given my findings that litigation coverage dominated news headlines, the processes identified here may enable litigation to dominate protest activism as well. These findings suggest that the media visibility and stability of social

movement litigation may contribute to the legalization of the agendas of movement actors outside the courtroom (see Chapter 4).

The primary objective of this introductory chapter is to lay out the overarching theoretical model that guides this research, which I construct using analytical tools provided in the legal, sociolegal, and sociological scholarship on social movements. However, before delving into the theoretical context for this work, I will first briefly describe the historical context and development of the LGBT movement during the timeframe of this study.

I. The LGBT Movement in Historical Perspective

In the years from 1985 to 2008, the LGBT movement went from being comprised mostly of small, decentralized, local liberationist groups to being most visibly comprised of a core set of large, national civil rights organizations (Armstrong 2002; Rimmerman 2001: 65). Before this time period, gay and lesbian activists primarily formed small and local “liberationist” organizations that celebrated gay pride and promoted the empowerment of sexual minorities. Lesbians and gay men often organized separately, splintering movement organizations along gender lines. Movement organizations were often further diversified by specific intersectional identities, such as intersectional racial–sexual identities, creating organizations with names like the Gay Asian Pacific Alliance and Gay American Indians (Armstrong 2002: 374). Influenced by the larger progressive political climate of the 1970s, these early liberationist organizations often promoted multiple social justice issues beyond the affirmation of sexuality or sexual identity, such as antiwar or racial justice agendas (Armstrong 2002: 81-83).

Beginning in the early 1980s, gay and lesbian communities experienced a series of serious shocks that ultimately destabilized gay liberationist politics. The gay community was reeling from the AIDS epidemic and its ensuing underfunding and political denial. *Bowers v. Hardwick* (1986), the Supreme Court decision finding state anti-sodomy legislation constitutional, shaped the legal landscape around gay rights issues and provided a justification for denying a wide variety of rights and benefits to LGBT people (Landau 2003). As homophobia and AIDS-phobia swept the nation, the reinvigorated antigay Religious Right gained increasing political power, and discrimination against gays and lesbians intensified, often with legal backing.

By the mid-1980s, gay and lesbian political organizing had shifted dramatically in response to these challenges (Bernstein 2002: 568; Vaid 1995: 74). Gay men and lesbians merged together under a common sexual identity (Humphrey 1999: 226), which they advocated for and defended through increasingly large and bureaucratic national civil rights organizations (Rimmerman 2001: 59, 65). These organizations used tactics such as lobbying, litigation, and electoral politics, often in conjunction but nearly always with a specialization in one of these tactics. In the early 1990s, these gay and lesbian civil rights organizations experienced a surge in funding, helping establish them as the movement’s mainstream (Bernstein 2002: 552).

Although the substantive goals of the mainstream LGBT movement have varied since the 1980s, the pattern has been to prioritize issues that address formal equality through legal and policy reform (D’Emilio 2000: 36). In the mid-1980s, AIDS-related policy work—which at the time was an issue subsumed within the ambit of lesbian and gay politics—eclipsed most of the

movement's other issues (Bernstein 2002: 560). The LGBT movement's other major legislative priorities at the time also included the passage of state and local laws prohibiting employment discrimination and a federal hate crimes statute (Vaid 1995). LGBT litigators also put the issue of gays in the military on the political agenda in the late 1980s, setting up the issue for the national prominence it would assume once Bill Clinton incorporated it into his 1992 presidential campaign (Bernstein 2002: 566). The LGBT movement's cornerstone issue, relationship recognition—which includes the struggle for same-sex marriage—surfaced as a major movement priority beginning in the 1980s and became increasingly central during the 1990s and throughout the 2000s (Murdoch & Price 2001: 168). Each of these key issues in mainstream LGBT politics has been either explicitly focused on legislative reform (in the case of the antidiscrimination laws and hate crimes bills) or a priority that was put on the map through movement litigation (e.g., marriage, military service).

Yet this mainstream focus on legal issues and rights-based politics has not gone uncontested within the LGBT movement. As the LGBT civil rights organizations climbed to prominence, a “radical flank” of protest-based political groups emerged in the late 1980s. Identifying themselves as “queer” rather than “gay and lesbian” to distinguish themselves as opponents to mainstream LGBT politics (Stone 2010: 470), these protest groups criticized both the form and substance of mainstream LGBT political advocacy. The substantive queer critique had to do not with the mainstream use of rights language *per se* but with the way in which these claims tended to assume a monolithic gay identity. The legal protections LGBT civil rights organizations sought against discrimination, sexual harassment, constitutional rights violations, and hate crimes all hinged on the claimants' identities. Queers considered the emphasis on sexual identity categories as falsely reductive, imposing an artificial rigidity on amorphous sexual desire. Queers critiqued identity politics for its implicit assumption that there is a universal gay experience, an idea which marginalizes numerous groups such as queers of color, whose experiences of sexuality are tightly bound to racialization (Humphrey 1999: 226). Queers also critiqued how identity claims marginalized bisexuals and transgender people of all races, whose gender performance or desires pose analytical challenges to an essentialized gay identity (see Yoshino 2000). As an antidote to the single-issue civil rights organizations, queers embraced a multiplatform political approach that “sought alliances with people of color, bisexual and transgendered people, and anyone else defined by dominant discourse as somehow transgressing dominant cultural norms” (Bernstein 2002: 561).

Queer politics also departed from the mainstream civil rights organizations in its skepticism that legal methods could produce meaningful social change. Instead of trying to become contenders in the existing political system, queer organizations aimed at more large-scale, structural transformation. Queers proclaimed their ultimate goal to be “destabilizing traditional meanings of sex and sexual orientation” and “undermining and reconstructing dominant forms of (hetero) sexuality” (Bower 1994: 1016). They used creative protest (or “direct action”),¹ which could be performed in diverse settings from suburban shopping malls to city streets, because those tactics could directly confront the cultural practices and value systems

¹ Although there are some semantic differences between the terms *protest* and *direct action*, I use these terms interchangeably here to signify “the collective use of unconventional methods of political participation to try to persuade or coerce authorities to support a challenging group's aims” (Taylor & Van Dyke 2004: 263).

queer groups sought to transform (Rimmerman 2001: 55). This use of protest as a “tactic of cultural subversion” (Bower 1994: 1016) became a defining feature of queer politics and distinguished queer groups from the mainstream gay and lesbian groups.

The protest groups that set out to propel queer agendas into the LGBT political mainstream were ultimately short-lived, with most groups going into decline in the mid-1990s (Armstrong 2002: 182-83). Although some new queer groups have since been formed, the trend has largely been toward disbandment. That is not to say that queers had little impact on the LGBT movement, however. For example, the mainstream civil rights organizations in the 1990s actually addressed rather than ignored some of the major queer critiques. The mainstream groups modified their mission statements to formally include transgender people, expanding their focus beyond sexual identity. The civil rights organizations also addressed the marginalization critique by taking measures to increase racial diversity among their ranks (Rimmerman 2001: 63). Although the substantive impact of these changes is questionable (see Ward 2008), the changes offer some evidence as to the seriousness with which queer critiques were addressed; mainstream LGBT movement organizations acknowledged the importance of queer politics by incorporating symbolic structural changes to address queer demands. Furthermore, the fact that the mainstream groups adapted themselves to account for queer critiques suggests that although the civil rights groups were increasing their budgets and growing at this time, their position as movement agenda setters had not yet fully solidified. Thus, the queer critique was strong enough to threaten their position as movement leaders and require a response.

In summary, the time period under investigation was characterized by the growth of civil rights–style LGBT advocacy, followed by a critical period of intramovement contestation over the merits of that political model, out of which civil rights groups emerged victorious and secured an established position at the LGBT movement’s mainstream. This historical trajectory of the LGBT movement is a testament to the idea that movement agendas are constructed. It bears remembering that the contemporary civil rights model of LGBT politics, which is often taken for granted as the logical or natural way of “doing” LGBT politics, is ultimately just the political form with enough backing to become institutionalized. One aim of this research, then, is to help understand *why* the civil rights model triumphed while its alternatives have since faded from view. The next section, which outlines the theoretical model for this dissertation, draws out literature relevant to this question.

II. Theoretical Framework for Examining the Impact of Litigation on Social Movements

This study lies at the intersection of legal, sociolegal, and sociological scholarship on social movements. Each of these areas of scholarship has generated subfields of work pertinent to the specific issues of litigation and movement agenda setting that guide my research. Within the legal literature, critical legal scholars have argued that lawyers prioritize issues that can be pursued through litigation and pressure others in their movements to support those legal goals (e.g., Bell 1976; Tushnet 1987). Within the sociolegal literature, research on legal mobilization has shown that litigation attracts enormous material and symbolic resources, perhaps even greater resources than those attracted by other movement tactics (e.g., McCann 1994). Within the sociological scholarship, research on social movements and organizations suggests that litigation

may evoke frames and issues that resonate with deep-seated political values, making it appeal to a broad array of actors both within and outside of a social movement.

Taken in combination, these literatures offer important insights into the mechanisms that may privilege litigation relative to other social movement tactics and, as a corollary, may privilege legal goals relative to other issues on a social movement's agenda. Below I offer a critical approach to movement agenda setting, one which emphasizes how institutional dynamics—rather than one-on-one interactions between individual lawyers and other movement actors—may generate greater resources for social movement litigation as compared to other social movement tactics. I further show how these institutional factors that privilege litigation over other movement tactics may also privilege legal goals over other movement goals, making legal issues the flashpoint for movement action of all types.

(1) Critical Legal Scholarship on Lawyer Domination within Social Movements

Critical legal scholarship has examined the role of lawyers in progressive social movements and the potential for these lawyers to exert disproportionate influence over other movement activists. This critical work suggests that conventional legal practice may have a deradicalizing effect on social movements. Critical scholars have argued that movement lawyers are often preoccupied with legally achievable goals, which are formalistic and less radical or transformative than the substantive goals articulated at the movement's grass roots (Scheingold 1975; Handler 1978; McCann 1986). Lawyers may substitute their own agendas for those of their clients (Kessler 1990; Bell 1976; Milner 1989; Tushnet 1987) or overshadow their clients in their pursuit of rights-oriented legal change (see López 2005). Lawyers may also coopt their activist clients by forging relationships with activists who require the lawyers' technical expertise (e.g., to seek nonprofit tax-exempt status or to defend arrested protestors from criminal charges) (Scheingold 1975: 139-41). Through these subtle means of persuasion within the lawyer-client relationship lawyers can operate as a mechanism through which conservative legal goals replace radical movement objectives.

Derrick Bell's (1976) analysis of the NAACP Legal Defense and Education Fund is a prime example from this area of legal scholarship. Bell shows how lawyers in the civil rights movement displaced their clients' goals of substantive social change in the lawyers' pursuit of viable legal claims. NAACP lawyers and their clients were part of a social movement intent on ameliorating racial inequalities in public education (Bell 1976: 477-78). However, after the NAACP won a major victory in *Brown v. Board of Education* (1954), NAACP attorneys and their clients became divided over the specific priorities they should pursue to achieve this goal. The attorneys were focused on racial integration (Bell 1976: 482). The African American parents and public-school children they represented, however, were more concerned with increasing the quality of education within African American schools than with pursuing a racial balance (Bell 1976: 479). Bell argues that the lawyers' strategy was less effective than their clients' proposals for furthering the movement's antistatist goals (Bell 1976: 488).

Bell's work and other critical legal scholarship have identified instances where lawyers have taken control of the agenda through individual strategic negotiations with their clients. However, this scholarship does not provide a comprehensive theoretical approach for explaining the sources or scope of lawyers' power within movements. Work by sociologist Sandra Levitsky

demonstrates how there may be other, less overt ways in which movement lawyering may generate intramovement power imbalances. In a study of LGBT movement organizations in Chicago, Levitsky found that litigating organizations were able, in the words of one activist, to “hijack” the movement’s agenda (Levitsky 2006: 158) because the litigating organizations had the financial backing to act independently without seeking other groups’ cooperation (Levitsky 2006: 145-46). The grassroots organizations, which had significantly fewer resources, were forced to contend with and support the highly visible litigation agenda. Levitsky’s research suggests that litigating movement actors may inadvertently garner power within their movements due to the unique ability of litigation to attract resources and publicity.

A complete examination of law and movement agenda setting must account for the differential ability of various political tactics to mobilize both financial resources and symbolic resources such as visibility and public recognition. This is an important aspect of lawyers’ power within movements. It operates inadvertently and thus cannot be resolved through the intervention of more responsible lawyering styles that empower grassroots activists to take the lead in strategizing; the community representatives they consult may have already been indirectly influenced by the publicity surrounding movement litigation, and this publicity may have shaped their desires and goals accordingly. The legal mobilization approach I outline next begins to contend with extralegal resource mobilization as a potent additional factor linking litigation to agenda setting within social movements.

(2) Legal Mobilization Scholarship on Litigation Attracting Movement Resources

Sociological scholarship on “legal mobilization” looks at the collective translation of movement grievances into an assertion of legal claims (McCann 1994). Focal questions for legal mobilization research are how and why movement actors engage with law, what meaning this has for the actors who do it, and what implications it has for the movement more broadly (Paris 2010: 20).

Empirical studies of legal mobilization have emphasized how litigation and legal rhetoric attract extralegal benefits to a movement’s cause beyond the material legal remedies that may result from movement litigation (see Galanter 1983). Three primary types of extralegal benefits emerge from this literature. First, litigation attracts significant coverage in the mainstream news media (Keck & Sikkink 1998; Silverstein 1996). In his study of the pay equity reform movement, Michael McCann found that lawsuits generated a “tremendous amount of mainstream media attention” (McCann 1994: 58). News media coverage of litigation for pay equity reform was five to ten times greater than coverage of any other tactic, including legislation, electoral politics, and protest (McCann 1994: 59-60). McCann also found that “the overwhelming majority of this coverage explicitly concerned law suits and legal issues” (McCann 1994: 60). These findings square with other social science accounts, which suggest that law and litigation are newsworthy items (see Chapter 2). The corporate structure of news organizations compels competition for readership. Reporters, operating under pressure to effectively gather stories under deadline, keep an eye on sites of routine news production such as political and legal institutions (Herman & Chomsky 2002: 18-19). This likely biases coverage toward movement issues and tactics that occur in those legal institutions. News outlets also try to attract readership with general interest stories or drama (Herman & Chomsky 2002: xxi). Social movement litigation, which pits opposing parties in a high-stakes contest over politically potent issues,

offers a dramatic storyline as well as identifiable protagonists for personal interest profiles (Galanter 1983: 139; Barkan 1980: 952). By contrast, the features that make protest actions dramatic, such as violence or massive numbers of participants, have been on the decline since the 1970s (McAdam et al. 2005). At the same time, collective nature of protest actions may make it difficult for reporters to identify a particular actor whose personal narrative could represent the diversity of interests at stake.

Second, litigation generates financial resources for social movement organizations. The publicity lawsuits receive generates support for movement organizations and facilitates fundraising (Handler 1978). One way litigation may attract funding is by providing a clear marker for success in the resulting judicial opinion. Organizations that specialize in litigation emphasize the outcomes of their legal cases—regardless of whether a case is a clear win or loss—to galvanize fundraising efforts (NeJaime 2011: 980). An outright win incentivizes support by allowing contributors to assess the impact of their efforts. Conversely, the “denial of the claim might serve to highlight more intensely the injustice suffered by the group,” creating “a sense of urgency for the movement” that motivates support (NeJaime 2011: 984). Thus, litigating organizations may be more likely than protest or lobbying organizations to generate organization-sustaining resources.

A third extralegal benefit that previous work has found is the ability of social movement litigation to galvanize activism outside the courts (Coleman, Nee, & Rubinowitz 2005; McCann 1994; Scheingold 1975). Litigation efforts can motivate activists by helping them name particular grievances, blame responsible parties, and lay claim to a specific remedy (Felstiner, Abel, & Sarat 1980). A public lawsuit can awaken a sense of collective rights entitlement (Engel & Munger 1996; Polletta 1998) or provide activists with rhetorical tools for claiming injustice (Marshall 2003), sparking grassroots mobilization and protest. Litigation can also focus activists’ potentially obscure sense of grievance into pointed political effort with concrete goals (Hull 2001). These factors may enable litigation to sustain the momentum of collective action in the face of virulent opposition (Coleman, Nee, & Rubinowitz 2005: 668), which may otherwise sap the energy of a mobilized group.

These findings of legal mobilization research, which link litigation to increased publicity, organizational support, and movement mobilization, would appear to contradict the view of litigation in critical legal scholarship as an agent of disempowerment and deradicalization. Indeed, legal mobilization scholars tend to reject the critical notion of a “competitive, zero-sum relationship among political tactics” (McCann 1994: 297), focusing instead on the “synergistic” and mutually influential relationship between protest and litigation (Coleman, Nee, & Rubinowitz 2005). In this view, litigation constitutes not a dominating force, but rather a “complementary and interactive” element of a social movement’s diversified tactical approach (McCann 1994: 297).

While the legal mobilization literature generates several important insights into social movement litigation, it raises several concerns regarding litigation as a source of resource imbalance and agenda setting within social movements. The media visibility and financial resources that this literature has associated with litigation may not have equal benefits for all factions of a movement. Indeed, those resources are likely to be disproportionately channeled

toward the movement organizations that specialize in litigation. Furthermore, if those resources do in fact disproportionately benefit a movement's litigation campaigns, this would suggest that the substantive issues being litigated would be particularly likely to transform into movement priorities. In the following section, I put these findings in conversation with sociological research on social movements to provide a more comprehensive theoretical account of the mechanisms through which litigation generates extralegal resources and the consequences this may have for a movement's agenda.

(3) Discursive Opportunity Theory and the Privileging of a Movement's Legal Tactics and Agenda

The sociological research on social movements examines the environmental factors that may constrain or enable opportunities for activism and thereby shape patterns of movement mobilization and sustained organization (McAdam 1982). While the field has focused mostly on how activists seize on shifting political or economic conditions as opportunities for action, a growing body of research suggests that movements may also respond to relatively stable features of their *cultural* environments. This research suggests that social movements' rhetorical strategies are constrained by "discursive opportunity structures," or the deeply embedded ideas and belief systems that dominate the political culture in which a movement operates (Ferree 2003). Movement activists strategically keep "a finger on the pulse" of the wider arena," much like business strategists do for the competitive marketplace, to perceive opportunities for action in the cues conveyed by their "targets, opponents, allies, potential allies, and the public" (McCammon 2012: 21). Activists who hope to convince these broad audiences of the value of their movement's cause must select rhetoric that "resonates" with culturally dominant values and systems of meaning (Ferree 2003: 304).

Legal norms and ideas derived from constitutional texts, court decisions, and statutes comprise many of the ideas and values that dominate political discourse and become privileged social movement rhetoric. Social movement actors "draw upon critical concepts emphasized in the legal domain" to produce "claims [that] are more likely to resonate, and thus to persuade potential supporters" (McCammon, Muse, Newman, & Terrell 2007: 733). In the United States, institutionalized legal discourse emphasizes rights claims that adhere to liberal legal principles of formal equality and limited state involvement in individual liberty. Empirical work suggests that these liberal assumptions, institutionalized in formal legal discourse, prevail over alternative definitions and dominate movement discourse (see McCammon Muse, Newman, & Terrell 2007). For example, work by Myra Marx Ferree has shown that U.S. feminists frame abortion as a matter of individual choice, a liberal construction that defines rights as formal protections for individuals. Feminists devised their strategies to conform to judicial rhetoric, which itself "drew upon longer-standing political traditions of liberal individualism" (Ferree 2003: 313). Notably, this trend is reversed in Germany, where feminists emphasized the public health imperative to protect women from the burden imposed by unwanted pregnancy and the health risks of illegal abortion—framing that provided a better fit with the political values of the German welfare state.

The sociological literature expands theoretical understandings of litigation as a source of extralegal movement resources (e.g., media and organizational support, as discussed above). Litigation is the sole social movement tactic that is inextricably linked to dominant legal principles; lawyers who seek to prevail in litigation—or who are at least ethically obligated to

try—must translate or “repackage” their clients’ and movements’ grievances into a resonant legal claim (Cummings & Eagly 2001: 456). Movement litigation thereby engages dominant legal ideas and viewpoints by necessity. Furthermore, previous work suggests that social movement litigators may draw on dominant legal rhetoric—even highly problematic legal rhetoric—to a greater extent than movement lobbyists advocating for legislative change (Currah 2005: 21). This bolsters the hypothesis from the legal mobilization literature that movement litigation generates culturally resonant claims that garner greater media coverage and organization-sustaining resources than other tactics.

The sociological literature on “discursive opportunity structures” further suggests that legal issues may become privileged priorities in a social movement’s agenda. If dominant legal principles shape social movements’ *rhetorical* strategies, as sociological research shows, dominant legal principles may also shape activists’ strategic selection of agenda items. Discursive opportunity may compel activists to prioritize grievances that can be translated into formal legal terms. Critical legal scholarship, which shows that lawyers pursue priorities that can be adapted into legal claims (Morris 1984: 36; Tushnet 1987), supports this hypothesis. Theories of discursive opportunity suggest that this may be a more widespread phenomenon, wherein both lawyers and grassroots activists alike selectively focus on issues that resonate with the ideological structures of formal law.

This dissertation, by extending discursive opportunity to theorize how legal issues may come to dominate movement agendas, raises important implications for theories of law and social change. The ability of litigation to mobilize protest may be interpreted not only as a special benefit of movement litigation (as the sociolegal literature implies) but perhaps as part of a systemic process that privileges legal issues in a social movement’s agenda. From this perspective, both protest and litigating organizations may be mutually constrained by the strategic imperative to prioritize legal issues. In some ways, this could be a good thing for a movement by making a movement more focused and more cohesive. It might even make a movement more politically effective by minimizing infighting and narrowing activists’ sights to political goals with greater appeal to powerholders and chances for success (McCammon, Campbell, Granberg, & Mowery 2001: 66). But legalizing a movement’s agenda could also diminish movement diversity—and not just political diversity. Given that dominant legal constructions favor single-axis, identity-based claims of nondiscrimination over claims based on the intersection of multiple identities (Caldwell 1991; Goldberg 2002: 636-37), the legalization of movement agendas may foster the political marginalization of individuals facing multiple, intersecting forms of discrimination. I discuss this possibility in greater detail in Chapter 5.

III. Method: Studying the Influence of Litigation within the LGBT Movement

The LGBT movement from 1985 to 2008 provides a particularly illustrative setting for research on legalizing social movement agendas. As discussed in the previous sketch of the LGBT movement’s historical development, these years were marked by the steady rise of the civil rights model of political organizing, concurrent with the eventual defeat of the protest-based queer activism model. Accordingly, the movement during these years presents a fertile context for exploring why and how legal issues may come to dominate social movement agendas.

Even more importantly, this case offers a unique mixture of protest and civil rights organizations, both of which were active *en force* in the LGBT movement of the 1980s and 1990s. The tactical diversity that existed during time allows for the observation of variation among tactically distinct organizations and presents the possibility of analyzing how that variation may have contributed to those organizations' relative success. Furthermore, extending the time period back to the heyday of queer politics—a period in which rights-based strategies were subject to serious critical scrutiny—creates a “hard case” for investigating the systemic privileging of social movement litigation. I purposefully focus on this period in order to determine whether litigation was able to attract greater extralegal benefits than other tactics even at a time when rights-based strategies had not yet become resolutely dominant in the movement. Finally, focusing on this period of internal movement critique offers the opportunity to examine the factors that may potentially weaken intramovement resistance to formal legal goals, generating a more nuanced perspective of how litigation may become a dominant movement force.

In addition to being a methodologically useful context for this research, the selected slice of LGBT movement history under observation also happens to capture a major portion of the contemporary era of LGBT movement activism that remains in place today. The mid-1980s marked a widely-acknowledged turning point in LGBT movement history, representing the movement's emergence into its present configuration. While line-drawing in movement history typically involves some degree of arbitrariness, it seems clear that the rise of HIV/AIDS and the Supreme Court's *Bowers v. Hardwick* (1986) inspired a massive restructuring of LGBT movement politics, which “departed from the forms of mobilization, political strategies, and goals that characterized the previous time period” (Bernstein 2002: 560). Accordingly, I can hypothesize with a fair amount of confidence that the patterns I find here regarding the benefits accrued through litigation are likely to persist in the movement today; there have been no major changes in the organizing strategies and mobilization schemes in LGBT activism from 2008 to today that would cause me to think otherwise.

It should be noted that this case study focuses on LGBT movement organizations in California. It was crucial to observe state and local organizations, rather than just national ones, because queer protest organizations are underrepresented in national politics (Gamson 1995: 393). Limiting the analysis to a single state also ensured that the movement organizations in the study were operating within a common set of jurisdictional, political, and, to some extent, cultural constraints. This methodological choice follows the common practice in sociological research to operationalize social movements as geographically bounded within a state or municipality, even when that movement operates within a larger societal sector (see Ray 1999). This is justified because the institutional pressures that affect movement fields tend to be local rather than national (Fligstein & McAdam 1995: 2-3). This may be particularly true for the LGBT movement, which is often characterized as influenced by regional concerns (Armstrong 2002: 4-5; 213-14 n.5). Finally, I selected California rather than a different state mainly due to its vast size and population density, which makes the state likely to produce the most data points for observation. California LGBT organizations have also traditionally been at the forefront of nationwide movement innovations (Armstrong 2002: 4-5, 213-14, fn5), which suggests that findings from California have implications for the U.S. LGBT movement as a whole.

(1) Summary of Methods and Data

I employed a combination of quantitative and qualitative analyses of data relating to the LGBT movement in California. I will discuss the sources of those data briefly here. Each of the chapters that follow provides a more detailed account of those sources, as well as an in-depth discussion of the methods used for collecting and analyzing the data.

First, I used a content analysis of mainstream newspaper articles on LGBT politics to determine how the frequency and quality of newspaper coverage varied with different social movement tactics. A research assistant coded a random sample of articles from three major newspapers to gather information regarding the date of publication, the length of the article, the particular tactics and issues reported, and whether the article quoted an LGBT movement representative or opponent. A central finding from this analysis was that the media covered litigation significantly more frequently than any other LGBT movement tactic, including lobbying and protest, suggesting that litigation has been a particularly visible LGBT movement tactic.

Second, I analyzed quantitative information on the entire population of California-based LGBT movement organizations to determine the factors promoting the survival of those organizations over time. I identified the relevant LGBT organizations for this analysis and gathered data on those organizations (including their founding dates, tactics, staff, and membership numbers) through the *Encyclopedia of Associations*, an annual reference guide on voluntary organizations. I then used event history analysis to estimate how the organizations' choice of particular social change tactics affected their survival over time, controlling for other organizational features and external, population-based and institutional factors. The analysis revealed that LGBT movement organizations that litigated were likely to survive longer than organizations that did not litigate.

Third, I used a qualitative analysis of a subset of six California-based LGBT movement organizations, each of which used a different primary tactic, to examine action-planning and agenda formation within these organizations. Two primary data sources were used: archival documents relating to each of the sampled LGBT movement organizations (e.g., meeting minutes, pamphlets, leaflets, and other ephemera) and in-depth interviews with activists who belonged to the organizations. I triangulated information from these sources to provide a detailed account of these groups' organizing strategies and to get a better sense of why the organizations prioritized legal issues in many of their actions, even among the groups whose members seemed to think other issues were more important.

My methodological approach—combining content analysis of media coverage, event history analysis of organizational survival, and qualitative analysis of archival materials related to agenda formation—was driven by the emerging consensus among social scientists and legal scholars alike that intentional behavior is not the primary cause of entrenched patterns of social subordination (see Albiston 2009; Albiston 2010; Bagenstos 2006). Studies of institutional racism and institutional inequality suggest that social subordination and privilege often result from subconscious action or impersonal organizational practices that assume and reify social status, rather than from intentional, animus-based discrimination. Accordingly, my study analyzes the privileging of law and legal organizations within a social movement as a product of

detached institutional processes instead of a direct interaction traceable to particular movement actors. Thus, while my research engages with critical scholarship on the power of law within movements, it moves that critical scholarship beyond its current focus on individual and conscious strategic choices of the movement's lawyers toward a more systemic account of the processes that can limit a movement's ability to effectively advocate for political projects focused outside of the formal law.

IV. Chapter Outline

In the remaining chapters, I consider the processes through which litigation may take on a privileged role in the LGBT movement and potentially shape the agendas of activists outside the courtroom. Chapter 2 examines mainstream media coverage of the LGBT movement from 1985-2008. The primary purposes of this chapter are to determine which tactics have received the most media visibility and whether coverage has varied in terms of the depth provided to movement issues or the types of perspectives quoted. The analysis revealed that litigation was reported significantly more frequently than any other LGBT movement tactic, including lobbying and protest, suggesting that litigation has been a particularly visible LGBT movement tactic. Furthermore, articles covering litigation or lobbying were significantly more likely than articles covering other tactics to report on movement issues in depth and to personalize the story by quoting an LGBT activist. While current theories of media and social movements would emphasize the proximity to the state as a key feature explaining the more visible and enhanced media coverage of litigation and lobbying, this chapter suggests alternative possibilities related to the structural mechanics involved in the performance of litigation and lobbying that may also be relevant. While the present study cannot conclusively determine what caused the identified disparities in media coverage of litigation and lobbying, these findings remain independently important for movement agenda setting given that the visibility of particular objects in the media shapes people's perceptions of those objects' political importance.

In Chapter 3, I analyze quantitative data on LGBT movement organizations to determine which tactics are associated with organizational survival. I find that LGBT organizations that litigate were significantly more likely to survive as compared to those using other tactics. The effect remains significant even when controlling for density, legal and political changes, structure, and age. LGBT lobbying, on the other hand, was significantly negatively correlated with organizational survival, suggesting that an organization's focus on the state does not independently contribute to survival. I identify differences in the set of narratives that litigation and lobbying evoke, which could potentially explain the different impact of these tactics on the public perception of their legitimacy and the ability to foster organizational survival. I argue that the survival of litigating organizations, and the legitimacy of litigation indicated by their survival, suggest that litigation will have a greater and longer-term influence on a movement's agenda than other tactics.

In Chapter 4, I analyze interview and archival data from a small subset of LGBT movement organizations to understand (a) how LGBT movement organizations that used predominately litigation, lobbying, or protest varied in their priorities and processes for planning action, and (b) how differences among those groups and interactions between them related to the construction of a common movement agenda. I find that while protest group members claimed extralegal goals as their top priorities (e.g., visibility and countering homophobia rather than

acquiring formal legal rights), protest group action tended to be heavily focused on the issues being litigated or considered by legislatures. The data suggest that this disconnect between protest group members' expressed priorities and the focus of their actions arose from the reactive, media-focused process protest groups used to plan their actions. The visibility of media coverage may thus inadvertently refocus activists outside the court the issues being litigated, which can narrow the range of priorities a social movement pursues.

In the conclusion, I summarize the main findings of this dissertation and explore their implications in detail. I begin by discussing the contribution of this research to theories of law and social change, and I conclude by discussing some pragmatic points that cause lawyers and social movements might take away from this work to create more inclusive social change strategies.

Chapter 2

Visibility of Litigation: Media Coverage of LGBT Movement Tactics

I. Introduction

Social movements rely on the mainstream media to convey their messages and actions to the public, to increase their legitimacy² as viable political players, and to attract supporters to their cause (Gamson & Wolfsfeld 1993). However, not all movement actors and actions are equally positioned to attract the attention of news outlets and journalists. Movement actions that contain an element of drama or human interest receive more news coverage, as well as more prominent coverage, than those that do not. The quality of movement coverage also varies. Movement action that involves politically powerful actors or highly credible sources of information is more likely than movement action lacking those elements to receive detailed, in-depth coverage that relates the firsthand perspectives of the actors involved. Each of these factors—the visibility, depth, and perspectives provided in news coverage—can have enormous consequences for a movement’s internal growth and development (Vliegenthart et al. 2005: 377) and for its public reception (see Gitlin 1980).

This chapter provides the first cross-time, comparative study of mainstream news coverage of different types of social movement tactics. Drawing on an original database of articles covering LGBT movement activity from three major newspapers from 1985 to 2008, this chapter investigates variation in both the frequency and quality of articles covering different types of LGBT movement tactics. The primary purpose of this inquiry is to determine how coverage of protest differs from coverage of movement tactics such as litigation and lobbying, which operate within state institutions. While intuitively it may seem that radical and extreme movement tactics like protest would be most likely to attract the attention of reporters, the empirical literature suggests that the mainstream media rarely report on protest, and, when they do, the coverage emphasizes factors like violence that make protests appear less socially acceptable (Mueller 1997; Barranco & Wisler 1999; Oliver & Myers 1999; Oliver & Maney 2000). Conversely, some limited work has shown that mainstream news sources devote substantial attention to social movement litigation. Michael McCann’s (1994) research on the pay equity movement found that mainstream media coverage of litigation “dwarfed—by five to ten times—that accorded to each of the other aspects of political action in pay equity conflicts, including legislation, electoral campaigns, labor strikes, and union negotiation battles; more than twice as much attention was given to legal activity than all the other categories combined” (McCann 1994: 59-60). The present study expands on McCann’s work by extending the scope of the observed movement action beyond a single issue and beyond a single time period, allowing for deeper investigation into the factors that may facilitate greater litigation coverage.

My analysis in this chapter reveals that the media covered litigation significantly more frequently than any other LGBT movement tactic, including lobbying and protest. This suggests that litigation has been a particularly visible LGBT movement tactic. Furthermore, articles

² I refer in this chapter to *cognitive legitimacy*, which exists when “there is little question in the minds of actors that it serves as the natural way to effect some kind of collective action” (Hannan & Carroll 1992: 34).

covering LGBT litigation or lobbying were significantly more likely than other articles to report on movement issues in depth and to personalize the story by quoting an LGBT activist. At the same time, coverage of LGBT litigation and lobbying were also significantly more likely to quote the perspectives of countermovement actors, or individuals opposed to LGBT rights. This suggests one potential explanation for the high frequency of news articles reporting on litigation and lobbying: journalists may gravitate toward litigation and lobbying because of the professional and elite actors who engage those tactics. This explanation can only be a tentative one, given that I do not have a baseline count of the numbers of protest, litigation, or lobbying events that actually made up the foundation of the media coverage I examined. The discussion section offers and evaluates other possible explanations that might explain these findings.

This study contributes to current understandings of law and agenda setting across social institutions in several ways. First, the high coverage of LGBT movement litigation suggests that the legal institutions play a strong role in setting the news agenda. Second, the visibility that this coverage confers suggests that litigation has a heightened impact on the public's agenda, given that media coverage shapes popular perceptions of social issues (McCombs & Shaw 1972; McCombs & Reynolds 2002). Finally, and most relevant to the theoretical focus of this dissertation, the media's privileging of LGBT movement litigation may have a feedback effect, shaping the agenda of the LGBT movement itself. Movement actors take media and public agendas into consideration when forming their own agendas (Gitlin 1980), often tailoring their agendas to attract visibility and support. At an even deeper level, LGBT activists viewing extensive media coverage of LGBT litigation may come to view the issues being litigated as the movement's central priorities. Accordingly, the visibility of litigation (and, to a lesser extent, lobbying) may have a constitutive effect on the LGBT movement, mobilizing constituents sympathetic to media-driven issues (Vliegenthart et al. 2005: 377) and orienting the movement as a whole around toward law-reform activities.

II. Media Coverage of Social Movements: Patterns and Predictions

Many studies have identified empirical patterns in mainstream news media coverage, including patterns in the types of stories that are selected for news coverage and in the descriptive accounts provided in the coverage of those stories. These studies suggest that the state plays a critical role in shaping both the content and tone of news coverage of social movement activity, allowing for more favorable coverage of those social movement activities that involve state organizations or actors. This section reviews the existing literature in this area (see Table 1) and extrapolates further predictions regarding variation in coverage of different types of social movement activity.

The purpose of this literature review is to lay the groundwork for a theoretically informed interpretation of my findings—not to assert any definitive hypotheses to be tested regarding media bias. While this discussion suggests the existence of media bias in coverage of social movement action, any actual assessment of that bias would require an examination of media coverage alongside “a credible, objective record of the population of...events” that formed the basis for that coverage (McCarthy et al. 1996: 480). The data in this study, however, are limited to media representations, not movement action, and accordingly cannot establish bias as the causal source of the patterns observed.

A final preliminary note on terminology is in order. I often refer to the “objects” that are covered in or become the focus of the mainstream media. This is a general term used to encompass all things that receive more or less news coverage, including issues, actions (e.g., tactics), or entities (e.g., public figures or organizations) (Carroll & McCoombs 2003: 37). I refer to these objects by their specific terms when generalization is inappropriate.

(1) Visibility of Movement Coverage: Frequency and Prominence

Coverage frequency (the quantitative frequency of articles covering certain objects) and article prominence (visual placement of an article within a media source) are two dependent measures often used to assess media visibility. Each of these factors is discussed below.

(a) Article Frequency

The objects that are most frequently covered in the mainstream media are not necessarily representative of the empirical reality on the ground. Instead, what gets covered depends in large part on journalistic norms, standards, and newsgathering behaviors, which are disseminated through professional training and upheld through competition-minded editorial decisions (Bennett 1988: 118-120; Herman & Chomsky 2002: xii). Social movement activity that fits well with these newsgathering norms and routines is more likely to receive mainstream news coverage than activity that does not (see Oliver & Myers 1999).

One common journalistic routine is to report stories that originate from state-based political and legal organizations (Bennett 1988; Herman 1995; Herman & Chomsky 2002; Kielbowicz & Scherer 1986: 76-77; Gans 1979; Ryan 1991; Kruse 2001). Mainstream news journalists keep a close watch over state organizations—the courts, legislatures, City Hall, the White House, and the State Department—for efficiency reasons; these state organizations are equipped with a readymade credibility that reduces the investigative expense typically required when taking information from other sources (Herman & Chomsky 2002: 18-19). Tracking developments in these typical sites of “significant” news production helps journalists turn over articles on strict deadlines, helping the corporate organizations they work for beat out their competitors for readership. The focus of journalists on state organizations suggests that the news media will report more frequently on social movement activity taking place within state venues (e.g., litigation and lobbying) than on social movement activity taking place outside those venues (e.g., street protest).

Journalistic standards of “newsworthiness” also dictate the selection of objects for news coverage. While newsworthiness as a professional value attempts to ensure that only the most “important” stories receive coverage, the drive for newsworthiness tends to push reporters toward the more dramatic, controversial, or conflict-ridden events, regardless of their social or political importance (Bennett 1998; Haltom & McCann 2004). For example, street protests involving a controversial issue (Oliver & Myers 1999; Oliver & Maney 2000), violence (Barranco & Wisler 1999; Mueller, 1997), or a counterdemonstration (Oliver & Maney 2000), are the most likely to receive coverage. Similarly, litigation receives more coverage when it has dramatic qualities, such as a large money damages award (Haltom & McCann 2004; Bailis & MacCoun 1996; Nielson & Beim 2004). Although previous research says little about whether protest or litigation receive a boost in coverage on account of the journalistic penchant for drama, there is reason to believe that litigation may produce more of the sort of media-worthy drama

that attracts journalists' attention as compared to protest. The dramatic aspects of protests that are associated with greater coverage have become less common in recent years (McCarthy et al. 1995). Social change litigation, on the other hand, contains several appealing dramatic qualities. It pits opposing parties in a high-stakes contest over politically potent issues and provides identifiable protagonists for whom there are direct and significant consequences (see Galanter 1983: 139(n7); Barkan 1980: 952). Accordingly, journalists' use of drama as a criterion for story selection likely gives litigation an advantage over protest in attracting news coverage.

(b) Article Prominence

The prominence of news articles is another component of media visibility. Stories that are prominently featured—stories that are longer, have greater headline width, or are placed closer to the front page of the paper, magazine, or website—are more likely to grab readers' attention than stories that are shorter and less visually attractive (Graber 1988: 250; Holmqvist & Wartenberg 2005: 15).

Previous scholarship provides vague guidance as to the factors that increase the likelihood of prominent media coverage. On one hand, the same sort of newsworthiness considerations that increase the frequency of coverage may also increase the prominence of coverage. The selection and placement of news articles involve two separate editorial decisions, and newsworthiness plays a large role in both (Lundman 2003: 366). On the other hand, more peculiar or infrequently covered topics or tactics may receive the lengthiest coverage; editors might assume that readers have received sufficient background information to process stories on frequently reported objects (see Collins et al. 2006: 100) and reserve the valuable print space for more "unusual" stories. Article prominence may thus provide added visibility to frequently covered movement activity, or it may boost the visibility of less-covered movement tactics.

(2) Depth of Movement Coverage: Thematic and Episodic Framing

In addition to varying in article frequency and prominence, media coverage also varies in regards to the level of depth or contextual background each story provides. Mainstream news tends to be episodic in nature, or focused on the particular details of news events rather than their contexts. *Episodic* coverage generally approaches stories as "self-contained dramatic capsules, isolated from each other in time and space" (Bennett 1988: 44), obscuring the intricacy, structural causes, or breadth of movement issues and action—leaving more potential for that coverage to skew movement messages and repel the public. *Thematic* coverage, by contrast, focuses more on the contextual features surrounding a news story, such as the historical events that triggered the covered political action or the more general social patterns or issues the action represents (Iyengar 1991; Bennett 1988; Haltom & McCann 2004).³ Thematic coverage therefore relates valuable information regarding the complexity or persistence of the movement's

³ To see how episodic and thematic framing might play out in the context of social movement coverage, take the example of a hypothetical protest calling attention to LGBT homelessness. Episodic coverage of the protest might focus on the weather, turnout, or sponsors, whereas thematic coverage might discuss how workplace discrimination and familial homophobia exacerbate the risk of homelessness for LGBT people or recap the movement's ongoing service or advocacy efforts in this area.

grievance, which can generate sympathy for the movement's cause or help explain its selected targets.⁴

There is a surprising absence of research that investigates whether coverage of social movement tactics varies in terms of episodic or thematic coverage. Studies that examine the likelihood of thematic versus episodic coverage tend to look at coverage of a single type of movement activity, such as protest (Smith et al. 2001: 1404) or litigation (Haltom & McCann 2004: 172; Carreiro 2005: 1). Those studies suggest that episodic coverage is prevalent across different types of movement action. However, one single-tactic study that focused on protest found that articles citing government sources of information were more likely to receive thematic coverage that provided extensive descriptions of movement issues (Smith et al. 2001: 1414). Assuming that government officials are more likely to comment on social movement activity that formally solicits government involvement—specifically, social movement activities like litigation and lobbying—this finding would suggest that litigation and lobbying may produce more thematic coverage than social movement activity that occurs outside of government institutions (e.g., protest).

(3) Personalization of Movement Coverage: Quoting Movement and Countermovement Perspectives

One common attention-getting device that journalists use to attract readership is to relate news events via the personal narratives of the individuals involved in or affected by those events (Hughes 1940). Referred to alternatively as news “personalization” (Bennett 1988: 26-35) or “human interest” framing (Semetko & Valkenburg 2000: 95-96), this news format highlights the narratives of individual movement actors or their opponents.

Not every movement actor is given the opportunity to broadcast his or her perspective through the media. The more well-resourced and “professionalized” the movement actor, the more likely that the actor will be granted “media standing” or status as a news source. Attributions of media standing depend on journalists’ interpretations of how serious an actor is as a player in a particular policy arena (Ferree et al. 2002: 86). Power and privilege figure strongly into making this determination (Gans 1979). For organizational actors, financial resources augment standing by enabling an organization to employ a press contact, an individual who is specifically tasked with establishing and maintaining media ties. Bureaucratic organizations also tend to have greater media standing due to their formalized structure, which can signal legitimacy and credibility (c.f., Fishman 1980: 145). At an individual level, one’s class and professional status similarly enhance media standing; “[w]e are likely...to see more men in the news than women, more rich than poor...far more white, professional, well-educated spokespeople than exist in any random sample of society” (Bennett 1988: 34).⁵

⁴ As Iyengar explains, “The use of either the episodic or the thematic news frame affects how individuals assign responsibility for political issues; episodic framing tends to elicit individualistic rather than societal attributions of responsibility while thematic framing has the opposite effect... [When] news is heavily episodic, its effect is generally to induce attributions of responsibility to individual victims or perpetrators rather than to broad social forces” (Iyengar 1991: 141).

⁵ This is not because journalists are uniquely susceptible to reproducing existing power relations, but rather because journalists are a subsample of the population and are not immune to commonplace

The same status-related features that are associated with increased media standing are also associated with the increased use of institutionalized political channels for social reform, such as courts and legislatures (Staggenborg 1988). While virtually anyone can initiate activities such as street protest and voter registration, formally pursuing legal change requires a baseline level of professional expertise and resources (Staggenborg 1988: 86). Movement organizations that seek more “radical” change (beyond law reform) tend to have few resources, use non-hierarchical structures, and pursue direct action strategies (Fitzgerald & Rodgers 2000: 578). This suggests that media coverage of social movements will tend to overrepresent the perspectives of movement actors pursuing law-reform strategies, as those actors are more likely to possess media standing.

Another factor affecting the types of perspectives conveyed in mainstream news stories is the pressure to produce neutral or “balanced” coverage of controversial social issues. Many U.S. news media sources hang their reputation on their paper’s neutrality, or lack of apparent bias, in reporting on hot-button political and social issues.⁶ Journalists attempt to provide a “neutral” account of politically contentious movement issues—or at least they stake out the appearance of neutrality—by relying on scripted story formats that traditionally convey impartiality. The primary example is the “balanced” story format, in which journalists give equal coverage time to one movement’s actions and to the perspectives of the movement’s opponents.⁷

I know of no existing research that examines how the balance norm might impact coverage of different movement tactics. However, previous work suggests that law reform tactics are particularly likely to trigger balancing norms and therefore coverage of countermovement perspectives. Journalists only give equal time to perspectives that fall within the realm of “legitimate controversy,” or perspectives that fall within a live and reasonable political debate (Hallin 1986: 116-17; Shoemaker & Reese 1996). The presence of elite political discourse on an issue strongly affects whether journalists see that issue as subject to reasonable debate. The more a movement’s actions solicit reactions by policy elites, the more likely they are to be constructed as legitimate controversies and to trigger “balanced” citations of countermovement perspectives. Because litigation and lobbying formally demand that government officials respond to movement needs, these tactics may evoke greater levels of “balancing” between the perspectives of movement actors and their opponents.⁸

stereotypes. For example, “predominant problems with news about violent crime against women – such as blaming the victim and reinforcing harmful cultural stereotypes and myths – lie not with individual journalists but with the social structures and values that deny male violence against women in a serious, systemic problem rooted in misogyny and patriarchy. By reflecting this cultural blindness, the news reinforces it” (Meyers 1997: ix).

⁶ Alternative legitimate models of journalism may be emerging in the U.S., however. The rift between Fox News and MSNBC suggests that news networks are increasingly building subscriber networks based on politicized news reporting.

⁷ Many have critiqued this “balance” approach for inflating controversies and engendering artificially dichotomous perspectives on complex issues (Gamson 1988: 169).

⁸ Importantly, the inclusion of countermovement perspectives through the balance norm may not just reflect, but also create, political power for countermovement groups. Journalists seeking out countermovement activists for coverage to satisfy the balance norm may pay less attention to those

Table 1: Characteristics of Dependent Measures of Media Presence

	Article Visibility	Article Depth	Article Perspective
Types of Variation	Article frequency Article prominence	Thematic (contextualized) Episodic (event- focused)	Movement perspectives Countermovement perspectives
Focus	Presentation of media object (e.g., tactics)	Substantive description of media object	Sources referenced and quoted
Factors of Influence	Conflict/controversy Elite involvement	Elite involvement	Media standing
Effect on News Consumers	Attention to movement	Comprehension of movement	Evaluation of movement

III. Research Design

This study analyzes mainstream news articles covering all forms of LGBT movement activity from 1985 to 2008. The purpose is to determine which tactics received the most visible, detailed, and personalized coverage. The focus of this analysis is on media content: on the media representations themselves and the messages they convey rather than on the news production or its reception by various audiences (see Seale 2003). Accordingly, the study provides no direct evidence regarding factors that generate bias in the selection of news objects, nor does it provide conclusive evidence regarding the effects of particular coverage on the public (Collins et al. 2006: 92). Rather, the primary purposes of the study are: (a) to identify how media messages may vary depending on the type of social movement activity that is reported (see Findings section); and (b) to generate inferences regarding the potential factors that produce these findings (see Discussion section).

(1) Sampling Plan

The unit of analysis is individual newspaper articles. The sample of newspaper articles reports on the LGBT movement's political activity from the years 1985 to 2008. As discussed in Chapter 1, the timeframe for this study is marked by a tactical transition within the LGBT movement, during which it shifted from a diverse array of radical protest and traditional civil rights tactics to a more streamlined mainstream movement uniting primarily under the civil rights approach. By identifying patterns in media coverage that remain consistent across the years of this tactically-variable time period, this study gains traction on whether patterns in

activists' political standing. In this case, journalistic norms could spin up the political power of a previously marginalized perspective because "challengers who obtain a significant amount of media coverage usually enjoy a significant rise in political status. Those recognized in by the news media as serious political players become serious political players" (Wolfsfeld 1997: 67).

coverage may be media-generated or variable depending on the context and the movement being covered.

I examine newspaper articles as a representation of larger patterns in mainstream media coverage. Newspaper coverage provides a good barometer for charting broader media trends, given that radio and televised news tend to echo stories covered in newspapers (Winter & Eyal 1981; Clarke & Fredin 1978: 42; Downie & Kaiser 2002: 64). One potential drawback of this approach, however, is that it may miss the impact of news photographs and other visual images, which figure more strongly in spectacular street protests than in formal law reform tactics. To help diminish the potential bias against visual representations in the media, this study includes a textual analysis of any photograph captions that appeared in the newspapers; this helps to ensure that instances of protest coverage are not undercounted.

Newspaper articles were selected from three major mainstream publications: one national newspaper, the *New York Times*, and two California newspapers, the *San Francisco Chronicle* and the *Los Angeles Times*. The *New York Times* is traditionally used in communications research as a benchmark of national news coverage (Alwood 1996; Gamson 1992; Rohlinger 2002) because it tends to set the agenda of other major U.S. news outlets (Herman & Chomsky 2002; Bagdikian 2004; Rojecki 1999: 39). The *New York Times* is also consistently ranked among the news publications with the highest circulation and online readership (Perez-Pena 2007; Pew Research Center 2006; Frontline 2007). While large-scale syndication limits variation between local and national newspaper coverage (Winter & Eyal 1981), it is important in observing media coverage of social movements to include local papers, which are significantly more likely to cover local protests (Oliver & Myers 1999: 72). Thus, the study also includes newspapers serving the two largest metropolitan newspapers in California (the site of the case study): the *San Francisco Chronicle* and the *Los Angeles Times*.

(2) Data Collection Procedures

Articles for this study were located utilizing online searches of historical news databases. The *New York Times* and the *Los Angeles Times* articles from 1985 to 2008 were available on LexisNexis (<http://www.lexisnexis.com/media/>). The *San Francisco Chronicle* articles were available on LexisNexis starting from October 1, 1989, and on ProQuest Historical Newspapers (<http://www.proquest.com/en-US/catalogs/databases/detail/pq-hist-news.shtml>) for the years before that. The purpose of these online searches was to locate every article published in these papers between 1985 and 2008 that covered any form of LGBT movement activism.

I conducted an initial set of experimental test searches within a single source (the *New York Times*) during non-consecutive years (1990 and 2008) to determine which search terms would yield the most relevant set of articles. These initial tests revealed the importance of avoiding action-focused search terms (e.g., “protest”), which tended to exclude political tactics that could be described in multiple ways (e.g., gatherings, vigils, demonstrations, street performances, or even simply, “actions”). Ultimately, three types of search terms generated the most relevant results: (a) identity terms (e.g., gay, lesbian, bisexual, queer); (b) activist terms (e.g., reformer, advocate); and (c) general political terms (e.g., campaign, movement). After running individual searches of terms falling within each of these categories and excluding those

that produced numerous false hits I arrived at the following set of final search terms, utilizing LexisNexis' Boolean operator of an exclamation mark to find all relevant hits:

(gay or homosexual! or lesbian! or bisexual! or transgender or transsexual! or "same-sex" or lgbt or glbt or queer) w/p (movement OR organization! OR organizer! OR campaign OR group! OR activist! OR advocate! OR reformer! OR protestor!)

These terms produced a sampling frame of 27,767 articles. A research assistant read through an initial random sample of those articles⁹ consisting of 40 articles per newspaper per year (n=2,880) in order to screen out irrelevant articles from the analysis (i.e., obituaries, corrections, events listings, letters to the editor, and "false hit" articles that did not report on LGBT politics). This left a final sample consisting of 1,145 relevant articles for analysis (an average of 15.9 articles per newspaper per year). A research assistant read through and coded the sample articles for information about the following descriptive characteristics: the article's date; word count; the newspaper in which the article was reported; the LGBT movement tactics and issues reported (accounting for the simultaneous coverage of multiple tactics or issues in a single article); whether the article quoted an LGBT movement representative; and whether the article quoted an opponent of the LGBT movement. The next section describes each of these measurements in detail.

(3) Measures of Variables

(a) LGBT Movement Tactics

The focus of this study is on media coverage of LGBT movement tactics. I measure tactic coverage through a series of dummy variables, each of which indicates whether an article mentions a specific tactic. The use of indicator variables, rather than a single multi-level variable, allows for the analysis to account for multiple tactics being reported simultaneously in a single article.

The tactic variables represent actual, empirical groupings of actions that I found through an initial, exploratory analysis of the media data. I culled 100 articles from the final random sample and read through each of them, listing in minute detail every form of LGBT movement activity that those articles reported. I then grouped the activities listed into broader categories of movement tactics based on whether those activities contained analytically similar characteristics. A research assistant coded the entire sample of articles using this list as a baseline and added any other observed tactic categories as necessary (with my approval). The final list of tactic variables consisted of the following:

- *Litigation*: Any stage of formal litigation, including filing briefs, serving other parties, conducting discovery, negotiating settlements, performing oral arguments, awaiting and receiving the final judgment of a case, and appealing a judicial opinion to a higher court (n=216).

⁹ I generated the random sample by (a) assigning each article in the sampling frame a unique number through the Random Number Generator function in Excel; (b) dividing the articles into different columns by year; (c) sorting the random number column by value; and (d) selecting the first 40 articles per year that appeared in the value-sorted random number column.

- *Lobbying*: Activists' attempts to influence the legislature, including legislative lobbying, legislative committee testimony, and direct advocacy to government officials or agencies (n=177).
- *Protest*: Direct action, marches, rallies, demonstrations, civil disobedience, boycotts, nonviolent resistance, or any other collective action involving the temporary occupation of a public or private place to express political opinions or demands (n=160).
- *Education*: Educational services, such as the distribution of educational materials, classes, study groups, and lecture series (n=100).
- *Original Research*: Original research activities, such as publishing studies, performing public opinion polling, or monitoring the media (n=69).
- *Voter Activism*: All voting-related political action, including voter registration, activism regarding ballot initiatives, and voter education campaigns (n=44).
- *Service*: Provision of community services such as job training, counseling, elderly or youth care, medical care, or homeless shelters (n=31).
- *Philanthropy*: Any fundraising activities for LGBT political causes, including charities or the provision of any other type of financial assistance (n=25).
- *Boycott*: Abstaining from business relations with, or withdrawing social relationships from, a particular organization or other social entity for political reasons (n=12).
- *Legal Services*: Provision of legal advice or assistance outside of formal litigation, for example through rights trainings, legal clinics, or lawyer referral services (n=6).

A separate code, "Public Action," accounted for coverage of public activities by LGBT people, such as a cultural festival or artistic endeavor, which did not expressly mention any political or social change purpose (n=157). For instance, articles covering the annual LGBT Pride celebration¹⁰ were coded as "Public Action" rather than "Protest" unless they specifically framed the Pride celebration as movement activity or as advancing LGBT-related social change. For example, one *Los Angeles Times* article that described parade participants as "call[ing] for an end to discrimination and push[ing] for acceptance" (Times Wire Reports 2008: A6) was coded as "Protest" because it cited the political factors motivating parade participants.

(b) LGBT Movement Issues

Another set of dummy variables was used to indicate whether an article covered a particular LGBT movement issue. Only the issues that journalists associated with the LGBT community, movement, or activism were included (i.e., not issues that the article mentioned when discussing non-movement actors or events). Again, the method of using an indicator variable for each individual issue ensured that all issues were accounted for in articles that covered multiple issues simultaneously.

¹⁰ Pride celebrations are held in cities nationwide each summer to commemorate the police raid of New York City's gay bar, the Stonewall Inn, on June 27, 1969. While this "commemorative ritual" celebrates an event often attributed to the politicization of LGBT people (Armstrong & Cragg 2006), pride celebrations since the 1980s have become increasingly apolitical, focused on festivity rather than demanding social change. Many of the more radical LGBT groups have boycotted or even protested pride celebrations for that very reason. Accordingly, the content and framing of the article served to determine whether a particular pride parade would be coded as a "Protest" or a "Public Action."

The methods used to construct the issue codes were also identical to the methods used to construct the tactic codes. The final list of issue variables consisted of the following:

- *HIV/AIDS*: People living with HIV/AIDS (n=186).
- *Marriage*: Same-sex couples or transgender individuals getting married (n=153).
- *Violence*: Acts of violence and hate crimes (n=132).
- *Employment*: LGBT people in the workplace. This includes employment discrimination; the firing of and retaliation against LGBT employees; employer provision of health care benefits (which are also coded as Health/Medical); and employer recognition of same-sex spouses or domestic partners for benefits programs (which were also coded as Relationship Recognition) (n=120).
- *Public Accommodations*: Exclusion of LGBT people from public accommodations, such as universities, hotels, health clubs, businesses, and nonprofit organizations such as churches and the Boy Scouts of America (n=111).
- *Relationships*: Coupling and forming partnerships outside marriage, such as domestic partnerships or reciprocal beneficiaries. When discussed in the context of same-sex marriage, both issues are coded (n=89).
- *Military*: LGBT people in military service, discrimination in the military, and the military's "Don't Ask Don't Tell" policy (n=80).
- *Youth*: LGBT and gender-nonconforming youth. This typically involved an element of harassment or bullying or failure to conform to school rules such as gendered grooming standards (n=69).
- *Religion*: Religiousness within LGBT communities and among LGBT individuals (n=62).
- *Parenting*: Family formation and dissolution and the experiences or rights of individual LGBT parents, including in adoption, custody and visitation rights, and second-parent adoption (n=45).
- *Transgender*: Transgender people or transgender-specific issues (n=41).
- *Criminal Justice*: LGBT people in the criminal justice system, including people in jail or on parole, or those who had been arrested or charged with a crime. Articles on the criminalization of sodomy were also included in this category (n=37).
- *Housing and Homelessness*: The prevalence and incidence of homelessness among LGBT people and discrimination in housing (n=24).
- *Race*: LGBT people of color or issues specific to the intersection of race and sexuality (n=18).
- *Immigration/International*: LGBT people outside the U.S. and issues involving immigrants, the enforcement of immigration law, or asylum (n=16).

Many times, news articles would make a passing references to several LGBT movement issues at once without providing any further description or analysis of those issues. This "laundry list" approach to coverage occurred only for movement issues, not for discussions of movement tactics or any other movement attributes. To avoid clouding the analysis with these barely-visible issue references, I instructed the research assistant to code only those issues that were described in two sentences or more. Articles that did not discuss any movement issue for at least two sentences were coded as *general coverage* (n=205).

(c) Length

An article's length provided another measure of media visibility (alongside frequency of coverage of particular objects). Longer articles tend to be more visually prominent compared to shorter articles, and thus more likely to attract the attention of readers (Carroll & McCombs 2003: 36). Article length was operationalized here as the number of words an article contained ("word count").

(d) Depth of Coverage

The substantive depth of coverage—or the amount of contextual background information the article provided—was measured through two variables. First, a dummy variable was used to indicate whether or not an article reported on more than one movement issue in detail (i.e., in two or more sentences). This variable provided a measure of *thematic* framing, suggesting that the article took a step back from the immediate focus to convey the interconnected issues that comprise a movement's broader agenda. For example, one *Los Angeles Times* article reporting a movement-initiated lawsuit seeking insurance benefits for LGBT domestic partners described how the issue had evolved from the LGBT movement's historical agenda—calling it a "natural next step" after the movement's recent victories in implementing local antidiscrimination employment legislation (McFadden 2004).

A second dummy variable was used to indicate that an article failed to report on any movement issue in detail (i.e., in two or more sentences). This variable provided a measure of an article's *episodic* framing, suggesting that the article focused on specific movement actions or events "with minimal or no attention to the issues raised" (McCarthy et al. 1999: 129). This variable is equivalent to the *general coverage* variable, discussed in the description of the movement issue codes above.¹¹

(e) Perspectives Quoted

Activists who are quoted in a newspaper article—whether they are proponents or opponents of LGBT rights—are given the opportunity to convey their perspectives on and frame the interpretation of the LGBT movement activity reported. Articles that quote opponents also convey a separate message apart from the speaker's particular perspective: that the particular LGBT movement activity or issue reported is a controversial one. Two variables were included to measure the types of perspectives and controversy-related messages an article conveys: first, one dummy variable indicated whether an article quoted an LGBT activist; and a second dummy variable indicated whether an article quoted an opponent of the LGBT movement.

¹¹ Preliminary analyses included a third dummy variable, indicating whether an article reported more than one LGBT movement tactic. My initial thought was that articles covering multiple tactics would have a more holistic and contextualized framing of movement action, thereby providing a separate measure of article depth. However, further analysis suggested that the tactics most consistently reported in the context of other movement activity tended to be perpetual "tagalong" tactics, lacking independent significance to merit coverage on their own. The prime example is coverage of research and educational activities, which was reported alongside other forms of movement activity 43% of the time (whereas coverage of tactics other than education was covered alongside other movement activity only 32% of the time). My analysis of these stories supports the inference that educational activities formed the "backdrop to stories already selected for coverage for other reasons" (McCarthy et al. 1999: 128). Therefore, this variable was excluded from the final analysis.

(4) Method of Analysis

The methodology used to analyze the collected data was as follows. First, I provide a descriptive account of the coverage of LGBT movement activity, including a close analysis of how the frequency of coverage varies depending on the tactic reported. This descriptive account helps gauge which movement tactics were most visible and salient in the media during the years of my analysis. Second, I examine variation in the content of the articles, including in the articles' length, its depth of analysis on movement issues, and its inclusion of LGBT or anti-LGBT activists' perspectives. Third, I examine whether certain tactics are more or less likely to be reported in a particular context, such as during an election year or earlier or later in the observed time period (1985-2008). In each analysis, basic statistical tests measured significant differences in article content based on the tactics reported (e.g., the difference in mean word count between articles that do or do not report litigation). These tests employed the Pearson χ^2 test, using the 95% confidence level (see Collins et al. 2006: 96).

IV. Results

(1) Frequency of Coverage

The overall quantity of media coverage on the LGBT movement stayed fairly consistent both over time and across news source. An average of 47.7 total articles were reported per year (SD 6.8). Coverage peaked in 1991, 1993, and 2004, with 68, 60, and 58 articles respectively, and dipped in 1995 and 1998, with 38 articles in both years. Outside of those years, coverage stayed within the 11-article range of 41-52 articles reported annually. Each of the three newspapers contributed a roughly equal percentage of articles to this annual total. Because the newspapers also showed little variation in their descriptive content (see also Gamson 1992: 197; Ferree et al. 2002: 46),¹² the remainder of this analysis will focus on coverage patterns across, rather than within, individual newspapers.

As expected, certain tactics were reported more frequently than others. Litigation was the most frequently reported tactic, covered in 216 articles total. Litigation was covered significantly more frequently than the tactic that received the next highest amount of coverage, lobbying, which was covered in 177 total articles ($p = 0.047$). This suggests that the greater visibility of

¹² Statistical tests did reveal some significant variation, although it was minor in terms of actual effect. *New York Times* articles were longer on average (coef. 0.10; $p < .01$) and *San Francisco Chronicle* articles were shorter on average (coef. -0.08; $p < .01$). This is likely a reflection of resource disparities, as the *Chronicle* serves a much smaller city and has lower circulation rates. In terms of the perspectives quoted, *San Francisco Chronicle* articles quoted more LGBT activists on average (coef. 0.08; $p < .01$) and fewer LGBT opponents (coef. -0.06; $p < .05$); *New York Times* articles quoted fewer LGBT activists (coef. -0.08; $p < .01$); and *Los Angeles Times* articles quoted more LGBT opponents (coef. 0.09; $p < .01$). The only significant difference in coverage of movement tactics (the primary focus of this chapter) was in coverage of voter activism, with the *Los Angeles Times* producing more coverage of voter activism on average and the *San Francisco Chronicle* producing less coverage on average. However, given the low total number of articles on voter activism ($n=44$; or 4% of the total articles), this finding has little bearing on the overall results.

litigation in the news articles sampled in this study was not due to chance.¹³ This finding echoes the only other previous study I know of that compares coverage of social movement litigation to other social movement tactics, Michael McCann's study of pay equity activism from 1979 to 1989 (McCann 1994: 58-9; 319-20).

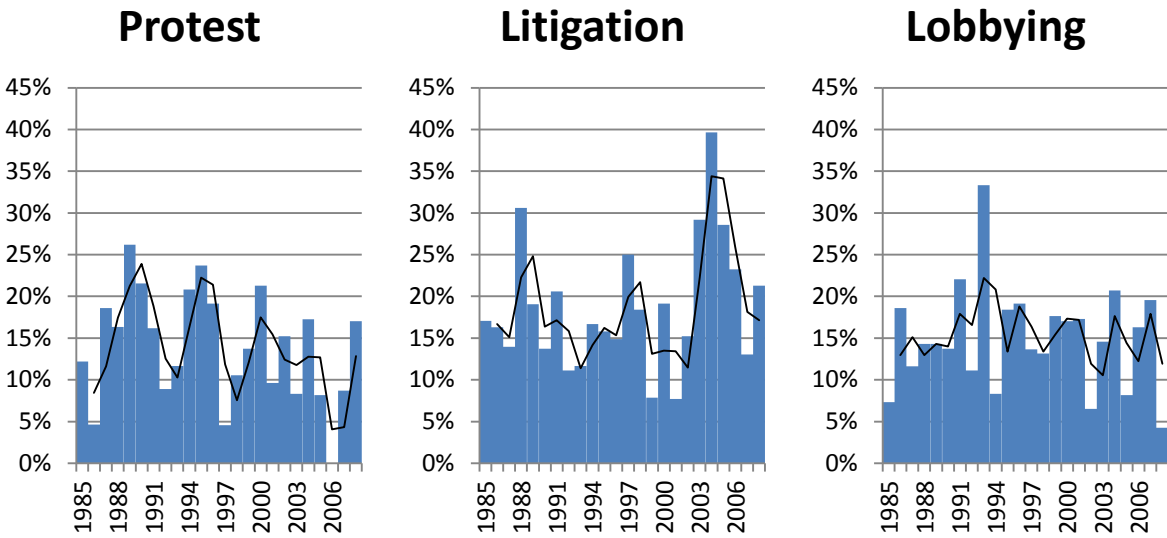
After lobbying, protest received the next highest quantity of coverage (160 articles). Contrary to what previous research would suggest, there was no statistically significant difference between the quantities of lobbying and protest coverage. The other tactics, however, were reported much less frequently, with just 100 articles covering educational activities, 44 covering voter activism, 31 covering service activities, and 25 covering philanthropy. As explained above, while these findings cannot determine the probability of each tactic receiving media coverage (given that frequencies of the underlying actions that produced this coverage are unknown), these data provide an important gauge of which LGBT movement tactics have received the most mainstream media visibility. These results are shown in Figure 1 below.

The issues that received the most frequent coverage overall were HIV/AIDS (186 articles), marriage (153 articles), violence (132 articles), and employment (120 articles) (see Table 2). Of these, HIV/AIDS and marriage coverage varied the most over time, corresponding broadly with more general fluctuations in the dominant movement issues of the day. Over half of the HIV/AIDS-related articles (n=96) were published between 1985 and 1990, which is when the epidemic was still largely perceived as a "gay disease" and had not yet become a concerted and independent focus of activism outside the gay movement (see Selbin & Del Monte 1998: 107-9). Conversely, more than three quarters of the marriage coverage (n=111 articles) occurred in the final five years of the study, 2004-2008, which is when the contemporary boom in the movement's marriage focus exploded following the 2003 *Goodridge* decision in Massachusetts. Coverage of employment- and violence-related LGBT activism, while slowly decreasing over the years, remained relatively stable at an average of 5 (SD 2.92) and 5.5 (SD 2.86) articles per year, respectively.

It does not appear from the data that the media's focus on particular issues was driving the coverage of social movement tactics. A breakdown of issue coverage by tactic (see Table 2) indicates that there was a negative relationship between the most frequently covered tactic (litigation) and the most frequently covered issue (HIV/AIDS); only 4.6% of articles on litigation discussed HIV/AIDS, as compared to 19% of articles that did not cover litigation (t=5.1). By the same token, the top two most frequently covered issues, HIV/AIDS and marriage, were frequently associated with coverage of the least-frequently covered tactics: articles on voter activism covered marriage at a higher rate than articles on any other tactic (n= 18/44; 40.9%), and articles on philanthropy covered HIV/AIDS at a higher rate than articles on any other tactic (n=13/25; 52%). Were media attention to particular issues the principal force driving tactic coverage, one would expect issues like voter registration and philanthropy to have been reported at much higher frequencies.

¹³ The significance levels remain nearly identical when removing from the equation the articles that covered both litigation and lobbying. There were four articles in total that covered both litigation and lobbying, such that removing them would result in 212 rather than 216 litigation articles and 173 rather than 177 lobbying articles. The difference between those modified two groups (i.e., the litigation-only and lobbying-only articles) remains significant (p=0.0468).

Figure 1: Articles per Year Covering Protest, Litigation, and Lobbying



**Trendlines show 2-year moving average.*

(2) Length

While the frequency-related findings suggest increased visibility for state-centered LGBT movement tactics, the length-related findings suggest that those state-centered LGBT movement tactics were not particularly prominently featured. Lobbying articles were longer on average than articles that did not mention lobbying, but the difference was only minimally statistically significant.

Protest articles, however, were significantly likely to be shorter than other articles by quite a large margin; protest articles averaged at about three quarters the length of non-protest articles, a difference of approximately 200 words (665.9 words on average for protest articles versus 852.3 words for articles that did not cover protest). This difference was highly statistically significant, suggesting that protest activity was significantly less prominent than other tactics in the mainstream press and generated less visibility for the LGBT movement.

Table 2: Article Characteristics by Tactic

	Total	Litigation	Lobbying	Protest	Education	Voter Activism	Service	Phil- anthropy
Visibility								
Frequency (N)	1145	216	177	160	100	44	31	25
Word Count (average)	826.24	788	892.33+	665.91 ***	911.53*	849.43	972.68	599.5*
Depth								
Multiple issues reported in depth (1/0)	75 (6.55%)	12 (5.6%)	18 (10.2%)*	11 (6.88%)	5 (5%)	5 (11.36%)	3 (9.68%)	1 (4%)
No issues reported in depth (1/0)	205 (17.9%)	12 (5.56)***	27 (15.25)	40 (25)	32 (18.71)	10 (22.73)	6 (19.35)	5 (20)
Perspective								
Quotes LGBT representative (1/0)	613 (53.54%)	115 (53.2%)	110 (62.1%)*	80 (50.0%)	60 (60%)	25 (56.82%)	18 (58.06%)	10 (40%)
Quotes anti- LGBT opponent (1/0)	213 (18.60%)	62 (28.7%) ***	53 (29.9%) ***	26 (16.25%)	12 (12%)+	10 (22.73%)	1 (3.23%)*	2 (8%)
Issues								
HIV/AIDS (1/0)	186 (16.24%)	10 (4.63%) ***	19 (10.73%)	26 (16.25%)	48 (28.07%)	8 (18.18%)	17 (54.84%) ***	13 (52%) ***
Marriage (1/0)	154 (13.45%)	52 (24.1%) ***	32 (18.08%) *	16 (10.00%)	6 (6%)*	18 (40.91%) ***	0 (0%)*	0*
Violence (1/0)	132 (11.53%)	32 (14.8%)+	16 (9.04%)	115 (10.63%)	11 (11%)	3 (6.82%)	0 (0%)	0+
Employment (1/0)	120 (10.48%)	31 (14.4%) ***	36 (20.34%) ***	105 (9.38%)	4 (4%)*	4 (9.09%)	2 (6.45%)	1 (4%)

(3) Depth of Coverage

Articles on litigation and lobbying went into greater depth than other articles in terms of their description of movement issues. For example, 10.2% of lobbying articles discussed at least two movement grievances in depth (at least two sentences) as compared to only 5.9% of articles not about lobbying, a statistically significant difference. This detailed attention to multiple issues suggests that articles on lobbying reflect a more thematic framing on average, meaning that those articles drew connections between various movement issues and thereby promoted greater understanding of movement perspectives and the intelligibility of movement actions.

Litigation articles showed a similar tendency toward greater depth in their descriptive content. Articles covering litigation were significantly less likely than articles not on litigation to omit any account of movement issues (or, if movement issues were mentioned, to list them in a

cursory fashion in a single sentence). Only 5.6% of articles on LGBT litigation failed to provide descriptive information on movement issues, as compared to the much greater 20.8% of articles that did not cover litigation. Litigation coverage was markedly different in this respect from the other articles, which all showed much higher levels (closer to the 17.9% on average) of this episodic, glossing-over of movement issues in coverage of movement tactics. This suggests that litigation is less prone to the typical cursory analysis of movement issues (episodic framing) that previous work has found to be common in media coverage of politics (Bennett 1988).

Protest coverage, by contrast, was the most likely to include only cursory or general analysis of movement issues without reporting movement issues in any depth. This finding resonates with findings from previous work, which identify an “amalgam of grievances” frame in protest coverage, or the portrayal of protestors as unfocused and advocating for too many disparate issues at once (Boykoff 2006: 221).

Taken together, these findings suggest that the depth of coverage of social movement issues is increased (or more thematic) in articles on movement litigation and lobbying, and the depth of coverage of movement issues is decreased (or more episodic) in articles on movement protest.

(4) Perspectives Quoted

Another way social movement organizations communicate their message is when the media take quotes from activists. Articles on lobbying were significantly more likely than articles on other tactics to personalize coverage by quoting an LGBT activist. LGBT movement representatives were quoted in 62.1% of lobbying articles as compared to 51.9% of articles reporting other tactics. No other tactic showed a significant difference in the likelihood of quoting LGBT activists.

One possible explanation for the increased use of direct quotes in the context of LGBT movement lobbying could be that movement lobbyists tend to have greater media standing than other activists. As described previously, media standing tends to be a function of one’s political status, and lobbyists’ proximity to the state puts them in a better position vis-à-vis other movement activists such as street protestors in regards to receiving media standing. What is less clear is why movement lobbyists were more likely than movement lawyers to receive media standing and to be quoted. Both lobbyists and lawyers tend to possess similar status qualities, such as professional degrees and elite connections, which would seem to position them more or less equally for media standing. One possibility is that lobbyists may be popularly perceived as government insiders, with a more cooperative relationship and intimate alignment with government elites than lawyers, who often enter the state through litigation as challengers to elite actions (see Chapter 4 for a further development of this argument and a discussion of the consequences it may have for the LGBT movement).

With respect to countermovement perspectives, articles on lobbying and litigation were more likely than articles on other tactics to quote opponents of LGBT rights. Anti-LGBT perspectives were quoted about 13% more in articles on lobbying and litigation than in articles that did not report these tactics; 29.9% of all lobbying articles and 28.7% of litigation articles

quoted anti-LGBT perspectives as compared to 16.5% and 16.3% of articles that did not cover those tactics, respectively.

The differences in countermovement quoting cannot be explained merely by the issues that are at stake in litigation and lobbying articles. Although litigation and lobbying articles are significantly more likely on average to cover the issue of same-sex marriage—a particularly salient issue for opponents of LGBT rights—anti-LGBT quoting occurred at significantly higher rates even in litigation and lobbying articles that did *not* discuss marriage. Among articles not discussing marriage, anti-LGBT perspectives were quoted in 22% of articles on litigation as compared to 14.3% of articles on tactics other than litigation and 24.8% of articles on lobbying as compared to 13.9% of articles on tactics other than lobbying.

Articles on the LGBT movement’s service-related or educational activities were significantly less likely on average to quote anti-LGBT perspectives. The likely explanation is not that these tactics are inherently non-controversial. Countermovement activists have vocally opposed even the most sympathetic pro-LGBT actions, such as service provision for lesbian and gay partners of September 11 victims (Gross 2002) or the polling of LGBT service members to document discrimination (Myers 2000). A more convincing explanation would account for the different types of opposition that these actions inspire. In general, LGBT movement activities related to service provision or education do not directly implicate political elites. This makes it unlikely for political elites to risk staking out an affirmative position on those activities. Accordingly, there may be fewer anti-LGBT opponents with standing available to provide quotations on LGBT service or educational activities. Furthermore, journalists tend mostly to seek out countermovement perspectives on issues that they deem to be open to reasonable political disagreement, or within the scope of “legitimate controversy” (Hallin 1986: 116); the lack of elite discourse in the area of political tactics like service or education may itself construct those tactics as non-controversial, diminishing journalists’ perceived need to seek out opponents’ perspectives to “balance” coverage.

V. Discussion

This chapter has shown that that litigation and lobbying are the most visible LGBT movement tactics in the mainstream media and that litigation and lobbying produce the most detailed yet controversial coverage of that movement. What explains these findings? With regard to visibility, the data provide only speculative evidence of potential media bias. Yet despite data limitations, the high media salience of litigation and lobbying—the two tactics that operate within formal state channels for law reform—suggests that journalistic monitoring of state institutions may increase coverage of movement action taking place within those institutions.

These findings also help expand theoretical understandings of the mechanisms that generate media selection bias. Previous work has shown that collective action that targets the state or that occurs in close geographical proximity to a state capitol building has an increased chance of receiving news coverage (Oliver & Myers 1999: 76-77). However, because this work focused on a single tactic (protest), it did not explore the possibility that close geographic proximity to the state may be a stand-in for proximity to other movement tactics operating simultaneously within the state (i.e., litigation or lobbying). In other words, higher coverage rates for protests on the steps of government buildings may be the product of greater journalistic

attention to the movement activity occurring *inside* those government buildings. Without a comparative consideration of various movement tactics, previous work leaves open the possibility that elevated coverage of state-proximate protest action may be triggered by the movement's parallel use of formal, state-based channels for law reform. Future research exploring this possibility would help tease out currently vague understandings of the mechanisms linking movements, media, and the state.

My findings suggest other possible mechanisms that may generate greater visibility for state-centered social movement tactics. The content analysis of litigation and lobbying articles indicates a unique level of journalistic attention to these tactics. For example, both litigation and lobbying provoked significantly more detailed coverage of LGBT movement issues (i.e., with lobbying articles expounding on a greater number of movement issues and litigation articles being less likely to produce generalized, episodic accounts that omit discussion of those issues). Protest coverage, by contrast, was far shorter on average and was less likely to report any movement issue in any depth. These findings may reflect an editorial view that state-centered social movement activism is more important and newsworthy than protest action.

Why might editors and journalists consider litigation and lobbying to have greater news value than tactics like protest? As previous work suggests, the proximity of these tactics to the state may be a crucial factor. Unlike other political tactics, litigation and lobbying specifically call on state officials to weigh in on, often to officially support or oppose, particular movement goals. Litigation asks judges to make a determination as to the legality of movement goals; lobbying asks legislators to back movement-supportive laws. Calling on officials to weigh in on movement demands may increase media coverage of litigation and lobbying by generating more elite discourse on litigation and lobbying; it pulls together greater numbers of actors with "media standing"—actors who are accepted as credible news sources—who are interested in and willing to speak on movement litigation and lobbying.

However, my findings cannot be explained solely by the proximity of litigation and lobbying to the state. Coverage of litigation and lobbying varied in important respects that the state-proximity explanation would not predict. For example, litigation received significantly greater coverage than lobbying, and lobbying was significantly more likely to quote LGBT movement perspectives. These differences caution against overemphasizing the explanatory power of the movement actors' association with the state.

One productive avenue for future research would be to delve deeper into the mechanical differences that distinguish movement tactics, as a way of theorizing how certain tactics may provide a better "fit" with dominant media routines. For example, one way to explain the significantly higher media visibility of litigation over all other tactics could be the extensive public documentation that litigation produces. Litigation requires formal documentation at each stage of its advance in order to preserve the formal record of a case and make it reviewable on appeal. While lobbying also produces publicly available documentation of legislative debates, most of the movement's role in influencing legislative debates occurs in behind-the-scenes negotiations with legislatures, which oftentimes neither movement actors nor legislatures wish to make public. Thus, even journalists who seek out news stories on topics other than litigation may be thwarted by the preliminary challenge of even finding out about those stories, given the

relative dearth of public documentation. This structural factor distinguishing litigation from all other tactics could help explain why litigation was more visible in terms of the numbers of articles covering it.

Analyzing the mechanical or structural features of social movement tactics can also provide greater theoretical traction for previously unexplored mechanisms (aside from proximity to the state) that may enhance the newsworthiness of both litigation and lobbying. For instance, litigation and lobbying may evoke similar narrative or discursive elements that elevate their newsworthiness. Both litigation and lobbying require social movement actors to translate their grievances into specific demands, such as a particular legal interpretation or the passage of legislation of a certain type. Previous work has found that increased specificity in movement actors' demands improves the chances of political success (Cress & Snow 2000: 1079; McCammon 2009: 50-51). One suggestion, then, is that the specificity of framing that litigation and lobbying require transforms obscure movement grievances into a more precise set of demands, a particularly effective rhetorical move that helps convince journalists of those tactics' importance.

Litigation and lobbying may also be uniquely able to evoke the types of conflict-based narratives that resonate with traditional news storylines. Litigation clearly advances a conflict-based storyline, pitting plaintiffs and defendants with incompatible goals on opposite sides of a high-stakes contest for state vindication. The legislative process, at least as currently defined in the U.S., similarly evokes a two-sided conflict narrative, to the extent that one political party (Republican or Democrat) shows greater allegiance to movement values than the other. Although the conflict narrative is less stark in the legislative context, both legislative lobbying and litigation seem to be generally more susceptible to a protagonist/antagonist, hero/villain story format than other types of movement tactics. While previous research has shown that conflict increases the likelihood of movement coverage (e.g., Oliver & Maney 2000: 489), more work is needed to understand whether certain tactics may better able to trigger the types of conflict narratives that journalists find so attractive.

I offer these accounts of the divergent mechanical and narrative attributes of social movement tactics to illustrate how these previously overlooked factors offer a promising avenue for theoretical development, with the potential for more comprehensive and coherent explanations for differences in the depth, visibility, and perspective of social movement media coverage. An alternative explanation that my data cannot rule out, however, is that media coverage may simply reflect the quantities of actual movement activity on the ground. In the LGBT movement context, for example, I cannot rule out that LGBT activists may have conducted more litigation than lobbying and more lobbying than protest. Yet I should note that the available data do not seem to support this alternative conclusion. The next chapter in this dissertation, which involves a survey of the tactics employed by LGBT movement organizations in California from 1985 to 2008, reveals that only 13.5% of all California-based LGBT movement organizations during this time reported using litigation at any point in their lifespan. Yet my data show that 18.9% of the newspaper articles covering LGBT movement activity

during these years reported on litigation.¹⁴ These data detract from the alternative explanation that the media coverage of LGBT movement tactics reflected the extent to which those tactics were actually being implemented.

VI. Conclusion

This chapter provides the most comprehensive study to date comparing media coverage of different types of social movement tactics. My analysis expands existing understandings of the relationship between media, politics, and social change. We know from previous work that media visibility, in terms of the frequency or prominence of coverage, cues readers into thinking of reported content as particularly important (Carroll & McCombs 2002: 36; McCombs & Reynolds 2002). News objects that are highly visible tend to direct public attention toward those objects, increasing their salience on the public agenda (McCombs & Reynolds 2002; Terkildsen & Schnell 1997; Woolley 2000). Thus, the findings here regarding the enhanced visibility of state-centered LGBT movement tactics—and litigation in particular—suggest that those tactics will be given the most public attention, perhaps even channeling the possibilities for movement success into those areas of public focus.

In addition to setting the public's agenda, the enhanced visibility of litigation and lobbying may also play a role in the construction of social movement agendas, specifically regarding the elevation of law-reform issues as major priorities on those movement agendas. If media visibility makes the public think more about particular topics, it is even more likely to influence how activists particularly keyed into media coverage on their movement would evaluate the importance of those topics. For example, the media visibility of LGBT litigation and lobbying may compel LGBT activists working on other tactics to view litigation and lobbying as particularly productive and useful movement tactics. The media visibility of LGBT litigation and lobbying may push other LGBT activists to organize strategically around those activities and ride on their resonance. Chapter 4 will consider these and other effects of media visibility in shaping the broader LGBT movement's agenda.

Media coverage may also reconfigure social movement fields more broadly by enhancing the legitimacy of social movement litigation and lobbying vis-à-vis other movement tactics. For example, the visibility of litigation and lobbying may promote the widespread interpretation of those tactics as legitimate, "common-sense," or natural ways of creating social change (c.f., Hannan & Carroll 1992: 34). Similarly, the enhanced description of movement issues in media coverage of litigation and lobbying coverage may also increase popular sympathy for those actions (see Bennett 1988: 26-35), promoting solidarity with the actors who perform them. Finally, the enhanced personalization or quoting of movement actors in media coverage of litigation and lobbying provides those actors the opportunity to broadcast their messages (Ferree et al. 2002: 103), similarly promoting sympathy for and solidarity with those actors (Nepstad

¹⁴ The difference between litigation use and litigation coverage is greater than the difference between the use and coverage of other tactics. 16.0% of LGBT movement organizations used protest at any point between 1985 and 2008 (compared to 13.5% of articles covering protest) and 14.3% of LGBT movement organizations used lobbying at any point between 1985 and 2008 (compared to 15.5% of articles covering lobbying). This suggests that any selection bias that exists in coverage of LGBT movement activity may favor litigation to a greater degree than other tactics—further calling for more research into the role of tactics' mechanical differences in generating variation in coverage.

2001: 21; Lind & Salo 2002: 225; see Sterett 2001). Together, these findings suggest that the media act as a mechanism reinforcing the legitimacy of litigation and lobbying and the movement actors that perform those tactics. Chapter 3 moves on to consider questions regarding the differential legitimacy of various movement tactics and how those legitimacy differences may affect social movement organizations.

Chapter 3

Stability of Litigation: Survival of LGBT Movement Organizations

I. Introduction

This chapter provides the first quantitative, empirical investigation of whether the use of litigation, as opposed to other tactics such as protest or lobbying, has an independent effect on social movement organizations' survival rates over time. The survival of a social movement organization is an important factor associated with intramovement influence and agenda setting. According to population ecology theory in sociology, the longer a social movement organization survives, the less susceptible it is to competition pressures; long-lived organizations benefit from stable ties to sources of support and faithful membership (Freeman et al. 1983: 692). With less pressure to compete with newly formed groups, older organizations are able to pursue agendas that their members find important, with relatively less need to deviate from members' priorities to attract resources as compared to newer groups. For instance, older organizations need not pursue newsworthy tactics to attract the attention of new members. Furthermore, organizations that survive over time are capable of developing and carrying out long-term strategies that newer groups are structurally incapable of pursuing. Organizations that survive over time are thus likely to exert greater control over their own agendas than newer groups.

Sociological research on organizations suggests that an organization's practices—or, in social movement organizations, the tactics an organization uses—are one of the primary features that determine that organization's chances of survival (Minkoff 1993: 890). The goals of organizations in a given population typically overlap, especially in a social movement where groups are commonly aligned to pursue some form of social change; the primary feature that distinguishes these organizations is the set of practices they use to achieve those goals. Neo-institutional theory adds that the organizations that use tactics that relevant parties (e.g., community members, philanthropists, foundations, and other funding sources) consider legitimate, or a “desirable, proper, or appropriate” means of accomplishing collective goals (Suchman 1995), will survive longer than those that do not. Organizations that are considered legitimate attract financial resources, which in turn promote their survival; contributors deem those organizations to be worthy of their participation or financial support, and the organizations are rewarded with resources that keep them in business (Aldrich & Auster 1986; Pfeffer & Salancik 1978).

Organizations are typically considered legitimate—and tend to survive longer—when they abide by institutional norms and rules (Rao et al. 2000: 242). Organizations signal their compliance with these institutional norms by gaining the approval of state and cultural authorities (Haveman et al. 2007:120). For social movement organizations, using institutional channels for advocacy (e.g., courts and legislatures) is a particularly effective means of achieving high levels of legitimacy (Minkoff 1993: 890) and protection from disbandment (Minkoff 1993: 902). Using state channels signals that these groups “conform to legal rules and gain endorsement from other powerful actors” (Rao et al. 2000: 242). Furthermore, the dominant “cultural power” of the law (Merry 1995) and the legitimacy of the democratic state (Walker et al. 2008: 41) would suggest that social movement organizations using state-based tactics will

appeal to a broad array of social actors, from community participants and patrons to the more “moneyed” movement contributors (e.g., corporate sponsors, government elites, and foundational philanthropists). This broad appeal diversifies the sources of organizational support, further increasing survival by making organizations less reliant on any given funding source (Walker & McCarthy 2010). Groups using more confrontational tactics may alienate all but a small group of like-minded supporters (see Gitlin 1980).

While there is a large body of sociological work supporting the link between state-based tactics and organizational survival, little has been done to expose how variation among state-based tactics—specifically variation between litigation and lobbying—may have disparate effects on organizational survival. The sociological literature typically conceptualizes social movement organizational tactics as falling into four general categories: institutionalized political advocacy (any combination of legislative lobbying, electoral politics, and “watchdog” activities); direct action (demonstrations, marches, grassroots organizing, picketing, boycotts, and civil disobedience); service provision (training, education, shelters, and community integration or development programs); and cultural tactics (cultural production or sponsorship of the arts, media, humanities, and social sciences) (Minkoff 1993: 894; Minkoff 1994: 949, 966n1; Minkoff 1999:1668). Organizational scholars use these “theoretical groupings of observed [tactical] combinations” (Earl et al. 2003: 590) to both reflect observed overlap among organizational tactics frequently used in combination and to categorize social movement organizations by the type of social arenas in which they operate, providing traction on how operation within these different arenas affects outcomes for these groups.

However, for several reasons, it is problematic to conflate litigation and lobbying under a single type of tactic without examining the possibility that these tactics may have independent and quite different effects on organizational survival. First, many contemporary social movements have drawn on the litigation-centered model of the NAACP Legal Defense and Education Fund, using primarily impact litigation to achieve social change goals (Costain 1992; Meyer & Boutcher 2007; Handler 1978). The rise in litigation-centered organizations suggests that litigation is widely considered to be a normatively legitimate tactic among contemporary movements (Carroll & Hannan 1989: 525-526), increasing the likelihood that litigating groups will survive longer over time. Second, as detailed in Chapter 1, prior empirical work has found litigation to be associated with numerous extralegal benefits that would seem to enhance organizational survival to a greater degree than lobbying: litigation generates significant media attention (McCann 1994) and financial resources (NeJaime 2011), both of which lengthen the lives of organizations (Vliegenthart et al. 2005; Walker & McCarthy 2010: 333). Therefore, it appears as though litigation may have certain structural characteristics apart from its mere association with the state (a factor it shares in common with lobbying) that likely increase the survival chances of organizations that litigate.

This chapter investigates the effect of litigation on LGBT movement organizations’ survival rates through a quantitative event-history analysis of original data from an entire population of LGBT social movement organizations in existence in California from 1985-2008. I use a statistical analysis of event-history data on these organizations to estimate how these organizations’ use of particular social change tactics affects their rates of survival over time, controlling for other organizational features and external population-based and institutional

factors. My analysis reveals that LGBT movement organizations that use litigation have higher survival rates than those that do not use litigation. It further reveals that the use of lobbying is associated with decreased rates of organizational survival.

These findings make an important contribution to theories of organizational survival by incorporating a more nuanced view of the role of the state in legitimating organizational tactics. The conventional sociological approach of viewing state-based tactics in the aggregate, as equal contributors to organizational legitimacy, assumes a monolithic state; my findings suggest that legal institutions within “the State” may produce greater organizational legitimacy (or at least greater resources) for the organizations targeting them than the state’s political institutions. Furthermore, these findings have important methodological implications for sociological work on organizational survival. The finding that litigation and lobbying have opposite effects on organizational survival rates suggests that the currently common technique of combining litigation and lobbying under a single “advocacy” category may be seriously flawed. In the conclusion to this chapter, I suggest that specific structural differences among legal and political institutions pose unique sets of constraints and opportunities for movement advocacy occurring within those realms, which may channel litigating organizations toward stability and increased survival.

II. Research Design

(1) Sampling Plan

(a) Research site

This study focuses on California-based organizations that seek social change to improve the lives of LGBT people. As discussed in Chapter 1, I narrowed the focus to a single state in order to capture patterns that exist within a discrete sector of the social movement subject to similar jurisdictional, political, and funding constraints (Armstrong 2002: 374; Minkoff & McCarthy 2005: 291; see also Dimaggio 1991; Ray 1999; Staggenborg 1991). Holding these features constant allowed me to get greater traction on the specific impact of organizational tactics, rather than other contextual factors, on organizational survival.

California provides an ideal case site because of its size and its population of LGBT people, which makes it likely to produce the largest numbers of, and variation among, LGBT movement organizations. California has the largest estimated population of LGBT people in the nation, as well as the greatest density of LGBT couples (Movement Advancement Project 2013). This provides a sufficient membership base to support a range of movement organizations, from large, national groups (e.g., Lambda Legal, National Center for Lesbian Rights, and, formerly, the Gay and Lesbian Alliance Against Defamation) to small and local ones (e.g., Queer Nation and the Lesbian Avengers). California’s geographical size also helps ensure sufficient representation of LGBT protest organizations, which tend to be decentralized and local (Gamson 1995: 393); the expansiveness of the region provides multiple localities and opportunities for protest group formation.

(b) Actors studied

The organizations selected for analysis were nonprofit groups that advocated for LGBT people by attempting to change patterns of discrimination toward sexual minorities; to influence public debate, policy, or laws affecting sexual minorities; or to otherwise improve the living conditions of LGBT people. All such organizations geographically based in California were included in the study, regardless of whether the organization had a state or national focus. Local chapters of national organizations (e.g., the ACLU's Lesbian and Gay Rights Project) were also included. The study did not include LGBT-identified organizations with a purpose that was primarily social instead of seeking change in LGBT people's status or social condition (e.g., gay choirs). Nor did the study include organizations primarily focused on HIV/AIDS activism without a specific commitment to sexual minorities.¹⁵ I defined the boundaries of the LGBT movement according to the perspectives of the activists themselves, who, during the timeframe of my study, viewed HIV/AIDS and LGBT activism as separate social movements.

The study includes all California-based LGBT movement organizations that were active at any point between 1985 and 2008. These organizations are the unit of analysis, and my data on these organizations are event-history data. For each year in the study, I entered data on both the organization's existence (the dependent variable) and on the independent variables in order to calculate survival rates. Accordingly, the study involved multiple observations for each organization (up to twenty-four observations), reflecting the number of years the organization existed in California between 1985 and 2008.¹⁶ An organization in existence from 1998-2008, for example, would produce eleven separate data points. This method produced a total of 1564 organization-year observations, generated from 106 organizations (see also Martin et al. 2006; Meyer & Boutcher 2007; Minkoff 1994, 1999, 2002; Olzak & Ryo 2007).

(2) Data Collection Procedures

(a) Data Source

The organizations in this study were identified from the national and regional editions of the *Encyclopedia of Associations*, an annual reference guide of voluntary associations. The *Encyclopedia* locates organizations through news-clipping services, referrals, and voluntary solicitations. Although the *Encyclopedia of Associations* may underrepresent protest organizations (Minkoff, 2002: 267), empirical research has found that the *Encyclopedia* includes most existing organizations in a social movement's organizational population (Martin et al. 2006).

(b) Coding Procedures

Each annual edition of the *Encyclopedia* published from 1985 to 2008 was coded to construct a longitudinal database with yearly information on the LGBT movement organizations in the study, including the organizations' number of paid staff, membership size, age, and tactics. This information was recorded into a database with multiple data points representing each year

¹⁵ I originally gathered data on all organizations that could potentially be categorized as LGBT, but later excluded the organizations that were purely recreational (12 organizations total) and organizations that were purely focused on HIV/AIDS (139 organizations total).

¹⁶ While the first observation for each organization is in 1985, I was able to account for organizational longevity by collecting data on each organization's founding date.

an organization was reported in the *Encyclopedia*. This dataset initially included all organizations listed in the *Encyclopedia*, even when no further information was provided on the organization other than its name. This generated eight organizations that appeared with “empty” database entries over all years, consisting of just the organizations’ names without any further information; I later removed these organizations from the database. For years where there was no recorded information on an active organization, I estimated values for missing data by using information from the years immediately preceding and following (Minkoff 1995).¹⁷

(3) Measures of Variables

The statistical analysis examines what characteristics of California LGBT movement organizations—and, in particular, which organizational tactics—increase those organizations’ survival rates (see Minkoff 1993: 893). This analysis measures the effect of an organization’s use of particular tactics (e.g., litigation, lobbying, protest) on the risk of organizational disbandment over time, controlling for structural organizational features (age, staff, and membership numbers) that previous research has found to be relevant to organizational survival.

This section discusses how the dependent and independent variables were measured. Table 3 presents the descriptive statistics for the variables in this analysis. The reader should bear in mind that all variables pertain to event-history data covering 1564 yearly records on 106 California LGBT organizations; these variables are therefore capable of changing value over time.

(a) Dependent Variable: Organizational Disbanding

To measure survival rates, I observed whether an organization was active or inactive during a given year. Organizations were considered active each year that they were listed in the *Encyclopedia of Associations*. If the *Encyclopedia* omitted an organization in a particular edition but included it in previous and subsequent consecutive years, I assumed the omission was in error and coded the organization as active during the intervening years. Organizations were considered disbanded when either the *Encyclopedia* explicitly listed them as defunct or when organizations listed in at least one edition failed to appear again.

Efforts were made to ensure that an organization was not coded as disbanded if it simply moved from California to another state. Because the *Encyclopedia* lists entries thematically (e.g., under “Homosexual,” “Gay/Lesbian,” or “LGBT”) rather than by state, I could determine when an organization had moved across state lines. Since no organizations moved away from

¹⁷ Missing data were filled in through this method of estimation for 732 of the 1564 organization-year observations (81/106 organizations in the study). This method of reproducing missing data from previous years relies on the assumption that organizational data is relatively constant year by year. An examination of the organizational data before filling in the missing data supports this assumption; organizational data did not shift drastically from year to year, and often remained the same for many years in a row. However, it should be noted that this technique may inadvertently produce more regularity in the data than would otherwise be present.

California during the timeframe of my study, I did not code any relocated organizations as disbanded.¹⁸

(b) Independent variables

Organizational Tactics

The focal independent variables in this analysis were the political tactics used by LGBT movement organizations. As stated above, organizational tactics are a primary factor that contributes to a movement organization's survival (Minkoff 1993: 890). The primary tactics used by the LGBT movement organizations in this study, and thus the tactic categories coded in the database, were:

- *Litigation*: Legal representation of clients. Includes filing briefs or complaints, service, discovery, negotiation and settlement, oral argument, and appeals (n=211; 13.49%).¹⁹
- *Lobbying*: Any attempt to influence the legislature, including legislative committee testimony, direct advocacy to government officials, and advocacy to government agencies (n=224; 14.32%).
- *Protest*: Any collective action involving the temporary occupation of a public or private place, which includes the expression of political opinions or demands. This includes direct action, marches, rallies, demonstrations, civil disobedience, boycotts, and nonviolent resistance (n=250; 15.98%).
- *Voter Activism*: All voting-related political action, including voter registration, activism regarding ballot initiatives, and voter education campaigns (n=38; 2.43%).
- *Community Service*: Providing services such as job training, workshops, classes, counseling, elderly or youth care, medical care, or homeless shelters (n=657; 42.01%).
- *Research*: Producing reports/information for public consumption, including studies, original research, public opinion polls, or monitoring of media images/practices (n=258; 16.50%).
- *Socializing*: Sponsoring social or recreational activities or opportunities for social networking (n=292; 18.67%).
- *Religious Services*: Conducting religious programs or pastoral activities (n=281; 17.97%).

These tactic categories were designed to be responsive to the tactic data reported by the *Encyclopedia of Associations*. I generated this list of tactics through an initial round of exploratory coding, in which I wrote down all tactics reported in the *Encyclopedia*, capturing minute variation in the language used to describe each tactic. I then combined these data into the “theoretical groupings of observed combinations” (Earl et al. 2003) in this list—a set of more general tactic categories that combine similar types of actions. Previous research has found

¹⁸ There were two organizations that moved to, rather than from, California: The Homosexual Information Center (HIC), an educational service of the Tangent Group, moved from Louisiana to California in 2000; and the Gay and Lesbian Alliance against Defamation (GLAAD) moved from New York to California in 1998. These organizations were included in the study starting in the year that they entered California.

¹⁹ Litigation-related activities, such as filing amicus briefs or providing legal advice, were initially coded independently but later dropped as separate categories because no organization used those tactics in the absence of litigation.

similar tactics in women's and African American social movement organizations (Evans 1997; Minkoff 1994; 1999; 2002).

Different tactics convey different messages and require different levels of financial investment, making them likely to have disparate effects on organizational survival. Tactics like litigation and lobbying, which bring movement groups closer to government organizations and elites, are expected to be highly legitimate and increase organizational survival. Protest and arts tactics are often considered more radical and less legitimate protest forms, and as such decrease organizational survival. Community services, religious services, research, and philanthropy, which require significant, continued funding, may contribute to increased disbandment due to their drain on organizational resources. Tactics that generate their own income, such as litigation (from lawyers' fees) or arts (from admission fees) may contribute to greater survival.

Each of these tactics was coded as a dummy variable indicating whether or not an organization used that tactic in a given year. This method accounted for the full range of tactics each organization used per year, as well as how those organizations' tactics changed over time. Capturing each of these tactics independently was important in this analysis because there was overlap between some of these categories.

Population Characteristics

The "density" of a given tactic (i.e., the number of organizations in a population using that tactic) is expected to enhance that tactic's contribution to organizational survival. As more organizations come to use a particular tactic, the tactic becomes increasingly taken-for-granted as a legitimate or appropriate way to carry out organizational activity; this protects organizations that use this tactic against disbandment (Hannan & Carroll 1992).²⁰ It is therefore expected that a large portion of LGBT movement organizations using lobbying, for example, would increase the survival of lobbying groups.

The measure of population density was coded uniformly for all organizations in a given year. Population density variables were measured separately for the only three tactics that produced significant results in the statistical analyses (litigation, lobbying, and protest). The variables were calculated as the number of organizations using a tactic per year. These variables were lagged by one year because the effect of population density was unlikely to be immediate.

Institutional Variables

Legal and political institutions also affect organizational survival. Developments in legal or political institutions that signal receptiveness or opposition to a movement's demands can cause activists to reassess their tactics (Sewell 1996). Positive developments send the message that activists' appeals to the receptive institution (their use of tactics targeting a particular institutional opportunity) will be effective (McAdam 1982). Tactics perceived to be effective are considered legitimate (Suchman 1995) and are thus likely to contribute to organizational survival.

²⁰ The protective effect on organizational survival eventually tapers off as density increases to the point of high saturation, which generates strong competition pressures (Hannan & Carroll 1992).

I used a series of time period variables as a proxy for measuring the impact of changes in legal and political fields (which signal opportunities for LGBT activism) on organizational mortality. As with the population variables, these measures of institutional context vary by year but not by organization and are coded uniformly for all organizations in a given year. Time period variables like these are frequently used in the social sciences to measure institutional influence (e.g., Cornfield & Fletcher 1998; Dobbin & Dowd 2000: 643; Dobbin & Dowd 1997: 516-17; Meyer & Minkoff 2004: 1468; Soule 1997: 865). Previous work has found that political context may condition the competition pressures represented by the density variables (Dobbin & Dowd 1997: 521).

The institutional variables represent discrete time periods in which symbolically important developments occurred in a legal or political institution, signaling that the institution had become receptive to LGBT activism. A dummy variable indicating the presence of a Democratic California governor (1993-2000) was used to measure the influence of political institutions on LGBT activism (see Minkoff 1995). A dummy variable indicating the post-*Lawrence v. Texas* period (2003-2008) was used to measure the influence of legal institutions on LGBT activism. Both of these variables were lagged by one year “to account for the time necessary for information about perceived changes to be translated into action” (Meyer & Minkoff 2004: 1470).

A final variable was used to represent the passage of linear time. It had a value of one for the first year of the observation period (1985-2008) and increased by a value of one for each subsequent year (see Dobbin & Dowd 1997: 518). This variable was primarily used as a control to determine whether the institutional variables matter independent of linear time. It also tested whether movement organizational disbandment is a secular trend.

(c) Control Variables

Organizational Structure

Having a formalized, bureaucratic structure increases an organization’s likelihood of survival. Foundations and funders providing crucial organizational resources tend to favor social movement organizations with bureaucratic structures (Jenkins 1985). “Professionalized” movement organizations, or formally structured organizations that hire professionals to carry out routine activities, also tend to perform regular “organizational maintenance” activities and have greater access to elite funding sources (Staggenborg 1988). Accordingly, I included the number of paid staff as indicated in the *Encyclopedia* as a measure of an organization’s degree of formalization; this variable was expected to increase the likelihood of survival. I assumed that the organizations with no data listed on this variable had no paid staff.

Membership Size

Organizations with a larger membership base have greater chances of survival because they can rely on internal resources, rather than external and fluctuating support, to sustain themselves (Minkoff 1993: 897).²¹ Membership size was measured by annual reports in the

²¹ The *Encyclopedia* provided no reliable measure of financial data. While the *Encyclopedia* listed budgetary data for a small fraction of the cases (487/1564), there was far too much missing data to

Encyclopedia of Associations. Forty organizations provided no information on membership (656 observations total); I assumed that those organizations had at least one member and assigned them that value.

Age

Newly formed organizations are more prone to disband than older organizations, a principle that sociologists call the “liability of newness” (Stinchcombe 1965). New organizations must compete with older organizations, which have established structures and ties to resources (Freeman et al. 1983: 692). A variable for an organization’s chronological age was therefore included as a control. Age was measured by calculating the time that had elapsed since an organization’s founding date as reported in the *Encyclopedia*. There were no missing data on this variable.

Table 3: Descriptive Statistics on LGBT Movement Organizations in California, 1985-2008

	Mean	Standard Deviation	Minimum	Maximum
Protest	0.16	0.37	0	1
Litigation	0.13	0.34	0	1
Lobbying	0.14	0.35	0	1
Voter Activism	0.02	0.15	0	1
Service	0.42	0.49	0	1
Research	0.16	0.37	0	1
Density of Protest	5.57	2.09	3	10
Density of Litigation	7.77	1.73	5	12
Density of Lobbying	8.12	1.04	6	10
Post-Lawrence	0.82	0.39	0	1
Democratic Governor	0.22	0.42	0	1
Passage of Time	12.56	6.58	1	24
Membership	1348.79	4865.04	1	43000
Staff	3.54	15.34	0	130
Age	15.13	9.54	1	56

Statistics are for pooled, cross-sectional time-series data covering 1564 yearly records on 106 California LGBT organizations.

(4) Method of Analysis

I use event history analysis (Tuma & Hannan 1984) to measure the impact of various organizational properties on the survival rates of the LGBT organizations studied. In this analysis, the dependent variable was technically the rate of failure, although I will sometimes refer to its converse, the rate of survival, because survival is the key theoretical question (Minkoff 1993: 900). The independent variables in this analysis were the tactics (litigation,

include this variable in the statistical model. Furthermore, an independent comparison of a selection of these data with organizational tax returns provided on Guidestar.org suggests that the *Encyclopedia* reports of budgetary data do not reflect actual organizational assets.

lobbying, and protest), structural features (age, staff, and membership numbers), and contextual factors (population density, institutional conditions) that are relevant to organizational survival.

I employed event history analysis rather than using a traditional count model for two reasons. First, preliminary analyses of the LGBT organizational data revealed that their rate of survival varied over time; the organizations experienced low survival rates initially, which gradually increased over time (see also Freeman et al. 1983). This variation in the rate of organizational survival violates a basic assumption of the Poisson distribution (the basis for traditional count models), which is that the underlying rate of the outcome event remains constant over time. Second, my data include right-censored event histories, meaning that some of the organizations in this study may have disbanded after the end of my data collection period in 2008. Whereas count models typically discard the data on these right-centered cases, the hazard rate model is able to incorporate these data (Sorenson & Stuart 2000).

The hazard rate of organizational disbandment at time t is defined as follows (where T is the duration of time that has elapsed until disbandment occurs):

$$r(t) = \lim_{t' \rightarrow t} \frac{\Pr(t \leq T < t' | T \geq t)}{t' - t} .$$

The duration is measured as the number of years that have elapsed since the organization was founded. Because I have data on each organization's founding date—even when that date occurred before the start period for my data collection in 1985—I was able to accurately measure the duration of all the organizations in this study (not just ones that were formed during the observed time period).

The Cox model was used to model the hazard rate. The hazard rate that the Cox model produces is represented as follows:

$$r(t) = h(t) \exp(\beta X),$$

where $h(t)$ is an unspecified baseline rate and β specifies the influence of the variables in X . This model accounts for the continuity of the organizational data in this study; it takes the annual changes reported in the *Encyclopedia of Associations* into account when examining the variables associated with the risk of disbandment. The model was estimated in Stata 12.1.

III. Results

Table 4 presents the Cox-model estimates of disbandment rates in the in the sample of LGBT organizations. The hazard ratios represent the effect of each independent variable on the risk of disbandment. Hazard ratios greater than 1 indicate that the independent variable increased the disbanding rate, whereas hazard ratios less than 1 indicate that the independent variable decreased the disbanding rate.²²

²² For hazard models, coefficients less than 1 increase the survival rate because the coefficient for hazard is a ratio; the numerator is the hazard of disbandment for litigating organizations, and the denominator is the hazard for disbandment for non-litigating organizations.

The table presents five separate models to detail how adding particular independent variables affects the estimates. Model 1, in the first column, includes the independent variables for organizational tactics. Only lobbying and litigation had statistically significant effects on the rate of survival, but in opposition directions. Litigation had a significant positive effect on survival, but lobbying had a much larger negative effect on survival. In other words, the findings suggest that litigation improves survival rates but lobbying reduces survival rates.

Model 2 determines whether different levels of competition among litigating or lobbying groups affected their different risks of disbanding by controlling for the density of these groups. This model also controls for the density of protest on the theory that a perceived rise of more radical protest groups might cause funders to channel money to the more benign litigating and lobbying groups (see Haines 1984). The density of litigation was not significant, nor did it have any effect on the hazard ratio for litigation. The density of lobbying was associated with a slight decrease in disbandment risk for lobbying groups. However, the significance of lobbying density was marginal and disappeared when other variables entered the equation.

Model 3, which introduces the variables for major changes in political and legal fields, also failed to generate any significant results. This finding was somewhat surprising given that most of the social movement literature focuses on developments like these (signals of political or legal opportunity) as a primary impetus for social movement activity (see McAdam 1982; Andersen 2005). While these signals were insignificant, Model 3 does show a significant, positive effect for the passage of linear time. This means that organizations that existed at the tail end of the study had greater survival rates than those in the earlier parts. The reason is that there had been a peak in the number of LGBT organizations in existence in 1998, which slowly declined over subsequent years (see Appendix I: Organizational Founding and Failure by Year). Given that litigation remained significant even when controlling for the passage of linear time, it appears as though organizations that litigate were relatively immune to this late 1990s decline. Lobbying groups, whose disbandment risk jumped when controlling for the passage of time, appear to have been especially hard hit by this cycle of disbandment.

Model 4 includes controls for staff and membership size in order to measure whether these structural features, rather than the tactics the organizations performed, influenced the organizations' survival rates. Organizational scholars argue that increases in staff and membership improve survival by increasing organizations' internal capacity to garner resources. Even with these controls, the same pattern of effects persisted. While this finding was not consistent with the theoretical expectation that membership and staff numbers would bolster longevity (e.g., by setting up routine resource-garnering practices), other studies of social movement organizations have found similar results (Minkoff 1993: 902).

Finally, Model 5 reflects the influence of organizational tactics when controlling for organizational age. Both age and litigation are statistically significant in this model, indicating that as organizations become older, their risk of disbandment decreases, regardless of whether they litigate. The .95 hazard ratio indicates that for every one-year increase in age there is a 5% (1-.95) decrease in the hazard of disbandment; this can be interpreted as the protective effect of age per year. The significance of litigation diminishes when age is taken into account. This is likely due to the fact that age is the strongest factor in decreasing organizational disbandment.

Prior research found similar results: newly formed organizations are more prone to disband due to the aforementioned “liability of newness” (Freeman et al 1983).

Table 4: Event-History Analysis of Organizational Disbandment
(Standard errors are in parentheses)

	Model 1	Model 2	Model 3	Model 4	Model 5
Litigation	.20* (.15)	.20* (.15)	.22* (.17)	.23* (.17)	.28+ (.21)
Lobbying	2.85** (1.25)	2.65** (1.15)	2.23+ (.95)	2.18+ (.94)	2.45* (1.09)
Protest	.91 (.42)	.92 (.42)	.48 (.53)	1.06 (.49)	1.09 (.50)
Voter Activism	.39 (.43)	.41 (.45)	.98 (.32)	.46 (.51)	.54 (.59)
Service	1.03 (.34)	1.03 (.34)	.94 (.40)	.98 (.32)	.95 (.31)
Research	.86 (.37)	.88 (.38)	1.06 (.49)	.88 (.43)	1.12 (.55)
Density of Lobbying		1.43+ (.29)	1.31 (.28)	1.31 (.28)	1.31 (.28)
Density of Litigation		1.19 (.31)	.77 (.23)	.77 (.23)	.77 (.23)
Density of Protest		.98 (.13)	1.07 (.24)	1.06 (.24)	1.07 (.24)
Post-Lawrence			1.66 (2.00)	1.60 (1.93)	1.56 (1.88)
Democratic Governor			.62 (.75)	.65 (.80)	.63 (.77)
Passage of Time			.80* (.08)	.80* (.08)	.82+ (.09)
Membership				1.00 (.00)	1.00 (.00)
Staff				.95 (.05)	.96 (.04)
Age					.95** (.02)
Log Likelihood	-245.16	-241.54	232.64	-231.64	-228.81
Degrees of Freedom	6	9	12	14	15
Prob > chi2	.13	.05	.00	.00	.00

Statistical significance is indicated with the designation “+” where $p < .10$; “” where $p < .05$; “**” where $p < .01$; and “***” where $p < .001$.*

These models indicate that LGBT groups that engage in litigation have lower rates of disbandment than groups that do not use litigation. In the first column of Table 4 (Model 1), it can be seen that litigation has a positive effect on LGBT organizations’ survival rates, and this effect persists even when controlling for the density of tactics, the fluctuation in political and legal fields, differences in organizational structure (i.e., staff and membership), and organizational age (although with diminished significance).²³

Perhaps more surprising is how negative the effect of lobbying was for organizational survival. Lobbying groups had higher rates of disbandment than non-lobbying groups. This is a counterintuitive result given how frequently sociological studies group lobbying and litigation together when measuring the effect of tactics on organizational survival (Meyer & Minkoff 2004). In fact, I know of no study of social movement organizations that distinguishes these two

²³ This statistical correlation may help explain why 6 (35%) percent of protest and 9 (53%) of lobbying organizations disbanded, while only 2 (15%) of litigating organizations disbanded.

types of tactics. The drastically different impact of litigation and lobbying found here suggests that grouping these tactics as a single category may add noise to previous models and suggests a need for further inquiry into the validity of those findings.

IV. Discussion

This study established an association between the use of litigation and increased rates of organizational survival. Although this study cannot prove that litigation causes organizations to survive longer, it can rule out some plausible alternative explanations. One interpretation of the findings might be that organizations turn to litigation as they age, meaning that older age causes organizations to pursue litigation, rather than litigation contributing to older age. This hypothesis finds support in previous research, which has found that movement organizations turn to institutionalized channels for political activity (either legislatures or the courts) as they age (Staggenborg 1988; McCarthy & Zald 1973; Minkoff 1999). However, the data for the California LGBT organizations in this study do not support that explanation here. Only two organizations that used litigation incorporated that tactic later in their lifespans; the other litigating organizations started out using litigation and continued throughout their long organizational lives. While there was a slight increase in the use of litigation in recent years, that increase can be attributed to the formation of new litigating organizations (e.g., Marriage Equality USA, Equality California, and American Veterans for Equal Rights) in the later years of the study.

Another explanation could be that litigation is a traditional strategy that organizations of a certain era adopted. The findings could suggest that litigation was a popular form of political activism in an earlier period of time and that litigating organizations were formed during this time and were able to survive due to their older age. However, if this were the case, one would expect other tactics that surged in previous eras—like service, a tactic that experienced great growth among women’s and racial minority movement organizations from the 1960s to mid-1980s (Minkoff 1994: 943)—to show similar outcomes; yet the use of service was not correlated with longer survival for the LGBT organizations in this study. Furthermore, movement lobbying has historically figured just as strongly into social movement activity as litigation, and yet lobbying is negatively correlated with LGBT organizational survival.

If these alternative explanations do not hold, are there additional theoretical reasons to believe that litigation contributes to survival? Indeed, there are a number of possible explanations linking litigation to organizational survival. Litigation bears many of the trappings of legitimacy emphasized in previous work. As discussed previously, sociological theories of organizations hold that long-term survival is a sign that an organization’s tactic is valued and viewed as legitimate, which compels participants to invest financially in the organizations using the legitimate tactic (Aldrich & Auster 1986). LGBT movement litigation appears to generate organizational legitimacy in several ways. Litigating groups acquire “socio-political legitimacy” because the tactic operates in standard, institutionalized channels to effect reform, which signal the organization’s nonconfrontational posture and adherence to rules and norms (Haveman et al. 2007: 120; Rao et al. 2000:242; Minkoff 1993: 890). The prevalence of litigation after the judicial advances in civil rights in the mid-20th century (Meyer & Boutcher 2007) has also bolstered the prevalence and cognitive legitimacy of litigation as a movement tactic generally, leaving “little question in the minds of actors that it serves as the natural way to effect some kind

of collective action” (Hannan & Carroll 1992: 34). Also due in part to the civil rights advances, litigation is broadly considered to be an effective tactic; the LGBT movement is similar to past identity movements that have formed litigating groups to emulate the success of the NAACP (Costain 1992; Handler 1978; Rosenberg 1991).

However, the link between litigation and previously theorized modes of legitimacy cannot alone explain the increased survival rate of LGBT litigating organizations because each of these aspects of legitimacy would seem to apply to lobbying, which is similarly state-based, nonconfrontational, prevalent, and previously successful. One possibility is that litigation may provide a different type of legitimacy that previous work has not considered, mixing procedural rule-following with a more confrontational style and giving it particularly broad appeal. In order to operate in the judicial system, litigators need to carefully follow the procedural rules of the forum, including filing deadlines, bounded attorney-client relationships, professional decorum, etc. This rule-following display, along with the proximity of litigators to the state, appeals to the more conservative, and often more wealthy, movement factions that supply significant financial resources (Walker & McCarthy 2010: 318). Lobbyists have a similar “inside the beltway” appeal to more conservative donors. Yet litigation uniquely provides just enough challenge to the state to appeal to radicals as well. While lobbying requires direct ties to and negotiation with political elites (often in closed-door settings where the risk of cooptation is high), litigation can involve quite obstinate challenges to state action (e.g., police practices or the enforcement of a discriminatory law). Furthermore, the performance of litigation requires demonstrative advocacy on the part of lawyers, infusing the tactic with a confrontational posture that can appeal to radicals and conservatives alike. This distinctive balance of confrontation and procedural rule-following may allow litigating groups to appeal to a diverse array of funding sources, making them less reliant on any given funding source for survival (Walker & McCarthy 2010).

In addition, litigation may be associated with particular types of narratives apart from confrontation that allow litigating organizations to tap into resources in a way that groups using other tactics cannot. The discrete outcome in each case offers funders a clear marker for success, which appeals to the “[p]hilanthropic norm concerning attaining measurable indicators of a grant’s success, or ‘bang for the buck’” (Silver 2001: 245). Even when cases are lost in court, the finality of that outcome can galvanize fundraising and organizational support for the losing side by highlighting adversity and creating a sense of urgency that motivates support (NeJaime 2011; McCann 1994: 262). Unlike protest or lobbying tactics, the outcomes of litigation are also clearly traceable to the litigating organizations themselves, whose official involvement is on public record. Protest and lobbying, by contrast, typically involve collective efforts by multiple movement entities, making it difficult to identify the impact of any particular movement actor. The contributions that result from protest and lobbying tactics are thus more likely than those that result from litigation to be diffused throughout the movement, rather than flowing to the individual organizations involved (see Haines 1984). This narrative simplicity of litigation may thus help generate greater organization-sustaining resources than protest or lobbying.

V. Conclusion

My central finding in this chapter—that litigating organizations have greater chances of survival—develops this dissertation’s key theoretical inquiry into the influence of litigation on the LGBT movement’s agenda. That litigating organizations have greater chances of survival

suggests that movement participants feel strongly enough about the importance of litigation that they would support the organizations that pursue it with financial donations. The survival of litigating groups, while not a *direct* measure of the value of litigation and its support as a movement tactic, would strongly suggest the existence of such support. Accordingly, groups that litigate may have greater influence within the LGBT movement, considered to be legitimate movement leaders, and given deference in internal debates over priorities.

A primary contribution of this chapter is to develop a more nuanced conception of “institutional” political action than that assumed in previous research on social movement organizations. The dominant approach in sociological studies is to assume that any tactics tied to the state are uniformly considered less disruptive and more legitimate than protest and other non-state action (Minkoff 1993: 890). The theory is that focusing on the state signals that these groups “conform to legal rules and gains endorsement from other powerful actors” (Rao et al. 2000: 242). This approach, which fails to distinguish among various types of state-based movement tactics, effectively assumes a monolithic state—that discrete organizational sectors within the state (i.e., courts, legislatures) bear equal legitimacy and that association with any of those sectors will have a similar stabilizing effect on movement groups. My finding that two state-based tactics (litigation and lobbying) have *opposite* effects on organizational survival suggests the need for a more complex account of the state and the mechanisms through which association with it transforms perceptions of movement organizations and imbues them with legitimacy.

Political theory lends some preliminary suggestions for how to reconceptualize different sectors within the state and the ability of those sectors to legitimate social movement organizations. In particular, the legislative and judicial branches of the state are associated with disparate theories of governance, which comprise the norms and logics that govern perceptions of and action that takes place within those arenas, including when social movements interface with those arenas. Legislative enactments are justified by principles of representational democracy, which hold that law should reflect majority will (as determined by popular representatives). Judicial rulings are justified by liberal principles limiting the power of the state to infringe upon individual rights. Judicial action that usurps or is argued to usurp the legislative role or subverts the majority will is considered illegitimate, as is legislative action that circumscribes judges’ ability to check government overreaching. Accordingly, opponents can shore up opposition to social movement activity that occurs in these different forums by berating the “activist judges” or “runaway legislatures” that side with the movement; this is essentially drawing on the disparate political ideologies governing the judicial and legislative branches to delegitimize social movement activity targeting those branches (Leachman 2013). Accordingly, the ability of movement organizations to distill legitimacy from tactics targeting those institutions will vary depending on the relative salience of the political ideologies that govern these institutions.

This chapter also suggests the need for more complex theorization of the different narratives that social movement tactics evoke, which may generate more or less legitimacy and may be more attractive to different types of supporters. Previous work considers legitimacy to be largely a function of how confrontational a tactic is; movement action operating within state realms is considered legitimate because it is less confrontational. Yet as the discussion above

suggests, certain structural features of litigation—its identifiable protagonists and antagonists, its simplified set of issues, its culmination in a discreet outcome—links litigation to a set of narrative qualities that are particularly attractive to a variety of movement actors and donors. Furthermore, the element of confrontation embedded in these litigation narratives actually increases the legitimacy of litigating groups. While confrontation narratives tend to alienate protest groups from the mainstream (Gitlin 1980), the confrontation involved in litigation signals compliance with mainstream legal rules and norms; lawyers are expected and even *required* to be adversarial. The confrontational aspect of litigation is also potentially appealing to a wide variety of relevant actors: wealthy donors, sympathetic elites, mainstream constituents, and the movement's more radical fringe. In short, confrontation is too simple a narrative to be a blanket consideration for the legitimacy of all political tactics. Context grounds tactics in meaning, and, as this study points out, some tactics may be better situated to capture legitimating narratives.

Chapter 4

Proactive Litigation, Reactive Protest, and LGBT Movement Agenda Setting

I. Introduction

The data presented in Chapters 2 and 3 reveal that LGBT movement litigation received the most media coverage and conferred the greatest organizational stability of all LGBT movement tactics. Chapter 4 explores the implications of those findings for the LGBT movement's substantive agenda through an in-depth qualitative analysis of a small subsample of LGBT movement organizations. This study investigates how the visibility and stability of litigation, along with organizational dynamics within and among LGBT movement groups, may have affected the substantive priorities that defined the LGBT movement's agenda.

The primary research questions this chapter investigates are: (1) what are the mechanisms through which LGBT movement organizations that use protest, litigation, and lobbying identify and set their goals?; (2) do those organizations vary in how they identify goals and plan their actions?; and (3) how does that variation affect those organization's ability to remain faithful to their members' priorities? These questions target key issues of internal movement power dynamics and agenda setting, topics that remain largely unexamined in the current literature (but see Coley 2013). Further, the key focus of these questions on the impersonal, organizational dynamics that may inadvertently affect movement agendas poises this research to illuminate potential mechanisms through which powerful social institutions come to shape (or constrain) struggles for social change.

Regarding the first two research questions, my qualitative data suggest that important differences existed among LGBT movement groups that primarily used litigation, protest, and lobbying regarding the internal procedures those groups used to identify their goals and plan their actions. Specifically, litigating organizations appear to have *proactively* pursued actions that built on long-term planning efforts and targeted members' predefined priorities; conversely, protest organizations appear to have *reactively* pursued actions by planning protests in response to recent events and headlines to attract publicity and participants to the protest's timely and newsworthy focus.

Regarding the third research question, the process differences among protest and litigating groups appear to have affected the degree of control that these groups had over their own agendas. In particular, the protest groups' tendency to focus on newsworthy events seems to have derailed those protest groups from their members' expressed goals. No such pattern was apparent among the litigating organizations, suggesting that those litigating organizations had comparatively greater autonomy than protest groups in pursuing expressed priorities and controlling their own agendas.

After describing in detail the variations in the organizations' action-planning processes and evaluating the effects of these processes on the organizations themselves, this chapter turns to examining the implications of these organizational differences for the LGBT movement more broadly. Protest organizations focused on media coverage to identify particular events and

stimulate popular participation related to those media events. Given that litigation was the focus of mainstream media coverage (see Chapter 2), protest groups' reactivity to newsworthy events may have caused those protest groups to substitute the issues being litigated for members' previously expressed priorities. Protest groups were also reactive to routine, public events, which longstanding litigating groups had the organizational capacity to regularly plan and carry out. Finally, the frequent interactions that occurred between protest groups and movement lawyers via lawyers providing protest groups with valuable professional services and expertise further enhanced movement lawyers' capacity to influence LGBT protest action. The processes identified here may therefore drive the LGBT movement's agenda toward change available through formal law: while litigating groups purposefully directed their efforts toward the opportunities provided under current legal doctrine, protest groups may have also inadvertently directed their efforts toward the issues being litigated in attempts to attract media attention.

II. Research Design

(1) Sampling Plan

This chapter examines individual social movement organizations that were active between 1985 and 2008. I focus in particular on the earlier part of this timeframe, between the years of 1985 and 1995. Narrowing the timeframe to these years made it more feasible to manage the large amount of qualitative data needed to explore my research questions. This narrowing also enabled me to focus on the time period likely to provide the most theoretically relevant information. As detailed in Chapter 1, mid-1980s to mid-1990s marked a period of internal contestation within the LGBT movement regarding the tactics and goals that would most effectively improve the lives of LGBT people. The LGBT movement circa 1990 contained not only the mainstream, national civil rights organizations that exist today (which use primarily litigation or lobbying), but also a large number queer protest groups. This diversity makes this time period an especially fruitful one for examining the interactions and power dynamics among these different movement groups.

My methods for selecting the subsample of organizations in this study are as follows. I used information from the larger database of LGBT movement organizations analyzed in Chapter 3 to select six California-based LGBT movement organizations for this chapter's more intensive, qualitative analysis. The criterion used in selecting those organizations was their primary organizational tactic and specifically whether the organizations used primarily protest, litigation, or lobbying. I focused on protest, litigation, and lobbying in particular so that the information gathered could build upon the more theoretically interesting findings from Chapters 2 and 3. Furthermore, it is my understanding based on years of interaction with and research on the LGBT movement that activists within the movement see organizations that use litigation, lobbying, and protest as distinct "types" of movement actors, making it likely that those organizations will use similar practices and have similar orientations to social change (Clemens 1993: 771; Engel 2007; Noy 2009: 237).

Organizations were selected to maximize variation on primary tactics and structural factors. To achieve variation on primary tactic, I elected two organizations that used primarily litigation, two that used primarily lobbying, and two that used primarily protest. For the structural features, I sought variation on features that might independently influence those organizations' internal decision-making processes: membership size, age, and affiliation with a

larger national organization (see Table 5).²⁴ Selecting pairs of tactically similar organizations that possessed these key structural differences allowed me to get more traction on how much “work” the tactic itself was doing to produce the resulting findings.

The organizations selected were: Queer Nation and the Lesbian Avengers, which primarily used protest; the ACLU Gay Rights Chapter of Southern California and National Gay Rights Advocates, which primarily used litigation; and International Gay and Lesbian Human Rights Commission and Lesbian/Gay Lawyers’ Association, which primarily used lobbying. The remainder of this section provides a brief description of each of these organizations.

Table 5: Summary Characteristics of the LGBT Organizations in the Study

Organization	Lobbying		Litigation		Protest	
	IGLHRC	LGLA	ACLU-LGRC	NGRA	Lesbian Avengers	Queer Nation
City	San Francisco	Los Angeles	Los Angeles	San Francisco	San Francisco	San Francisco
Lifespan	1992-present	1985-present	1976-present	1983-1991	1993-1997	1990-1991
Membership size ²⁵	High	Low	Average	Average	Low	High
Structure	Stand-alone	Chapter	Chapter	Stand-alone	Chapter	Chapter

Litigating Organizations

The two litigating organizations were the ACLU Lesbian & Gay Rights Chapter of Southern California (ACLU-LGRC) and the National Gay Rights Advocates (NGRA). Both organizations primarily used impact litigation and implemented formal, bureaucratic, nonprofit organizational structures with appointed boards of directors, staff attorneys, and other hired staff. The ACLU and NGRA also both participated in the regularly scheduled LGBT movement litigation strategy sessions that movement lawyers developed by the late 1980s, including Lavender Law (the biennial and then annual conference held by the National LGBT Bar

²⁴ In terms of membership, Queer Nation (protest) and IGLHRC (lobbying) were high-membership organizations during the time period studied; Lesbian Avengers (protest) and LGLA (lobbying) had low memberships. The litigating organizations did not vary significantly on this criterion. In terms of age, Queer Nation (protest) and the NGRA (litigation) were much shorter-lived than other organizations of their type; Lesbian Avengers (protest) and the ACLU Gay Rights Chapter (litigation) survived longer than other organizations of their type. The lobbying organizations did not vary significantly on this criterion. In terms of affiliation with a larger national organization, the ACLU (legal) and LGLA (lobbying) were chapter organizations, while NGRA (litigation) and IGLHRC (lobbying) were stand-alone organizations. The protest organizations did not vary significantly on this criterion.

²⁵ For membership size, I sought organizations that would be considered relatively large, and organizations that would be considered relatively small, as compared to other organizations that used the same primary tactic. I was able to gather a sense of each organization’s relative size by scanning through the archival documents and seeing how members described their organization in relation to others of their type.

Association starting in 1988) and the twice-yearly litigators' roundtable attended by all major LGBT litigating organizations at the time.

The ACLU-LGRC is the older of the two litigating organizations. It was formed in 1976 by gay rights advocates who felt that the national ACLU had not given enough concerted attention to the civil liberties of gay men and lesbians. Like other LGBT organizations at the time, the ACLU-LGRC focused in large part on challenging discrimination against LGBT people and people living with HIV/AIDS in employment, housing, and public accommodations. Aside from its antidiscrimination litigation, the ACLU-LGRC distinguished itself among the LGBT litigating organizations in its focus on criminal justice issues for gay men and lesbians, pursuing cases that challenged the loitering and lewd conduct laws that provided justification for police surveillance and harassment of LGBT people in public spaces.

The other LGBT litigation group in the study, NGRA, specialized in HIV/AIDS discrimination. In the time period of the study, NGRA was especially focused on challenging discrimination against gay men by insurance companies seeking to deny coverage to people with HIV/AIDS. Although the NGRA disbanded in 1991 after only eight years in operation²⁶—a fleetingly short time compared to most other California LGBT impact litigation groups—it was once the best-funded litigating organization of its day (Shilts 1989: A4).

Protest Organizations

The protest organizations, Queer Nation and the Lesbian Avengers, were both San Francisco-based organizations that used almost entirely protest or direct-action tactics to accomplish social change. They shared the similar core political objective of increasing the visibility of LGBT people in society and pursued visibility by using flamboyant, media-seeking protest tactics. Both protest groups identified as “queer,” not only to emphasize their members' aversion to binary gay-straight categories but also to affirm themselves as politically radical. The groups were also anti-assimilationist, meaning that they sought widespread social transformation that would fully embrace sexual minorities rather than assimilate them into the heteronormative mainstream. Although both Queer Nation and Lesbian Avengers were loosely affiliated with national organizations of the same name, they remained autonomous, did not rely on the national chapters for funding, and clearly demarcated their chapters' unique identities. While Queer Nation and Lesbian Avengers each took action on a broad range of issues, they were similar in their focus on resisting the Right Wing, drawing attention to police harassment and brutality, and eliminating racial injustice both within and outside of the LGBT community. Like the litigating organizations, the protest organizations employed formal decision-making procedures with specific, preordained protocols. However, unlike the litigating organizations, Queer Nation and Lesbian Avengers were not hierarchical and did not have directors with the authority to initiate organizational action unilaterally; Lesbian Avengers operated by a 2/3 majority vote, and Queer Nation operated by consensus.

²⁶ The NGRA generated controversy in the LGBT legal community in 1989 after the organization summarily fired its three attorneys and other staff when they critiqued the NGRA's fundraising tactics and allocation of resources (Shilts 1989). This controversy surrounding the organization's internal power struggle is thought to be the primary reason for the group's loss of funding and eventual demise (Tuller 1991).

Lobbying Organizations

The two lobbying organizations in the study are Lesbian/Gay Lawyers Association of Los Angeles (LGLA) and International Gay and Lesbian Human Rights Commission (IGLHRC). Although both these groups used predominantly “insider” tactics, such as legislative lobbying and direct advocacy to state and private organizations, that is where their similarity ends. The LGLA (known as Lawyers for Human Rights until 1986) was the lesbian and gay affiliate of the Los Angeles County Bar Association. Although it is comprised entirely of lawyers, the LGLA is not a litigating organization, but rather a legislative lobbying and advocacy-based organization. It used a significant part of its advocacy efforts to sway the California state bar and the national bar association to support LGBT-related issues in the hope of leveraging the bar’s political power to advance LGBT causes. IGLHRC, conversely, is a human rights organization that works primarily with other organizations in the international human rights advocacy community. Aside from its lobbying and advocacy efforts, IGLHRC performs human rights monitoring, or the documenting and spreading of information about human rights abuses worldwide. An important tactical difference between the two lobbying organizations was that whereas IGLHRC prided itself on its use of grassroots organizing and participation in protests, LGLA shied away from protests, limiting its nonadvocacy work to social networking with lawyers and other professionals.

(2) Data

(a) Archival Data

This research is based on a content analysis of archival documents drawn from the archives of the sampled organizations. These archival documents consisted mostly of historical meeting minutes, internal memoranda, and newsletters written for organizational members. Other documents that were less frequently or consistently produced, such as press releases, personal letters, pamphlets, and budgetary reports, were also included to the extent that they were available. As a whole, this set of archival documents contained a wealth of data on each organization, including: information regarding the members’ strategic decisions; the factors that organization members took into account when making strategic decisions; discussion and debate among organization members; details regarding organizational contact with other activists, lawyers, or political insiders; perspectives on organizational struggles and challenges; details on events staged; and media talking points.

I collected all the archival materials from the ONE archives in Los Angeles and the GLBT Historical Society in San Francisco during several visits made between 2010 and 2011. In all, I obtained and analyzed more than three thousand documents produced directly from the sampled organizations (n=3,367). I supplemented these organizational documents with 267 additional pages of material produced for the annual (originally bi-annual) LGBT lawyering conference Lavender Law (discussed in the previous section). The additional Lavender Law materials contained useful general information regarding LGBT movement litigation strategies as well as documents authored by members of the litigating groups in the study. Table 6 lists the numbers of documents collected per organization and the years of available data.

While in the archives, I used a digital camera to generate electronic copies of all documents. A transcription service then converted each of the documents into digital form. This

allowed me to perform electronic searches on the text of these documents. The archival texts were all digitally entered into Atlas.TI software and coded, as described below.

(b) Interviews

To supplement the archival data, I conducted in-depth interviews with activists who were part of the sampled organizations, including board members, attorneys, staffers, and volunteers. I found the names of most of the interviewees in the archival materials and then later located their contact information through a series of internet searches. Finding and contacting many of these individuals proved extremely difficult. Many of the activists who belonged to LGBT organizations in the 1980s and 1990s were deceased, given that this time period was marked by the onset of the HIV/AIDS epidemic, which ravaged the activist community. In addition, the limited data I was able to gather on the individuals I sought to interview (typically just their full names and LGBT affiliation) made it very difficult to locate many of them. The keyword internet searches I used for this retrieved many false hits, especially for common names. I therefore used snowball sampling methods (i.e., asking the activists whose contact information I retrieved online to introduce me to other members of their organization) to help expand the list of interviewees as much as possible (see Weiss 1994: 25).

In the end, I conducted a total of nineteen interviews (see Table 6) between 2011 and 2012. Two interviews each were with members of IGLHRC, LGLA, ACLU, and Lesbian Avengers; four interviews were with members of NGRA; and seven interviews were with members of Queer Nation. All the interviewees had participated in strategy formation except for two (one from the LGLA and one from the NGRA), both of which involved highly knowledgeable staff members recommended to me by strategists from their representative organizations. For the litigating organizations (NGRA and ACLU), all interviews were with lawyers except for one with a non-lawyer staff person from the NGRA.

Given that the numbers and proportion of activists interviewed for each organization is uneven due to the difficulty I had in locating many of the organizations' members, the interview data should be viewed with caution and not necessarily as representative of the organization's membership. However, I did try to get a sense of how representative the interview respondents' perspectives were by specifically asking them whether they perceived their opinions to be outliers or whether others shared their views. In addition, I looked to the archival research wherever possible to corroborate the interview data or contextualize how the opinions expressed therein fit or conflicted with others in the same organization. I note in the text any time the analysis relies on interview sources alone.

The interviews ranged from sixty to one hundred minutes long (one to one and one half hours) and were conducted over the phone. Although I have seen many sociological studies opt for in-person interviews rather than phone interviews, I found phone interviews to be extremely useful for this study, both for practical reasons and for allowing me to generate the best quality data. On a practical level, phone interviews allowed me to connect with activists who had become geographically dispersed in the years since their California activism. It is also quite possible that phone interviews helped me establish credibility with respondents. It has become apparent to me that many people read me as straight, which sometimes raises suspicions about my commitment to LGBT work or generates assumptions that I am unfamiliar with LGBT

issues. Phone interviews avoided any such reading; people entered the conversation knowing that I was affiliated with the Williams Institute, a well-respected LGBT law and policy institute at UCLA, and they seemed to assume (correctly) that I was a member of the LGBT community.

I conducted each interview using a semi-structured interview format. I had prepared in advance a list of questions to discuss, which were loosely structured around a set of core topics (see Appendix II: Interview Guide). While every interview touched on questions from within each topic area, the questions were not scripted and did not progress in the same order. Rather, I allowed respondents to direct the course of the conversation. Although I was unable to ask every question to all respondents, I aimed to keep as much consistency as possible by ensuring that interviews asked key questions from each topic area. This semi-structured interview format allowed respondents to direct the discussion based on the topics they found to be most important, and it allowed me to ask follow-up questions as needed and to account for any unanticipated issues that emerged organically over the course of the conversation (see Blee & Taylor 2002).

The topic clusters discussed in each interview included the activist's personal history (When did you get involved with LGBT/Queer activism?); general impressions of the primary goals and struggles facing their organization or the movement at the time (What do you think were the most important issues for LGBT people to confront when you were active?); organizational strategy formation (What processes did your organization use in deciding whether to pursue a particular action?); organizational agenda setting (In deciding which issues to prioritize, how important were each of the following factors?); organizational planning (Did your actions tend to conform with a predesigned strategy or would you decide each action on a case-by-case basis?); and relationships with other social movement organizations (What types of other groups did you interact with?). These topic clusters were the same for all respondents, regardless of whether those respondents participated in organizations that used primarily protest, litigation, or lobbying; however, questions would be phrased differently to account for differences in the respondent's specialization in one of these tactics, and follow-up questions typically focused more specifically on issues relevant to that particular tactic.

Each interview also contained a small set of questions specifically customized to the particular organization in which each respondent was involved. These questions were based on what I had already learned about the individual and his or her organization from the archival data. The main purpose here was to get a sense of whether the main issues that I found the organization prioritized in its actions actually reflected what interviewees remembered as being their organization's main focus at the time (Would you say that police brutality was a major focus for the activists in your organization?). For organizations like NGRA and Queer Nation, which experienced significant internal contention and ultimately disbandment, I also reserved some time at the end of the interview to open the floor to the respondents to air their perspectives on those internal debates.

Nearly all of the interviews were audio recorded and digitally transcribed. For the three interviews where respondents felt uncomfortable with a recording, I typed notes throughout the interview. These interview notes and transcriptions were uploaded to Atlas.TI

Table 6: Number of Archival Documents and Interviews per Organization

	IGLHRC	LGLA	ACLU-LGRC	NGRA	Lesbian Avengers	Queer Nation
Number of archival documents	144	343	1524	400	523	433
Years of archival data	1992-1997	1985-1991	1986-1995	1985-1991	1993-1997	1989 ²⁷ -1991
Number of interviews	2	2	2	4	2	7

(3) Analysis

After collecting all transcripts and notes from the interviews, I used the qualitative data analysis software Atlas.TI to code and analyze these data. As with the media and organizational data (see Chapters 2 and 3), I developed the coding scheme inductively by reading through the documents and generating categories based on the themes that emerged. The primary purpose of the coding scheme was to identify the actions each organization pursued, the issues each organization’s members prioritized, the factors that motivated organizational action, and any other information related to organizational strategy or structure that might be useful in explaining the organizations’ behavior. I used the same coding scheme for both the archival and interview data to help identify areas where these data could be blended or “triangulated,” providing a better understanding of each of these key areas of inquiry (see Lofland et al. 2006).

For the codes related to issue priorities and organizational action, I started out using the code lists compiled for the media and organizational data (Chapters 2 and 3) and added to these lists as needed. The code lists used for the media and organizational data of the previous chapters did not need to be as expansive as the code list for the present study; a much narrower set of issues and actions emerged from the mainstream newspaper articles (Chapter 2) and from the small blurbs on each organization in the *Encyclopedia of Associations* (Chapter 3). The archival documents, on the other hand, essentially related every issue members raised in discussion and every action organizations took. Additional codes were therefore needed to capture the richness of the data.

The *actions* codes used in this study aimed to capture all organizational behavior taken to effect social change. These *actions* codes consist of all the *tactic* codes used in previous chapters, plus the following tactics that emerged specifically from the archival data: boycotts, graffiti, letter-writing, media trainings, networking with other organizations, outreach to underrepresented communities, rights trainings, and testifying to legislative committees.²⁸

²⁷ Archival documents for Queer Nation/San Francisco are available for both the years of its existence (1990-1991), and some early pre-formation documents from group members are available as well (1989).

²⁸ The reason I used the term *actions* rather than *tactics* in this chapter is mainly to avoid any confusion that might occur in the conflation of tactics with *strategies*. While the meaning of these terms may be indistinguishable in everyday usage, I draw a key analytical distinction between these concepts in this

I also coded all *issues* that appeared in the archival and interview data, including both LGBT- or movement-related issues that an organization's members raised or issues that were the focus of organizational action. These issues (which I sometimes refer to as *priorities*) were also more expansive than those in the media or organizational data from the previous chapters. The following codes were added to the issues coded in previous chapters: asylum, copyright, corporate responsibility, homelessness, intersectional discrimination, intracommunity racism or sexism, militarism, reproductive justice, sex work, and sports.

The codes related to *motives* for organizational action captured additional information that might explain why an organization's members prioritized certain issues or pursued certain actions. This set of codes sought to capture the framing and rationales an organization's members used to justify their decision-making (Benford 1993; Mills 1940: 905-06). Since motivational statements tend to refer to an accepted normative system or ethos shared by the speaker and the audience (Mills 1940: 906), coding for motives also helps in characterizing the internal culture of an organization. The coding scheme operationalized motive statements to include times where an organization member provided a rationale for the decision to perform an action, or discussed specific motivations behind an action, or framed an action as part of a particular organizational objective. Examples of motives include: the emergence of a given legal or political opportunity; the urgency that develops in the wake of a recent event; the widespread or acute nature of a particular problem; the longstanding or intractable nature of a particular problem; or the desire to attain additional side-benefits such as media coverage.

A final set of codes was used to capture any additional information relating to an organization's strategy and structure. Organizational *strategy* was operationalized to include both goal identification ("the determination on the basic long-term goals and objectives of an enterprise") and action-planning ("the adoption of courses of action and the allocation of resources necessary for carrying out these goals") (Chandler 1962: 13). Organizational *structure* was operationalized as "the characteristics of organizational subunits and the relationships among them" (Miles & Snow 1978: 256) as well as other aspects of an organization's design that might be relevant to the study, such as the allocation of decision-making authority, the allocation of organizational resources, or and the processes used to constrain or direct organizational behavior.

After coding all documents, I employed a two-part analysis. Both parts involved Atlas.TI, which I used to quickly locate relevant text and examine that text in its context, preserving its fit within the larger narrative structure of the document. The first part of the analysis sought to construct a detailed account of the actions and action-planning processes employed by each type of social movement organization and to assess the factors that motivated organizational action. Here I called up and analyzed all coded statements relating to major areas of analytical interest (issue priorities, motives, and organizational planning processes). I interpreted these statements as direct evidence organizational strategy (goal identification and action-planning processes) and as direct evidence of the organization's members' mindsets and intentions. To the extent that the data include retrospective accounts of organizational activity, they may have been subject to

chapter: *Actions/tactics* are behaviors that organizations undertake; *strategies* are the processes organizations use to plan that behavior.

retrospective bias; however, since most of the data here were archival materials recounting or planning contemporaneous organizational actions, I believe there was little bias in this case.

The second part of the analysis sought to understand the degree to which organizational actions targeted members' expressed concerns. I called up all statements discussing organizational action to construct a list of every action taken by each organization during the time period under investigation. I cross-referenced the issue codes associated with those actions so that I could tally the number of actions organizations took by issue. These tallies allowed me to assess which issues each organization actually focused on rather than the ones they emphasized in rhetoric only and to determine the extent to which organizational actions actually targeted members' expressed priorities.

III. Results

There were striking differences in the process through which members of the litigating and protest organizations planned their actions and in how those members understood their organizations' role in the LGBT movement. The key point of variation among these groups was in the procedural processes they used to plan actions, which suggests that these groups approached action planning in fundamentally different ways. While my data do not support a causal argument, the evidence does suggest that the organizations' primary tactics—their extensive use of protest, litigation, or lobbying—were related to the approach those organizations used to develop their agendas and select actions to perform.

In this section, I examine the typological differences among protest, litigating, and lobbying organizations in the LGBT movement. I analyze how those differences relate to variation in the organizations' agenda-setting patterns. In particular, I examine how differences among these groups' action-planning processes—along with the greater visibility and organizational stability afforded to litigation (see Chapters 2 and 3)—may coalesce to unwittingly push LGBT protest groups away from members' predefined priorities and toward the movement issues being pursued through litigation. Again, while the available data cannot support the conclusion that there is a causal process at work aligning protest groups with the movement's legal agenda, that is at least one plausible interpretation to derive from the data. Alternative interpretations are discussed in this chapter, along with suggestions for future research.

(1) Differences Among Litigating, Protest, and Lobbying Groups

The primary differences that emerged among litigating, protest, and lobbying groups is that the organizations' action planning processes were divided into proactive and reactive approaches. *Proactive* approaches created forward-looking priorities (anticipating where the movement should be in the years to come); groups taking a proactive approach formulated step-by-step, contingency-ridden plans to achieve those priorities and selected actions that advanced the organization's objectives and plans. *Reactive* approaches planned actions in direct response to particular events or problems that occurred; groups taking a reactive approach emphasized speedy decision-making processes so that actions could be carried out in a timely manner, and they selected actions that targeted recent developments (even if members had not previously claimed the issues raised by those developments as priorities). In general, litigation groups tended to be more proactive in their approach, while protest groups tended to be more reactive.

Lobbying groups fell somewhere in the middle of these poles, with the lobbying group that used more collective action taking a more reactive approach.

(a) Litigating Organizations: Proactive Planning

The ACLU-LGRC and NGRA, the two litigating groups in the study, showed all the hallmarks of a *proactive* approach in the process they used to plan and carry out their litigation strategies. Members devised specific, long-term objectives that were focused on winning favorable legal precedent. Litigation strategists mapped out the intermediate steps necessary to achieve those objectives, anticipating contingencies that might arise along the way. The litigation strategists also put a premium on selecting cases that promised to advance the issues members had defined in advance as organizational priorities. Each of these components of the litigating groups' proactive action-planning process will now be examined in turn.

Goal-Setting and Legal Opportunity

In both of the LGBT litigating organizations, staff attorneys took the lead in designing and implementing the organizations' litigation strategies. The attorneys saw their task as involving two major, sequential components: attorneys would “identify where the gains are to be made in protecting and advancing our rights and then pursue litigation which [would] achieve that goal” (NGRA Annual Report 1988; statement made by then-Legal Director Leonard Graff).

In the initial step of this process—deciding which issues to pursue—the archival data strongly suggest that the ability to shape legal precedent was the most crucial consideration. Sometimes precedent-setting figured into the organizations' archived strategic discussions explicitly as the central motivating force. For example, in an address to other LGBT litigators in 1990, NGRA Legal Director Paul A. DiDonato cited the “[p]recedential (law reform) value of the case” as the number one consideration that public interest law firms must consider in determining the cases to prioritize (Paul DiDonato, Lavender Law Address 1990, “Public Interest Law Firms: How they Choose Cases and Utilize Cooperating Attorneys”). More often, attorneys would simply make offhand references to the ability to “set a landmark precedent” (NGRA Newsletter 1988-89: 2) or otherwise shape legal doctrine in their accounts of organizational priorities or cases. This sort of offhand reference to a case's precedential value was quite common, figuring into the majority of the organizations' strategic discussions. The centrality of setting precedent as the backdrop for these accounts suggests that members implicitly assumed it to be the common-sense goal for their organizations.

The focus on precedent-setting promoted a forward-looking vision for the litigating groups, wherein attorneys would try to anticipate whether the courts and the LGBT community would embrace a proposed issue several years down the line, after a test case had been fully litigated and concluded. One NGRA publication entitled “NGRA is Preparing Now for the Future” touted this anticipatory approach to its members, stating that NGRA attorneys had “embarked upon a planning process that will map the organizational objectives for the next four, critical years” (NGRA Year in Review 1988: 10). Perhaps as a consequence of this constant anticipatory thinking, it was common for lawyers to envision themselves as movement leaders (see also Rhode 2010: 417), or, as one attorney presenting at Lavender Law described it, as “social change agents; as creative strategists; as a role model for others interested in justice for

lesbians, gays, and bisexuals” (Cynthia Cumfer, Lavender Law Address 1994, “Judicial Education and Strategies around Same-Gender Parenting Issues”).

Marriage equality is one example of an issue where attorneys specifically sought to lead the LGBT community forward. In 1989, NGRA attorneys decided to present a state-court challenge to Alaska’s prohibition on same-sex marriage (NGRA Litigation Committee Meeting Minutes, Jan. 19, 1989). While the archival documents contained little mention of NGRA’s marriage strategy, my interviews revealed that NGRA attorneys decided to move on the issue with the anticipation that the community would follow their lead. One NGRA attorney, initially responding to a question on a different topic, changed course to discuss his organization’s marriage litigation strategy:

– R: ...I remember having a lot of discussions of marriage equality at the time. Leonard and I were really the only ones pushing for lawsuits in favor of gay marriage. People thought it wasn’t the right time, and I still don’t understand that thinking.

– INTWR: Maybe it was – it seems that litigation is so strategy-driven, that it’s hard for people, you know, that it’s all about winning. Or am I wrong on that?

– R: I think that’s how a lot of people view it. It’s not the way I viewed it at any rate. It was about – and I think that was one of the critiques about NGRA, that we would do stuff like pushing marriage in Alaska and Hawaii if I recall, that you won’t get anywhere with that. It’s like, you’ll get there because you’re advancing a social agenda. You know. The law is in service of social change – that is the whole purpose of it.

To be clear, the reason the attorneys chose Alaska was specifically was that it was a state that they thought would ultimately result in victory; Alaska courts had historically ruled in favor of gay rights claims (see Pierceson 2005: 125). The likelihood of victory in Alaska was something that another NGRA attorney I interviewed had emphasized, and in his answer to a follow-up question that specifically asked about the chances of winning the Alaska case, the attorney quoted above clarified, “we didn’t take cases that we thought were losers.” The blowback NGRA received in this early case was not only about whether attorneys had correctly projected a win, but also about the perception that the NGRA would be staking out on the marriage issue ahead of the movement.²⁹

Although the focus on creating favorable precedent sometimes pushed LGBT lawyers into new political territory, as in the marriage equality context, oftentimes it had the opposite effect by compelling a more conservative approach to litigation strategizing. Litigating groups tended to prioritize issues where they had “strong law on our side” or where attorneys had the sufficient legal tools at their disposal to prevail in court (NGRA Press Release, Settlement Victory for Gay Man Denied College Diploma, January 27, 1989), often through incremental

²⁹ Ultimately, NGRA would disband before the case could proceed. The individuals whom NGRA attorneys had identified as potential plaintiffs, Jay Brause and Gene Dugan, went on to file suit in 1994 after being denied a marriage license. An Alaska trial court decided in their favor, overturning the state’s defense of marriage act as unconstitutional (*Brause v. Bureau of Vital Statistics* [1998]). The Alaska legislature promptly overturned the decision by passing a state constitutional amendment.

rather than sweeping legal victories. For example, in the 1980s, HIV/AIDS was a recent development that generated a wide range of legal complications for LGBT people, from discrimination in employment to discrimination in public accommodations and the criminal justice system. The law at this time was far too uncertain to permit accurate predictions in long-term HIV/AIDS-related impact litigation. In the face of this uncertainty, the NGRA focused the bulk of its HIV/AIDS efforts in an area where there *was* sufficient legal certainty to predict and proactively implement precedent-setting litigation: HIV/AIDS-related insurance discrimination. While the organization's (non-attorney) executive director initially opposed making insurance discrimination an organizational priority, she quickly warmed to the idea when staff attorneys demonstrated how the strong law in that area provided a solid platform for advancing favorable precedent (Interview #51106). At the time, all jurisdictions in the United States had adopted some form of the model Unfair Trade Practices Act, which included a prohibition against "unfair discrimination between individuals of the same class and equal expectation of life" that made it discriminatory for insurance providers to reject gay men without also rejecting other high-risk groups (Schatz 1987: fn54). In addition, NGRA attorney Ben Schatz convinced the National Association of Insurance Commissioners to ban screening on the basis of sexual orientation, providing an alternate administrative forum for airing discrimination complaints. With these antidiscrimination protections at their disposal, NGRA attorneys successfully mounted numerous insurance discrimination challenges around the U.S. (NGRA Press Release, AIDS Insurance Discrimination Complaints Filed in 48 States, April 7, 1988). The cases built up from a few initial victories to a series of high-profile settlements, which the organization trumpeted proudly as evidence that it was "fully prepared to take legal action against insurers who violate the rights of their clients" (NGRA Press Release, NGRA Continues Fight against AIDS Insurance Bias, July 21, 1989).

Precedent and Sequencing

The second major strategic factor attorneys considered was what types of cases would most effectively target their identified goals. Here the attorneys followed the standard impact litigation model popularized by the NAACP Legal Defense and Education Fund (Andersen 2005: 1), devising complex, step-by-step plans to incrementally build up good precedent. Like good chess players, litigation strategists thought through the likely outcome of each test case, mapping out specific forums to target and arguments to build upon, and planning in advance for a fallback position to take in case things did not go according to plan. In terms of forums, attorneys would discuss whether to target state courts, federal courts, or both, based on their assessment of those courts' receptivity to LGBT rights claims. This assessment often involved detailed monitoring and research on several specific judges, information that litigating organizations shared with one another (see Cynthia Cumfer, Lavender Law Address 1994, "Judicial Education and Strategies around Same-Gender Parenting Issues"). Another factor in the forum decision was whether there was a particular jurisdiction that would likely be amenable to advancing organizational goals. In the area of relationship recognition, for example, NGRA attorneys decided that Wisconsin would provide a good initial battleground state, based on the strong antidiscrimination statutes the state provided (NGRA Newsletter May/June 1990: 2).

Litigators also used careful advance planning in setting out the specific legal arguments they would present in sequence. Here too the litigators followed conventional impact litigation practices, which acknowledge that judges' ability to generate legal reform is constrained by the

existing legal precedent and professional norms that enlist judges to “interpret” rather than “make” the law (see Rosenberg 1991: 11-12). Attorneys hoping to make an impact in such a system closely monitor precedent and seek incremental victories on arguments that track existing precedent. The following comments, made by one ACLU-LGRC attorney at a board of directors meeting, illustrate this point. Here, the meeting minutes capture a conversation regarding the organization’s military discrimination cases, specifically the lessons to be learned from the organization’s experience in the 1989 *Watkins v. United States Army* case:

If we had been able to win the case on equal-protection grounds, that would have been better for us, but there was less of a chance to win it on those grounds. If the lower had ruled that *Watkins* had equal protection, the Supreme Court almost certainly would have taken the case and reversed the ruling. (ACLU-LGRC Board of Directors Meeting Minutes, Mar. 9, 1991)

In the scope of two sentences, the attorney calculated the odds of winning from among the various available legal arguments at two different levels of federal court review. Such calculations, which were typical in discussions of litigation strategy, illustrate how closely litigating groups monitored each argument and strategized how it would play out at different levels of judicial review.

One might wonder how attorneys could decide issues of argument and forum before ever seeing a flesh-and-blood client come forward with an injury. Part of what made the litigating organizations’ proactive approach possible was that there was simply an overabundance of community need. LGBT people experiencing harm in all walks of life would continually approach the ACLU and NGRA through the call-in phone services that both organizations had set up for this purpose (see also Carpenter 2013: 19-20). In interviews, attorneys from both organizations recalled that they would use this public interface to handpick “individuals who could be good cases [or] good plaintiffs” (Interview #50917) for their preplanned litigation strategies. The archival documents confirmed this; one NGRA Annual Report from 1988 noted how the organization would review “hundreds of case proposals each year and work with NGRA staff in selecting the test cases which the organization will undertake.” The general abundance of community need allowed—indeed, required—litigators to be selective in deciding which injustices to litigate. A case’s fit with a predetermined organizational priority or a litigation plan provided that decisive selection factor.

Litigation “Values”

Certain values associated with the litigating groups’ proactive stance appear to have become “taken for granted as legitimate, apart from evaluations of their impact on work outcomes” (Meyer & Rowan 1977: 344). For example, litigating groups continually emphasized the value of having a priority-driven case docket—pursuing litigation related to predefined organizational priorities—as having independent value, regardless of the substantive issues the case presented. NGRA legal director Paul DiDonato, in his previously mentioned Lavender Law address on case selection, reserved an entire component of his speech for process and rational planning considerations; chief among these considerations was the “compatibility of a case with organizational agenda” that had previously been established (Paul DiDonato, Lavender Law Address 1990, “Public Interest Law Firms: How they Choose Cases and Utilize Cooperating

Attorneys”). Newsletter accounts also underscored the independent importance of cases being driven by previously set priorities, with docket updates emphasizing a case’s relation to a “top priority” (NGRA Newsletter Autumn 1987: 4) or the organization’s “ongoing efforts” (NGRA Newsletter Summer 1988: 1) in a particular area. A case’s relevance to organizational priorities also factored strongly into strategic discussions regarding whether to take a proposed case. Cases that failed to advance preexisting agenda items would be rejected or scrutinized in great detail to determine whether they presented alternative benefits that justified the organization’s deviation from predefined priorities. Realizing the uphill struggle it would be to garner support for cases unrelated to organizational priorities, attorneys often refrained from pitching such cases at litigation strategy meetings (Interview #10920). Giving more weight to cases connected with preexisting values ensured a continued investment in anticipatory goal setting and long-term planning, thus facilitating further proactive planning. At the same time, adhering to preexisting values also ensured that litigating organizations pursued actions that advanced, and would not be derailed from, collectively determined goals.

Predictability

Another consideration that figured strongly in litigating groups’ decisions to take a case was the case’s predictability, or whether attorneys could calculate the proposed case’s outcome. Litigation strategists looked for cases involving fact patterns that were not murky or complex, and behavior that “clearly” or “quite plainly” triggered the legal priorities their organizations were targeting (NGRA Press Release, AIDS Insurance Discrimination Complaints Filed in 48 States, April 7, 1988; NGRA Press Release, Suit Filed to Protect Gay Couples’ Rights, January 12, 1988). One reason the strategists valued such clear-cut cases was for the cases’ potential to win favorable legal precedent (again, a fundamental goal shared by litigation strategists). Another reason was that clear-cut cases also facilitated the complex, contingency-ridden planning in which litigating groups engaged. Selecting cases with clear facts evoked a cleanly delimited set of legal issues, allowing lawyers to predict all the legal issues, arguments, and counterarguments they would confront during litigation. This enabled lawyers to proactively plan a long-term route forward. At the same time, emphasizing calculability in case selection decreased the likelihood that litigating groups would become derailed from members’ priorities because it forced litigators to anticipate and decide whether they were ready to engage with the inevitable legal issues outside their agendas.

Control through a Proactive Litigation Strategy

In many respects, the proactive stance allowed litigating organizations to retain a high level of control over their agendas. The organizations would pursue actions that adhered to members’ long-term priorities, rarely deviating from their charted course. However, litigators certainly did not possess *complete* control over the direction their organizations would take. Indeed, a key factor that shaped attorneys’ considerations of what issues to prioritize was the current structure of legal doctrine—a matter over which attorneys often had little control.³⁰ As

³⁰ This is not to say that the litigating groups had no role in shaping legal doctrine. Attorneys from the LGBT legal groups sometimes participated in legislative drafting, and the impact litigation these organizations performed also shaped legal doctrine. However, once attorneys had successfully shaped the law in one area through drafting or litigation, they would typically move on to less established areas of law. Thus, in practice, the organizations were often confronting legal doctrine which they had no hand in shaping.

the sociological literature on discursive opportunity structures would predict, legal developments, such as the passage of legislation or growing judicial acceptance of a particular legal argument, fundamentally shaped the set of issues the doctrinally-focused LGBT litigators would come to recognize as top priorities (see Chapter 1; see also Andersen 2005: 12-14). The following memorandum from one ACLU attorney provides an example of how legal developments could pull LGBT litigators toward certain issues:

A further area of importance over the coming year in the field of equality rights in California will be the development of the law under Labor Code 1102.1 (which expressly prohibits employment discrimination based on sexual orientation). Because Gov. Wilson vetoed AB 101, which would have added sexual orientation to the list of prohibited forms of discrimination under California's Fair Employment and Housing Act, this separate law prohibiting employment discrimination was passed. The problem is that there is no developed case authority under this new law and many important issues (such as the availability of compensatory damages, punitive damages, and attorneys' fees, the statute of limitations, exhaustion of administrative remedies, election of remedies, the availability of disparate impact claims), and what counts as sexual orientation discrimination (e.g., is sexual orientation harassment covered?), remain relatively open. The result is that many private counsel are unwilling to take these cases, because there is too much uncertainty about the likelihood and amount of potential recovery. *While I am not interested in bringing run-of-the-mill sexual orientation private employment discrimination cases (most of which continue to settle), I would be interested in participating in appeals raising some of these questions*, which are likely to have significant influence upon the tangible rights of equality of lesbian and gay employees in California. (ACLU-LGRC internal memo, Jan. 28, 1994)

As this quote demonstrates, the passage of a new antidiscrimination law generated a slew of novel legal issues, which attorneys saw as an opening for them to stake out early favorable judicial interpretations of the law that would become binding precedent for future courts. The attorney reinforces the fundamental precedent-setting goal of the organization, saying that he would not consider taking "run-of-the-mill" employment discrimination cases—designated as such presumably because those cases settle and thus raise little opportunity to establish new precedent. Yet he identifies particular issue areas in which gains were to be made on appeal. This narrative suggests that the passage of the antidiscrimination law prompted the attorney's interest in litigating on employment issues that would not have otherwise become the focus of organizational action. It also shows how litigators exploited the opportunities made available in their legal environments through proactive planning.

In summary, while the litigating group's proactive approach promoted adherence to predetermined organizational priorities—litigating groups rarely pursued actions that did not reflect members' predefined goals—the litigating groups did not have a particularly high degree of autonomy in their actions. In particular, attorneys' assessments of movement issues were yoked to a legal landscape over which the attorneys had little control. Their agendas were fundamentally shaped by the tools, opportunities, and threats that the legal doctrine allowed, even more so, according to my archival data, than any empirical assessment of community need. As a result, litigating organizations were characterized by decisive action planning that

concertedly targeted the specific legal issues for which the structure of legal doctrine provided an opportunity for action. Although the litigating groups showed some autonomy in their ability to tie actions to organizational priorities, the substantive issues that became those groups' priorities were ultimately constrained by formal law.

These findings are highly relevant to the sociological research on social movements and organizations. Like previous organizational research, this study has shown that organizations draw on their legal environments for ideas about legitimate behavior and how to implement organizational action (see Edelman 1990). My study expands on previous work by examining this dynamic among social movement organizations, which incorporated aspects of their legal environments not through compliance behavior—the traditional focus of the organizational research—but rather by offering movement organizations powerful opportunities for action that motivated them to focus on law. This suggests that the law may influence social movement organizational fields in a different way than it does in the legal regulation of business organizations: by offering discursive opportunities that tend to channel organizational action. Future work at the intersection of organizational theory and discursive opportunity theory (see Chapter 1) may expand the explanatory power of both areas of research.

(b) Protest Organizations: Reactive Planning

The protest organizations, Queer Nation and Lesbian Avengers, were *reactive* in their approach to planning organizational action; they planned each protest in response to a specific, transient stimulus, typically a dramatic news story relevant to LGBT people. Nearly every protest was either directly inspired by a recent event or was timed to coincide with an upcoming event. For instance, Lesbian Avengers conducted a series of actions around the story of Lorena Bobbitt that exemplify this pattern. Bobbitt became a media magnet when she severed her husband's penis after enduring years of physical and emotional abuse in their marriage. The Avengers were initially motivated to take action on the Bobbitt story when the incident hit the headlines. They framed the story as relevant to lesbians by talking about the ironic set of "family values" embedded in Virginia law, which prosecuted a battered wife and denied custody to lesbian mothers while doing nothing to prevent domestic violence and marital rape. The Avengers planned to raise awareness of these issues by holding a "Bobbitt-cue," a protest featuring a public hotdog roast. They later decided to hold off on the protest to further capitalize on the media and public attention to the issue by timing the protest to coincide with Bobbitt's criminal trial. The example illustrates how protest strategies were both generally motivated in response to a news event and timed to coincide with upcoming events that promised to be newsworthy.

Mobilizing Frames

Protestors focused on events as part of a conscious organizing decision. Recent events helped protest activists achieve the key task of "motivational framing," or persuading others to engage in collective action and sustaining their participation (Benford & Snow 2000: 617). Protest organizers would seize on the sense of urgency generated by recent events to inspire popular participation at their actions. For example, one Queer Nation flyer advertising a protest at the Serramonte Shopping Center on February 9, 1991, stated, "Arrests were threatened last weekend, and that's why we're here today." Recent events provoked a sense of urgency that increased people's willingness to act and act quickly. One account of Queer Nation's organizing

strategy, reported in a newspaper article, describes the sort of quick, responsive action-planning that I found throughout both organizations' meeting minutes: "At last week's meeting, Queer Nation called for a kiss-in at a Castro Street bar that had failed to help a couple of fellow gays who had been bashed out on the street. The kiss-in was carried out that night" (Matier & Ross 1990: B4).

In the interviews, many protest group members also told me that they considered events to be particularly effective or natural vehicles for inspiring collective action. The following response by one Queer Nation activist to a question asking directly about the organization's focus on events is particularly revealing:

– INTWR: Okay can I ask you, you mentioned media events being the thing that drove a lot of the protests, but like, did you find that a lot of protests were focused on a particular event? Was timeliness important in that respect – or what you think?

– R: So there were proactive and reactive actions. So like: Hello Kitty [an action the respondent had described earlier], proactive. Traditional Values Coalition, reactive. The gluing on the federal building, reactive. The "just six sux sex" posters all over the city, proactive. So if you separate those two, you can just see that the reactive stuff was...reactive. I feel that reactive stuff is also easier for people to grasp. It's so much easier to focus on and strategize about. A reaction is always easier to strategize. Whether it's effective is a different question.

– INTWR: Was it easier to get people out to either proactive or reactive stuff, how was that, like, received by the majority of people?

– R: Reactive stuff is always easier; proactive stuff, you'd have to make it a party.

One important point that emerges here is that organizing around events was something that protestors did strategically to provide "focus" and attract interest, despite their concern that reactivity might make them less effective, a point discussed in more detail below. As the sociological literature on collective action framing suggests, the task of attracting and sustaining participant interest is fundamental for collective action groups (Benford and Snow 2000: 617-19)—perhaps creating a greater need for motivational framing, and reactivity, in groups that primarily rely on collective action in their tactics.

Another important point that emerges is that it was not *impossible* to proactively organize protest actions that proactively pursued members' predefined priorities; doing so just consumed greater resources. The respondent went on to compare his job at the time as a club promoter to the types of tactics he would have to use to get bodies on the streets for proactive protests: "You know, I would call to do something, I would call 300 people. It would take me hours, and I would call 300 people, though." The sense one gets from these statements is that reactive planning conserved time and energy and was thought to be more useful for facilitating collective protest action.

Media Attention

Reacting to events was also considered an effective means of accomplishing another crucial goal of protest organizations: garnering media attention. Attracting media attention was a key goal for protest organizations. While protestors and litigators alike would hold press conferences in attempts to attract journalists' attention, the protest groups had much more difficulty turning those press conferences into actual coverage.³¹ As I discuss in Chapter 2, this may be due to the newsgathering norms and practices that compel journalists to focus coverage on activity occurring in state organizations like the courts (see Herman & Chomsky 2002). Because it was such an uphill battle for protestors to attract journalists' attention to their actions, protestors' action-planning meetings were dominated by discussions of media strategy. Meeting minutes covering the planning of the aforementioned "Bobbitt-cue," for example, asked, "How we will look to the media? We need to think about it" (Lesbian Avengers Meeting Minutes, Nov. 15, 1993). Similarly, nearly every recap of a past protest would evaluate the protest's effectiveness at attracting news coverage. For example, one Lesbian Avengers newsletter recapping a protest targeting the military ban on gay and lesbian service members noted that, "Since we wore makeshift veils [posing as "nuns with guns"], we did attract media attention; one station actually gave us an interview on the news" (International Lesbian Avenger Communique, May 1994). The intense focus on attracting news attention suggests that the protest group members understood the success of their actions to be dependent on media coverage.

The desire for media attention ran so deep that the protest groups tailored both their actions and action-planning processes to most effectively target newsworthy stories. Typical, nonviolent protest action tends to fall outside journalistic standards of newsworthiness, which favor dramatic events or "important" state-related functions (see Chapter 2). Because journalists typically do not find protests newsworthy in their own right, protestors often specifically planned their actions to coincide with a current news story on the theory that bringing their protests in close proximity to a news event engendered more coverage of the protest itself. For example, one Queer Nation member I interviewed, when asked specifically how his organization got the idea to protest a small suburban town's decision to formally change the name of one of its streets from "Gay Court" to "High Eagle Road," recalled, "It was in the newspaper. It was just a small item, that Gay Court was changing its name to High Eagle Road. It struck me as this kind of perfect little moment we could exploit to our benefit" (Interview #60904).

The meeting minutes from both protest groups also document how those groups implemented special procedures to get around cumbersome consensus- or majority-based planning processes, enabling their members to respond quickly and implement protest action while an LGBT-related issue remained in the limelight. Queer Nation permitted focus groups to carry out actions without going through the typical consensus review process in the general body. Lesbian Avengers implemented an accelerated planning process that would "empower [members] to respond immediately to pressing issues in the media" (Lesbian Avengers Meeting Minutes, Apr. 14, 1994). The Avengers justified the decision as follows: "We want to be able to respond quickly because without our response, the issue will fade from notice and be forgotten."

³¹ Several of the attorneys I interviewed reported intense press interest in their actions. Two NGRA attorneys, for example, mentioned separately that they would keep suits hanging in their offices so they could quickly slip into them when reporters called the organization asking to come by for an interview (Interview #50917; Interview #51106).

What is particularly interesting here is that the protest groups here felt compelled to sacrifice their participatory decision-making processes—a key feature of radical movement organizations signaling their commitment to egalitarian ideals (Fitzgerald & Rodgers 2000: 579)—because they felt it hampered their ability to plan effective protest action.

Cognitive Factors

Protest groups reacted to current events not only as a strategic device to shore up participation and media attention; their very definitions of protest and their formulas for planning protest action were steeped in a logic of reactivity. One Queer Nation member I interviewed, pondering whether a Queer Nation–style direct-action group could exist today, stated, “It might not be necessary. What would we react to?” (Interview # 60912). A similar sentiment was expressed by a Queer Nation member as he recounted the essential elements of a protest: “[T]hat was what the tactics were about: you needed a place to put on the show, and you needed a timely hook to put it on with” (Interview # 60821). These statements suggest a sense that the purpose of using direct action, and the very existence of a direct-action group, turns on its reactivity.

Reactivity and the Protest Agenda

Protest organizations’ reactivity seems to have influenced the protest agenda, by leading protest organizations to focus on those events that frequently or regularly presented themselves—events which protestors could frame as urgent, new developments and thereby use to hook media coverage and popular participation. For example, one major focus of protest activity—police brutality—was fueled in large part by the ongoing adjudication of instances of police misconduct. Even a single case of police misconduct could generate several formal phases of adjudication, from police commissioner investigations to disciplinary hearings to civil lawsuits. These procedural stages produced frequent, regular stimuli for protest organizing. Queer Nation’s policing protests in particular targeted multiple formal legal developments resulting from a single act of police violence: a brutal police sweep of San Francisco’s Castro district on October 6, 1989. Activists used the administrative hearings from the police commission’s investigation of the incident and the legal proceedings that were part of the lawsuit filed against the city as a result of the incident as the hooks for several protests on policing issues. The flyers advertising these protests often directly referred to the dates and times of those upcoming legal proceedings to invoke a sense of urgency around the issue. One Queer Nation protest flyer targeting a police commission hearing of a police captain accused of antigay brutality urged, “We have two weeks to demand that the Police Commission reject the charges as they stand and return them to the Police Department to be redrawn” (Queer Nation Flyer, “Who Cares when Cops Bash Queers,” Dec. 19, 1990). One of the activists I interviewed, who worked primarily on police brutality issues, confirmed that litigation kept the issue alive. In a response to a general question about Queer Nation’s action-planning, the respondent stated, “[A] sort of main strategy was to keep alive the anger and the focus and the pressure around misconduct cases and the lawsuits that were moving forward from the Castro sweep. We were looking for ways to keep it fresh, to keep it entertaining and interesting” (Interview #60821). This quote confirmed the sense that I gathered from the archival documents that protest activists would strategically frame ongoing phases of legal proceedings related to police misconduct as vital new developments. This converted a single instance of police violence into a series of “fresh” and timely events. By continually generating new legal events, adjudication of police brutality expanded a single event into an ongoing set of protest hooks.

The large number of event hooks associated with adjudication (and, to a lesser extent, legislation) sparked numerous queer protests focused on legal issues. Both the Lesbian Avengers and Queer Nation organized numerous protests around cases being adjudicated, including the criminal prosecutions of perpetrators of hate crimes or domestic violence, the defense trials of protestors arrested during direct action, and various other civil and criminal cases. Protestors also targeted several actions at pending domestic partnership and antidiscrimination bills, such as employment antidiscrimination bill AB-101 (vetoed by the governor in 1991) and its analog, which passed the following year. In the end, protests focusing on particular legal issues or events were far more common than protests seeking change in any other area; according to my count of the actions documented in the archives, 55% percent of Lesbian Avenger protests and 27% of Queer Nation protests were either specifically protesting or were motivated by a particular court case or piece of legislation. These numbers were much higher than the numbers of protests targeting many other areas that members had identified as priority issues, including private organizations (corporations, Boy Scouts, employers), government (police accountability, military), academia, the Right Wing, and the media. The second most frequently protested issue for Queer Nation was the Right Wing (the focus of 19% of protests), and the second most frequently protested issue for Lesbian Avengers was violence, both domestic violence and anti-LGBT violence (the focus of 10% of protests). This finding that the LGBT protest groups focused most of their actions on legal issues is surprising given that members of both protest organizations made numerous references throughout the archival documents to their group's rejection of a law-centric approach and their desire to steer clear of institutional politics.

Not only did the queer protest organizations plan actions around the (mostly legal) issues that generated a steady supply of events, those protest organizations also avoided action on issues that failed to generate events—even if protest group members considered those issues to be crucial movement priorities. For example, members of both the Lesbian Avengers and Queer Nation cited violence against LGBT people as a particularly important issue. Queer Nation newsletters discussed antigay violence more frequently than any other issue. Yet with the exception of a few protests targeting the civil and criminal trials of perpetrators of anti-LGBT violence, Queer Nation only initiated protests (or candle-light vigils) against violence in 7% of their actions. This number was slightly higher for Lesbian Avengers (with violence at issue in 10% of the organization's protests) because the Avengers organized several protests around domestic violence in heterosexual relationships (an issue relevant to the group's feminist politics), which happened to be at stake in several high-profile legal cases at the time (e.g., the criminal trials of Lorena Bobbitt and O.J. Simpson). One possible explanation for Queer Nation's surprisingly low number of violence-related protests may be that homophobic violence, although quite common, often went unreported or misrepresented in the news media. Minutes from one Queer Nation meeting, for example, recounted one instance where police and newspapers had failed to classify the kidnap, rape, and murder of a lesbian as a hate crime because the victim was not identified as a lesbian (Queer Nation Meeting Minutes, Oct. 1, 1994). Without media exposure, instances of violence against LGBT people may have either escaped the protest groups' attention or been considered insufficient as news hooks.

These findings regarding the tendency of protest groups to focus on the opportunities for action created by law and litigation are highly relevant to sociological theories of discursive

opportunity (see Chapter 1). My study shows that formal legal interpretation can act as a structural constraint, shaping activists' strategic decisions. My work builds on this literature by showing that legal structures can shape not only a movement's strategic *discourse*, but also a movement's strategic selection of agenda items. Furthermore, because my work examines litigating as well as protest-based segments of a movement, it generates a more nuanced view of the legal discursive opportunity structure as not entirely external to the movement, but rather as being continually being pushed or shaped (within existing constraints) by movement actors. In this sense, the movement—or at least, certain privileged sectors of the movement—can be seen to shape their cultural environment, and the environment of their fellow movement organizations more generally.

Tension over Reactive Strategies

The tendency for protest groups to reactively plan protests around newsworthy events generated palpable tension within the protest groups. Protest group members acknowledged the divide that their reactive approach created between their own priorities and their groups' default focus on event-producing issues. One Queer Nation member criticized his organization's reactive approach in an open letter to the organization in 1991, stating: "Issues are only brought before the group when anger boils over as a result of outrage at particular incidents" (Allen Carson, Open Letter to Queer Nation, February 6, 1991). The Lesbian Avengers issued similarly strong critiques of their own reactivity. In one meeting, recapping a recent protest on affirmative action (related to California's Proposition 209 and surrounding litigation), members questioned the direction of their organization: "Is the group having an identity crisis? Discussed. More service oriented activities and networking. Set up clear goals and strategies" (Lesbian Avengers Meeting Minutes, Aug. 21, 1995). A flyer circulated at another meeting, which bore the heading "Recurring Themes" included the following paragraph at the very top of the page:

Proactive vs. reactive: Should we create our own agenda by researching issues rather than (primarily) reacting to headlines? Part of the issue here is that when we are reactive, we feel as though we are on a super time crunch. Another issue is that when we are reactive we are letting 'them' set our agenda."(Lesbian Avengers Flyer, 1995)

This flyer suggests one potential secondary effect of reactive protest planning is that it may derail protest-based activists from members' self-defined priorities.

Reactive Strategy Cedes Control of the Agenda

In summary, protest groups planned each action around a particular event, typically one that stimulated news media attention. Protest groups focused the bulk of their actions on the issues that happened to create regular, newsworthy events, and not necessarily the issues that members had expressed in advance as priorities. LGBT-related issues that were subject to adjudication, which were particularly likely to produce such events, appear to have become a default focus of much of the protest groups' action. Thus, a possible conclusion from this analysis is that protest groups' reactive planning process focused those groups' actions on issues that were not members' most pressing political concerns, creating significant tension within those protest groups. In other words, the protest groups' reactive approach may have diminished their members' control over the set of substantive issues that ultimately defined the

organizations' agendas, exacerbating internal tensions and perhaps even facilitating those groups' decline.

(c) Lobbying Organizations: Proactive and Reactive Planning

The lobbying organizations, IGLHRC and LGLA, used an action-planning process that was at times proactive and at times reactive to the legislative agenda. These lobbying organizations worked proactively by initiating campaigns to push legislators forward on certain LGBT issues. One proactive approach was to work with legislators, politicians, and other insiders who supported LGBT rights. In 1992, for example, IGLHRC cosponsored a delegation to Russia with Massachusetts representative Barney Frank to seek the release of hundreds of men imprisoned for consensual gay sex. IGLHRC also sought to garner new supporters by meeting with legislators in person. As one member described in the organization's newsletter:

While in Washington [D.C., on a trip to meet with non-LGBT human rights organizations], we also met with a few government officials at the Helsinki Commission the State Department and Representative Jim McDermott's office (D-WA), who co-chairs the Congressional International AIDS Task Force. These meetings were similarly encouraging. Hopefully with the new administration, we will have even more success *educating these institutions to take on our issues* (IGLHRC Homoglobe, December/January 1992: 5; emphasis added)

The quote suggests that IGLHRC lobbied legislators on issues that the group's members had independently come to recognize as priorities. The italicized portion further insinuates that IGLHRC lobbyists may have had some previous success in putting their own issues on the legislative agenda.

Drafting model legislation was another proactive tactic that the LGLA used, albeit somewhat infrequently, to push forward their priorities and forge bonds with sympathetic legislators. LGLA members drafted two pieces of model legislation, both in 1986: the first was an amendment to California's Fair Employment and Housing Act to include AIDS discrimination, and the second was an HIV/AIDS-inclusive antidiscrimination ordinance for the City of Los Angeles. The use of legislative drafting by LGLA may be somewhat idiosyncratic for a lobbying organization. Oftentimes it is the litigating movement organizations that use drafting as a supplemental tactic, hoping to create a foothold for future litigation (Cummings & NeJaime 2010: 1235). Its use here by the LGLA (and not IGLHRC) could be explained by the fact that LGLA consisted entirely of lawyers. Interestingly, the LGLA's unique lawyer membership base provided the organization an opportunity for proactive engagement with the legislature that IGLHRC, the lobbying group without lawyers, could not match.

In addition to their proactive legislative advocacy, IGLHRC and LGLA also planned several actions reactively, organizing efforts in response to proposed legislation or ballot initiatives that affected LGBT people in each organization's geographical focus (California for the LGLA, foreign countries for the IGLHRC). IGLHRC worked to oppose several draft laws pertaining to LGBT people and people with HIV/AIDS, including one proposed bill in Russia that would require HIV antibody tests for anyone suspected of belonging to a "risk group." This was a live issue for the organization from 1994-1998. LGLA similarly initiated campaigns to

oppose the Block Initiative (Proposition 96) as well as various bills asking for HIV testing to determine insurability. LGLA also advocated for several proposed state and local nondiscrimination bills protecting LGBT people and HIV/AIDS status.

Some lobbying group members shared the concerns of protest groups about the reactive aspects of their action planning. LGLA acknowledged the risk of reactive strategizing in an internal document entitled “Announcing a New Project” (November 6, 1986), which attempted to set the organization on a more proactive new course:

Lawyers for Human Rights [LGLA] is developing a project to prepare concrete proposals on issues that are expected to confront the lesbian and gay community in the coming months and years. While we have been engaged in a review of current or proposed legislation affecting our community for some time, this new project will assist those who are brainstorming about what the future holds for us by providing the legal expertise to draft suggested legislation, regulations, and legal opinions.

After reviewing the specific issue areas that the organization planned to target, the document went on to state: “Recent events have increasingly put the lesbian and gay community on the defensive. This forward-looking project is an opportunity to create concrete proposals to enhance our lives, and to assist in preparing solutions to future problems before they occur.” There is no evidence that the organization became more forward-looking as a result of this proposal; indeed, the organization was most proactive in its legislative drafting efforts, and the only two times it performed legislative drafting were in the same year that this “new project” was announced.

Although IGLHRC and LGLA had both proactive and reactive elements in planning their formal legislative advocacy, these organizations diverged in the extent of their reactivity in planning for other types of organizational activity. Specifically, the degree to which the lobbying groups used other tactics that relied on popular participation—and mobilizing frames—coincided with the degree to which those groups were reactive. IGLHRC vigorously sought member involvement in its letter-writing campaigns (a technique pioneered by the prominent human rights organization Amnesty International). The regularly published Emergency Response Network newsletter that IGLHRC used to coordinate letter-writing efforts employed an event-hook style of reactive framing that strongly resembled the protest groups’ solicitations for member involvement. For example, IGLHRC urged member involvement in many of its campaigns to repeal foreign sodomy laws by relating a dramatic recent event that made such campaigns seem more urgent, such as the mass arrest of LGBT people under Russia’s sodomy law or recently initiated litigation challenging sodomy laws in Nicaragua and India. The urgent tone here echoes the motivating frames seen in the protest group’s discourse, emphasizing an immediate need for members’ action.

The LGLA, conversely, did not solicit member participation in its advocacy actions. The organization’s advocacy work was carried out by any of the LGLA board members who had a personal connection to or investment in that work. For instance, the LGLA Board decided to undertake an advocacy campaign for stricter enforcement of Los Angeles’s antidiscrimination ordinance based on inside information from one LGLA member who worked in the Los Angeles City Attorney’s office (LGLA Board Meeting Minutes, Oct. 6, 1988). Similarly, the Board also

decided to review Governor Deukmejian’s record on gay rights based on one LGLA member’s connections to politician Sheila Kuehl, who urged LGLA to become involved (LGLA Board Meeting Minutes, Aug. 15, 1989). The individual responsibility model that apparently drove the LGLA’s actions likely enabled the organization’s actions to closely track the individual interests of its board members.

These differences between the LGBT lobbying groups are important for two reasons. First, the fact that IGLHRC used a much more reactive, event-driven strategy specifically when it solicited popular participation suggests that popular participation may be what drives reactivity. It also suggests that reactivity may be more intractable for protest organizations than for lobbying organizations; protest tactics *require* popular participation, whereas lobbying organizations can choose the degree to which they solicit popular participation and curtail it if they want to be more proactive. A second implication of these findings is that an organization’s degree of professionalization—its employment of wage-earning workers to carry out organizational functions (Staggenborg 1988: 585-65)—may be unrelated to the organization’s degree of proactiveness. IGLHRC, a lobbying group, employed several staff members (including a designated media representative), as did the litigating groups NGRA and the ACLU. Yet, unlike the litigating organizations, IGLHRC was reactive to current events. Thus, as with the statistical analysis of organizational data in Chapter 3, this chapter’s analysis suggests that an organizational structure may be less important than tactics in determining whether a movement group will possess advantages related to movement agenda setting.

Table 7: Summary of Differences among Protest, Litigating, and Lobbying LGBT Movement Organizations

	Protest	Litigating	Lobbying
Time orientation	Backward-looking: Responds to past events	Forward-looking: Anticipates future events	Forward-looking in legislative drafting; backward-looking in collective action; varies in formal lobbying
Definition of success	Media visibility; popular participation	Winning cases	Passing bills; popular participation (for collective action)
Issue Choice	Driven by immediate stimulus such as a dramatic news story or event	Driven by legal opportunities and the likelihood of case victory	Driven by legislative opportunities (for lobbying); immediate stimulus (for collective action)

(2) Litigation Sets the Protest Agenda

While the previous section was primarily concerned with examining variation among the litigating, lobbying, and protest-based LGBT movement organizations, this section proceeds to analyze how the differences identified among these groups might affect fidelity to members' expressed priorities. Here, I delve deeper into the data presented earlier, which suggest that protest groups' reactive planning may have shaped the set of substantive issues those protest groups acted upon most frequently. In their attempts to attract participation and media coverage, protest activists planned most actions to coincide with a current event. As the previous section implies, this reactive approach may have compelled protest groups to deemphasize member priorities that failed to generate an adequate supply of such current events (e.g., anti-LGBT violence) and instead focused their actions on the types of issues that would produce regular, newsworthy events (e.g., policing). This section explores that possibility in greater detail.

In particular, this section examines additional data suggesting that protest groups' reactive action planning may have pushed those groups toward legal goals. I explore how reactivity to news stories may have focused protest groups on the issues receiving news coverage, which were largely litigation related. Furthermore, reactivity to events may have focused protest groups on routine sources of public events, which were typically state-sponsored and court-centered. Finally, despite their critique of the LGBT civil rights groups, protest group members were not exempt from the lure of the law; they shared the common view of law and litigation as crucial to creating change, and they considered lawyers to be legitimate movement leaders. These factors suggest a set of mechanisms that could link protest groups' reactivity to the elevation of legal issues, and specifically the issues being litigated, to prominently featured priorities on the protest groups' agendas.

The focus in this section is on protest groups because the litigating and lobbying groups in this study did not show the same vulnerability to becoming derailed from members' priorities. The mixed findings regarding the lobbying organizations provide insufficient traction for generalizing about their action-planning approach or its effect on the organization's fidelity to members' goals. For the litigating groups, it appears as though their distinctively proactive approach—which placed high value on anticipatory goal setting, contingency planning, calculability, and control—may have helped those litigating groups tailor their dockets to effectively pursue members' predefined priorities. Again, I do not mean to suggest that the litigating organizations had complete autonomy in developing their substantive agendas. As the previous section emphasized, LGBT impact litigation was deeply shaped by the structure of formal law; the desire to create favorable precedent drove litigation strategists to situate their goals within areas of law that afforded them the greatest prospects for success. Yet a potential advantage of litigating groups' proactive approach may have been in its reinforcement of member goals and protection from derailing litigating groups from members' legal objectives—perhaps protecting those LGBT litigating groups from the organizational strife that arose from protest group members' sense of “identity crisis” and lack of control.

(a) Routine Production of Legal Events

As I discuss in the previous section, the reactive planning of protest actions directed protest groups toward litigation because litigation provides frequent and predictable events around which to organize. Court proceedings and other government-related events are also good

targets for protests because they are prominently advertised and publicly accessible. Members of protest group Queer Nation would monitor government bulletins for relevant upcoming events that could serve as hooks for protests. The advance notice and advertisement of those events provided plenty of time for protest groups to organize, as well as the opportunity to network with other LGBT organizations working on the issue. One Queer Nation member, responding to a follow-up email I had written asking him to let me know if he could think of any additional information regarding “how you discovered the specific events that became the focus of protests,” recalled:

For official city events — board and commission meetings, hearings, and so on — various attorneys, advocates and activists followed the public agendas of the bodies in question, and they would spread the word about any items that might merit intervention. For instance, I remember receiving calls from the staff at the ACLU, from Walter Parsley and from others alerting me to San Francisco Police Commission hearings — and then making calls myself to other activists to start the organizing for a major queer presence at the events. (Interview # 60821)

As this quote indicates, activists’ common access to public records allowed for coordination around legal events. With litigation, the formal participation of movement attorneys in the cases provided yet another conduit for LGBT activists to become informed about relevant cases. The strict timeline governing litigation, enforced by the threat of sanctions, may make litigation-related events particularly clear targets for activism.

Interestingly, the multiple procedural phases associated with litigation may have facilitated the long-term survival that LGBT litigating organizations experienced (see Chapter 3). The proactive planning that was necessary to carry out the various procedural stages of litigation provided a clear direction and motivation for litigating groups’ continued long-term action, giving members a specific motivation for survival. One ACLU-LGRC newsletter even suggested that proactive planning for the procedural phases of litigation and sticking it out for the long term of a case were considered essential to litigating groups’ goal of generating a legal impact:

Winning requires standing up and fighting; struggling through bureaucratic appeals, proceedings, and delays requires energy and steadfastness. Whenever one of us is wronged, we must show we have the determination to see it through to the end (ACLU-LGRC Newsletter September 1986: 5).

The requirement for litigating groups to keep up with the predictable, pre-charted procedural deadlines that structure litigation may have augmented these groups’ incentive to survive and advance planning for survival, contributing to their overall longevity.

Many of the factors that made litigation so amenable to protest planning—the multiple events associated with a single case, the public accessibility of information on state action—also made litigation more attractive to journalists. In one of the yearly Lavender Law presentations entitled “Using the Media Effectively for Gay and Lesbian Rights Litigation,” LGBT lawyers emphasized how each procedural stage of litigation provided a separate opportunity to reach out to the media:

If you are working on a legal case, for example, you may want to have a press release when you file the case (because you are in control of the timing), a press release when the case goes to court, a ‘phone around’ when some preliminary decision is made, and another press conference at the time of the decision. (Elaine Elinson, Lavender Law Address 1988)

The archival documents for each of the litigating organizations included multiple press releases filed at various stages of a particular case, suggesting that the attorneys understood that they could promote each stage of a case as a separate newsworthy event. At the same time, the public accessibility of information on state organizations is also attractive to journalists because it promotes efficient newsgathering practices; as discussed in Chapter 2, the enormous pressure on corporate journalists to turn out articles quickly makes them more likely to select stories that require the least amount of investigatory digging.

In sum, my qualitative data suggest that the procedural phases of litigation may have facilitated protest groups’ reactive planning style by providing multiple scheduled events that protestors used to coordinate and inspire collective action. These data also provide some limited support for the theory that the procedural phases of litigation contributed to the increased organizational stability and media coverage associated with litigation. The following section explores how the high level of media attention to litigation may have also provided a separate justification for protest groups to focus on litigation-related events: the possibility of engendering greater news coverage of protests associated with litigation.

(b) Focus on Law-Dominated Media Coverage

The reactive focus of protest organizations meant that protestors were constantly scanning newspapers to find newsworthy events to hook on to and heighten coverage of their actions. The archival documents suggested, and interviews confirmed, that protest group members found most of these event hooks in the mainstream press, not in the LGBT media outlets that had already become an established presence in several California cities. While the LGBT press covered relevant movement-related events more frequently, finding events in the community’s own publications rather than the mainstream media would not have accomplished the central purpose of hooking protests to media events: to appeal to mainstream audiences outside the LGBT community. Thus, the finding that mainstream newspaper coverage of the LGBT movement focused mainly on litigation (see Chapter 2) suggests that protestors were more likely to learn about and plan protests in reaction to the issues and events being litigated.

Furthermore, protest strategists (like litigation strategists) were extremely savvy about how the media worked and were aware of the media appeal of litigation. There were multiple instances in both groups’ meeting minutes that indicated that protestors purposefully hooked their actions to litigation and other law-related events as a way to enhance protest coverage. An illustrative example is provided in the minutes from one Lesbian Avengers meeting (February 24, 1997), which proposed three actions:

Action Idea #1 Muni incident - muni worker allowed a queer man to be beaten up on his bus. March 10 trial and mass coverage. Ruth would like to take advantage of this press opportunity.

Action Idea #2 CUAV police accountability hearings. The police dept. wants arbitration and thus lack of public access. Expecting media coverage. Hall of Justice 5:30 pm on / /97. [Dates left blank in original.]

Action Idea #3 Hawaii – Marriage – write letters in support of gay marriage. PFLAG supports the gay marriage proposal. DOMA. Looking for sponsors.

Litigation is the apparent motivating factor in each of these three action proposals: The first action targets a criminal trial for a hate crimes incident; the second action targets a police accountability hearing; and the third refers to same-sex marriage litigation in Hawaii in the *Baehr v. Lewin* case, which had recently gone on appeal (McMorris 1996). Two of the three action ideas specifically state that the reason for organizing around these litigation-related events is their potential to attract media coverage. The final proposal on marriage, while not directly mentioning the media, refers to one of the most heavily publicized LGBT rights cases in recent history. These proposals reveal how a media-focused protest strategy could (and often did) set protestors' sights on legal issues.

The interview data further revealed that, at times, protestors' desire for media coverage may have driven them toward legal issues that they would not have otherwise emphasized. In one interview, after mentioning offhand various legal events that had been the focus of protests, a respondent from Queer Nation stated, "we felt like the governor, law, those are big ticket items and they would get us good media coverage" (Interview # 60904). I then asked him directly:

– INTWR: I mean, did you get a sense that, you know, protesting a politician or an attorney, protesting like legislatures or laws or anything like that would get you more media coverage?

– R: Oh, of course, sure.

– INTWR: Go ahead.

– R: No, I was simply going to say that – what we did was that, we weighed in every action its potential for producing coverage, and elected those forms that we knew that would be most appealing. Kiss-ins we knew were great, would produce good visuals. You know, it was entirely structured by the recognition that the limited impact of our action in a city like San Francisco would be multiplied manifold by media coverage.

– INTWR: Well put. And what about the issues, just generalizing, were there any issues in particular that the media was focused on that you think kind of drove you to act in that direction more than you otherwise would have?

– R: Certainly, the governor’s repeated refusal to just sign a bill protecting us. If you know what I am referring to, right?

– INTWR: AB-101?

– R: Yeah.

The respondent in this exchange cites a piece of legislation—which became a major focus of Queer Nation’s actions—as something that the organization might not have worked on had it not been such a newsworthy issue. As previously mentioned, AB-101 was an employment antidiscrimination bill protecting lesbian and gay workers that then-Governor Pete Wilson vetoed in 1991. California and national newspapers provided extensive coverage on the protests surrounding the veto. In one article demonstrating the typical sensationalist tone in newspaper coverage of AB-101, the *New York Times* described protests in San Francisco around the bill as “near riots” where “protesters set fires and smashed windows at a state office building and caused \$250,000 in damage” (Gross 1992: A39). The protestors’ intuition to target this particular “big ticket” legal issue for its news value appears to have been correct.

Protestors were also savvy enough to identify and emphasize the individual elements of the legal proceedings that they considered likely to attract journalists’ attention. In the Lesbian Avengers’ actions around the Lorena Bobbitt story—which, as noted above, were strategically timed to coincide with Bobbitt’s criminal trial—the Avengers made a point of highlighting several individual media personalities who had emerged from recent legal cases. One document, written to sister Lesbian Avenger chapters, described the Bobbitt-cue protest as follows:

During Lorena Bobbitt’s trial in Virginia for slicing off her husband’s penis, we had a party on the corner of Shattuck Av. and Virginia St. in Berkeley to barbecue in effigy John Wayne Bobbitt’s penis. There was also a special guest appearance of the penis of Judge Buford Parsons, the Virginia judge who removed a four-year-old child from his mother, Sharon Bottoms, because she is a lesbian. (Lesbian Avengers, “Highlights from the San Francisco Chapter”)

As the text here suggests, the Avengers highlighted in their protest narratives that had emerged from highly publicized legal cases. The protesters identified antagonists in John Wayne Bobbitt and Judge Buford Parsons, and they identified protagonists in the women victimized by these men (Lorena Bobbitt and Sharon Bottoms). The protestors drew on these media personalities as concrete examples of the harms caused by patriarchy and homophobia.

The data presented here provide a rare insight into how social movement organizations develop their agendas. Existing social movement research seldom examines these processes (but see Coley 2013), assuming instead that movement organizations come equipped with an agenda and observing how organizations pursue that agenda. My data suggest that media coverage of litigation may have heightened the influence of litigation on the agendas of LGBT protestors. Protest groups’ strategic reactivity to media coverage appears to have shifted protestors’ attention toward the litigation-related issues that dominated headlines. In addition, the visibility of litigation in the mainstream press may have made movement activists perceive the issues

being litigated as particularly important priorities (see McCombs & Reynolds 2002; Cohen 1963). Thus, the media may have shaped the LGBT movement's agenda not only by shifting protestors' strategic planning (as protestors drew on litigation to enhance the attention to and the effectiveness of their own actions) but also potentially by shaping activists' assessments of the importance of litigation as a legitimate movement tactic. The next section turns to discussing how the protest-based LGBT activists in this study actually perceived the value of litigation and the lawyers who were doing it.

(c) Cultural Legitimacy of Law

Whereas protest group members typically framed the decision to target court cases as a strategic choice aimed to increase the efficacy of their actions, many of them also genuinely felt that the legal issues subject to litigation were important in their own right and independently worthy as targets for LGBT movement action. For example, one interview respondent from Queer Nation, after describing how the group would strategically target major legal cases to garner media coverage, paused for a brief moment and then added, "Well, we were doing it because the media was interested in it, but we were also doing it because it was absolutely determinative of the texture of our lives" (Interview #60904). Although the instrumental focus on media attention brought protestors' attention to the issues being litigated, the fundamental belief that those litigated issues were important to LGBT people and that pursuing those issues would effectively create social change provided an equally important impetus for protestors' decisions to target those issues in their own actions.

The legitimacy of lawyers may have also made protestors more likely to plan actions around issues being litigated. Protestors would often speak of lawyers as essential movement actors, in part because of the valuable services lawyers provided, such as legal rights training. Protestors had a high chance of arrest at nearly every action, and in many cases they would prepare by soliciting litigating organizations to offer the group rights training or by discussing the legality of their actions with a lawyer (see Lesbian Avengers Meeting Minutes, May 28, 1994; Jan. 1, 1995; Feb. 14, 1995). Movement lawyers also went to many of the protest actions and would offer to provide legal representation for those who were arrested (see Lesbian Avengers Meeting Minutes, Apr. 10, 1995).

The interviews shed light on just how connected the protest groups were to lawyers. A Queer Nation member, recounting the group's occupation of a suburban shopping mall where members of the group had previously been kicked out, recalled:

– R: And we came back for the next weekend again with a Queer Nation action. We brought lawyers with us that time. And we brought a printout of the Supreme Court decision saying malls are public places and you cannot just throw people out for no reason.

– INTWR: Oh, who were the lawyers?

– R: We always had lawyers. [inaudible]... We would always bring the name and phone number of a lawyer.

- INTWR: Okay, who gave you the idea to do that?
- R: That comes from all the old protest stuff, that was an ACT-UP thing that we just adopted.
- INTWR: But who brought it into the organization? Do you remember?
- R: So ACT-UP would have a lot more. But we always had a lawyer who was in on the action, who was supporting our cause. Probably they were a law student or a recent graduate to represent us. Because ACT-UP had a history of getting arrested, so Queer Nation had to plan for the same thing. (Interview # 60829)

The respondent cites several times to ACT-UP, an HIV/AIDS activist group whose confrontational direct action tactics inspired those used in Queer Nation. It appears from these comments that ACT-UP's experience had a strong influence in Queer Nation's decision to keep lawyers nearby. Yet there also appears to be an independent interest on the part of the involved lawyers in maintaining ties with the protest groups; this respondent corroborates the sense I got from other interviews and the archival documents as well, which is that LGBT lawyers and legal organizations did affirmative outreach to support the protest groups. One ACLU-LGRC internal memo (January 28, 1994), described the organization's engagement in two police brutality cases arising out of the AB-101 demonstrations mentioned above as "the most time-consuming matter" on the organization's docket. Interactions like these, in which lawyers voluntarily offered their services in support of radical protest action, formed bonds between protestors and lawyers and identified lawyers as allies of protest groups.

Perhaps as a corollary of the high contact between lawyers and protestors, protestors seemed to regard lawyers as compatible movement actors. Both Queer Nation and the Lesbian Avengers welcomed solicitations by movement lawyers to get on board with their projects. The ACLU, which had projects devoted to LGBT and policing issues, informed Queer Nation organizers about the regular commission meetings that Queer Nation members would use for protest hooks. Lesbian Avengers also had some contact with the ACLU. Lawyers from the ACLU and the National Center for Lesbian Rights attended different Lesbian Avengers meetings to bring attention to policing and other movement issues, such as family rights and transgender discrimination, issues on which movement members took diligent notes and around which they subsequently took direct action (Lesbian Avengers Meeting Minutes, Jan. 30, 1995).

Protestors seemed to hold lawyers and litigating organizations in much higher regard than lobbyists and other "insiders." For example, minutes from one Lesbian Avengers meeting (December 13, 1993) reported an invitation by gay politician Tom Ammiano for Avengers to get involved in police reform, followed by the statement: "Skepticism of getting involved in insider politics." Protestors expressed similar "skepticism" toward LGBT lobbyists, whom protestors viewed as having a tendency to get coopted (Interview #60821; Interview #60904). Others also considered protest and lobbying groups to be in competition, with each side highly suspicious of the other. Accordingly, solicitations by politicians and traditional lobbying groups tended to be much more problematic for the protest organizations and caused more internal debate (Interview #60821). This distinction between litigating and lobbying movement groups suggests that,

although protestors considered the legal goals pursued by lobbying groups to be important, they considered litigating groups to be more legitimate movement actors. This provides a more nuanced understanding of the legitimacy of movement litigation, which, as I argue in Chapter 3, may help explain why litigating organizations have the highest survival rates.

This section has suggested that the legitimacy of movement litigation and lawyers may have contributed to the ability of litigation to shape the LGBT movement's protest agenda. The legitimacy of law and lawyers in the eyes of protest actors suggests that law, as an important cultural institution, contributes not only to the relative power of litigating organizations in terms of allowing them to survive and thrive, but also to the agenda-setting power of litigation in framing the issues and setting the goals that become the target of protest action.

V. Conclusion

In this chapter, I discussed and analyzed differences among litigating, lobbying, and protest-based organizations in the LGBT movement. A central focus of this analysis was the different approaches that these organizations used in selecting their priorities and planning their actions. I found that the litigating organizations tended to be proactive in their action planning, looking ahead to define future goals and resisting deviation from those predetermined goals. In contrast, protest organizations typically planned actions as a post hoc reaction to media events, while lobbying organizations mainly based actions on opportunities for advocacy provided by legislators.

One contribution of this study has been to explore how the implementation of a primary tactic may shape the adoption of proactive or reactive strategies. The data presented in this chapter suggest an association between an organization's primary tactics and its use of a proactive or reactive strategic approach. Each LGBT organization seemed to construct its approach around what members saw as the inherent limitations and fundamental goals associated with their organization's primary tactic. Protest groups implemented a reactive approach because their members thought it would help secure the popular participation needed to carry out their actions and achieve the media attention they defined as success. IGLHRC similarly used a reactive approach in their tactics that required popular participation, further suggesting the link between reactivity and popular participation. Litigating groups, on the other hand, implemented a proactive approach because attorneys thought it would help create a level of predictability and achieve a foundation of incremental gains necessary to build favorable precedent. Lobbying groups would alternate between a proactive and reactive approach, depending on whether an LGBT-related bill was being proposed (in which case they would reactively weigh in) or whether individual legislators showed receptivity to LGBT rights (in which case they would proactively "educate" such legislators on priority issues). This evidence suggests that members from each of these organizations viewed the approach that they implemented as the "natural" way to carry out their primary tactic, finding it difficult to imagine an alternative way of doing things—even when, as in the case of reactive protest planning, it raised problematic consequences. Thus, a proactive approach appears to have become an institutionalized aspect of impact litigation, and a reactive approach appears to have become an institutionalized aspect of protest (see Carroll & Hannan 1989: 525-526).

While my data are consistent with the theory that tactics shape the adoption of a proactive or reactive strategic approach, there are also several alternative hypotheses that future research in this area should consider. The most crucial factor to consider further is how organizational structure may contribute to a proactive or reactive approach. The litigating and lobbying LGBT movement groups observed here had more rationalized, bureaucratized structures than the protest organizations, which had a looser, “networked” character (Castells 1996; Melucci 1996). The proactive strategies I describe here seem to mirror the type of rationality embedded in bureaucratic organizational structure: both involve a long-term vision of organizational functions and have mechanisms in place to ensure the automatic and continued production to achieve organizational goals. It is therefore plausible that the more rationalized the structure of a social movement organization, the more proactive its strategy. Although I did not find direct evidence to support this conclusion in my analysis of the available data, the logical link between organizational structure and the strategies I have observed suggests that this would be an important additional area for future research to consider.

Another contribution of this study has been to explore how the adoption of proactive or reactive strategies may influence the types of substantive issues an organization acts upon the most. I have suggested that the proactive approach of litigating groups may have kept those groups focused on the opportunities for doctrinal change that attorneys prioritized, perhaps even insulating them from issues that eschew translation into effective legal claims. I have also suggested that protestors’ quest for newsworthy and timely action focused them primarily on recent events, typically those they found covered in the litigation-focused mainstream news media. Sometimes the events protestors targeted were not publicized in the media but rather in other places of public access, such as government buildings; yet these public-access events, such as criminal trials, litigation, or police commission meetings, also tended to be state-sponsored and related to law. Thus, the reactive approach of the protest-based activists appears to have subtly shifted their groups’ actions toward litigation-generated media events or state-generated public-access events—either way focusing those protest groups on toward legal priorities.

Issue selection is an area that remains largely unexamined in social movement research (see Coley 2013), such that even this chapter’s tentative insights stand to make a contribution to the literature. Yet much more work is needed in this area, particularly work that compares alternative hypotheses to the ones presented above. Coley’s recent (2013) article suggests three other factors that could provide additional traction in explaining the rise of certain issues (legal or otherwise) as movement priorities: framing, political opportunities, and organizational resources. It is crucial for future work to examine these theories of issue selection further. In the context of social movement organizations, issue selection is important because it curtails or moves chances for change into certain predictable directions.

The causal mechanisms I suggest here, however tentatively, strongly merit further investigation, given their potential implications for theories of law and social change. One implication has to do with something that I have alluded to throughout the chapter: that proactive action planning may provide an organization greater control over its actions as compared to reactive action planning. Although neither the proactive litigating groups nor the semi-proactive lobbying groups were entirely autonomous (insofar as their goals were molded by the opportunities for action defined by formal law), they were at least able to avoid the problematic

sense of derailment that caused consternation among the protesters. They adopted their goals, however constrained, as their own, and they seemed to consider their victories the product of their own will. The protest groups' members, on the other hand, were continually frustrated at their organizations' seemingly intractable inability to stay on track with the issues they felt mattered most. While being proactive or reactive may be meaningless in terms of true organizational autonomy, it seems linked to members' perceptions of organizational autonomy in a way that makes continued participation in the organization more or less rewarding.

Another implication of this work for law and social change is in its identification of potential mechanisms through which radical protest groups' substantive goals may become displaced by the formal equality goals pursued through impact litigation. If the use of protest generates a reactive approach, which in turn generates a focus on legal issues, then even protest organizations that are concertedly critical of rights-centered politics may enter the fold of the movement's legal agenda. To the extent that protest groups are a source of internal critique of formal law and its limits in creating social change, the processes identified here may augment the reach of formal law within social movements.

Chapter 5

Conclusion

For decades, scholars have debated whether litigation does or does not help social movements create social change. On one side of the debate, critical legal scholars have emphasized how lawyers often alienate their clients' interests and dominate the lawyer-client relationship, inhibiting the broader movement's potential to achieve its goals. On the other side, sociolegal scholars have shown how litigation generates numerous extralegal benefits that support mobilization, indirectly bolstering grassroots efforts for social change. While attempts have been made on both sides of this debate to synthesize these conflicting accounts into an overarching theory of law and social change, the sense emerges that the ability of law to produce social change is eternally contingent on the particular time, place, and case being observed.

My aim in this dissertation has been to call attention to a different, and perhaps more productive, set of questions about law and social movements. Instead of rehashing debates over whether or not litigation can help movements *achieve* their goals, my interest here has been in how litigation can actually *shape* movement goals. More specifically, my project has considered the institutional and organizational processes, such as media biases and organizational routines, that may consolidate the central goals of social movements around the issues being litigated.

A central theme of this project has been that litigation may be at a comparative advantage vis-à-vis other tactics in its ability to attract crucial movement-shaping resources. I have shown that LGBT movement litigation received more media visibility than any other tactic and that the LGBT organizations that used litigation had greater survival rates than organizations using other tactics. These findings suggest that litigation has been a particularly visible and stable feature of LGBT politics and, as a corollary, that litigation has played a crucial role in the construction of the LGBT movement's identity.

My research further supports the conclusion that litigation influences the construction of a social movement's substantive agenda—the core set of issues that movement actors collectively prioritize. I have shown that LGBT litigating groups tended to proactively look ahead to define future goals and resisted deviation from predetermined organizational priorities, whereas LGBT protest groups that sought newsworthy and timely action concentrated primarily on recent events, typically those publicized in the mainstream media. Because media coverage focused primarily on litigated issues, protest organizations' reactivity to media coverage appears to have redirected those protest organizations away from their original priorities and toward legal goals.

By shifting the focus of this research to the mechanisms of social movement construction, this study breaks new ground in the ongoing debate about litigation for social change. Both sides of the current debate tend to conceptualize litigation as a tool and question whether that tool is effective. The problem is that movements are not unitary actors with monolithic goals, but rather fields of contention. Within these fields, there is no universal agreement regarding the definition of movement success. Furthermore, as my work has shown, the "tools" being used can amplify

particular perspectives and visions of the movement over competing ones. In other words, the difficulty in assessing the effectiveness of litigation as a tool of social movements is that the tool *constructs* the movement.

In the remainder of this chapter, I explore the implications of my findings in greater detail. I begin by discussing the implications of this research for theories of law and social change, and I conclude by discussing some pragmatic takeaway points for cause lawyers and social movements.

I. Legalization, Marginalization, and Movement Construction

My findings suggest that litigation may orient movement action toward the narrow set of issues that can be expressed through legal claims, marginalizing a movement's grievances for which there are no current legal remedies. As I showed in Chapter 4, the queer protest organizations that purposefully espoused non-legal goals came to focus on the legal goals being pursued through litigation, which ignited a sense of urgency and importance that fueled collective action. While this inadvertent refocusing of queer activism around law reform goals did not change the subjective values of individual queer activists regarding the importance of radical politics, it elevated the presence of legal issues and legal frames at the organizational level.

I emphasized the reorientation of protest groups in particular because protest is a tactic that one might assume would be fairly open to the faithful pursuit of activists objectives, however radically imagined. While it makes sense that litigation and lobbying—processes aimed clearly at law reform—would focus on formal legal goals, it is less clear why protest groups would emphasize formal legal objectives. Unlike procedure-bound litigation and lobbying, street protests are not subject to any formal constraints on their subject matter that would require translating their goals into legal terms. Yet I found that, in practice, protest actions tended to focus on legal issues nonetheless. These findings confirm the idea from discursive opportunity theory that the institutional context helps enable certain forms of political expression—often those that fit well with official legal interpretations—while simultaneously constraining others. My study takes discursive opportunity theory one step further, however, by identifying particular features of protest (reactive planning) and particular features of the institutional environment (the high media coverage of litigation) that mechanistically privilege political expression that engages with law.

Does the legalization of a social movement's agenda affect that movement's ability to pursue truly transformative political projects? When diverse movement factions come to align behind formal legal objectives, the legal frames and values that emerge from those struggles may spill over into the movement's own political culture. In other words, the legalization of movement agendas may be a vehicle for diffusing official legal interpretation into sites of insurgency. Accordingly, the ability of movements with legalized agendas to pursue transformative political projects will depend on whether the law supports a vision of equality that would promote meaningful social change.

Some commentators have held that U.S. law is inherently incapable of ameliorating, or even having an adequate language for conceptualizing, persistent social inequalities. According

to this perspective, the legal system and legal discourse inadequately conceptualize the plight of the “have-nots,” treating their grievances as “individualized, dehistoricized injury and entitlement” (Brown 1995: 118) rather than as systemic problems of class subordination. The remedies sought through the legal system, which target those individually-conceived problems, accordingly provide inadequate relief for structural subordination—and may even serve to legitimate existing power relations by projecting the appearance that the system fosters social equality (see Thompson 1975). Organizing resistance around these individuated legal cases and pursuing goals that can be framed in the law’s terms would thus sacrifice an opportunity for substantive, systemic reform.

I would not so resolutely discount the potential for law to support transformative politics. Social movements often cultivate their own interpretations of legal principles, which may fly in the face of official understandings, as an organizing tool in politics (Polletta 2000). The law is then, at the very least, *capable* of radical interpretation and expressing transformative visions of equality and social change. Furthermore, history has shown that the law may alternate between “left” and “right” orientations, depending on the social context (Calabresi 2003: 2116-17). The differences between the Warren Court and the Court that decided *Lochner* are just one example of how official interpretations of legal doctrine can fluctuate over time in their ideological content and in their ability to sustain progressive reform.

Yet though the law contains the potential for radical interpretations promoting substantive equality, this potential often remains latent. The numerous progressive interpretations of law that abound in informal discourse are often “killed” or silenced through judicial nonrecognition (see Cover 1983). Antidiscrimination law in particular—the typical vehicle identity movements use to combat social subordination—has become settled around quite limited understandings of equality. Judicial interpretation has crystallized around a definition of equality as formal access to equal opportunity (Klare 1979: 132), and discrimination as isolated, intentional acts by prejudiced perpetrators against individual victims (Bagenstos 2006: 45; López 2003: 82). This interpretation not only denies remedies for the structural factors most responsible for perpetuating inequality, it also places the focus on preventing individual wrongdoing rather than producing substantive outcomes that create real change (Crenshaw 1988: 1341-42). Thus, when antidiscrimination litigation comes to define an equality movement’s priorities, the movement may find itself privileging issues with little hope of creating social transformation through substantive equality.

The emphasis on single-axis identity categories in antidiscrimination law raises another potential harm in the legalization of movement goals: marginalizing individuals who face multiple, intersecting forms of discrimination. Antidiscrimination law provides a remedy only for discrimination on the basis of one protected status (e.g., race, gender, national origin). Claims of multidimensional discrimination, or discrimination that occurs at the intersection of these categories, are typically unsuccessful or, in some instances, are not actionable at all under current legal theories (Crenshaw 1990; Caldwell 2006: 365-67; Best et al. 2011). Civil rights litigators tend to echo the law’s single-axis paradigm, shoehorning their clients’ claims into one of the law’s recognized categories of protected status (Carbado 2000: 1469). The legalization of movement goals around antidiscrimination litigation may accordingly facilitate the

marginalization of movement goals focused on intersectional subordination and crosscutting, multi-issue goals.

Returning to the specific context of the LGBT movement, the potential for legalization to marginalize multi-issue politics may help explain a long-debated puzzle among sexuality scholars regarding why issues like “support for working families, ending violence against women, prison reform, poverty, and redistribution—all once critical parts of our LGBT liberation movement’s agenda—have disappeared in the national LGBT movement discourse” (Vaid 2013: 41). These lost causes are representative of a previous multi-issue approach to LGBT politics, which incorporated race and class justice as central facets of the movement’s agenda (Armstrong 2002: 75). In the LGBT movement of today, however, multi-issue politics have been substituted for (most visibly) marriage equality, an issue most relevant to the LGBT community’s white and wealthy individuals (Hutchinson 2000: 1371-73). One possibility is that marriage has become elevated in the movement’s agenda because of its ties to litigation, the primary tactic advocates have used to push the issue forward. Marriage equality also fits nicely within dominant liberal legal discourse in that it emphasizes removing only formal barriers to equality rather than seeking to ameliorate substantive inequality compounded by intersecting systems of racial, gender, and economic inequality. The role of litigation in marginalizing multi-issue politics and intersectional groups within the LGBT movement is thus a promising area for future research.

II. Legalization, Movement Deradicalization, and Hegemony

This dissertation also opens up new areas for research in the literature on social movement deradicalization. A large body of scholarly work has documented the tendency of social movements to *deradicalize*, or to abandon their more confrontational tactics and transformative social change goals for more moderate tactics and reformist goals (see e.g., Piven & Cloward 1977; Staggenborg 1991). The general pattern in this scholarship is to link deradicalization to a movement’s direct engagement with the state; the argument is that a cozy relationship with political authorities invites cooptation by “mobilizing [movements] into elite projects, providing symbolic access to decision processes, or otherwise deradicalizing the claims of movements” (Smith & Wiest 2012: 170; see also Meyer & Tarrow 1998). The assumption in this work seems to be that state and movement actors have, at least initially, fixed political preferences that ultimately come into alignment when state actors effectively force a radical movement into strategic self-restraint.

The legalization process I examine in this dissertation offers an alternative view of movement deradicalization. The privileging of litigation and legal issues over protest groups’ extralegal priorities may be described as deradicalization insofar as it undercut protest groups’ ability to pursue non-resonant goals—goals which defied legal translation. Yet in this case, the processes responsible for deradicalization were not just the strategic decisions of protest group members, although these did play a part (i.e., as queer activists strategically targeted legal issues to spark mobilization and media attention). What my study adds to this picture is a detailed account of the role of the other unintentional, systemic processes that simultaneously contributed to deradicalization. In particular, I showed how institutional and organizational dynamics—arising from factors like journalistic practices, interactions among movement organizations, and

protest planning routines—may have elevated legal issues to movement priorities at the expense of issues incapable of resolution through formal legal advocacy.

My study thus brings the literature on movement deradicalization into conversation with institutional understandings of marginalization and inequality (see Albiston 2009; 2010). Instead of viewing inequality as the product of direct interaction and strategic behavior, institutional theorists view inequality more as a product of impersonal, institutional practices that shape subconscious action and reinforce structural disadvantage. Similarly, my study departs from the usual view of deradicalization as the product of direct interactions and strategic behavior among movement or state actors and instead focuses on indirect and unintentional processes that may produce movement deradicalization. This perspective fits comfortably with contemporary views of power as produced through the convergence of multiple social institutions (Armstrong & Bernstein 2008). Future work from this perspective may help further delineate the often invisible institutional forces that undercut a movement's more transformational goals.

This institutional understanding of movement deradicalization also resonates with theories of hegemony; it might even be conceptualized as hegemony *within* movements. Hegemony is achieved on a societal level when subordinated groups remain subordinated due not to sheer repressive force, but rather to socially-dominant values and meaning systems that obscure subordination or otherwise thwart resistance to the status quo (Gramsci 1992). To conceive of the processes I identify here as “hegemony within movements” would not precisely conform to the classic definition of hegemony; while the queer protestors in this study “bought into” the importance of law and the legal issues they prioritized, there was also a clear sense that those protestors drew on law strategically to derive symbolic benefits for their organizations. Yet I would argue that expanding the concept of hegemony to account for processes like the legalization of movement agendas—which occur through the convergence of activists' normative and strategic orientations toward law—would be productive for building hegemony theory, as it would avoid the inaccurate depiction of the disempowered as succumbing to “false consciousness.”

Understanding how hegemony operates *within* social movements is also crucial to our understandings of how hegemony operates at a societal level. Social movements are a primary arena in contemporary society for the cultivation of resistance to existing power configurations. Therefore, the deradicalization of social movements—the processes through which dominant value systems that support the status quo become hegemonic within movements—may be a way in which hegemony is produced *through* social movements. Because there is no surer way to diminish the possibilities for far-reaching reform than to undercut efforts to achieve it, the reorientation of movement activists around a more conservative set of legal priorities can work to undermine a movement's potential to produce transformative change.

III. Recommendations for Cause Lawyers and Social Movements

The legalization of movement agendas has substantive consequences mainly for movements in which litigation strategies are divorced from the larger movement's needs and goals. The LGBT movement is a prime example of a movement in which, at least historically, the issues being litigated were substantively distinct from the issues protestors expressed as priorities. While litigators in the movement selected law reform goals based on sexual and

gender identity, queer protestors of the early 1990s identified a broad range of goals that challenged identity paradigms and sought more transformative progressive change (e.g., sexual liberation, challenging the patriarchal nuclear family, redistribution). In the LGBT movement (and other pluralistic movements with diverse political factions and demands), the attention devoted to litigation and the legalization of the movement's agenda were likely to generate a substantive shift in the movement's focus, thus risking subordinating the priorities of protest groups.

My research suggests that conventional impact litigation, which prioritizes formal legal outcomes, may create conditions ripe for a litigation agenda that is out of touch with community demands (see Carpenter 2014). My work confirms that focusing on winning favorable precedent pushes lawyers toward "juridically intelligible" issues and claims, which have the greatest likelihood of succeeding in court (Currah 2006: 13). The LGBT lawyers in this study tended to select priorities by attending to doctrinal developments and other legal opportunities (Andersen 2005) rather than by assessing what other activists were doing or what change most constituents desired (see also Bell 1976: 512-13; Rubenstein 1996-1997: 1675; Carpenter 2014: 19-20). This law-centered approach may contribute to the separation between grassroots and litigating organizations' goals, with the latter likely to emerge as dominant.

Attorneys hoping to limit the deradicalizing potential of litigation are therefore advised to develop litigation strategies that are not narrowly focused on formal legal outcomes. Litigation need not privilege law reform goals to effectuate social change; there is plentiful legal scholarship laying out the practical steps lawyers can take to infuse litigation with extralegal goals, such as client empowerment or community need (López 1992; Carpenter 2014: 19-20). This would require attorneys to move beyond traditional assessments of a case's value for its "winnability" and take cases with low chances of success.

Attorneys who are mindful of the enormous extralegal advantages of litigation may also design litigation strategies to in ways that support activism outside the court. For example, attorneys in the LGBT movement and other movements with factions that critique the use of identity politics could articulate legal claims that challenge, rather than reinforce, the problematic identity-based assumptions of antidiscrimination law. This might mean pushing forward claims of intersectional or structural subordination, which, as discussed above, are generally disfavored in official interpretations of antidiscrimination law.

Finally, attorneys could design litigation strategies that would to publicize the demands of a movement's protest-based activists that might otherwise be excluded from mainstream discourse. The Religious Right provides a counterintuitive example of how a movement can use litigation to publicize radical demands. Conservative groups have defended school districts through repeated challenges to the instruction of intelligent design, an issue that predictably loses in court on Establishment Clause grounds (NeJaime 2011). These groups concertedly "put religious principles above legal rules" (NeJaime 2011: 979) in bringing these creationism cases, using the cases to publicize a radical conservative view that is out of line with mainstream legal interpretation and to garner resources for organizations promoting this view.

Again, putting political values above legal strategy would require attorneys to face the possibility that their arguments, potentially even their cases, might fail. Yet persistent advocacy to reframe problematic assumptions in law serves important purposes beyond law reform. For example, “pressing courts to understand the analytic error in treating identity categories as independent of one another” could “go a long way toward pushing back against and perhaps even redirecting judicial orientation” (Goldberg 2009: 145-46; see Holzer 2008: 28-29). Through persistent advocacy of radical movement frames, lawyers might further leverage the bully pulpit of movement litigation to promote the broader goals espoused by diverse movement activists operating outside the courtroom. In these ways, lawyers who remain mindful of the enormous power of movement litigation can harness that power to provide more effective representation of diverse social movement communities.

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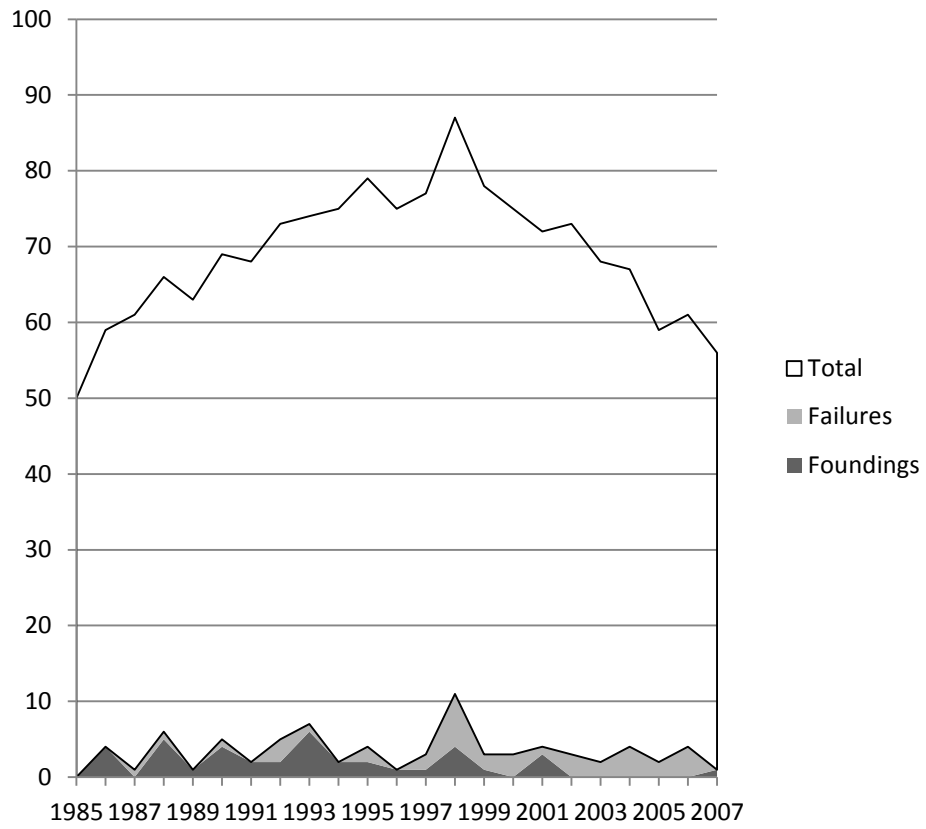
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Appendix I:

Organizational Founding and Failure by Year



Appendix II

Interview Guide

PART I: INTRODUCTION & CONSENT

(1) Introductions

(2) Verbal Consent:

- a. Do you agree to take part in this interview?
- b. May I record the interview?
- c. Anonymous?
- d. May I quote directly from this interview?

PART II: GENERAL QUESTIONS

(1) Background on Interviewee:

- a. When did you get involved with LGBT/queer activism?
- b. When did you become involved with the [organization]?
- c. Were you a member of any other LGBT political groups at the time?

(2) Issues: What do you think were the most important issues for LGBT people to confront when you entered the position at [organization]?

- a. Do you think [organization] was good at confronting those important issues—through litigation or otherwise? (Why/not?)

(3) Formal process: What processes did your organization use in deciding whether to pursue a particular action?

- a. Who would propose projects?

(4) Prioritizing: How did the [organization] decide which issues to prioritize?

- a. In proposing potential cases, what issues would come to the fore?
 - i. How did you find out about the issues?
- b. In deciding what issues to prioritize, how important were each of the following:
 - i. Rallying members
 - ii. National media attention
 - iii. Publication of reports or statistical information
 - iv. Other LGBT organizations attend to the issue
 - v. Countermovement forces attend to the issue
 - vi. Political figures or state officials prioritize the issue
 - vii. (Does it depend on what sort of issue it is?)

(5) Planning

- a. Did cases have to conform to a pre-designed strategy?
 - i. For example, would you choose individual actions that seemed to work well with organizational priorities?
- b. Or would you decide each action on a case-by-case basis?
- c. Did the organization ever get derailed in following any current events, or did it mostly stick to priorities?
- d. Did the fact that you were using [primary tactic] affect the sorts of issues you decided to pursue?

(6) Relation to other Organizations

- a. How often did [organization] members consult with other organizations when they decided to pursue a particular action?
 - i. Which organizations did [organization] members consult with?
- b. Did [organization] have any direct confrontations with other LGBT organizations?
 - i. What types of other groups did you interact with?
- c. Did [organization] specifically do outreach to
 - i. Lesbians or straight women?
 - ii. Bisexuals?
 - iii. Racial minorities?

PART III: SPECIFIC ISSUES/EVENTS

- (1) According to the archival material I've looked at, the most common issues addressed by [organization] during [time period] were: [issues]. Does that sound about right, from what you remember?
 - a. Do you remember how these issues emerged as priorities?

- (2) Anything else you'd like to say about [organization]'s issue priorities or focus?

PART IV: RECRUITING OTHER INTERVIEWEES

- (1) Are you still in contact with people from [organization]? Would you be comfortable either connecting me with them or giving me their contact information?