POWER AND THE QUEST FOR JUSTICE

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Dedication

For Grandma and GG: Juanita Johnson and Myrtle Zeigler.

Abstract

This dissertation asks how legal, political and social actors affect the beliefs and actions of public interest law organizations. In order to answer this question requires two conceptual prerequisites. The first is the concept of power. There are substantial limitation with current understandings of what it means to affect others. I conduct an ordinary language analysis to illustrate interest group scholars' acceptance of one sense of power—as domination. In the process, I recover another sense of power— as influence—the ability to affect others through imperceptible and non-coercive means. The second conceptual prerequisite is what public law organizations do, and how these actions reinforce one another. I create the concept of triangular advocacy to explain how these groups try to change society through a combination of legal, political, and social advocacy. While legal advocacy is central to public law groups' efforts, political and social advocacy complements their goals. With the concepts of power—as influence, and triangular advocacy, I examine the question that I posed at the outset: how key actors have power with public law groups. I find that legal and social advocacy are important ways for PILOs to overcome challenges that political actors and the broader public place in their way. If public law groups perceive themselves as having good relationships with political actors, however, then they can concentrate on insider forms of politics, and do not need to emphasize social change as strongly.

Table of Contents

List of Tables

List of Figures

Chapter I: Introduction

The California Supreme Court, in *Pérez v. Sharp* (1948), was the first in the country to strike down a law banning interracial marriage (an anti-miscegenation statute). Peggy Pascoe's *What Comes Naturally* (2009) gives a masterful narrative of the case. She describes the lonely road to the California high court for Andrea Pérez and Sylvester Davis (the litigants) and Dan Marshall (their attorney and family friend). They received minimal help from civil rights organizations. The ACLU's national office did not have enough time to write an amicus curiae brief supporting Pérez and Davis, and left it to the Southern California office, which failed to write one, while the NAACP did not participate in the case at all. These organizations' lack of enthusiasm and abstention is puzzling given their charter to protect individuals like Pérez and Davis.

There were persuasive legal, social, and political reasons for the ACLU and the NAACP to avoid this case. Starting with the law, Dan Marshall was presenting a novel argument. He argued that the California ban on interracial marriage violated the couple's free exercise rights (both Pérez and Davis were Catholic, and the Church allowed interracial marriage). The NAACP, especially, may have believed that not only would Pérez and Davis lose, but, to add insult to injury, the California court might create a precedent saying that states had the right to *prohibit* interracial marriage— which no court had yet done. They had other reasons for believing that the California Supreme Court would be apprehensive about ruling in favor of Pérez and Davis. In the 1950's, 92% of White Americans opposed interracial marriage, and—somehow, more than 99% of white Southerners opposed it (Pascoe 2009, 206). The black community was equally

resistant. Given the almost unanimous public opposition to interracial marriage, it is not hard to imagine how legislators felt about the issue. The western states had strict laws preventing Asian Americans from marrying other races. California was particularly aggressive. It asked the Utah state legislature to strengthen its anti-miscegenation statues because too many Californians were circumventing their laws by marrying in Utah. The legal, social, and political context, therefore, was highly discouraging. It is important to note that although no legislator, judge, or member of the public did anything to these organizations, it is reasonable to conclude that they affected the perceptions about what these entities thought was possible, and therefore, what they ended up doing—or not doing, in this case.

Pérez demonstrates the importance of other actors in shaping the perceptions and actions of organizations. The traditional approach is to ask the converse of this question: how "the special interests" affect others. There is a long history of this question in judicial politics, for example (Krislov 1963, Barker 1967 Caldeira and Wright 1990, Epstein 1993, Solowiej and Collins 2009). There is substantially less attention to the ways that actors both constrain and *enable* organizations. Although the law, the public, and legislators may have convinced the NAACP, the ACLU, and the JACL that their prospects for success in *Pérez* were slim, it is easy to imagine that in other circumstances they could persuade them otherwise. The effect that these actors have on organizations may be more complex because these groups lie at the intersection of the law, society, and politics. There are likely, in other words, to be cross-domain influences: beliefs about the position of an actor in one domain affect actions in the others. If the NAACP, for

example, believed that the law was on its side, but the public and elected officials were not, does it take legal action to try to persuade them or force them to comply? There are other entities in a similar position at the intersection of the law, society, and politics. These groups, which legal scholarship calls Public Interest Law Organizations (PILOs), consistently use the law to try to change society, and are descendants of groups like the NAACP's Legal Defense Fund (LDF) and the ACLU.[1] The central question of this dissertation, therefore, is how legal, social, and political actors affect the perceptions and actions of public interest law organizations. It is, however, the last question. This project is, at its root, about how actors shape the beliefs and actions of others. The first question, therefore, is what should one call this affecting of others. Is it power? Is it influence? Is it both, or neither?

I: Conceptual Puzzlement

The interest groups subfield has few grand theories that unite the research under a common set of questions and theoretical approaches (Hojnacki et al. 2012). Two of these theories are called "neopluralism" (McFarland 2004, Lowery and Gray 2004). Although Gray and Lowery, and McFarland both call their theories neopluralist, the former is, in their words, a "gaggle of models". This leaves McFarland's neopluralism as the most theoretically sophisticated framework to turn to for guidance. His neopluralism, as the name implies, takes pluralism as its conceptual foundation. The first premise of McFarland's theory is that power is causation. This idea is an extension of Dahl's definition of power, which McFarland slightly modifies: "A has power over B to the extent that A causes changes in B's behavior in the direction of A's intentions"

[1] I will use the terms "public interest law organization" (PILO), "public law group", and "public law

(McFarland 2004, 47). This definition seems to include influence, because it alters another's behavior, but McFarland argues that power involves moving another towards one's goals. The archetypical example of this understanding of power is a lobbyist pressuring legislators to vote in ways that she prefers. Applying McFarland's definition to the *Pérez* case, the law, the public, and California legislators *influenced* the NAACP, the ACLU, and the JACL, but they did not have *power over* them because none of these actors intended to alter the behavior of these three organizations.

McFarland's distinction between the words "power" and "influence" is a great place to begin exploring the cornucopia of confusion surrounding the concepts of power and influence, not only in the interest groups subfield, but in the power literature at large. McFarland deserves credit for his attempt to offer guidance to political scientists. He also deserves recognition for providing a clear distinction between power and influence. The problem is that few agree that intentionality is the criterion that distinguishes the two. Dahl's *Concept of Power* says that intentionality is a sufficient, but not necessary, condition that demonstrates an actor's *power* (Dahl 1957a, 205). For later theories: Bachrach and Baratz, Lukes, and Foucault, they include unintentional changes as a form of power. Indeed, for the second, third, and fourth faces of power, the unintentional effects of power are central to their efforts. If there is a distinction between the words "power" and "influence" intentionality may not be the best candidate.

The *Pérez* example demonstrates the importance of getting clarity on this question. What did Pascoe describe, the influence of these actors on the NAACP, the ACLU or the JACL, or their power? There are two words, but does it follow that there are two

concepts? This is not mere semantics. If they are different, then they have different criteria. No one would assume that theories of representation are the same as theories of power because they are two different concepts—and words. If power is actually different from influence, this implies that there should be a power literature and an influence literature with theories appropriate to each. Perhaps there is only one concept. Power is a subset of influence, or influence is a variant of power. But this raises the question, if there is a single concept, which is a scholar supposed to choose—and why?

Every "face of power" theory, including Dahl's, subsumes influence under the word "power" to some degree, treating them as near synonyms.[2] Interest groups scholars compound the confusion by speaking of influence, but thinking in power. They usually do not write of interest groups' power, but their "influence", and "the influence process" (Lowery 2013, Baumgartner and Leech 1998). The problem, however, is that when they define influence it is usually some variant of Dahl's definition of power: A getting B to do something that B would not do otherwise. Influence ends up being power. If there is a distinction between influence and power, it is not obvious what it is. If scholars remain unable to answer this question, then David Knoke's assessment of the subfield's lack of theoretical coherence thirty years ago will remain accurate: "The field has made many empirical advances, yet: "…its surface diversity and richness mask the field's underlying anarchy. Put bluntly, association research remains a largely unintegrated set of disparate findings, in dire need of a compelling theory to force greater coherence upon the enterprise. Without a common agreement about central concepts, problems, explanations,

[2] Lukes (1974) distinguishes "power" from "influence" in his third face of power. I will address his distinction in the next chapter.

and analytic tools, students of associations and interest groups seem destined to leave their subject in scientific immaturity" (Knoke 1986, 2). Power and influence may be abstract concepts—but the need for clarity about them is not.

This conceptual confusion has many sources. One of the central ones is what Colin Bird calls scholasticism—the tendency to privilege certain thinkers and beliefs. Bird writes: "We stand as much in the shadow as on the shoulders of these giants; the dazzling light they cast in some directions may artificially darken other areas and lend premature credence to assumptions that deserve closer scrutiny" (Bird 2011, 110). As I will explain in more detail in the next chapter, interest group scholars are standing in the shadows not only of giants: Robert Dahl, Herbert Simon, and Harold Lasswell, but titans—Machiavelli, Hobbes, Russell, and Hume. These lumunaries have already told political and social theorists what power *is*. These giants and titans create a conceptual path-dependence that becomes nearly impossible to escape because scholars internalize their ideas—and the unspoken assumptions that support them. These ideas become so ingrained that scholars do not realize that their concepts allow them to see some things—but blind them to others. The consequence is that "these ideas form a privileged technical vocabulary around which set-piece academic debates pivot. Reflection is then increasingly controlled by the (often spurious) assumptions required to hold these debates in place. Worse, these assumptions become difficult to challenge because professional success is tied to establishing the "significance" of one's work in relation to such scholarly debates. As a result, our thinking becomes stuck in ruts, colonized by patterns of thought at once questionable yet hard to dislodge" (Ibid, 114). The first consequence

of needing to relate one's work to on-going scholarly debates is that the "cure" that others recommend for conceptual confusion ends up being the disease itself—more literature, because the field has already agreed on what the concept *is*. The second consequence is that alternative theories that might resolve this confusion are often illegible to others unless they conform to these debates. If any proper discussion of power *must* situate itself as being in conversation with the faces of power or the community power debates, then any alternative is doomed because a new perspective on the topic might require setting aside the premises of that discussion in the first place.

A direct approach, engaging in debates about what power *is*, will not help alleviate the difficulty surrounding power and influence. Hanna Pitkin, following Ludwig Wittgenstein's lead, suggests an indirect approach: "...we may find that both theoretical and empirical work on some particular topic encounters persistent difficulty and confusion, as has been the case for instance in political science on the topic of power. Here again the investigators' concepts may require some attention; we may profitably stop looking at power phenomena in the world for a time, and back up to an examination of how we talk about "power" (Pitkin [1972] 1993, 19-20). Rather than discussing what power, or influence, *is*, it may be more beneficial to examine what those words *mean*, and how ordinary people *use* these words. Examining ordinary language helps show the similarities and differences between power and influence, and reduces the conceptual confusion. None of this negates the importance of prior scholarship, as ordinary language does have its flaws, but, as J.L. Austin says: "certainly, then, ordinary language is *not* the last word: in principle it can everywhere be supplemented and improved upon and

superseded. Only remember, it *is* the *first* word" (Austin 1956, 11). The first chapter of this dissertation takes Pitkin's— and Wittgenstein's, advice by looking at what "power" *means*. The hope is that it will help alleviate some of the confusion surrounding power and influence. Once there is a clearer understanding of what key actors are doing to public law groups, the next issue is what makes PILO distinct as an organizational form—and why that distinctiveness is not always obvious to political scientists.

II: The Public Interest Law Organization and Political Science

The earliest scholarship on organizations observed that many of them engaged the judiciary as a routine part of their political activities (Bentley 1908, Latham 1952, Truman 1951). Indeed, contemporary literature shows that the judiciary is just one of many venues that groups use to achieve their goals (Strolovitch 2007). As this early literature was observing pressure groups affecting the political process, a new organizational form was beginning to flourish. The first American public law organization was the German Society of New York (Der Deutsche Rechsschutz), formed in 1876 to protect German immigrants from exploitation and abuse through litigation (O'Connor and Epstein 1989). The German Society of New York is what people now recognize as a legal aid organization—an entity that provides direct legal services to clients that cannot afford private counsel. Building on the successes of the German Society, other legal aid organizations spread throughout the country. The expansion of these organizations spawned a new species of socially-oriented law organization during the Progressive era. These new groups not only provided legal assistance to those who could not afford it, but sought to use the law to achieve policy and social change through

the political branches (executive and legislative branches), and the courts. Two of the leading organizations in this early era were those that I mentioned in *Pérez*: the ACLU, and the NAACP, especially its Legal Defense Fund.

The successes of the ACLU, but especially the NAACP's planned litigation campaign that culminated in *Brown v. Board* demonstrated that legal organizations could do more than simply provide direct legal services to underrepresented clients, but could use litigation to achieve social change. Political science took note of the ACLU and the NAACP's successes during the Warren Court era (1953-1969). Rather than trying to maximize their own utility in the most amenable domain, these organizations' efforts focused on the judiciary, and these had ripple effects on the law, society, and politics. These effects created many opportunities for additional scholarship. Clement Vose's 1959 *Caucasian's Only* ushered in a new era of scholarship on the link between organizations, the law, politics, and society. The NAACP's legal strategies and tactics in *Brown* and thereafter, received sustained and extensive scholarly attention throughout the decades (Kellogg 1967, Kluger 1975, Wasby, D'Amato, and Metrailer 1977, Wasby 1984, Tushnet [1987] 2004). The ACLU, too, was a crucial actor in advancing social change through the law during the Warren and Burger Courts, and political science research tracked its work (Ivers and O'Connor 1987, Markmann 1965), especially in First Amendment jurisprudence (Manwaring 1962, Sorauf 1976), and the women's rights movement (Cowan 1976).

The successes of these organizations, as well as the massive social changes occurring during the time, inspired a public law movement that blossomed during the

1960's and 1970's. These new organizations aimed their efforts at trying to help traditionally marginalized groups in American society. There is no estimate of the population of public interest law organizations during this era, but a study conducted by Burton Weisbrod, Joel Handler, and Neil Komesar (1978) identified eighty-six prominent organizations in their sample of the field. As the movement grew and diversified, so, too, did the literature surrounding it. Some lamented the focus on the NAACP and the ACLU, and other work evaluated the disability rights movement (Olson 1984), the behavior of material and purposive organizations in the area of obscenity law (Kobylka 1991), as well as reproductive health litigation (Gonen 2003). During the late 1970's, and throughout the 1980's public interest law diversified ideologically with the emergence of conservative public interest law organizations. These groups challenged traditional understandings of what it meant for public law groups to work in "the public interest" but also began to offer substantial counterweights to the success of the traditionally liberal public interest law organizations (Southworth 2008). Lee Epstein's 1985 *Conservatives in Court* is a prominent example of scholarship that traced the development and legal maneuvers of conservative legal entities.

While a bountiful literature grew during this early era, political scientists began to show a decreased interest in public law during the 1980's for two reasons. One of them is methodological. This earlier literature, descriptively rich though it was, in addition to a liberal bias, suffered from a pathology common to interest group research at the time of "building a literature on lobbying one case study at a time" (Baumgartner and Leech 1998). While interest in public law groups from political scientists waned, the second

factor that led to a decline in interest in the public law organization was advances in the interest group subfield. Due to the difficulties of generalizing from a smaller range of organizations—and to accommodate the rising prominence of sophisticated statistical analyses in American political science, later work aggregated organizations of many varieties into general surveys of interest groups (Schlozman and Tierney 1986, Walker 1991). This scholarship, in the process of aggregation, obscured many important distinctions, such as those operating in specific policy areas (Baumgartner and Leech 1998). It also obscured the distinctiveness of several types of entities, such as business (Hart 2004), citizen/public interest groups (Berry 1997), institutions (Salisbury 1984), social movement or advocacy organizations (Minkoff et al. 2008, Andrews and Edwards 2004), and public interest law organizations.

Yet, in spite of the retrenchment in political science, scholarship about public interest law organizations has continued to grow, but primarily in legal circles (Rhode 2008, Chen and Cummings 2013, Albiston and Nielsen 2014), and socio-legal scholarship (Rubin 2001, see Edelman et al. 2010 for a compendium of the growing literature). An especially engaging enterprise is the cause lawyering literature led by Austin Sarat and Stuart Scheingold. Political science has many things that it could gain from re-engaging with legal and socio-legal scholarship from an organizational perspective. One of them is that it would enrich political scientists' understanding of legal advocacy as a form of democratic participation. PILOs are among the most prominent intermediaries between citizens and the judiciary. Ordinary people making rights claims in court involves them more directly in the government's decision-making process than

they could ever hope to have in legislative or bureaucratic settings (Zemans 1983, Lawrence 1991, Dor and Hofnung 2006). Political science also has many things that it can contribute to scholarship on the link between movements, the law and social change. Two of them include an appreciation for the constraints and opportunities that public law groups have as *permanent, formal organizations*, like other interest groups, but also the infinitely subtle ways in which politics mediates the relationship between society and the law for their advocacy efforts.

What political science has to gain and what it can offer, are some of the reasons that I argue that public law groups deserve scholarly attention. This dissertation, generally, and the second chapter, specifically, helps to reintroduce the public interest law organization as a distinct organizational form to political science. The second chapter also helps illuminate the shrewdness of public law groups. These organizations are keenly aware of the interconnections between law, politics, and society for their advocacy efforts. Once there is a sufficient understanding of the strategic sophistication of public law groups, one can fully appreciate the way that key actors affect those calculations—which is the project's central concern.

III: Overview of the Dissertation

The discussions about conceptual confusion and the distinctiveness of public interest law should make it clear that this dissertation is by nature cumulative. Two chapters provide the conceptual and empirical groundwork for a third. Although this organization and substantive focus is somewhat unorthodox, it is my hope that these discussions also make it clear that this preliminary work is not optional. Without

attempting to get more clarity around power and influence than exists at present, it is not possible to ground the last empirical chapter in a meaningful theoretical context that puts it in conversation with other work. The results of this dissertation become solely about public law groups, and not the way that actors have a role in shaping their circumstances and fate. Also, without some understanding of the interconnections between the advocacy activities of public interest law groups, how key actors affect them will be difficult to appreciate. I should make it clear that although the first two chapters of this project support the last chapter, this is not their only function. The first two chapters make independent contributions to their respective topics. It is time to explore each chapter and its key findings.

Philosopher J.L. Austin once wrote: "words are our tools, and, as a minimum, we should use clean tools: we should know what we mean and what we do not, and we must forearm ourselves against the traps that language sets us" (Austin 1956). Chapter Two begins to clean a tool, the word "power", and use it. It begins by exploring power as domination, which I define as an asymmetrical, conflictual, and coercive relationship, and shows some of the problems that the concept has for the scholarship on groups and organizations. The chapter then conducts an ordinary language analysis of the word "power" to uncover the multiple senses of the word, but also to illustrate some of the common themes behind the word "power" that unite these senses together. I find that there is a set of themes related to "having property" which is an outgrowth of the word's etymological history. These all provide the foundation for the main purpose of the

chapter, which is to explore the concept of power, but as a form of influence, which I define as the capacity to affect others through imperceptible and non-coercive means.

Chapter Three has several tasks. The first of which is to offer the framework of *triangular advocacy*—public interest law organizations' mutually interconnected engagement with the law, politics, and society. This framework synthesizes the recent advances in public law scholarship with work in political science to suggest that this strategy is an outgrowth of the formalization of the public interest law movement. The chapter tests the triangular advocacy framework through a survey of public interest law groups, to ascertain the proportion and frequency of their legal, political and social movement advocacy. I find that their work is more "dyadic" than "triangular". PILOs tend to emphasize the legal and social, or the legal or the political, with the legal dominating their efforts as their mandate as legal organizations implies. This chapter also presents descriptive statistics about the organizational context of public interest law, which helps to distinguish them from other interest groups, and gives a sense of their autonomous operation as organizations, which is consistent with the more recent surveys of public law groups.

Chapter Four addresses the central question of the project— the way in which public law groups' perceptions of their relationships with key actors affects their beliefs and actions. Building on the ideas of power as influence, and triangular advocacy, I find that public law groups' perceptions about their relationships with the public and political actors affect their actions. If groups perceive difficulty with these actors, they are more likely to sue in federal court or protest as a way to pressure the political branches.

Conversely, if PILOs perceive favorable relationships with the public or political actors, they lobby and draft legislation more often, and are less likely to engage in protests. This suggests that public law groups seek to maintain their already favorable status. These results are consistent with the dyadic nature of triangular advocacy that I noted above. I find that more extreme perceptions of the law, in either direction, increases activity in all domains.

Chapter Five reviews the key findings of the dissertation and offers directions for further research in each component of the project.

The goal of this dissertation is to recover the old as much as it is to discover the new. This is literally true for the concept of power and its many descendants, but it is true in figurative ways, too. The many senses of power were once clear to scholars before political science and social theory disciplined it out of them. The recovery of the old is necessary to uncover how the past continues to shape the present in ways that scholars seldom recognize. I hope that the recovery of the old will encourage others to begin the process of clearing up the mist surrounding the many ever-elusive concepts of power. The recovery of the old has also been true of the public interest law organization, which has not had a distinct identity in political science scholarship in over thirty years. Bringing back what has been lost to time will bear fruit in the results of this dissertation: the concept of power—as influence, the framework of triangular advocacy, and confirmation that key actors do affect the beliefs and actions of those organizations that find themselves at the crossroads of the law, politics, and society.

Chapter II-The Concept of Power—as Influence

"No word is used more carelessly by us all than the word "power." I know of no conception which to-day needs more careful analysis."[3]*—Mary Parker Follett*

Follett's words are as true today as when she wrote them during the early days of the Coolidge administration. Her most prescient insight is the second—the need for careful analysis, rather than the first. Sloppy usage has its own difficulties, but a particularly treacherous problem for scholars is working with concepts without an appreciation for their subtleties is that it can guide one's thinking in unknown ways. I believe that this situation characterizes the scholarship on power and influence, especially for scholars of American politics. Whether these scholars realize it or not, they are often thinking of one meaning of power: as a form of domination— an asymmetrical, conflictual, coercive relationship with a defined scope. The great cloud of dust that the power debate kicked up in the discipline reduced the visibility of the common ground upon which the participants stood—which is that power is a form of domination. This common ground is not obscure for power theorists, but it is for many not ensconced in the literature. The result is that the assumptions implicit in domination, therefore, largely go unnoticed, but merits close examination. The first step, therefore, is to make what has largely remained implicit explicit by semantic analysis—looking at the words that we use more carefully.

The first half of this chapter will identify and explore the intellectual genealogy of power as domination as it applies to interest group research. The disciplinary origins of this understanding of power does not begin with Robert Dahl, but with Harold Lasswell

[3] (Follett 1941, 96)

and Abraham Kaplan's efforts to operationalize certain terms. This lineage has been somewhat lost to the discipline over time, and thus requires brief elaboration. Examining this lineage also demonstrates how deeply ingrained and naturalized power as domination is in political scientist's thinking to the extent that they barely recognize it, and more importantly—its implications. The later part of this section will argue that power as domination often hinders their understanding of the nexus between power and groups, and severely constrains scholars' ability to ask certain questions in the first place. The domination-tinged character of the field's leading theories of power is by no means a new insight (Hartsock 1983, Haugaard 2012). What remains underappreciated is the extent to which this specific understanding of power continues to shape thinking about "what power is" when scholars look for it in the groups subfield.

One source of the conceptual dissonance between "power" and "influence" lies in the ambiguity inherent in the word "power" itself because it is polysemous— there are multiple senses of the word. Hillary Clinton may have had great *power over* (domination) her staff, but she had much less *power over* (influence) the electorate. The ambiguity of what power means owes its sustained treatment to philosopher Dorothy Emmet (1953), and Hanna Pitkin through her *Wittgenstein and Justice* ([1972] 1993), a primer on the philosophy of Ludwig Wittgenstein and ordinary language philosophy for a political science audience. Pitkin briefly demonstrated the potential of ordinary language tools for political scientists by doing analyzing the roots of the word "power" as what today most refer to as "power to" do something (power as a capacity or ability) and how Dahl's

operationalization of it deviates from this understanding, and reflects an understanding of power as form of domination.

The second half of this chapter will pick up where Pitkin left off, and conduct a brief semantic analysis of the word "power". This analysis situates the various political senses of the word "power" as all being members of a family of ideas related to "having property". This then makes it possible to situate and recover one sense of power for which political scientists are familiar, but they tend to obscure—power as influence— the capacity to affect others in an imperceptible, non-coercive, manner. This definition, and the tools of semantic analysis, shows the gulf between power as domination and power as influence. Semantic analysis depends on the use of examples. In order to illustrate power as influence, I will use Richard Neustadt's *Presidential Power*.

I: Power as Domination

One definition of the word "power" is—"control or authority over others; dominion, rule; government, command." (OED, 2016). Of the synonyms in that definition, the one that best distills this understanding of power is "domination", which stems from the Proto-Indo-European **dom(h_a)u-no-s* a compound of **dom(h_a)os* 'house' and the suffix **-no-* 'leader of' (Mallory and Adams 2006, 208). Domination at its root means "leader of the house." When using the word "power" in this way, one frequently adds the prepositions "on", "of", and, especially: "over". One has *ownership, mastery,* or *control,* or *power over* something. Power as domination has a long lineage that includes Machiavelli, Hobbes, Weber, and Russell. The relationship between domination and political science is so strong that the two terms are often interchangeable. An example of

this is V.O. Key, who writes: "…politics deals with human relationships of superordination and subordination, of dominance and submission, of the governors and the governed…Thus, observation, not of the rulers alone, but of the relationships of ruler and ruled, constitute the essence of the study of politics" (Key [1942] 1952, 4-5). There are three components of power as domination that need disaggregation. Domination is (a) asymmetrical (b) conflictual and (c) coercive.

(A) Asymmetrical Relation:

V.O. Key illustrates the inequality intrinsic to relationships of domination; one is superordinate and has power over the subordinate. The asymmetry demands a unidirectional flow of control; a plot of land does not—and *cannot,* own its landlord because, if it did, the asymmetry would no longer exist, and one would need to characterize the relationship in some other form. This has been a persistent issue in the study of power because it implies the lack of feedback (Simon 1953, Lowery 2013).

A less obvious corollary of the asymmetry implied in domination is that it requires a defined scope. This is a logical deduction from the concept. If the dominant is the "leader of the house"—then one must specify which house. "Queen Elizabeth rules over" is a statement without meaning. "Queen Elizabeth rules over: you, Sir Walter Raleigh, her vassals, counselors, or England" is comprehensible. Herbert Simon (1953, 513) explains this requirement: "Authority is never unlimited - the range of alternative behaviors from which the superior may select the particular choice he desires of the subordinate is a finite range. The limits within which authority will be accepted we will call the zone of acceptance".

The asymmetry of domination: ruler vs. ruled, dominant vs. submissive, and governors vs. governed, seems medieval, draconian, and wholly inapplicable to contemporary political science research on power. Asymmetry, however, permeates thinking on the topic of power in subtle ways. International Relations scholars Michael Barnett and Raymond Duvall (2005, 42) assert that: "most scholars interested in power are concerned not simply with how effects are produced, but rather with how these effects work to the advantage of some and the disadvantage of others." This is an example of asymmetry hiding in plain sight. Barnett and Duvall do not assert this because they have identified the roots of the word "power" and discovered that their sense of it implies asymmetry. The scholarship on power has unconsciously accepted domination as its foundation for so long that Barnett and Duvall can assert that most scholars' central concern is asymmetry as a disciplinary fact.

(B) Conflictual: Dahl's final definition of power is a useful lens through which to examine the conflict inherent in domination: "For us, then, influence can be defined as a relation among human actors such that the wants, desires, preferences, or intentions of one or more actors affect the actions, or predispositions to act, of one or more actors *in a direction consistent with – and not contrary to – the wants, preferences, or intentions of the influence-wielders*" (Dahl and Stinebrickner 2003, 17) (emphasis added).Even if the ruler and the ruled share the same set of preferences the vast majority of the time, they cannot share all of them all of the time. Madison thought that it was impossible to give every citizen the same preferences, and that "as long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed" (Madison et

al. [1787] 2003). Since the ruler and the ruled are not the same person, and cannot have identical preferences, domination is inherently conflictual. Domination, nevertheless, involves congruence between ruler and ruled— but in accordance with the preferences of the ruler—and not the ruled. One must not make the mistake of thinking that the conflict inherent in domination requires "violence" or other unpleasantness of any sort. Steven Lukes (1974, 23) is clear on this point."…but he also exercises power over him by influencing, shaping, or determining his very wants. Indeed, is it not the supreme exercise of power to get another or others to have the desires you want them to have—that is, to secure their compliance by controlling their thoughts and desires?"

(C) Coercive: The inevitable conflict inherent in domination requires rulers to use their superior resources (implied in the asymmetry) to force the ruled to comply since the ruled will not consistently comply with the rulers' wishes on their own. It is important to understand the ways in which coercion is distinct from other types of force. Scott A. Anderson (2008,17) writes, "historically, as now, "coercion" appears to be a catch-all term, rather than one that clearly demarcates, say, acts of domination from acts of badgering or arm-twisting. Typically, however, it is used to capture a way that agents with considerable power can constrain the wills, actions, opportunities, bodies, and lives of others... These uses [examples of coercion] suggest a sort of irresistible power, which can operate through various mechanisms, including physical force and violence, threats, positional authority, and social pressure." The irresistibility of coercive power requires further explanation. Anderson (2016, 76-78), consistent with an older understanding of coercion that includes Kant and Locke, says that the dominant have "enforcement" or

"stopping power" in the sense that the dominated cannot defend against or retaliate against the use of force, which is what makes the threat of force credible. The Saturday Night Massacre during the Watergate investigation illustrates the compulsory nature of domination. President Nixon's Attorney General, Elliot Richardson, disagreed with his superior's order to fire Special Prosecutor Archibald Cox (the conflict inherent in domination). Richardson had two options: "move in the direction of the dominant" (agree with Nixon and fire Cox), or have his superior *move him* out of the way either explicitly (fire him) or implicitly (resign, which Richardson chose). Richardson could not escape Nixon's power. The former attorney general could retaliate against Nixon *after* the President removed him from office, but Richardson not resist the loss of his post, which demonstrates Nixon's stopping power, and hence his coercive power over his attorney general.

The *move or be moved* dynamic is the defining characteristic of coercion, and therefore, of domination, which is part of the reason why domination holds interest for normative, as well as empirically-inclined scholars. The subordinate are *unable* to have their acts and predispositions align with their *own* wants, preferences, or intentions (Skinner 1998, Richardson 2002, Pettit 2008). Power as domination, in other words, interferes with the free action of others, which is anathema to democratic values. Coercion is also why many scholars characterize power as causal. A brief reminder of the necessary conditions of causal statements will demonstrate the link: "in saying that 'X causes Y', we assume three things: 1) that X and Y exist independent of each other, 2) that X precedes Y in time, and 3) that but for X, Y would not have occurred (Wendt 1998,

105). Domination is congruent with the logic of causation because the latter assumes the Y would not occur without coercion (X). This is one of the reasons for the endurance of this understanding of power; it aligns with causal modes of explanation. This feature of power as domination made the concept especially attractive to political scientists after World War II who were seeking to make the discipline more empirical.

Operationalizing Domination

Harold Lasswell— with the help of philosopher Abraham Kaplan, helped to make political science compatible with the dominant philosophy of science at the time: logical empiricism. Among the many goals of their joint work, *Power and Society* is to make previously vague terms rigorous enough for scientific study. One of the choices they made is to operationalize domination. Lasswell and Kaplan explicitly reject power as a capacity. Responding to Bertrand Russell they argue that "power is here defined relationally, not as a simple property... power in the political sense cannot be conceived as the ability to produce effects in general, but only such effects as directly involve other persons: political power is distinguished from power over nature as power over other men" (Lasswell and Kaplan 1950, 75). For them, power is not just any type of relation, but an asymmetrical, conflictual, and coercive one: "Politics, as a theoretical study, is concerned with the relations of men, in association and competition, submission and control, in so far as they seek, not the production and consumption of some article, but to have their way with their fellows…What men seek in their political negotiations is power (Lasswell and Kaplan 1950, 75, citing [Catlin 1927 210-211]). They argue, consistent with an understanding of power as domination, that power has a defined scope: " "Power

over whom" is not yet a complete specification: there must be added, "in such and such particulars" (the scope of power)" (Lasswell and Kaplan 1950, 76). To make domination scientifically rigorous, they argue that power is the participation in the making of decisions, which they define as, not merely as policies, but policies with *the threat and possibility of severe sanctions or deprivations*, which, they argue distinguishes power from mere influence. The choice to define power as "having their way with their fellows" which is not general, but has a defined scope, and over a series of specific decisions had a decisive effect on scholarship on power in political science.

There were a series of successors to Lasswell and Kaplan, such as Herbert Simon (1953), who describes his inquiry as "a series of footnotes on the analysis of influence and power by Lasswell and Kaplan in *Power and Society*..." (Simon 1953, 201). Others built on the conceptual groundwork laid by *Power and Society* by building formal models of the concept and refining the measurement of power (March 1955, 1957, Shapley and Shubik 1954). In spite of the proliferation of these efforts, this early literature still did not define the power in rigorous enough terms that could apply to a range of circumstances, which Lasswell and Kaplan's original goal. Despite the technical sophistication of these early measures, they failed to see the forest for the trees. The "central" or "intuitive" understanding of power had been lost, and needed a much deeper and sustained theoretical treatment than it had been given previously. Robert Dahl would help correct these deficiencies.

Of the early treatises on power, it is clear to see why Dahl's operationalization of power has stood the test of time. They reflect Dahl's singularly profound intellect. He had

the unique gift of writing with a high level of sophistication and accessibility. In *The Concept of Power* (1957a) his talents are on full display. Dahl sought to clarify the essence of power that prior discussions had missed: "Power, influence, control, authority. "I am seeking to explicate the primitive notion that seems to lie behind all of these concepts" (Dahl 1957a, 202). He litters the article with examples of this "primitive notion of power": the policeman making traffic go straight that would turn right otherwise, Dahl's ability to get undergraduates to read books that they would not read otherwise, or to take Friday afternoon exams when they would rather spend the day in New York City or Northampton otherwise. One can see from these examples that Dahl's understanding of power exhibits the same asymmetry, conflict, and coercion in Lasswell and Kaplan's definition of power. The policeman and Dahl, have stopping or enforcement power over specific persons, and not others. Dahl could not command traffic to turn right, for example. This enforcement power of the policeman and Dahl put them in an asymmetrical relationship with cars and students, respectively. The conflict in each element is clear as well. Cars and students would prefer to do things that the policeman and Dahl do not. He formalized this ancient understanding of power through his well-known formulation: *A has power over B to the extent that he can get B to do something that B would not otherwise do.* This intuitive notion is straightforward, but deceptively simple. While this form of power obviously expands the range of phenomena that scholars can study beyond the participation in making decisions.

In addition to making power more rigorous for empirical study, Dahl's theory is the first in this recent line of literature to make power causal. [4] Given Dahl's commitment to logical empiricism, it is a very particular causal claim—a Humean one. According to David Hume, one distinguishes cause from effect through the repeated observation of *actual events*. Natural necessity and unobservable entities cannot serve as causes, only other events. A popular metaphor for this mechanistic form of causation is the billiard ball model; a cue ball forces another ball to do something that it would not do otherwise—which is to stay at rest. Locke and Hobbes also understand power as operating in this way (Ball 1975). Dahl makes explicit what had been latent in the concept of power as domination.

It is common practice to interpret *The Concept of Power* through Dahl's theoretical rebuttal to the ruling elite theorists (Dahl 1958) and his empirical rebuttal to them in *Who Governs?* I will refer to the latter two works as "the community power projects" for ease of understanding.[5] *The Concept of Power*, I argue, is part of an effort started by those that Dahl acknowledged in his footnotes—Lasswell and Kaplan, and James March. Power and the community power projects are two separate enterprises

[4] The last criterion of Dahl's domination-centered definition of power, its causality, requires further discussion. Dahl does not explicitly define power as causation, and actually suggests otherwise in the *Concept of Power*. Dahl is cautious about speaking of causation due to the influence of Hume. Dahl writes: " But anyone who sees in the two cases the need to distinguish mere "association" from "cause" will realize that the attempt to define power could push us into some messy epistemological problems that do not seem to have any generally accepted solutions at the moment. I shall deliberately steer clear of the possible identity of "power" with "cause," and the host of problems this identity might give rise to" (Dahl 1957a, 203). Yet his concept of power is implicitly causal. It follows deductively from his formulation of power: specifically in the phrase: "would not do otherwise" for the reasons that I noted earlier on coercion. Dahl eventually "deliberately steered" towards the idea of power as causation in future writings: "The closest equivalent to the power relation is the causal relation. (Dahl, 1968. pg. 16 in Haugaard 2002).

[5] See Lowery 2013, footnote 2, in which he defends the linking of the community power literature, questions of influence, and the politics of interest groups.

(Baldwin 2015). Interpreting *The Concept of Power* through what came before it—political science's operationalization of domination, rather than by what followed it, leads to a more accurate understanding of Dahl's theory of power and where it properly belongs in each literature.[6] Dahl's community power projects were the spark for the conflagration that eventually became the three faces of power debate, yet Dahl, Bachrach and Baratz, and Lukes all share the same bedrock of power as domination—they just differed in how they thought that this control manifested itself.[7] Bachrach and Baratz's (1962) six-page—but potent, critique of Dahl centers on the strengths and limitations of the pluralism of Dahl, Polsby and others, but not the domination of Lasswell and Kaplan, Simon, or March. I would even suggest that Bachrach and Baratz's theory that the dominant can mobilize bias to prevent others from undermining their control is an important improvement on the work of Lasswell and Kaplan. Like his "second-face predecessors", Lukes substantially expands the range of what counts as domination, and

[6] Dahl's commitments to logical empiricism and domination precede The Concept of Power. A Preface to Democratic Theory (Dahl 1956) is one example of this. Dahl's embrace of logical empiricism is evident when he argues that "preferences" or "wants" are an inappropriate basis for understanding the intensity of preferences in a democracy, but instead one must focus on overt behaviors (Dahl 1956, 99-101). It should come as no surprise, therefore, that Dahl would eventually censure the ruling elite theorists for asserting the existence of such an elite without demonstrating its existence or control.

Dahl's ideas about power are in primordial form here, too: "…a more realistic relationship, such as A's capacity for acting in such a manner as to control B's responses" (Dahl 1956, 13). Following Lasswell and Kaplan, Dahl understood this control as occurring in cases of concrete decision-making in a specific scope. In a system of separation of powers and polyarchy, no entity has *power over* every aspect of the society. Dahl concluded that "who governs" (changes decisions in a democracy) are minorities who prevail on a specific, and idiosyncratic range, of issues, and not majorities. It should, therefore, also be no surprise that Dahl's standard of proof for evidence of a ruling class is whether that that elite (a minority, by definition) *consistently prevails on specific political decisions over* the objections of a majority. Dahl's understanding of what it would mean for one to govern is an extension of the principles of asymmetry, conflict, and coercion that are core components of domination, which he inherited from his predecessors (McFarland 1969).

[7] The power debate progressed substantially since Dahl, Bachrach and Baratz, and Lukes, and now includes many diverse strands and schools. See Haugaard 2002 for an excellent primer on those approaches. I focus on the three faces of power because these are the theories that most American politics scholars know.

includes shaping the subordinate's standing conditions: wants, attitudes, preferences in the direction of the dominant's wishes. Lukes, nevertheless is more conscious of the place that his theory of power has in the power as domination tradition (Lukes 1974, 10), which was the path-dependent trajectory at the time (Lukes 2015, 265-266).

Domination's disciplinary dominion

Power as domination is a particularly nasty and brutish understanding of politics—but it has a rightful place in the study of politics. The ways in which actors must *move or be moved* by government itself, or with the support of the political process is a crucial empirical and normative concern, and so long as scholars are willing to meet its three conditions it remains a valuable tool in the political science toolbox. John Gaventa's (1980) *Power and Powerlessness* is a classic treatment of the myriad and subtle ways in which people of the Appalachian Valley remain subject to asymmetrical, conflictual, and coercive forces that they are in no position to resist. I share Hannah Arendt's concern, however, that the centrality of one sense of power reflects scholars' "conviction that the most crucial political issue is, and always has been, the question of Who rules Whom?" (Arendt 1970, 64). I also share her belief that "It is only after one ceases to reduce public affairs to the business of dominion that the original data in the realm of human affairs will appear, or, rather, reappear, in their authentic diversity" (Ibid.)[8]. A comprehensive examination of the way that domination shapes interest groups'

[8] Hannah Arendt, but also Mary Parker Follett, Hanna Pitkin, and Dorothy Emmet each did their part to denaturalize domination as the essence of power. The fact that the leading voices against domination have been women representing different eras, ideologies, and disciplines seems like more than a coincidence. Nancy Hartsock agreed (1983). I should make it clear that I am not making an essentialist observation. There are women domination theorists (Hayward 2000) and there are male consensual theorists (Parsons 1963, Habermas 1984). I am suggesting, however, that women's distinct social position may have given Arendt, Follet, Pitkin, and Emmet perspectives on power that made them aware of the peculiarity of their

scholars thinking is beyond my present scope. I would like to use one criterion of domination: coercion, as an example of the way that domination controls scholars' research in unexpected and unfavorable ways.

From ancient concerns about the mischiefs of faction to modern concerns about how the "special interests" control politicians, understanding how groups prevail in politics often centers on whether they are able to bring about concrete, observable changes—usually decisions, such as roll-call votes in a legislature. Simply put: did they play the game, and did they win? Interest groups scholarship has had little success proving this after more than sixty years of work. Frank Baumgartner, Beth Leech (1998) and David Lowery (2013) catalogue the difficulties with examining the link between groups, government, and power, and these failures are part of the reason why the subfield has moved towards other observable events such as agenda-setting (Baumgartner et al. 2009, Caldeira and Wright 1988) providing information (Hall and Deardorff 2006), and "buying" effort rather than votes (Hall and Wayman 1990). I would like to suggest that the methodological problems that Baumgartner, Leech, and Lowery identify have deeper roots in their thinking than they may recognize. Why do they believe that power, or, as they call it, "influence", is when a group *prevails* over the resistance of another in making specific decisions? They often characterize the literature's inability to prove that groups overcome the resistance of others in concrete decisions as a high bar that research continues to fail to meet. The discussion of domination suggests that the question is not

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colleauges' largely uncritical acceptance of domination as the essence of power (Hawkesworth 1989, Young 1994). This coincidence raises important questions about the relationship between gender, power, and political science that needs further exploration. A nice start is Mary Hawkesworth's *Embodied Power*: *Demystifying Disembodied Politics* (2016).

whether the bar is too high—but whether it should be there at all. If scholars continue to limit themselves to situations where actors coerce others, in addition to the empirical failures above, they are going to miss the vast number of ways that they affect them without coercion.

In a great many situations, an actor or entity's very *existence* affects others. The president affects the legislative process through the constitutional power of the veto (Cameron 2000). The concept of anticipatory representation—attempting to please future voters through one's present actions, depends on the premise that voters and attentive publics affect members of Congress without *doing* anything to them (Mansbridge 2003, Arnold 1990). Both of these circumstances are legible to political scientists as forms of power. One could easily describe these situations as being about presidential power, or the power that constituents have over their representatives. Yet in both of these circumstances these examples don't evince the asymmetry, conflict, and coercion that political scientists say make power what it is. Congress is not subordinate to the president or the public, and neither has stopping power over Congress in the same way that Nixon, the policeman, or Dahl did. Congress can find ways to evade their disapproval—if Congress and these actors disagree at all, which they need not. It is certainly not accurate to describe the *nature* of the relationship that Congress has with the president and the public as essentially hostile. The source of this paradox is that for too long political scientists have been thinking of situations where one has "their way with their fellows" as the essence of power. They have been consuming "an unbalanced diet: one nourishes

one's thinking with only one kind of example" (Wittgenstein 1953, par. 593). Escaping this paradox requires looking at other examples.

II: The Concepts of Power

I am puzzled that after more than half a century of critical attention to power that so few have thoroughly examined the nuances and complexities that power poses as a *word*—with the notable exceptions of philosopher Dorothy Emmet and Hanna Pitkin. The acrimonious debates about power have long led scholars to declare it an "essentially contested concept"—which it is. There are no criteria that ever will—or *could*, convince anyone that domination is prevailing in a series of concrete decisions or shaping the wants of another. The essentially-contested nature of a concept, however, depends on the premise that there is only *one* concept; "no one would conceivably refer to one team among others as " the champions " unless he believed his team to be playing better than all the others *at the same game*" (Gallie 1956, 175). If the problem is that scholars are talking past each other (not playing the same game) because they are talking about different things, then the problem is not contestation—but confusion.

As an initial matter, I should state that "power" is not vague— it's ambiguous, and in such situations the best way to prevent confusion is to be clear on what sense of the word one is using. Hanna Pitkin had similar advice for a related word—representation: "A varied usage is not the same thing as a vague usage"; quite the opposite: "the need for making distinctions is exactly contrary to the vagueness which results from failure to distinguish." (citing Chrimes 1936, 85-86) In that case, however, the problem is not to state the correct meaning of the word, but to specify all of the

varieties of its application to various contexts" (Pitkin [1967] 1972, 8). Since the problem is ambiguity, I concur with Emmet's assessment that "It may be more helpful to start by noticing that the word covers a varied family of meanings. If we want precision, it may best be sought not by bastardizing certain members of the family (saying that they "are not really power") but by trying to discover their idiosyncracies in relation to the other terms with which they keep company in their several contexts" (Emmet 1953, 10). While varying senses of the word "power" may all be members of the same family, one must not assume that this necessarily means that they all have *one* thing in common. Instead, one must "*look and see* whether there is anything common to all" (Wittgenstein 1953, par. 66). Using the Oxford English Dictionary (OED) Online, Table 2.1 shows fourteen politically relevant senses of the noun "power" to help political scientists and power theorists consider other examples.

Table 2.1: Politically-Relevant Senses of The Word "Power" from the OED	
Definition or Phrase	**Definition in context**
Legal ability, capacity or authority to act; delegated authority; authorization, commission; legal authority vested in a person or persons in a particular capacity. Also in pl. in same sense.	*The Special Prosecutor had the power to investigate all matters pertaining to Watergate.*
More generally: ability, capacity. Also fig.	*Only a fool would underestimate the power of the fourth estate to make or break a politician.*
In power (a) in a position of authority, in government…	*The 1994 midterm election swept Gingrich and the Republicans into power in the House.*
Capacity to direct or influence the behaviour of others; personal or social influence	*A new justice's power on the Court depends on her collegiality.*
Control or authority over others; dominion, rule; government, command, sway. Freq. with †of, †on, over.	*The President's power over his staff.*
power behind the throne n. a person without constitutional status who covertly exercises power by personal influence over a ruler or leader; also in extended use.	*Insiders said that Dick Cheney was the power behind the throne.*
Political ascendancy or influence in the government of a country or state.	*The removal of John Boehner as Speaker signified the rising power of the Freedom Caucus.*
Ability to act or affect something strongly; physical or mental strength; might; vigour, energy; effectiveness.	*The Chair of Appropriations has great power in the Senate.*
Political or national strength.	*Terrorism raises distinct challenges to NATO's power.*
A powerful or influential person, body, or thing; spec. (in early use) †a person in authority, a ruler, a governor (obs.). Freq. with in.	*Senator Byrd was a power in the Senate.*
A state, nation, city, etc., with regard to its international authority or influence.	*The Framers worried that foreign powers would play the colonies off of each other.*
With distinguishing word: a movement to promote the interests or enhance the status or influence of a specified group.	*The Panthers helped the cause of Black Power.*
the powers that be and variants [after Romans 13:1] : the authorities; the people exercising political or social control.	*The populist streak is a revolt against the powers that be.*
power of the sword: control over military force and	*The power of the sword ensures that a government*

disciplinary authority in a country, etc.; (the threat of) violence.	*can coerce its population.*

The multiple senses of "power" in Table 2.1 shows that the word expresses many ideas. Power expresses some notion of capacity. The special prosecutor, the media, and the power of the sword are examples of power as an ability. The word connotes strength—as the chair of Appropriations, and NATO, demonstrate. Dick Cheney being the power behind the throne, or the president's power over his staff suggests that power is also relational, or involves others. These different senses also overlap. Dick Cheney's status in the Bush Administration also implies that he had a particular ability or capacity, but that he was also strong. This brief exercise leads one to the same conclusion that Wittgenstein reached when looking at games: "For if you look at them you will not see something that is common to *all*, but similarities, relationships and a whole series of them at that" (Wittgenstein 1953, par. 66). The similarities and relationships that permeate the word "power" show that the concept does not have a single essence. This means that no one can declare any particular sense of the word as being what power *is*, because power *means* many different things. This brief examination of the different senses of power makes it difficult to see how they are all members of the same conceptual family. It would be best to look at the history of power as a word. Turning to etymology is helpful because "a word never—well, hardly ever—shakes off its etymology and its formation. In spite of all changes in and extensions of and additions to its meanings, and indeed rather pervading and governing these, there will persist the old idea" (Austin 1956, 27). Turning to the history of the word is also helpful because "information about the

historical circumstances in which a word originated may tell us something about its meaning" (Pitkin [1972] 1993, 10).

The etymological history of the word "power" is somewhat intricate. Its most recent linguistic origin is the Vulgar Latin *potere*, which is a modification of the classical Latin, *possum/posse. Possum* is a compound of two words in classical Latin: *potis* (able, capable), and *sum* (I am) (Glare [1982] 2012). The word literally means, "I am able".[9] The classical and Vulgar Latin origins are why most definitions of power say that its core meaning is "power to", or the capacity or ability to do something. This is not the original meaning of *potis*, however; one must go further back in the etymological history. The classical Latin *potis* ultimately has its roots in the Proto-Indo-European (PIE) word *potis, which means: "master, ruler, lord, host, owner, husband".[10] Dahl wins the prize; he was etymological correct when he says that the primitive notion of power is control over another. The *potis was master, but the nature of his mastery needs elaboration. Most would recognize the PIE ***doms-potis* in one of its Greek compounds: the des (house) pōtes (lord), *despotēs*—the despot.[11] The Greek "house" is not architectural, but social (Ramat and Ramat [1993] 1998, 11). This is an important distinction. Agamben (1998, 2) notes that Aristotle's *Politics* consistently distinguishes between the *manager*

[9] *Possum* is the root of many words that we still recognize, such as "possible" [*possibilis*: possum+ibilis], "potency" [from *potens*, the present active participle of *possum*] and "potential" [*potentialis*: potentia (from *potens*)+alis] (de Vaan 2008).

[10] There is some debate in linguistics about the meaning of *potis. The emininent linguist Émile Benveniste [1969] (1973) argues that there is an older sense of *potis, meaning "self" of which "master" is a derivative. Others, however, have challenged Benveniste's etymological evidence (see Beekes and Van Beek 2009, 1225).

[11] The Latin equivalent of despot is *dominous*, which is related to domination— a concept which, at this point in the chapter, one should be well acquainted.

(oikonomos) of the household and the *master* (the head of the household in his capacity as owner of slaves) (Aristotle 1984, 277). The slaves were his possessions, and he could dispose of his property as he saw fit. The possession and disposition of human property is what defined the *potis as master, and this included his slaves as well as his family members, as seen in the Roman paterfamilias (Ramat and Ramat [1993] 1998, 10). If the *potis no longer had these possessions, he was no longer a master (McNulty 2007). Applying this logic to a more recent historical example, the 13th Amendment ended slavery in America— but it also ended mastery, as well.

The mastery implied in *potis, therefore, is "having property". It is now clearer how many of the disparate senses of power fit together into one family. When others speak of "the special prosecutor's power to…" in the above example, they are stating that she has *a* property: i.e. the capacity to investigate all matters pertaining to Watergate. The attributions of strength, "the chairman…has great power," is another ways of saying that this person has *a lot of a* property (capacity or ability). I should be clear these extensions are meant to illustrate the conceptual linkages between a few senses of power that make it sensible to us. This examination of the multiple meanings of power, and its etymology reveals that there are *concepts* of power that are all members of the "having property" family with many descendants who manifest some traits from this family of concepts but not others.

The goal of this brief semantic analysis has been to provide the foundation for the argument that scholars have failed to fully appreciate one particular member of the power family: power as influence. This is due to two contradictory trends. One set of scholars

collapse the distinction between power and influence. Most discussants on power, such as Dahl, tend to agree with Herbert Simon when he declared that "it is not necessary, for present purposes, to distinguish between influence and power, and I shall continue to use the two words as synonyms" (Simon 1953, 501). The second, which has a much smaller following, is to erect a firm, thick barrier between power and influence (Morriss [1987] 2002, Zimmerling 2005). Neither approach is satisfactory. The "collapsers" correctly recognize that power as influence shares many similarities to power as domination, but they err in suggesting that this common essence is control over another. The "dividers" correctly recognize that power (as domination) is not quite the same thing as influence, but they exaggerate the distance between power (in any sense) and influence. The collapsers and dividers ignore that power *as* influence is a legitimate member of the "power family", which is the point of reconciliation between the two.

III: Power as Influence

What I am calling "power as influence" is one of the politically-relevant senses of power from Table 2.1: the "capacity to direct or influence the behaviour of others; personal or social influence." The PIE and Latin roots of "influence" are roughly similar: in+fluō: "To flow in; especially of rivers the sea, or sim." Glare [1982] 2002). The word took its modern meaning, *influxus* (*stellarum*) from astrology, which posited that there was an ethereal, astral fluid that flowed from the heavens into human beings that altered their character and destiny (Morriss [1987] 2002). Sentences using power as influence do not need a preposition, but one may use "of" "on" "with" or "over". Power as influence is (a) a capacity (b) imperceptible and (c) non-coercive.

(A) Capacity: Power as influence has affinities with members of the relational branch of the power family (having human property) since it other actors, but I would argue that power as influence shares more with the capacity or ability senses of the word.[12]Relational senses of power require another person; if there are no slaves, there are no masters. If there is no throne (President Bush), then Dick Cheney cannot be the power behind it. The members of the capacity/ability power family do not have this problem; some aspect of their power is intrinsic (Harré 1970). There may be conditions or stimuli that activate that intrinsic capacity, but that capacity does not wholly depend on those conditions, or stimuli. A fire "activates" a match, but the match's ability to combust is not completely dependent on fire. Power as influence has a capacity component. The etymology of influence helps to show this. Human beings are the stimuli, or activating condition for heavenly influence, but the astral fluid comes from the stars and planets themselves, and not human beings.

(B) Imperceptible: Phrases such as someone being "under the influence" shows that influence has always had mysterious connotations. People use the word "influence" precisely because they often wish to emphasize the enigmatic or unobservable element of

[12] Philosopher Rom Harré says that to ascribe power to something (to describe a member of the capacity/ability branch) is to say that, in a rough paraphrase for human beings: X has the power to A=if X is subject to stimuli or conditions of an appropriate kind, then X can (or will) do A, *in virtue of its intrinsic nature* (emphasis original) (Harré 1970, 85). Harré adds two other conditions that are worthy of note: (1) to attribute power to something is only to state what something *can* or *will do*, but to say nothing about what a thing *is*, or for what reason X has that power. This is a question for future research. The second condition is most important here. (2) The attribution of power to something implies that some aspect of its power is independent of its conditions or stimuli. The president's power to veto legislation illustrates Harré's conditions. The president can only veto bills under certain conditions or with certain stimuli: Congress must pass a bill. Without this, the president's veto power lies dormant but the president still has the veto power *in virtue of the intrinsic nature of the office*. As for Harré's second condition, the veto power is not entirely a fixture of Congress or passing a bill, but the president inherently still has the veto power, even when the president chooses not to exercise that power.

whatever they are discussing. One reason for this is because it is impossible to observe these elements. The Italian "influenza" reflects this situation. Before the development of modern medicine, people did not know what caused human illnesses like the flu, hence their explanation that it came from the heavens. Another reason is that one *does not care to observe* these elements. When concerned parents speak of a television program possibly having a "bad influence on their children", the technological, neurological, or psychological mechanism through which it affects their children is beside the point. The content of the program and, more importantly, the effects that it has on children is what the concerned parents wish to emphasize. Influence, or more appropriately in this case, *power as influence*, is not a poor substitute for the empirical because observing these actions may be impossible, irrelevant, or both.

(C) Non-coercive: Domination seems like a subset of influence, but it is not. What distinguishes influence from domination, and vice-versa, is that there are situations where one has one, but not the other. One can affect others without having dominion over them. The presidential veto and anticipatory representation examples from earlier are situations of this sort. The unpopular authoritarian regime that lacks legitimacy with its citizens is a paradigmatic example of the converse. These regimes have *power over* their citizens (domination), but they do not have *power with* them (influence). Other related synonyms show how domination and influence are distinct forms of power. Unpopular authoritarian regimes may have command and control, but what they lack is *authority*, which Emmet (1953, 14) defines as "power *plus* some belief that there is a right to exercise it." Emmet says that what makes influence distinct is that "we may speak of power in situations in

which one person defers to another because of considerations which are not simply considerations of force" (Ibid.). Influence, therefore, is non-coercive by nature. An OED definition of influence also conforms with Emmet's argument: "the capacity or faculty of producing effects by insensible or invisible means, without the employment of material force, or the exercise of formal authority; ascendancy of a person or social group; moral power *over* or *with* a person; ascendancy, sway, control, or authority, not formally or overtly expressed" (OED 2016).

The key distinction, therefore, between power as domination and power as influence is coercion. Steven Lukes (1974, 32) provides a useful diagram that distinguishes "power" from "influence". Although we disagree on the difference between the two ideas, I will follow Lukes' lead by visually distinguishing "power as domination" from "power as influence" in Figure 2.1 as a way of clarifying the discussion thus far. For Lukes, the left column (conflict) of this figure is "power", while the bottom row is "influence". For Lukes, therefore, "power" and "influence" can overlap, so long as there is conflict, but non-conflictual, non-coercive power (the lower right-hand corner) advocated by consensualists such as Arendt and Parsons, are not "power". Lukes and I both agree that non-conflictual coercive power is an oxymoron, hence the null cell. We both disagree, however, as to what phenomena power as domination can encompass. Figure 2.1 visually conveys what I have been suggesting throughout; power as domination explains a very specific type of phenomena, while power as influence explains a greater diversity of political activities.

Figure 2.1: Power as Influence vs. Power as Domination

	Conflictual	Non-Conflictual
Coercive	**Power as Domination** Violence, force, control, and command	
Non-Coercive **Power as Influence**	Manipulation	Charm Status
	Authority Persuasion	

A Model of Power as Influence—Neustadt's Presidential Power

The etymological and ordinary language analyses of domination, power, and influence have been about words—but they are not *just* about words. These analyses are ultimately about *ideas* and the way that these words shape the research that political scientists conduct. If power as influence is a distinction that scholars could recognize, then the proof for this claim is in actual research. One of the clearest examples power as influence is Richard Neustadt's *Presidential Power*. Neustadt is clear that this is the sense of power that he is using for his study: "Presidential" on the title page means nothing but the President. "Power" means *his* influence. It helps to have these meanings settled at the start" (Neustadt [1960] 1961, 2). What makes Neustadt's work illuminating here because the core of his argument is precisely the distinction that I have been drawing throughout—that power as domination and power as influence are analytically distinct. Neustadt demonstrates that the president's dominion over others is truly rare, and, in line

with other consensual power theorists (Arendt 1970, Parsons 1963) argues that such situations reveal the president's weakness—the lack of his power as influence. Throughout, Neustadt applies the three criteria for power as influence: capacity, imperceptible means, and non-coerciveness to the presidency.

(A) Capacity to affect others: The president's intrinsic power is the ability to persuade, which is the power to bargain with others. Although Neustadt did not need to specify the sources of the president's persuasive power, he did so, placing it, not in the Constitution, or any particular statutes, but in the president's unique vantage point in the American political system. The president is the hub of requests from several sources: Congress, the Bureaucracy, the president's party, the public, and foreign actors. Presidents have distinct advantages relative to other actors, as they are the focal point for these other sources.

(B) Imperceptible Means: The persuasive power of the president depends on the status and authority that others attach to the office. Status and authority may augment the presidents' logic and charm with others, but status and authority may also operate independently to give presidents distinct bargaining advantages given their position in the political system. The other means of presidential influence are their public prestige and their professional reputations, which is particularly relevant here. Many actors in government try to predict what presidents are going to do with their bargaining advantages, and adjust their actions accordingly, ie: anticipated reactions. This is an example of the president affecting actors without doing anything.

(C) Non-Coerciveness: The president's lack of coercive power is the linchpin of Neustadt's argument. The separation and sharing of powers in the American system

makes the president's relationship with other actors symbiotic, rather than asymmetric. Presidents can "move" the political actors they must work with, but only through the imperceptible means listed earlier, and it is really the actors *moving themselves*. Many believe that the essence of presidential power is of the *move or be moved* variety—and presidents often take pains to convince others that this is the nature of their power as well, but it is not. In situations of presidential arm-twisting that appear to be the use of force, and "actors doing what they would not do otherwise" Neustadt highlights that what these actors are really doing is convincing themselves: "the essence of a President's persuasive task with congressmen and everybody else, *is to induce them to believe that what he wants of them is what their own appraisal of their own responsibilities requires them to do in their own interest, not his*" (Neustadt 1960 [1961], 46). The president is a sheep in wolf's clothing. This is because the president lacks stopping power with these actors, "when one man shares authority with another, but does not gain or lose his job upon another's whim, his willingness to act upon the urging of the other turns on whether he conceive the action right for him" (Ibid, 34)…"persuasion deals in the coin of self-interest with men who have some freedom to reject what they find counterfeit" (Ibid, 46).

IV. In Defense of Ambiguity

Throughout this chapter I have consistently switched between "power as domination or influence" and just "domination" or "influence", and my discussions have been specific to each, raising the inevitable question, why mention power at all? The fourteen examples of the concept and the multiple essences all suggest that the wisest

course of action would be to declare a conceptual disaster zone around the many concepts of power, and abandon the concept. William Riker (1964) recommended this course of action long ago. In spite of the difficulties that power poses as a concept, I believe that scholars should not condemn power as unfit for study. I seriously doubt that they would after more than half a century of effort, but there are principled reasons for retaining the word as well. Words create bridges— but they also put up walls. As the etymology of the word "power" shows, these multiple senses are all members of the "having property" family. Gaventa and Neustadt are both studying a related set of concepts; they wish to understand the sources of, and the consequences of the uses of power. Forcing both of them to relocate to the separate domination and influence literatures, respectively, does a disservice to appreciating the commonalties they share, which is an understanding of how others are able to shape the circumstances and fate of others in politics.

This exercise in ordinary language analysis, interesting though it may be, has been for a purpose. The goal has been to reduce conceptual confusion not only for the power literature, the interest groups subfield, but specifically to make the conceptual foundation of this dissertation as clear as possible, and to situate it within the proper set of works. This chapter can now more completely answer the question about what Pascoe described in the introduction—key actors influenced the NAACP, the ACLU, and the JACL—but it is also one where they had *power with* them.

Chapter III-Triangular Advocacy

"The key to effective social change is not rocket science. You need to reach all three branches of government and public opinion." –Roger Clegg, President of the Center for Equal Opportunity[13]

Gender Justice is a public interest law group in the Twin Cities of Minnesota committed to addressing the causes and consequences of gender barriers locally and nationally. One of these is the way that cognitive biases oppress those with gender or sexually-based forms of difference. Gender Justice takes cases that they hope will resolve the legal problems that their clients have, but that also have the potential to help a lot of other people. Given the scope of the problem, Gender Justice cannot live on the law alone. They use a multi-pronged approach that includes working with the MN legislature, and public education efforts. They hope that these efforts will illuminate the ways that cognitive biases sustain gender and sexual inequality not only in the law but also in politics and society, and the ways that all three work together to sustain these biases. Their approach is not atypical. Public interest law organizations are acutely aware of the legal, political, and social origins of the causes for which their employees commit their lives, their fortunes, and their sacred honor. They are under no illusions about the limits of the law in bringing about social change without the active support and engagement of the political branches responsible for enforcing legal decrees—and the public, which captures the attention of both legal and political actors. They also know that their organizations must work with all three domains to achieve lasting social change. PILOs engagement with these three domains, and the interconnections between them, is by no

[13] Rhode 2008.

means a new discovery, but prior scholarship has not sufficiently examined what these interconnections means for the practice of public interest law.

This chapter has three tasks. It, first, proposes a framework for understanding PILOs' mutually interconnected engagement with the law, politics, and society, which I call *triangular advocacy*. Since this chapter is part of a broader project, after introducing triangular advocacy, it then explains the sampling method for the survey of public interest law organizations that provide the data for this chapter and the next. The chapter also provides descriptive statistics of the sample, which demonstrates the unique organizational context of public interest law organizations. The chapter concludes by offering empirical support for the triangular advocacy framework by examining how public law groups allocate their efforts towards the law, society, and politics, and how organizational factors support the idea that triangular advocacy is a strategy for social change.

I: The Myth of Rights?

It is important to situate public law organizations within the legal profession in order to understand how PILOs are distinct from other legal organizations (such as legal service organizations [LSOs]) and other legal movements (lawyers affiliated with social movements). This will also clarify the nature of the critiques against them. Proceeding from the premise that organizational forms and practices reflect different ideologies of the law and what it does (Harrington 1995), Thomas Hilbink (2004) offers a typology of three types of cause lawyers: procedural, elite/vanguard, and grassroots. PILOs most closely align with the elitist/vanguard category. Hilbink's typology differs along three

dimensions. I will focus on the first—how public law groups view the legal system. They view the legal system as *above* politics. The law is neither divorced from politics (a proceduralist view), nor interchangeable with it (a grassroots view).

The law has an exalted place in the national psyche because of what Scheingold (1974) refers to as the myth of rights. For Scheingold, the word "myth" has two meanings. One meaning of myth is ideology—a narrative and set of values that explains the way that politics should operate. Under the *ideology of rights*, the source of legitimacy in America is popular sovereignty embodied in the Constitution. Actors derive their powers from it, take oaths to support it, and may not contradict it as supreme law. Although all actors by necessity interpret the Constitution to carry out their duties, "it is emphatically the province and duty of the judicial department to say what the law is" (Marbury v. Madison 1803). When a court declares that actors have violated the supreme law they are liable to moral condemnation because they have also violated core American principles: limited government, equality, liberty, etc. The courts are the only entities that have the authority to overcome politics because they are morally superior to it as guardians of the supreme law. If Americans are uniquely susceptible to legal discourse because of the ideology of rights, then the law is a potent weapon in the social change arsenal. One could conclude that legal change—by itself, is *sufficient* to produce social change because it alters the opinions of both the public and government officials. Scheingold rejects this. This rejection is the second meaning of myth—false belief, or the fantasy of rights.

There are many reasons to doubt that the law supersedes politics.[14] Many of them are variations on the theme that litigation is ineffective. Scholarship supports the idea that litigation I ineffective on three fronts. The first is political. Following Alexander Hamilton's observation that the courts have neither force nor will, these arguments posit that the courts' lack of these two requisite ingredients makes effective social change impossible because decisions are not self-enforcing, and political actors resist enforcing decisions with which they disagree (Horowitz 1977, Handler 1978, Rosenberg 1991). The second front is social. This work challenges the idea that litigation is effective at moving the public. Prior work minimizes the role of the court in causing social change on its own, but suggests that society may already be moving in the direction of the change legal advocates are pushing (Klarman 2004). Other work suggests that legal change cannot outpace the social regime without backlash (Krieger 2000). The third front is judicial. Using the law to achieve social change relies on the premise that the courts are receptive to the claims of disempowered litigants. A body of research suggests that they are not (Dahl 1957b, Galanter 1974, Solowiej and Collins 2009, Black and Boyd 2012). Many social movement organizations find that the courts are no more amenable to their goals than the political branches (Strolovitch 2007). In light of the body of work that challenges the effectiveness of litigation, a separate line of scholarship suggests that litigation consumes too many organizational resources relative to other efforts. Even if one concedes that litigation is effective, it is resource-intensive, and the diversion of scarce resources away from more effective alternatives is problematic. (López 1992, McCann 1986, Luban 1995).

[14] See Lobel 2007 for a catalogue of the many arguments against litigation as a strategy of social change.

Contemporary scholarship on the practice of public interest law, however, suggests that while PILOs believe in the ideology of rights—they do not believe in the fantasy of rights. They recognize the limits of litigation and incorporate social movement and political actions into their efforts to change society. Michael McCann and Helena Silverstein's (1998) study of the animal rights and pay-equity movements showed that cause lawyers are highly aware of the limits of legalism and encourage movements to pursue a range of strategies. Ann Southworth (1999) conducted interviews with around 70 civil rights and poverty lawyers and concluded that the conventional wisdom was wrong on two counts. These lawyers pursued a range of other strategies, and are not bright-eyed idealists who are unable to see political reality. Broad-based surveys of the public law field noticed a decreased concentration of legal effort relative to political and legal forms of advocacy since the 1975 Weisbrod study (Nielsen and Albiston 2006, Rhode 2008). Scott Cummings (2007) refers to the growing sophistication of public law practice as constrained legalism, "an approach to legal activism informed by a critical appreciation of *law's limits* that seeks to exploit *law's opportunities* to advance transformative goals" (Cummings 2007).

II: The Reality of Rights

The recent scholarship on the practice of public law shows an increasingly strategic understanding of the interconnections between the law, politics, and society on the part of public law groups. An analysis of each domain as a dyad (Law and Society, and Law and Politics, as well as Politics and Society) shows the mutual feedback between the three domains. The linkages between the three domains are themselves fields

of study, therefore, the interconnections that I present are meant to be illustrative rather than exhaustive.

Law and Society

The ideology and fantasy of rights relies on the assumption that the law can move society. There is support for this idea. Prior scholarship demonstrates that the U.S. Supreme Court, as "republican schoolmaster" can move public opinion in its direction (Franklin and Kosaki 1989, Caldeira and Gibson 1992, Johnson and Martin 1998). Even if the Supreme Court does not uniformly change public opinion en masse, legal pronouncements change the way that the public frames an issue (Vecera 2014). Legal efforts also help social movement goals. Legal victories have helped the civil, women's, disability, welfare, and LGBT rights movements.[15] Even losses may inspire latent groups to organize (McCann 1994, NeJaime 2011). The flow of influence also goes the other direction. The courts are not immune to society's influence. The judiciary is equally concerned about public salience of issues as the political branches (Hansford 2004) and affects the U.S. Supreme Court's propensity to grant certiorari to cases (Caldeira and Wright 1988). There is a growing body of evidence that the U.S. Supreme Court is responsive to public opinion (Mishler and Sheehan 1993, McGuire and Stimson 2004, Bryan and Kromphardt 2016) There is also evidence that public opinion constrains the Court (Casillas, Enns, and Wohlfarth 2011).

[15] The research examining the effect of litigation on social movements is too extensive to mention in any depth here, but some key works include Costain 1992, McAdam 1982, Olson 1984, and Piven and Cloward 1977.

Law and Politics

There are many ways in which the law affects politics. In spite of the fact that judicial pronouncements are not self-enforcing, political branch actors are obligated to comply and do not ignore court orders as a general practice. Litigation, therefore, can move public officials who resist groups' efforts. Even threat of litigation can win concessions from public officials (Handler 1978, see McCann 1998). The courts often do the work of the political branches, offering groups another useful way to use the law for political purposes (Lovell 2003, Frymer 2003). Politics affects the law institutionally. The courts are attentive to the priorities of the political branches, as evinced by the "switch in time" during the New Deal (Carson and Kleinerman 2002). Courts want to avoid backlash from the political branches, which may limit what the courts can do (Randazzo, Waterman, and Fine 2006, Clark 2009).

Politics and Society

The most obvious connection between society and politics is the electoral connection. Elected officials have a duty to represent their constituents, and may suffer defeat for ignoring their constituents' wants (Miller and Stokes 1963, Jones 2010). Public policy and public opinion tend to align with each other over time, due to the high responsiveness of public officials (Stimson, Mackuen, and Erikson 1995, 559). Public support for a group's goals functions as a signal to legislators of the popular support that it has in the public, which can help them in their lobbying efforts (Kollman 1998). Apart from lobbying, "outsider" forms of political activity can generate meaningful and sustained policy change that would not happen otherwise (Weldon 2011). Conversely,

failed lobbying efforts can raise the salience of the issue in the public (Kollman 1998). Often social movements can help create a reciprocal influence on the public and Congress that would not exist otherwise, as evinced by the women's movement (Costain and Majstorovic 1994).

Organizations and the Scope of Conflict

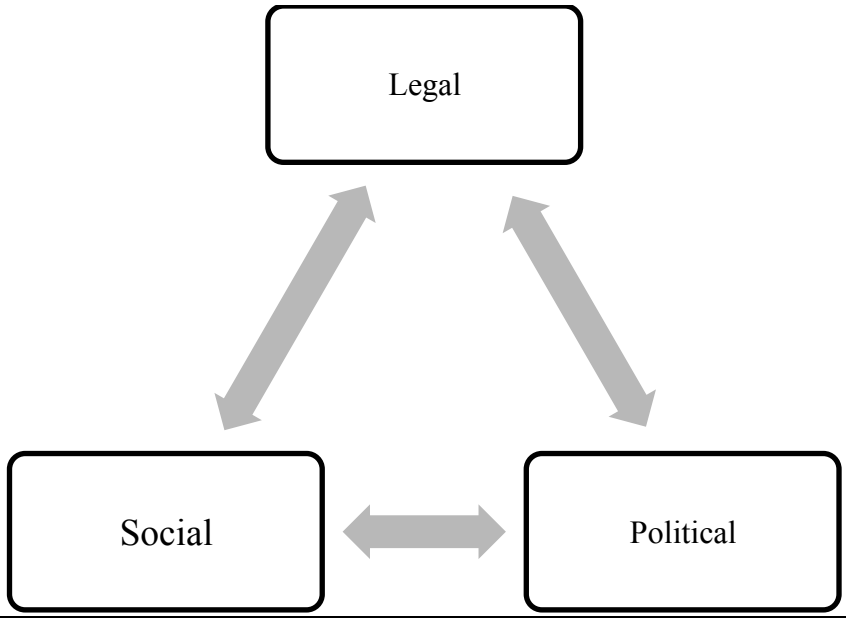
Public law groups have always been aware of the interconnections between the law, society, and politics, and litigation has always complemented public law groups' other advocacy efforts. Lawyers can do more than just litigate; some of the most effective lobbyists are lawyers because they know how to craft the language in bills to most fit their objectives (Luban 1988). Suing in court has never been an end in itself. Indeed, as a method for social change, litigation grew out of the failures of working with the political branches. The ACLU began as a lobbying organization, and even the NAACP's vaunted campaign against segregation was a last resort. Jack Greenberg, the former Director-Counsel of the NAACP's LDF—and successor to Thurgood Marshall, notes that the NAACP tried lobbying and protesting against segregation before concluding that a legal strategy was the most effective means of ending it in education (Greenberg 1974, 53n33). Greenberg offers insight into the thinking of the NAACP as an organization, as well as the limits of litigation: "…litigation is not the only instrument of social change and a litigation project must be weighed against or with alternatives, such as legislative or administrative change" (Greenberg 1974, 10). Greenberg also makes it clear that the NAACP was acutely aware of how success in one domain could help with the others: "these efforts [litigation] do more than bring about judicial decisions. They may stimulate

legislation or bring about administrative reform. Publicized law suits also spur public discussion of issues that might otherwise lie dormant" (Ibid.) Those charging public law groups, especially the NAACP, with social-change naiveté may have underestimated their sophistication (Mack 2005).

Public interest law organizations are, in the main, *organizations*. They ensure their survival by demonstrating their effectiveness, which encourages tactical flexibility (Wilson 1974). Organizations cannot afford to repeat mistakes, and public law groups must pursue the most cost-effective strategies to ensure their survival. As the public law movement matured, it incorporated extralegal advocacy efforts into its work more consistently and systematically (Aron 1989). Formal organizations have long exhibited a willingness to use any venue that helps them achieve their goals (Schlozman and Tierney 1986, Shipan 1997, Wright 1996). PILOs' institutionalization gives them the ability to cultivate long-term relationships with political actors and use insider tactics (Luban 1988, Staggenborg 1988). It is not just pragmatism which encourages PILOs' strategic flexibility, however; they are also *social movement* organizations. It would be a mistake to divide "insiders" (formal organizations) from "outsiders" (social movements) as both organizations and movements increasingly use the strategies and tactics of the other (MCarthy and Zald 1973, Strolovitch and Forrest 2011). It is important to keep in mind that PILOs emerged out of the public law movement of the 1970's, and that organizations, movements, and law interact with one another in subtle ways that elide clean divisions (Edelman, Leachman, and McAdam 2010). Greenberg's comments suggest that public law groups are astute observers of their political-legal-social terrain.

The institutionalization of public law groups ensures that they will play a game of social-change chess for a long time. This requires that they see the entire board. The historical and organizational context of public law groups suggests that their engagement with the law, politics, and society is not just strategic; it is a *strategy* for social change. I call this mutually-interconnected engagement with the law politics, and society *triangular advocacy* (visually depicted in Figure 3.1 below). I would like to argue that institutionalization makes these connections a more systematic part of PILOs' thinking and actions than prior scholarship has recognized. This framework acknowledges that PILOs are still—in the main, *legal* organizations. Thus, they still allocate the majority of their organizational effort towards legal advocacy due to their belief in the ideology of rights. PILOs still believe that the law offers distinct opportunities for legal change that the political branches do not (Fuller 1978); "courts must respond in some way when addressed by potential litigants. In contrast to the legislative and executive branches that have a number of techniques that they can use to avoid responding entirely, courts are much more limited…the legal process provides far more entry points to getting issues raised on the table" (Frymer 2006). This framework also acknowledges, however, that political actors have an interest in expanding the scope of conflict, as this increases the probability of success (Schattschneider 1960). This theory is a helpful way of conceptualizing PILOs' strategy for social change. It would help to see if this is more than a theory, and whether there is empirical support for engaging with the three domains, and that it reflects the unique organizational imperatives of public law groups.

Figure 3.1: Triangular Advocacy



III: Data

In order to assess triangular advocacy, the data for this chapter and the next come from a survey of public interest law organizations. I rely on prior research that defines PILOs as "non-profit tax-exempt groups that attempted to use the law to achieve social objectives" (Rhode 2008, 2029).[16] I add the qualification that these groups must be *primarily* committed to using the law to achieve social objectives. This definition includes such well-known public interest law groups such as the NAACP LDF, the ACLU (and its regional affiliates), as well as the Pacific Legal Foundation. These organizations use the law to achieve systematic change through impact litigation. This definition excludes legally-active divisions of non-profit groups such as the AARP

[16] This definition obviously excludes private public interest law firms due to the commercial nature or the organization.

Foundation and the Human Rights Campaign (HRC).[17] This definition also excludes "proceduralists" or traditional legal service organizations (LSO), such as the National Legal Aid and Defender Association (NLADA).

There is no list of the public law organization population. I used three sources to create a sampling frame of public law organizations. The first source is Rhode's (2008) sample of 51 PILOs (excluding any that may have been LSOs). The second was Southworth's (2008) 66 conservative public interest law organizations. Given the overrepresentation of liberal groups in the literature, I include the conservative list to correct for any possible ideological biases in the sampling frame. The third, and primary, source that I used were the publicly-available search results of the Public Service Jobs Database (PSJD). The search results yielded 4337 organizations, but the vast majority of these organizations did not meet the criterion of being organizations that primarily used the law to achieve social change. I filtered the search results through several steps. I, first, did a keyword search of organizations that had public law-associated terms in their title, such as "equal" "rights" and its variants.[18] This method reduced the PSJD list to 900 organizations. I then evaluated the websites of these organizations.[19] I sought evidence

[17] I include the independent legal affiliates of non-profit organizations, such as the NAACP's Legal Defense Fund, or the Cato Institute's Center for Constitutional Studies.

[18] Those keywords were: law, litig+variants, legal, center, foundation, rights, equal, equality, advocate, justice, defense, project, lawyer, public, initiative, liberties, counsel, attorney, freedom, Constitution, institute, judicial+variants, jur+variants, and social. *Note: "service" is not one of the keywords so as to exclude LSOs.*

[19] This method (using both the PSJD and the website) does, possibly, introduce a systematic bias against less wealthy public law groups that cannot afford to hire new staff or a maintain a website. I concluded that the possible bias that this method introduces is negligible; if an organization cannot afford a website, it likely cannot afford to hire and retain litigators.

of: (a) a staff member with the title of "director of litigation" or its equivalent (b) a commitment to using the law as a means of systematic advocacy, or (c) impact litigation. After examining the websites from the reduced PSJD list, and combining both Rhode and Southworth lists, I had a final sampling frame of 334 organizations (Appendix A). I emailed or called each of these organizations in three rounds of email, and one round of phone calls to a subset of the sampling frame to try to increase the response rate from January 2016 through June 2016. The executive directors, litigation directors, or advocacy directors completed the survey on behalf of their organizations. The resulting sample includes 91 public law groups, yielding a response rate of 26.9%, in the range of the 25-45% response rate of other interest group surveys (Marchetti 2015).

IV: Descriptive Overview of the Sample

Table 3.1: PILOs by Issue Area				
PILO Issue Area	Frame Count	Frame %	Sample Count	Sample %
ACLU	53	15.87%	15	16.48%
Civil Liberties	8	2.40%	4	4.40%
Civil Rights	10	2.99%	1	1.10%
Conservative	45	13.47%	5	5.49%
Criminal Rights	14	4.19%	5	5.49%
Disability	4	1.20%	1	1.10%
Economic	41	12.28%	10	10.99%
Environment	34	10.18%	12	13.19%
Ethnic	14	4.19%	4	4.40%
Families/Children/Schools	24	7.19%	10	10.99%
Gender/Sexuality	23	6.89%	5	5.49%
Health	4	1.20%	1	1.10%
Human Rights	13	3.89%	3	3.30%
Immigration	10	2.99%	3	3.30%
Public Interest-generic	34	10.18%	11	12.09%
Seniors	3	0.90%	0	0.00%
Total	334	0.00%	91	100.00%

Sampling Frame vs. Sample: Table 3.1 compares the sampling frame and the sample by issue area. The sample is generally representative of Public law groups by issue area. Conservative PILOs represented a third of the sample relative to the sampling frame. In spite of this lower response rate, conservative PILOs did not differ from other PILOs in most areas.[20] Apart from representativeness, the sampling frame also shows the diversity of public interest lawyering. In spite of the long history of civil rights and civil liberties

[20] I sent another wave of emails specifically to conservative PILOs, which yielded two more PILOs to the sample.

advocacy, these organizations only represent slightly more than a third of all PILOs. The environmental, as well as the gender/sexuality sectors, are remnants of the public interest law explosion in the 1970's. The impressive growth of conservative PILOs shows the conservative counter-reaction of the 1980's. The sampling frame is also evidence of some limits in the broader political opportunity structure for the translation of certain social goals into legal ones, as the low number of disability, health, and senior PILOs demonstrates, as does the low number of animal rights PILOs and those protecting sex workers.

Table 3.2: PILOs Sample by Geographic Scope

Region	Percent
Local	7.69%
State	43.96%
Regional	5.49%
National	35.16%
International	7.69%

Geographic scope: The recent surveys (Nielsen and Albiston 2006, Rhode 2008) did not ask questions about where most public law groups direct their efforts. Table 3.2 shows the primary geographic range of public law groups in the sample. A plurality of public law groups focus on the state level. PILOs that focus on either the state or federal levels are virtually identical in the allocation of effort towards legal, political, and social movement advocacy. Public law groups at both levels of government report that they are legally active (file amicus briefs and litigate) in both state and federal courts, thus reinforcing that one of the benefits of legal advocacy is the ability to simultaneously engage multiple venues (Frymer 2006). Despite the lack of a quantitative difference

between groups at both levels of government, these results raise thoughtful questions for future scholarship, the first of which is how "elite" the elitists/vanguards really are. The critiques of public law groups as being out of touch technocrats who pursue social change at a polite distance needs a more nuanced characterization. The second set of questions bears on triangular advocacy. As social movement organizations, the strong sub-national focus implies that these groups have an intimate connection with the issues in their local communities. This intimacy suggests that elusive myth of rights-type benefits may be secondary to more tangible effects that PILOs and their communities can see, and will use any tool that they have available. These results, at the very least, suggest that scholarship on public law organizations would benefit from including how state-level factors and federalism shapes the practice of public law.

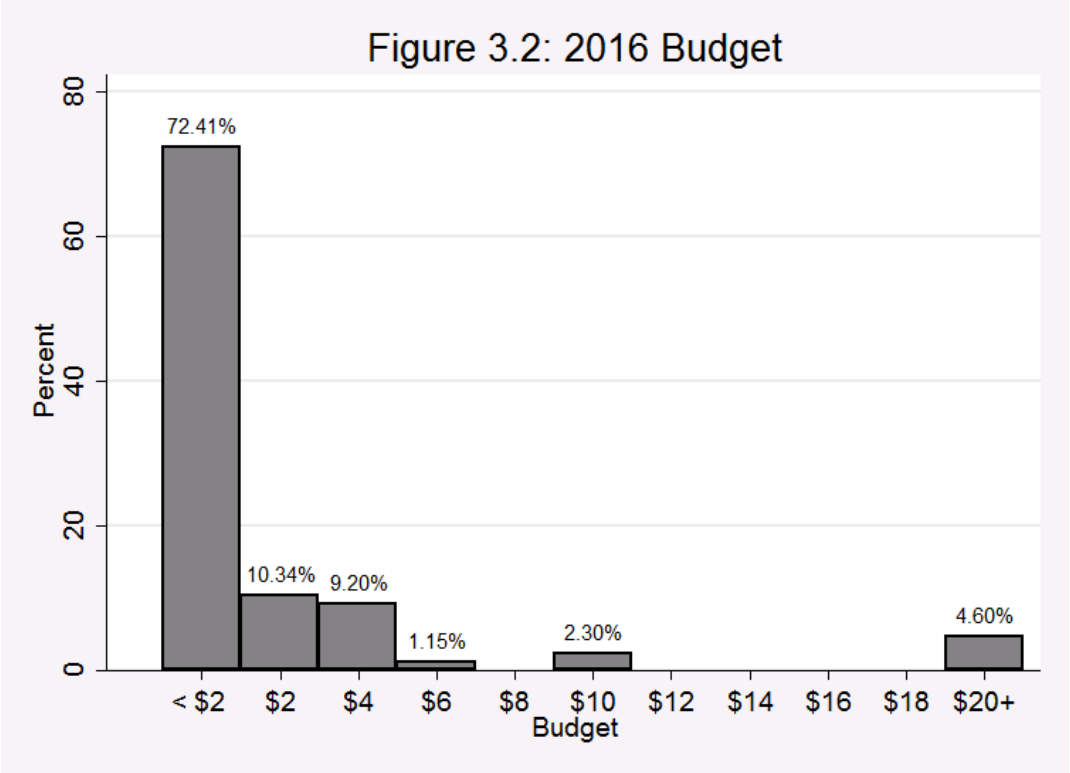


Table 3.3: Number of Attorneys on Staff		
# of Attorneys	**N**	**%**
1-4	52	59.77%
5-9	14	16.09%
10-14	11	12.64%
15-19	4	4.60%
20-24	2	2.30%
25+	4	4.60%
Total	87	100.00%

Budgets and Funding: In the popular imagination, formal organizations are "the special interests"; well-heeled organizations that have an excessive influence on the political process in virtue of their extensive wealth. The survey shows that for public interest law organizations one of those premises is patently incorrect. These groups are not extremely wealthy as Figure 3.2 and Table 3.3 indicate. The overwhelming majority of organizations have budgets under $2 million. These results conform somewhat to what Rhode found in her survey of prominent public law groups. She found that over half of her sample had budgets between $1-$5 million, while 16% had budgets exceeding $15 million, and 8% exceeding $50 million. Comparability is difficult because Rhode also includes LSO, yet these results seem to show that the broader universe of organizations is substantially less wealthy than even the $5 million figure would suggest when disaggregating the data into finer categories. Rhode's sample also reported that half of the organizations had between 11-30 lawyers on staff. The results of this survey shows that almost 60% have between 1-4 lawyers on staff, and only 24% have a phalanx of attorneys in the Rhode range. This is a counterintuitive finding given the high expense of both litigation and litigators. The NAACP's Legal Defense Fund and the American Civil Liberties Union are truly exceptional organizations that have budgets exceeding $30 million and $140 million, respectively. The picture that begins to emerge from these results is that PILOs have no choice but to pursue the most cost-effective forms of advocacy due to their limited budgets and staffs, thereby raising further doubts that litigation is the biggest and only arrow in public law groups' quiver.

Table 3.4: Reported Sources of Income	
Source of Funding	Percent
Contributions & Gifts	97.73%
Private Foundations	84.09%
Fund raising Events	65.91%
Attorney's Fees	62.50%
Fellowships for New Lawyers	37.50%
State Government Funds	23.86%
Federal Funds	19.32%
Other	19.32%

Albiston and Nielson (2014) examine how PILOs fund themselves and I use the same categories in Table 3.4 (except for membership dues) as key components of public law groups' budgets. My survey did not ask PILOs to divide their budget into categories, as I was interested in getting a tally of the number of PILOs' sources of support (consistent with Walker 1991 and Strolovitch 2007). Two-thirds of organizations report four or fewer sources of funding. While my questions are not directly comparable to Albiston and Nielson (2014), our questions assess similar concepts. Our results, nevertheless, vary substantially. Almost all organizations report that Contributions and Gifts are a source of funding, but for Albiston and Nielson this is only 10% of their budgets. More puzzling is that the next three most frequently reported sources of funding: Fund-raising Events, Attorney's Fees, and Fellowships, are the lowest four components of PILOs budgets, around 5%, or less, along with membership dues/fees. The divergence continues for Federal Funds, which is the lowest source of funding for public law groups, but is the highest proportion of their budgets. These divergent results may be due to the inclusion of LSOs, which compose 25% of the Albiston and Nielsen sample, but the divergence between the reported sources of funding and its translation into the percentage

of their budgets is a question for future research.

Table 3.5: Importance of Key Actors in PILO Decision-Making

	Staff	Board	Funders	Internal Agreement	Inclusiveness
Not at All	2.35%	5.88%	35.29%	15.29%	13.10%
Slightly	5.88%	28.24%	32.94%	28.24%	28.57%
Somewhat	10.59%	36.47%	23.53%	35.29%	38.10%
Very	48.24%	21.18%	8.24%	15.29%	19.05%
Extremely	32.94%	8.24%	0.00%	5.88%	1.19%
Total	100%	100%	100%	100%	100%

Stakeholders in Decision-making: Prior literature, and these descriptive results confirm, that PILOs are distinct from other types of interest groups in meaningful ways. The interest groups literature has committed much scholarly effort explaining how groups overcome collective action problems, meet member needs and represent those members' interests. There has been less, but growing, attention to formal organizations without members (Schlozman et al. 2015). The legal-focus of these organizations provides a unique organizational environment. They do not, for example, usually have members; this means that they may be less concerned with offering incentives. This would suggest that generic organizational variables (such as organizational maintenance or internal agreement) might be less relevant than much interest group research would suggest compared to the influence of staff (Berry 1977, Tierney 1994).

The staff charts the course for public law organizations. Table 3.5 reports the importance of certain actors to the decision-making process of public law groups. 80% of groups reported that the staff is "very" or "extremely" involved in decision-making. Only 7.32% of organizations marked "a little" or "none". Public law groups report that, in addition to the staff, the Board of Directors sets their priorities. 28% of organizations

reported that their boards were “very” or “extremely” involved in their decisions, which is higher than in previous questions. PILOs may rely on contributions and gifts, and involve formal stakeholders, but they try to maintain a wall of separation between decision-making and funding. They try not to “let the tail wag the dog” (Rhode 2008, 2052). Impressively 0% of my respondents indicated an extreme involvement of their funders in their decision-making, while only 32% indicated “somewhat” or “very” high involvement. The modal response is “not at all”. How these groups are able to ask for money yet not involve those they ask is impressive. PILOs do listen to other stakeholders; 20% of PILOs reported that they were “very” or “extremely inclusive” and heavily involved constituents or members in their decision-making processes, yet a plurality of organizations indicated that their level of inclusiveness and attentiveness to constituent agreement was rather low. Around 40% of organizations rated the response to questions about inclusiveness or concerns about internal agreement in the “little” or “none” response categories. Of particular interest are the comparisons between the extremities of response. Few organizations (13%) reported that they are “not at all” inclusive, while only 1% reported extreme inclusiveness. 15% reported that they do not care at all about constituent agreement, while 6% reported extreme concern. This suggests a strong independence for these organizations to conduct their political, legal, and social movement activities without too much concern about backlash.

Table 3.6: Frequency of Activity by Advocacy Vertex					
	Never	Some of the Time	About half the time	Most of the time	Always
LEGAL ACTIONS					
Amicus-State	14.63%	67.07%	3.66%	9.76%	4.88%
Amicus-Federal	9.76%	52.44%	9.76%	15.85%	12.20%
Litigation-State	13.41%	48.78%	10.98%	18.29%	8.54%
Litigation-Federal	10.98%	32.93%	9.76%	31.71%	14.63%
POLITICAL ACTIONS					
Letterhead Litigation	27.47%	43.96%	10.99%	14.29%	3.30%
Lobbying-Legislative	40.66%	40.66%	1.1%	9.89%	7.69%
Testify-Legislative	24.18%	57.14%	3.30%	6.59%	8.79%
Draft-Legislative	27.47%	54.95%	2.20%	8.79%	6.59%
Lobbying-Agencies	39.56%	43.96%	4.40%	5.49%	6.59%
Draft-Agencies	34.07%	50.55%	6.59%	6.59%	2.20%
SOCIAL ACTIONS					
Mass Media	1.39%	30.56%	11.11%	34.72%	22.22%
Public Education	5.56%	47.22%	20.83%	13.89%	12.50%
Protests	66.20%	32.39%	0%	0%	1.41%

The Arenas of Advocacy: The survey of public law groups asked them how frequently they engaged in certain legal, political, and social movement actions. The prior surveys never asked specific questions about how frequently PILOs took certain actions. Table 3.6 shows the frequency of these actions. Some broad patterns emerge from the results. In their engagement with the federal judiciary, they more frequently litigate than file amicus curiae briefs, and the discrepancy is quite notable. The majority of public law groups say that they litigate at least half of the time or more, and 46.34% of public law groups litigate more than half of the time. The majority of public law groups report filing amicus briefs less than half of the time, with 62.2% of PILOs filing amicus briefs less than half of the time. These simple descriptive statistics raise question about the relative

participation of public law groups in the vaunted Supreme Court amici game (Caldeira and Wright 1990, Box-Steffensmier and Christenson 2014) compared to litigating in court. The propensity to litigate in spite of the high expense is consistent with PILOs' organizational goal of social change. Amici briefs may help their goals, but is more indirect and detached relative to other efforts. PILOs engage federal courts (both amicus and litigation) more frequently than state courts. They report filing amicus briefs and litigating in federal courts " about half the time or more" about 20% more frequently than in state courts. This is likely due to the perceived parochialism of state courts, or the perceived prestige or quality of federal courts. He most frequently reported political action is what is often referred to as " litigation by letterhead" or " letterhead litigation," sending letters to governments (often agencies informing them of potentially illegal actions that the need to rectify, with the implied threat that the failure to stop the illegal activity will result in a lawsuit. Prior literature has not discussed litigation by letterhead, the frequency with which it has been engaged, and its centrality to public law groups as a form of advocacy. Although other advocacy organizations with attorneys issue these letters to government officials, too, public law groups' institutional reputation and legal-focus may allow them to issue these with more frequency and persuasiveness than other organizations. As for social movement actions, most of their actions are informational in some way. 68.05% of PILOs report engaging in mass media efforts about half the time or more frequently, while 47.22% of organizations conduct public education efforts with the same frequency. The survey did not ask about a broader range of more aggressive mobilizations of the public, but did ask about protests, which they report engaging in

quite infrequently; 66.20% reporting " never" doing so. It would be helpful to determine how these actions fit in the overall context of PILOs' triangular advocacy. In order to determine this, requires looking at the proportion of effort that PILOs allocate towards each advocacy vertex.

V: Results

Figure 3.3: Proportion of PILO Activity

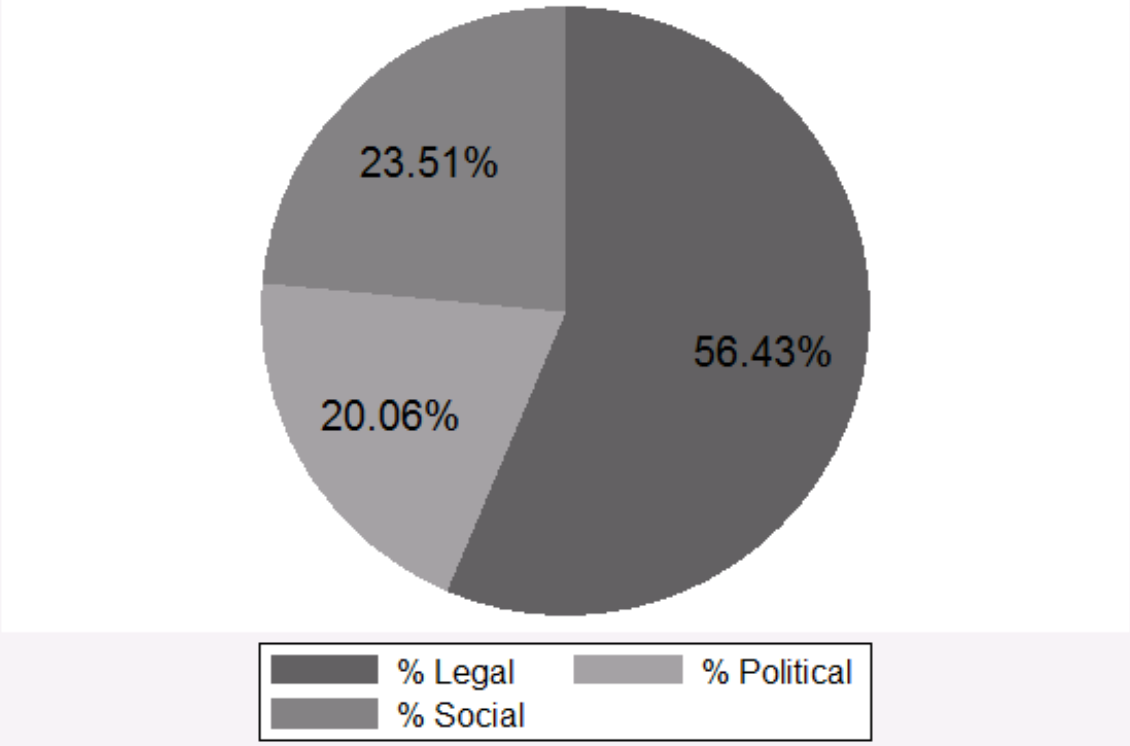
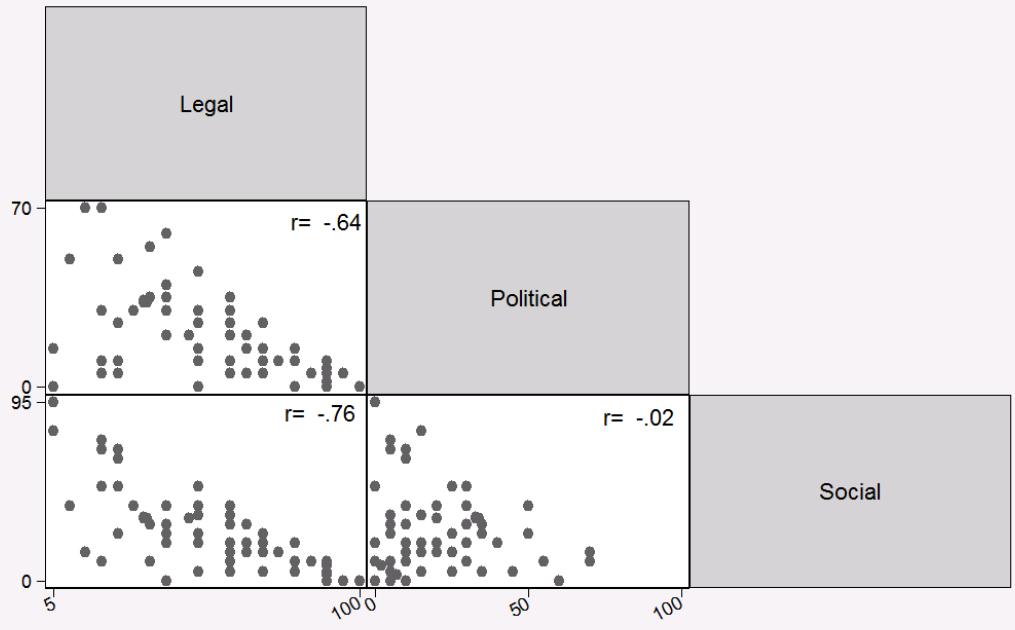


Figure 3.3 provides clear evidence that public law groups engage in triangular advocacy. Legal advocacy has never monopolized the energies of public law organizations. The Weisbrod et al. (1975) study found that 60% of PILO work was strictly legal. The recent surveys (Nielsen and Albiston 2006, Rhode 2008) replicated the Weisbrod categories, and they found that the range of legal work is between 51% and 63% The results of this survey (56.43%) are almost the exact average of the two studies

(57%). My survey, along with the prior three, shows a consistent, but slightly decreased focus on legal advocacy. My survey differs in its results from the prior two in both political and social movement work. I find a slightly higher level of political activity (20.06%), which the three prior surveys called "Legislative Work", which ranges from 7% to 17% from 1975-2007. My survey also combines the prior surveys' "Other Research, Education, and Outreach" and Rhode's "Political Mobilization" categories into "Social", which falls in between the range of prior surveys: 12%-26%.[21] This survey's consistency with the Weisbrod, Nielsen and Albiston, and Rhode surveys show allay concerns about the survey's representativeness.

Figure 3.4: Correlations between Advocacy Vertices



[21] Rhode replaced "Internal Administration" with "Political Mobilization" in her survey. I did not ask about organizational effort on these matters.

In order to determine whether there was any relationship between the three advocacy vertices I ran bivariate correlations between them. Since the survey asked organizations to determine the percentage of effort they expend in each domain, and the question forced the sum to 100%, there should be high correlations between each domain. It is not obvious which domains should correlate with each other, and how strong these relationships should be, hence the need for analysis. Figure 3.4 shows the correlation between advocacy vertices. I find that PILOs are triangular in thought—but dyadic in practice. There is an inverse relationship between the law and politics (-.64) and the law and social movement activity (-.76). There is no relationship between political and social movement activity (-.02).[22] Public law groups see the choice of engaging in politics or social movement work as a tradeoff with legal activity, but not with each other. PILOs, as an organization practice choose one of two dyads: Law and Society or Law and Politics. This result would seem to suggest "dyadic" "caret" (^) or "inverted v" advocacy, rather than the triangular framework that I have offered here, but these results are consistent with the mutually interconnected understanding of politics that I note throughout. By specializing in Law and Society, for example, public law groups may be hoping that this gives them leverage to do political work, and, conversely, if they specialize in Law and Politics, they need not necessarily concern themselves with society as much because they

[22] I wanted to test whether these results were an artifact of the format of the question. I was particularly concerned that a correlation between two pairs (XY, and XZ) would eliminate the correlations between a third pair (YZ) because of the constraints of the question. I tested this by creating a sample dataset of ten observations where each observation had three items (X,Y, and Z) summing to 100%. I had MS Excel generate random numbers for each observation's choice for X,Y, and Z. I then tested the correlations between them. The exercise and the results are in Appendix C. The results reveal three things about the format of the question. There must be negative correlation between the three vertices, which is perfectly logical (choosing one of these options (ex: "X") must trade off with choosing the other (ex: "Y"). There must also be moderate-to-high correlations between two of the questions. Most importantly for my purposes, two pairs of correlations do not eliminate correlations between a third pair.

have open access to the main levers of government. The next chapter will test this idea and whether the strategy of choosing between Law and Society or Law and Politics is strictly an internal affair.

Apart from the correlations between the advocacy vertices, analyzing the proportion of effort between different PILO sectors also shows triangular advocacy at work.[23] PILOs representing ethnic groups and immigrants report a substantial reliance on the law (70% or more). Their unpopularity in the populace suggests that they use the law as leverage to move society and politics. These two types of public law groups also confirm the dyadic results above; they emphasize social change more than political advocacy. The general pattern therefore, is the law and society dyad. Only criminal rights and general public interest organizations emphasize the law and politics as a pair. The next chapter will examine the factors that affect these broader dyadic patterns.

Table 3.7: Staff Involvement and Media Outreach

	Mass Media (press releases, websites, etc.)					
Staff Involvement	Never	Some of the Time	About Half of the Time	Most of the Time	Always	Total
Not at All	100%	0%	0%	4%	0%	2.78%
Slightly	0%	4.55%	0%	4%	6.25%	4.17%
Somewhat	0%	22.73%	12.50%	8%	0%	11.11%
Very	0%	50%	50%	56%	37.50%	48.61%
Extremely	0%	22.73%	37.50%	28%	56.25%	33.33%
Total	100%	100%	100%	100%	100%	100%

Pearson chi2(16) = 45.8199 Pr = 0.000

[23] I excluded the results from the ACLUs from this analysis in order to preserve the anonymity of the organization broadly.

Table 3.8: Willingness to Take a Losing Case and Public Education Efforts						
	Public Education Efforts					
Success	Never	Some of the Time	About Half of the Time	Most of the Time	Always	Total
Not at All	0%	11.76%	7.14%	10%	0%	8.45%
Slightly	25%	29.41%	21.43%	0%	0%	19.72%
Somewhat	0%	41.18%	21.43%	30%	33.33%	32.39%
Very	25%	14.71%	14.29%	60%	44.44%	25.35%
Extremely	50%	2.94%	35.71%	0%	22.22%	14.08%
Total	100%	100%	100%	100%	100%	100%
Pearson chi2(16) = 31.0550 Pr = 0.013						

The triangular framework posits that groups do not just have a strategy, but it is also an extension of the professionalization of public interest law. The unique position of permanent staff and boards of directors in these organizations should give them a deep understanding of social change. I examined the Law and Society dyad to ascertain PILOs' strategy for social change. I tested if there were any connections between organizational factors (involvement of key actors) or organizational mindsets (the willingness to take a losing case) and any public law actions. There were two connections between organizational mindsets and public law groups' social movement actions. Table 3.7 is a crosstabulation examining the link between the staff's involvement in decision-making and how frequently the organization engages in mass media outreach. The more staff-centric the public law group, the more likely they are to report engaging in reaching out to the public via the media, which is precisely what one would expect of political-legal professionals. They understand that their consistent engagement in one domain helps them in others. Further proof of this is the relationship between taking a losing case and

educating the public. Prior research (NeJaime 2011) suggests that groups can "win by losing" if their efforts can inspire mobilization. Table 3.8 shows this dynamic at work. Public law groups are, indeed, social movement organizations and reflect the tensions inherent in this organizational form. A plurality of PILOs reported that they were "very" or "extremely" willing to take a case even if they knew it would lose due to their overriding commitment to their causes as *social movement* organizations. Almost 30% of groups reported a little more caution about expending precious resources on lost causes however, reflecting PILOs realities as *organizations*. Their willingness to take on losing cases is not strictly a reflection of their commitment to the cause, but also reflects their triangular understanding of social change. Following Jack Greenberg, the results show that legal advocacy performs an educative function in the public domain, and this conditions group actions. Those groups that were more willing to take lost causes generally also engage in public education efforts more frequently. This pair of crosstabulations provide additional evidence that Law and Society, as a dyad reflect a triangular understanding of the nature of legally-based social change.

VI: The Intersection of Law, Politics, and Society

The descriptive results in this chapter serve three purposes: to introduce and contribute additional information about the practice of public law, as well as develop the theory of triangular advocacy both theoretically and empirically. The next chapter will offer additional evidence for the triangular framework, but I would like to briefly address some of the theoretical dimensions of triangular advocacy before then. As I have argued throughout, triangular advocacy is *a* strategy for legally-oriented social change, but on

specific issues and for certain types of groups they will use other strategies and perhaps one vertex with no concern for the others. The framework that I offer is a model that scholars can use to analyze the strategies and tactics of public law. They can ask whether a particular group used one or more of the advocacy vertices and the reasons for doing so.

The triangular strategy also gives public law groups a permanent location at the intersection between law, politics, and society. One of the limits of the idea that public law groups are strategic alone is that this framing makes PILOs engagement with the three vertices appear like an episodic, or tactical choice, instead of a sustained practice. The triangular framework seeks to prove that PILOs hold mortgages in these domains—not leases. If public law organizations are permanent residents in these three venues, then new questions become possible, such as how other key actors in these domains influence their choice to emphasize certain strategies over others. Since they work with the law, government actors and the public regularly, it is likely that PILOs' strategic choices are not strictly internal; they choose a certain strategy because of organizational goals and proclivities, but also because of their perception of how other actors can help and hinder PILOs in the achievement of their goals for social change. This all suggests that these key actors have the capacity to have power over public law groups and influence their beliefs and actions. The next chapter will explore whether these actors do so and how.

Chapter IV: Power & The Quest for Justice

"Not a small part of the determination to stay out of this issue [anti-communism] was the growing reality that the Supreme Court was a friend to the civil rights cause and promised in the future to be an even more committed friend"-Jack Greenberg[24]

Once again, the NAACP failed to get involved in a pressing social issue. The anti-communist fervor of the McCarthy era was a threat to the civil liberties of ordinary Americans, but the NAACP abstained from official involvement, as Greenberg notes, because of the organization's perceptions about the quality of its on-going relationship with the Court, or to be more precise, the cause's relationship with the Court—for the NAACP and its pursuit of black civil rights were virtually synonymous. The relevance of this brief vignette is not the NAACP's inaction—which would be hackneyed at this point in the dissertation—but to illustrate the *power* that the Supreme Court had with the NAACP. The Court's influence stopped the NAACP from filing an amicus brief in *Dennis v. US*, a case that the Court was considering, but also stopped the organization from aligning itself with any anti-communist social movements (Greenberg 1994, 105). The Court's influence had legal, and extralegal effects on the NAACP.

The NAACP anti-communism example suggests that the strategic choices of public interest law groups are subject to the influence of others. This chapter addresses this possibility by examining how the key actors that public law groups work with on a regular basis affect their engagement with the law, politics, and society. I find that PILOs beliefs about their relationship with the law, political actors (legislators and parties), and the public affect their triangular advocacy. If PILOs think that the public and political

[24] Greenberg 1994 (105).

actors view them unfavorable, they use legal and social movement actions to help them achieve their goals, with the hope that these two domains help them in politics. I also find that the power of these actors does not just constrain PILOs; it empowers them as well. If PILOs believe that they have favorable relationships with the public and political actors they do not need the law and society to help them, they can rely can emphasize political activity, and reduce their efforts trying to change society. These results help scholars understand public law groups' choice of venues and the way that the power of other actors shapes other organizations' beliefs and actions.

I: Contexts, Environments, Issue Areas and Structures

Organizations are subject to the influences of actors and entities that are both close to them and far from them. The most intimate contacts are the interactions that public law groups have with specific entities on certain cases, or a series of cases. The political science scholarship cited in the first chapter examines these more proximate and contextual influences on the actions of public law groups. If one wants to generalize across several types of organizations, one must turn to the interest group subfield in political science for guidance. Jack Walker's (1991) posthumous work was the first study to examine the external influences on group behavior systematically. He and his fellow co-authors included two variables in their models for the external political environment: partisan sensitivity (whether they noted a difference between one of the two political parties), and the degree of conflict that a group faces in a policy area. This was a start, but research on the topic needed to give more sustained thought to the ways in which politics affects groups (Tierney 1994, 40). It was not until Frank Baumgartner and Beth Leech's

(B&L) review of the interest groups literature, *Basic Interests*, that scholars began providing much-needed clarity and guidance on this question. B&L implored researchers to be more attentive to the ways in which the social and temporal circumstances create a distinct political context for organizations. They suggested that scholars include variables for "the actions of other interest groups, for the actions of government officials, for the degree of conflict and public salience represented by the issues in question" (Baumgartner and Leech 1998, 177). Their colleagues listened. In a review of the literature more than a decade and a half after B&L's assistance, it found that projects published since that time included the contextual variables that B&L recommended as well as others, such as the policy issue, the institutional environment, and the stages of the policy process (Hojnacki et al, 2012). While the inclusion of these variables is a substantial empirical improvement—they are not theories. There is little agreement as to why particular variables matter—but not others, and under what conditions (Leech 2015). This is especially problematic for public law groups placed at the intersection of the law, politics, and society. Although legal, political, and social contexts affect groups, it is difficult to determine where one context begins and the other ends.

Although justification for the use of some contextual variables over others has little theoretical support, the assumption that one must study politics in policy domains has some of the firmest and deepest conceptual roots in political science. Power as domination permeates the subfield's thinking about how certain actors and entities affect others. For the interest groups subfield, "context" has a particular meaning: specific policy domains, issues, or issue areas. The third premise of McFarland's neopluralism is

that "power and policy must be studied in specific domains. The political system is seen as divided into numerous separate policy areas…The process theorist assumes that the structure of power and the nature of the process may vary in different policy areas. One has to observe various areas to find out "(McFarland 2007, 6). This is not just a demand for empiricism; it follows from the assumption that power (as domination) is asymmetrical and has a defined scope.[25] While the study of interest groups in specific policy areas has a long history that precedes Dahl (see Baumgartner and Leech 1998, 121-123), power as domination complements the subfield's empirical work, and offers a theoretical justification for continuing to do so. I should note that the reason why Baumgartner and Leech suggest that their colleagues should turn to policy domains is empirical, not theoretical. Lobbyists *can* generalize about their use of tactics, but ultimately they resist global statements because their choice of certain tactics over others is highly sensitive to, and contingent upon, specific issues and contexts (Baumgartner and Leech 1998, 147). Although B&L's argument is empirical, it is theoretically compatible with the subfield's ideas about how to study power.

While analyzing group action through specific policy domains has uncovered a great deal about the political process (see: Heclo's 1978, Lauman and Knoke 1987, and Heinz et al., 1993), the subfield would benefit from using other tools to understand power

[25] The link between power and policy domains theoretically owes its origins to Dahl's community power projects. He says: "any investigation that does not take into account the possibility that different elite groups have different scopes is suspect. By means of sloppy questions, one could easily seem to discover that there exists a unified ruling elite in New Haven; for there is no doubt that small groups of people make many key decisions. It appears to be the case, however, that the small group that runs urban redevelopment is not the same as the small group that runs public education, and neither is quite the same as the two small groups that run the two parties" (Dahl 1958, 465-466). Dahl makes a similar argument about the illogical conclusions that follow from discussing power without attending to scope in a hypothetical Socratic dialogue in *Who Governs?* (1961).

as well. Baumgartner & Leech— but also McFarland and Dahl, are correct; the influences on group thought and action are often highly specific and generalizing across situations will obscure this fact. The question however, is whether these influences are *always* context-dependent. Consider an illustration. The NAACP's LDF had a long history of successes in fighting racial discrimination beyond segregation (*Brown v. Board of Education*), but also included restrictive housing covenants (*Shelley v. Kraemer)*, and anti-miscegenation laws (*McLaughlin v. Florida*). The problem with a policy-centric approach is that it would obscure some of the common problems confronting the NAACP (such as racism and political hostility) that led it to focus on the judiciary. The strategic focus on the courts was not completely situational. The problem is that if one assumes that power always has a defined scope then one cannot ask these questions at all. Every perspective inevitably illuminates certain things and obscures others; telescopes and microscopes see different things. The problem with focusing on policy domains alone is that it trades one form of obscurity for another because it gives a highly distorted view of the political system due to the difficulty of comparing different findings across hundreds of issue areas and ignores higher-level influences that affect organizations (McFarland 1991). A policy-centric analysis inhibits scholars from understanding the ways in which actors, institutions, etc. affect the same organization across issues, subtypes of organizations (such as public interest law organizations, or non-profits) or the universe of organizations as a whole.

On the opposite end of the spectrum, there are a series of studies that have examined structural influences on the practice of public law. The growth of public law

organizations, as the first chapter explains, grew during the civil rights revolution with support from government and foundation funding. Since the 1980's, public law practice has faced numerous barriers from a variety of sources. The Reagan Administration sought to decrease funding for legal aid, and created restrictive rules limiting organizations from receiving public monies for engaging in political advocacy (Aron 1989). Throughout the 1980's and 1990's, opposition also came from Supreme Court decisions that limited the fees that public interest attorneys could recover (Albiston and Nielson 2014). There have also been increased efforts by Congress and administrative agencies to limit litigants access to the courts (Staszak 2014, Luban 2003).

These structural elements also have firm theoretical grounding. Rhode (2008) describes the challenges to PILOs efforts that have come from congressional retrenchment against funding legal organizations and a more conservative judiciary. Rhode's aligns her findings with a prominent structural explanation for political behavior: the political opportunity structure (POS). This idea originated with political scientist Peter Eisinger who posits that the seemingly disparate environmental variables establish a context in which political actions occur. He writes:

> "In short, the elements in the environment impose certain constraints on the political activity or open avenues for it. The manner in which individuals and groups in the political system behave, then, is not simply a function of the resources they command but of the openings, weak spots, barriers, and resources of the political system itself. There is, in this sense, interaction, or linkage, between the environment, understood in terms of the notion of a structure of opportunities and political behavior" (Eisinger 1973, 11-12).

While the concept owes its origins to political science, it owes its continued existence and theoretical development to sociology. There, the notion of political opportunity structure (alternatively known as the political process theory) has been used

to explain the civil rights (McAdam 1982), the women's rights (Costain 1992), and the anti-nuclear power movements (Kitschelt 1986) amongst many others.[26] It has also been a key component of social movement mobilization theories such as contentious politics (Tarrow [1994] 2011). Political opportunity provides a theoretical framework to explain the emergence of social movements due its focus on structural, as well as mutable, aspects of politics at specific points in time. One of the other benefits is its broad conception of the political beyond domestic formal institutions, but involves, possibly, international actors, social ideals, their configurations, and their interactions in a coherent framework.

There are two challenges with using the POS as a theory for explaining the behaviors of public law groups and other formal organizations. The first is that the concept, is, obviously, quite broad. Aside from the problem of specifying what structural matters should matter, and why, it is difficult to examine how system-level changes affect organizations in real-time given how static and broad the changes are. The second challenge with the POS is that the theory is not designed to explain on-going behaviors. The theory has been most helpful in helping sociologists examine the latent factors in society that explain the emergence of social movements. As sociologists have developed the theory, it is not designed to explain how actors and entities shape the on-going behaviors of formal organizations that already exist. That is a question for political science. The venue-shopping literature, for example, offers some insights into the strategic choices of interest groups. It has found that venue choice has a substantial organizational component, such as the location of the headquarters of the organization

[26] These are only three prominent examples from an extensive literature.

relative to certain key decision-makers (Naoi and Krauss 2009), or organizational resources (deFiguerido and deFiguerido 2002). Some have found that venue-choice has a substantial political component, such as interest group competition (Holyoke 2003), conflict around a policy issue (McQuide 2007), while some have found that venue choice is a combination between organizational and political components (McKay 2011).

If the political science theories are a bit narrow, and sociological theories are a bot broad, then what is missing is a theory that can account for dynamic influences on a wide variety of organizations. One difficulty that "political contexts" or "opportunity structures" pose for scholarship lies in the connotations of the words themselves. "Environs" and "contexts" are too detached, neutral, and inert to capture the dynamic aspects of politics that involves living, complicated, and strategic human beings. Other actors, such as government officials and the public, are part of the political environment, but they are not their environments. The language of "environments" and "contexts" conceals the role of actors in shaping others apart from their surroundings. A concept that can offer more theoretical substance about how actors and entities affect others in a more dynamic fashion than either contexts or structures is the concept of power—as influence.

II: Power and Perceptions

I defined power as influence as the ability to influence others through imperceptible and non-coercive means. It is now time to apply this to the more specific question at hand—how actors and entities can have power with groups. To narrow this already broad scope, requires specifying *what* these actors have the capacity to influence. There are many things that actors may affect, but the beliefs of organizations deserve

special attention because people tend to act for reasons; they do something because they believe that it will help them achieve their goals.[27] Also, because key actors, like the public, lack formal control over organizations, the nature of the power relationship more closely resembles groups *moving themselves*, rather than the *move or be moved* character of domination. Since beliefs mediate the relationship between actors and actions, it is where one will most likely find the power of these other actors with organizations.

Many will not recognize affecting the beliefs of another as power, but this is precisely how influence operates. When A includes B in *A's own* thought process because *A values* B, this is influence in action. When Queen Elizabeth II's subjects revere her because of the value that they attach to her as a monarch this is power as influence. It is also a form of power when A adjust *A's own* thoughts to suit B. When voters "follow the leader" by changing *their own* policy positions to align with those of their preferred candidates (Lenz 2012), this is a demonstration of the power of their leaders over them. One problem with looking for power in beliefs is that, of course, beliefs are fundamentally statements about the believer, and not the state of the world. Conspiracy theorists' belief that the moon landing is a hoax (false belief), or conservatives' belief that the best government is a limited one (opinion), reflects the orientation of conspiracy theorists (Miller, Saunders and Farhart 2016) and conservatives' (Goren 2013), respectively, towards those issues. Although people are free to believe anything they want, one of the distinguishing traits of beliefs is that they conform to the world—or they aim to do so (Tollefsen 2015, 9). When pundits say that they believe that incumbents will

[27] For a philosophical justification of the idea that social wholes, like corporations, interest groups, movements, or governments can be conscious agents with beliefs, see Tollefsen 2015.

overwhelmingly win reelection in the next election, they are trying to tell others what they think is true to the best of their knowledge because they cannot claim knowledge (they do not *know* that incumbents will win overwhelmingly). It follows then that even though the moon landing did occur, and the proper size of government will always be an essentially contested issue, both conspiracy theorists and conservatives are attempting to express the truth as best they understand it. This is why beliefs matter—they reveal important information about someone's perception of the state of the world. Applied to the context of power, even if someone is not *objectively* important to others, the fact that *others think they are* reveals something about the status or authority of that actor. In addition, that actor's *ability* to convince others of her importance is additional evidence of her power (as the capacity to influence).

The previous chapter showed that public interest law organizations use the strategy of triangular advocacy to help them achieve their goal of social change. One of the remaining questions was how these groups decided to emphasize one domain over another and why they chose to do so. Applying this thinking to triangular advocacy, the law, political actors, and the public affect two beliefs: (a) the quality of the relationship that public law groups have with that actor and— by extension, (b) public law groups' prospects for success in one domain and possibly the other two. This auxiliary belief is where these actors influence public law groups. It is because PILOs *believe* that these actors are important to their success that leads them to include attend to their relationships with those actors. Assessing groups' relationships with others is a proxy for determining how successful they think they will be with those actors. If public law

organizations believe they have uncooperative relationships with legislators, for example, this implies that they also believe that this negativity compromises their ability to succeed in that domain. Interest groups tend to direct their efforts towards friendly legislators, rather than neutral or unfriendly ones, suggesting that the quality of relationships with others can function as a substitute for effectiveness (Hojnacki and Kimball 1998, Kollman 1997). I should make it clear their relationship with each of these actors varies by issue and over time. These actors are also not aggregates in reality; Congress has 535 voting members, and there are several "publics" that matter to organizations. These combined elements create a complicated and textured political calculus for public law groups. In spite of the aggregation, it is possible to speak of a relationship with these entities on average—and it is still useful information. Even though the opposition party in Congress often works with the president on certain issues, the nature of the relationship (by virtue of being the opposition) implies that the prospects for the opposition's success with the president are low.

III: Hypotheses

During the latter days of the Warren Court—and the massive growth of the public interest law movement, Richard Cortner (1968) argued that there are classes of litigants that have no choice but to resort to the courts because of the insurmountable structural barriers they encounter working with the political branches. The exemplar of his theory is *Baker v. Carr*, where Tennessee residents had to rely on the judiciary to compel legislators to reapportion districts in a fairer manner. Scholars applied Cortner's Political Disadvantage Theory (PDT) to the broader universe of interest groups, suggesting that

they turn to the judiciary to compensate for difficulties elsewhere. In spite of attempts to refine the theory (Olson 1990), there is a mountain of empirical evidence suggesting that this does not suffice as a general explanation for interest groups' use of the courts (Epstein 1985, Schepelle and Walker 1991, Strolovitch 2007). In spite of the empirical difficulties that the PDT faced, I believe that Cortner's analysis about the relative openness of the courts compared to the political branches is still sound political analysis, if not for all interest groups, perhaps for public law groups. Another benefit of Cortner's argument is that it highlights the unique role of beliefs in shaping PILOs perceptions about their ability to succeed, like the litigants in *Baker v. Carr*. The triangular advocacy framework can add another layer of sophistication to Cortner's theory by including the public in the calculation, and the knowledge that PILO's advocacy tends to be dyadic; they use the law and society as leverage to move the political branches. These additions to Cortner's thinking yield a "triangular" political disadvantage theory:

The Leverage Hypothesis: If PILOs believe they have unfavorable relationships with the public or the political branches they will be more likely to engage in legal or social movement activity.

One of the benefits of the concept of power as influence is that it allows scholars to consider the ways that actors and entities *constrain* others in the achievement of their political goals, but also how they *enable* them as well. If organizations believe that powerful actors may help them succeed, then this may encourage groups to continue working with those that empower them, especially in a specific domain. The political

vertex may be slightly different than the other two, per the Leverage Hypothesis. If public law groups are already "insiders", and the political branches support them already then they do not need to engage the public as strongly. PILOs may then be free to specialize in political branches advocacy, like lobbying or drafting legislation. Public law groups, in other words, are trying to *maintain* their advantages with political actors.

The Maintenance Hypothesis: If PILOs believe they have favorable relationships with the public or the political branches, they will be more likely to engage in political activity—and less likely to engage in direct social movement action.

IV: Data And Measurement

Dependent Variables

In order to gain a fuller understanding of how beliefs affect the actions of public law groups, I will test whether beliefs affect how *frequently* PILOs engage in certain legal, political, and social movement activities. Each advocacy "vertex" has a distinct set of variables that I code differently. These actions are a subset of those in Table 3.6 from the last chapter.

-The Law: Given These variables determine how often public law groups file amicus briefs or litigate in federal courts. I use binary logistic regression to determine whether PILOs engage in these activities *frequently* (here defined as engaging in an activity more than "half the time"). Respondents that litigate or file amicus briefs "some of the time" or

"about half the time" are coded as 0, the baseline, while doing those activities "most of the time" or "always" are given a 1. I exclude those "never" engaging in either activity.

-Society/The Public: The rarity of protest makes it worthy of analysis. Like the previous models for the law, I use binary logistic regression to determine the frequency with which public law groups protest. I give those who "never" protests a 0, while I give a 1 to those that protest at any rate.

-Politics: I analyze three political activities: lobbying legislators, helping legislators draft bills, and lobbying bureaucrats. Of the political actions, lobbying is the most direct way for public law groups to try to further their cause; it is analogous to "litigating one's case" in the political branches. In the same way, drafting legislation is analogous to amicus briefs because they are suggestions to a decision-maker. These variables have a tripartite coding: 0-"never" 1-"less than half the time" (which includes the "less than half the time" and "about half the time" categories) and 2-"more than half the time" (which the "most of the time" and "always" categories). Due to the ordered nature of these variables, I subjected them to general ordered logistic regression.[28]

[28] The most natural choice would have been ordinal logistic regression, but that model requires that models comply with the parallel regressions/proportional odds assumption, which is that each observation has an equal probability of being in each category (Fu 1999, 160). It requires, in other words that public law groups be equally likely to "never" lobby and "always" lobby, which the data from the last chapter confirms is not the case. Data often violate the parallel regressions assumption requiring alternatives such as the general ordered logit model, which does not require parallel regressions. It is more parsimonious than the alternative, interpreting multinomial logistic regression (which would yield more models) and retains knowledge of the ordered nature of the dependent variable(s).

Independent Variables

-Cooperativeness of Legislators: This Likert-scale item asked PILOs whether they perceived legislators as being cooperative or uncooperative with them. After choosing "cooperative" or "uncooperative" the survey then offers a branching question asking respondents to determine the intensity of un(cooperativeness): "a little" "moderately" or "a great deal". This created a six-item scale ranging from "a great deal uncooperative" to "a great deal cooperative", with increasing scores reflecting a more favorable relationship.

-Political Party Opposition: The survey asked a question from prior interest group surveys—whether one of the political parties was less supportive of the goals of the organization (Walker 1991, Strolovitch 2007). If respondents reported that they did, they then reported the quantity of this lowered support: "a little", "somewhat", "quite a bit", or "a great deal". In order to simplify analysis I reverse coded this variable so that reporting less of a difference between the two parties is a more favorable relationship with political actors.

-Challenge or Defend Precedent: The survey asked public law groups how frequently they challenged and defended legal precedents, separately. There are five response options: "never" "some of the time" "about half the time" "most of the time" and "always".

-Public Perception of Clients: PILOs reported whether the public "favored", "opposed", or felt "neutral" towards the clients that public law groups regularly represent. If they reported "favored" or "opposed", the survey then branched respondents to report whether they thought the public "strongly" or "not strongly" favored or opposed their clients. This created a five-point scale ranging from strongly opposed to strongly favor, with more favorable scores indicating a favorable relationship with the public.

Controls

-Number of Similar Organizations: Consistent with the resource competition hypothesis (Gray and Lowery 1996), the survey asked respondents to determine how many organizations do similar work to the PILO. They chose either 0- "0" 1- "1-2" 2-"3-4" 3- "5-6" or 4- "7 or more".

-For the coding of the remaining controls: attorney number, inclusiveness, formalization, and staff involvement, see the categories from previous chapter.

V: Results

Results I: PILOs perceptions about their relationships with key actors.

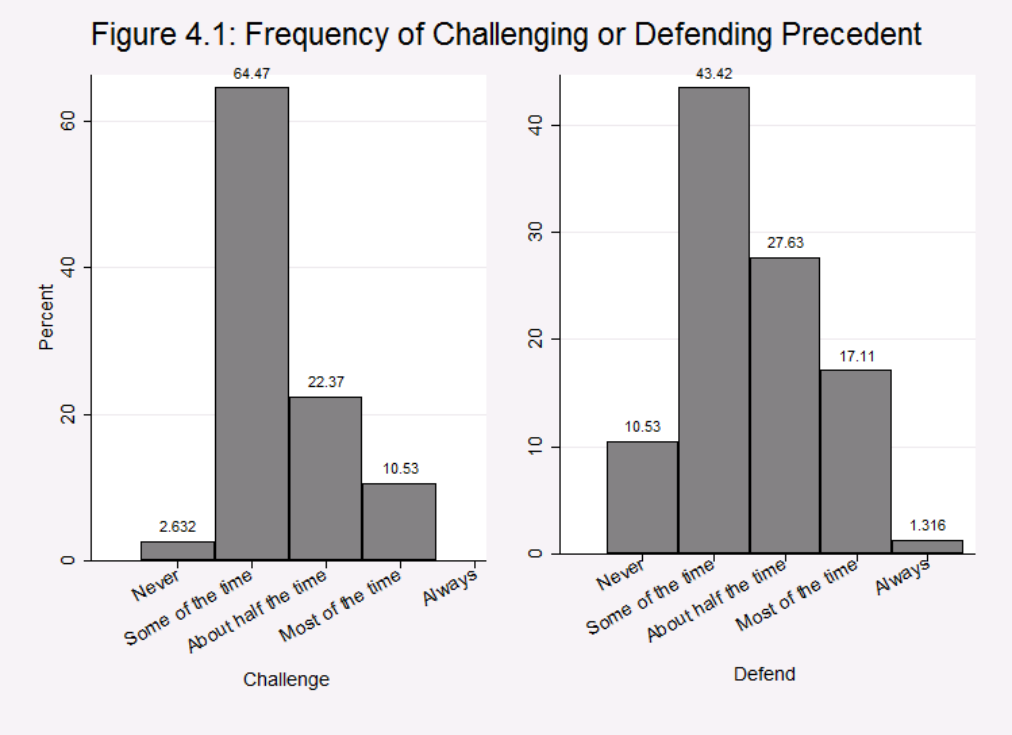
The Law: The branch that has the power of judgment has the inherent capacity to affect PILGs because they are deciding the cases that PILGs pursue. The judiciary's multiple points of access (multiple circuits and appeals courts), and often duplicate rights guarantees of state and federal constitutions (ex: freedom of the press, religious liberty) offers many opportunities for organizations to achieve their goals. Anecdotally, prior

research suggests that legal organizations are highly sensitive to the legal venues in which they operate. In a teacher pay case, NAACP litigators were deciding which circuit in which to bring the suit, and eventually settled on Arkansas because (at the time) it was part of a district that included Midwestern states such as Minnesota, Iowa, and Nebraska, and thereby would yield a more favorable outcome than a Deep South state (Tushnet 1987 [2004]). Recent systematic research from judicial politics scholars suggest that litigants are attuned to signals from the Supreme Court about their receptivity to certain cases (Baird and Jacobi 2009), and are more likely to bring cases before the Court if their interests are congruent with its policies and its agenda (Hansford 2004). This also suggests that the courts have the ability to affect litigation strategies.

The survey asked a series of new questions related to the law. The first asked PILOs about the receptivity of both state and federal courts to the goals of public law groups. 84.93% of groups reported favorable relationships with federal courts, and 70% reported favorable relationships with state courts. There are several explanations for this result. One is that public law groups do, indeed, have favorable relationships with the courts and have found the courts open to their claims. One explanation for this result is that public law groups reject the premise of the question. The norms of the legal field hold that judges are impartial. As one respondent told me in response to the survey: "sometimes we win, sometimes we don't. Judges decide on the merits of the case." It is possible that respondents are indicating a favorable relationship with courts so as not to suggest that courts are biased since the survey did not give respondents the option of indicating neutrality (to reduce satisficing). This possibility demonstrates some of the

tensions inherent in using the law to achieve social change. The advocates may be trained to be neutral, and believe that the courts are, too, but their use of the law is not. These results, nevertheless, express public law groups' faith in the American legal system of which they are a part, and their conviction that it offers their organizations a chance to further goals and provide their clients justice. The plausibility of the legal neutrality explanation limits interpreting these results too definitively and requires a less ambiguous measure of public law groups' relationship with the law.

A more fruitful line of inquiry is to examine PILOs' relationship with another entity—the law itself. The NAACP's venue shopping in less hostile Southern states demonstrates that public law groups are aware of the fact that judges decide cases in line with their preferences (Segal and Spaeth 1993, Songer, Segal, and Cameron 1994). But the law constrains judges because they have to *justify* their decisions with the law (Hansford and Spriggs 2006, Baum 1997, Knight and Epstein 1996). Since the law is the foundation of judges' opinions, public law groups depend on it to persuade judges. If the law opposes PILOs goals, then the courts cannot help them. Conversely, if it supports their goals, then they can. PILOs' relationship with the law*,* therefore, is more meaningful than how any particular judge or court feels about the organization or its goals, because the law constrains *every* judge or court.



In order to determine their relationship with the law, I asked public law organizations how frequently they defended and challenged precedent. If groups believe that the law does not support their goals, then they should challenge the law more often. Conversely, if they believe that the law is on their side then they should defend the law more often. Since I asked this as two separate questions, it is also a proxy for legal activity generally. Groups could, theoretically both defend and challenge precedent often. The different distributions between both questions, shown in Figure 4.1, suggest that both questions are capturing more than just how active groups are. Since PILOs must possess a necessary aggressiveness towards the law in order to make legal changes, one would expect that they would be primarily legally aggressive (challenge precedent), and, indeed, it forms a normal component of their work. Most organizations (64.47%) report that they

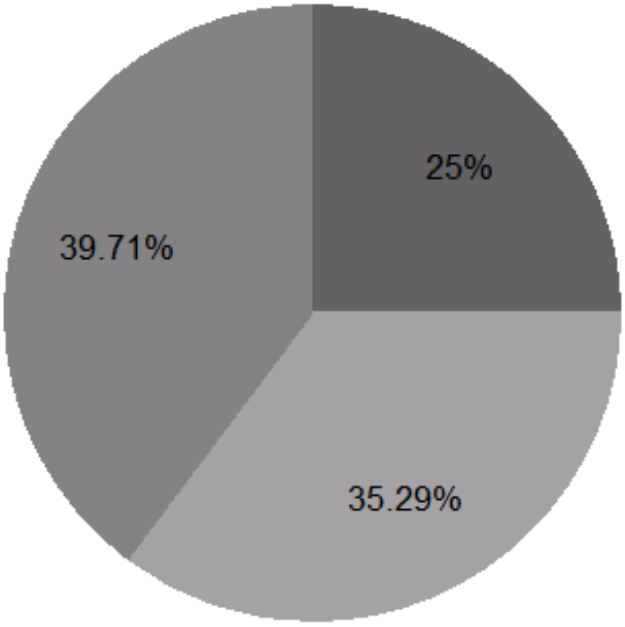
challenge precedent “some of the time”, but only a third of organizations challenge precedent half the time or more. The modal frequency for defending precedent is also “some of the time” (43.42%), but 46.06% of PILOs report that they defend precedent “about half the time” “most of the time” or “always”. They are marginally more legally defensive than legally aggressive.

Defending the law is easier—and cheaper, than a sustained legal challenge, and prior research suggests than planned litigation campaigns are rare (Wasby 1984), but it raises interesting questions about the strategy of public interest law. PILOs exist presumably because the law is a barrier to their cause, so how they plan to overcome that barrier while defending it is puzzling. Given how infrequently courts narrow precedent, another question is why PILOs think that they need to defend something that is not often at risk. One possibility is that they are trying to protect prior gains that are under threat more often than people may assume. A prominent example would be the protection of voting rights for racial and ethnic groups that the US Supreme Court circumscribed in *Shelby County v. Holder*. The triangular framework suggests that it is possible that these efforts may help PILOs mobilize the public or build momentum for the issue in legislatures, but this remains an empirical question. The legal defensiveness of public law groups, at the very least, challenges conventional wisdom about their approach towards the law, and suggests that they play a key role in sustaining the legal system.

There were some differences in aggressiveness and defensiveness by type of organization. There were no subtypes that more aggressively challenged precedent than others, but PILOs committed to defending the rights of families, children, or

education/schools reported a lower frequency of defending precedent relative to other groups. This does not mean that they are legally aggressive (or challenge precedent frequently, as they do not). Other governmental entities, such as school districts or social services may have the legal standing (and resources) to defend the challenges to precedent in court. Another subgroup, (the generic Public Interest category) rarely challenged precedent. The breadth of interests that they represent makes it difficult to commit to a sustained campaign to alter a specific area of law. Their breadth may also inhibit them from developing the expertise to engage in a specific area of law. As for those that defended precedent, PILOs representing specific ethnic groups were more legally defensive.

Figure 4.2: Public Perception of Clients

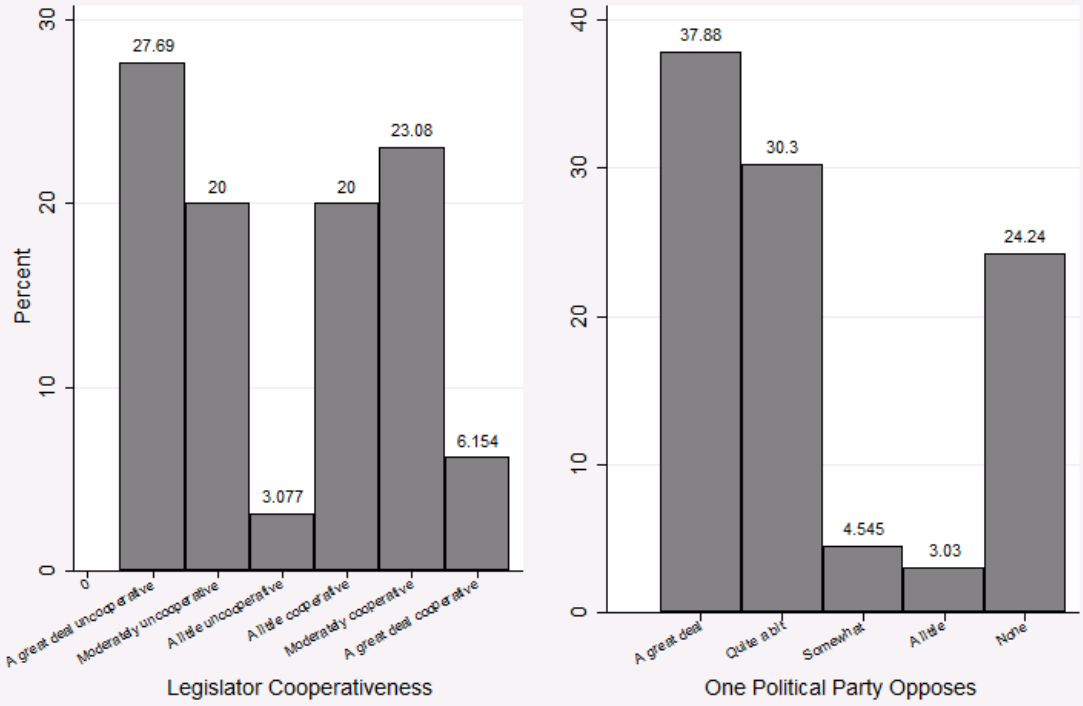


The Public: Public interest law organizations' interactions with the public may be simultaneously the most direct and the most indirect relationships that they have. Employees of public law groups are part of the public like the rest of us. As employees, they know what the public thinks, especially how it feels about their clients. Yet their interactions with "The Public" as a mass noun are quite limited. While many public law groups interact with the public through public education efforts, protests, social media, etc., their interactions with the public are likely to be the most indirect of the specific actors. Many of these groups' interactions with the public are mediated by media, cultural values, and other mechanisms. Public polling or news stories on certain issues, for example, may give PILOs a sense of where the public stands on issues important to them.

How the public feels about the organization, itself, is largely irrelevant to PILOs for the simple reason that the public does not have opinions about most public law groups because it isn't familiar with them, with the exception of the NAACP and the ACLU. The public's ideas about PILOs' clients, and people like their clients, is much more important to PILOs because this more directly affects their ability to persuade the public. If the pubic feels negatively about their clients then it should be harder for PILOs to persuade it. Public law groups have enough on-going interactions with the public to have a firm sense of how they feel about their clients and people like their clients. The survey, therefore, asked public interest law organizations their perception of the public's stance toward their clients. The results are in Figure 4.2. Overall, it appears that there is a lot of potential for PILOs to move the public. There is an almost even split between groups that believe that the public views their clients positively, negatively, and neutrally. This does not mean, of

course, that every organization is in an equal position to move the public. A slight plurality of organizations reported they believe the public disfavors their clients, which suggest that, as per the leverage hypothesis, they need to help improve the standing of their clients in the public. Criminal rights, immigration, ethnic groups report a distinct negativity in the public towards the goals of the organization (a majority of organizations reported that the public was neutral at best, if not strongly opposed to their clients). Conservatives and environmental groups reported a high level of a least neutrality if not strong favorability towards their clients. These findings are hardly surprising. The public generally likes clean air more than death-row inmates. Yet these results clarify our understanding of the social context in which groups find themselves.

Figure 4.3: Political Relationships



Politics: The party that public law organizations sue most often is the government. PILOs often accuse agencies or bureaucrats engaging in illegal or unconstitutional practices. The survey asked respondents two questions related to their political relationships: the un (cooperativeness) of legislators, and whether they perceived a difference between one of the political parties in their support. Figure 4.3 shows public law groups' assessment of their relationship with both legislators and parties. Around half of public law groups (50.77% say that their relationships with legislators are uncooperative. Outside of government actors, public law groups report opposition from one of the political parties. The parties are more consistent ideologically than in the past, and many PILOs, as the earlier literature notes, are still predominately liberal (ex: women's issues, environmental issues, poverty, etc.), therefore PILOs' perceived hostility from the parties is not surprising. Fewer than a quarter of organizations (24.24%) report they do not perceive a difference between the two political parties with regards to their goals while the 68.18% of organizations report "quite a bit" or "a great deal" of opposition from one of the political parties to the goals of the organization.

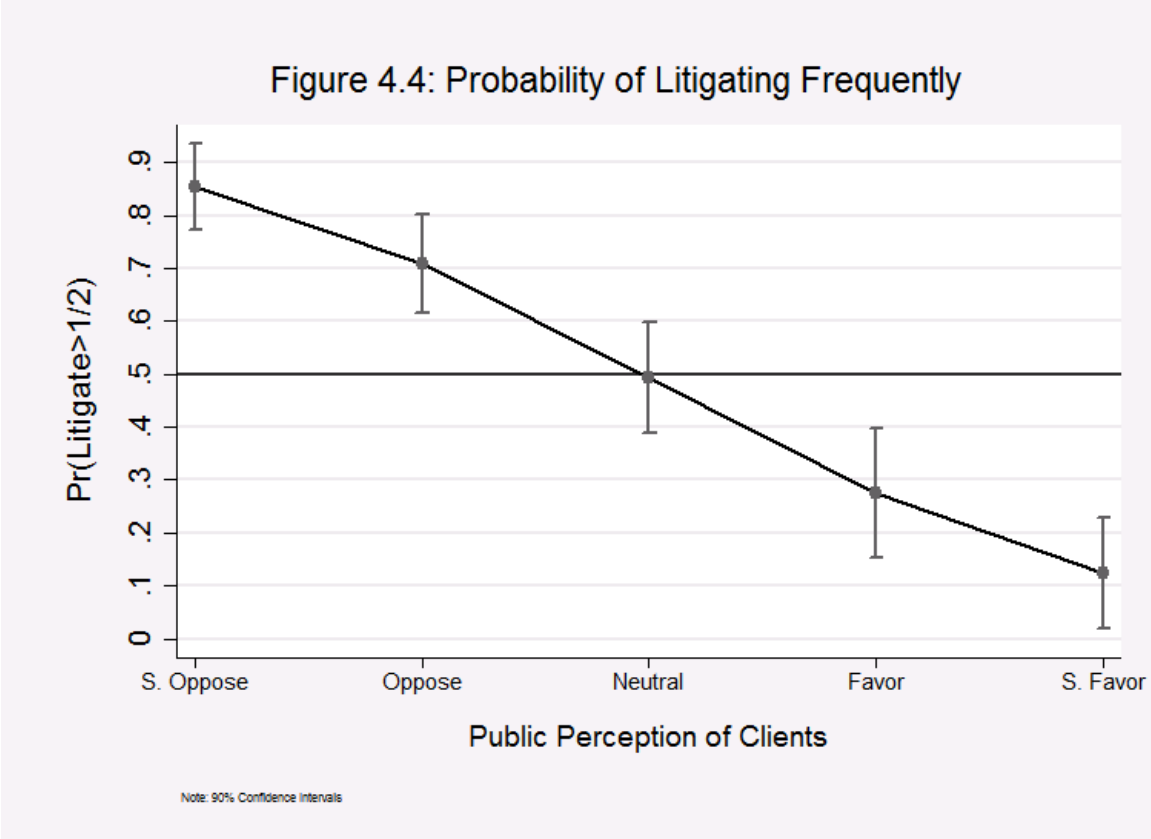
Combining party with the question about legislator (un) cooperativeness, there were some differences by type of public law group. Environmental organizations reported having uncooperative relationships with both legislators and parties, while others were more mixed. Conservative organizations reported having generally favorable relationships with legislators, and a large difference between the two parties regarding their goals, for obvious reasons, which economic groups reported as well.

Results II: PILO Actions

Table 4.1: Legal Advocacy		
	Amicus-Federal	Litigation- Federal
Legislator	0.647*	0.280
	(0.257)	(0.220)
Party	-0.462	-0.372
	(0.286)	(0.261)
Challenge Precedent	1.265*	1.226*
	(0.567)	(0.558)
Defend Precedent	1.139*	0.426
	(0.486)	(0.364)
Client Affect	-0.339	-1.251***
	(0.301)	(0.377)
Number of Similar Orgs.	-0.169	0.477+
	(0.300)	(0.274)
Attorney Number	-0.839+	-0.718+
	(0.461)	(0.395)
Inclusiveness	1.144+	1.057*
	(0.595)	(0.532)
Formalized	0.218	0.600
	(0.495)	(0.499)
Staff Involve	-0.971+	-1.120*
	(0.537)	(0.512)
Constant	-2.619	1.814
	(2.070)	(1.852)
Pseudo R^2	0.302	0.327
AIC	71.49	72.74
BIC	93.57	94.82
ll	-24.75	-25.37
chi2	21.41	24.62
Observations	55	55
Standard errors in parentheses + p<0.10, * p<0.05, ** p<.01, *** p<.001		

Legal Advocacy

The first question is whether PILOs' beliefs about their relationships with key actors affect their propensity to litigate and file amicus briefs *frequently* (engaging the activity more than half of the time, compared to less than half of the time), reported in Table 4.1. The results show support for the leverage hypothesis. The most substantively significant factor of whether groups litigate in federal court is the public's perception of their clients. The more favorably that the public views PILOs' clients the less likely PILOs are to litigate in federal court frequently. Figure 4.4 depicts the predicted probability of engaging in litigation in federal court more than half of the time compared to less than half of the time by client affect. Those groups that perceive the public strongly opposes their clients are 84.22% likely to litigate frequently, while groups that perceive the polar opposite (strongly supports) are less than 10% likely to litigate frequently. These results suggest that PILOs hope that litigation will raise the visibility of their issues, mobilize latent constituencies, and make the broader public more favorable to their cause. It also validates the central intuition of Cortner's theory that the courts may be the refuge for those that face opposition, whether it is inside or outside of the government. These results also provide another example of the Law and Society dyad of triangular advocacy.



The results challenge the leverage hypothesis to an extent. PILOs file more amicus curiae briefs if they believe that they have more cooperative relationships with legislators. Amicus curiae briefs and lawsuits may yield different benefits for PILOs. They do litigate more often if they believe they have bad relationships with the courts—as one would expect. If the law is a problem (challenge precedent often), then public law groups need to aggressively challenge it (litigate frequently), as the law is not going to change itself. If PILOs' don't perceive their situation as being as dire (evinced through favorable legislative relationships), then they are freer to use less direct methods in furthering their cause, like amicus briefs. Additional evidence for this possibility is the

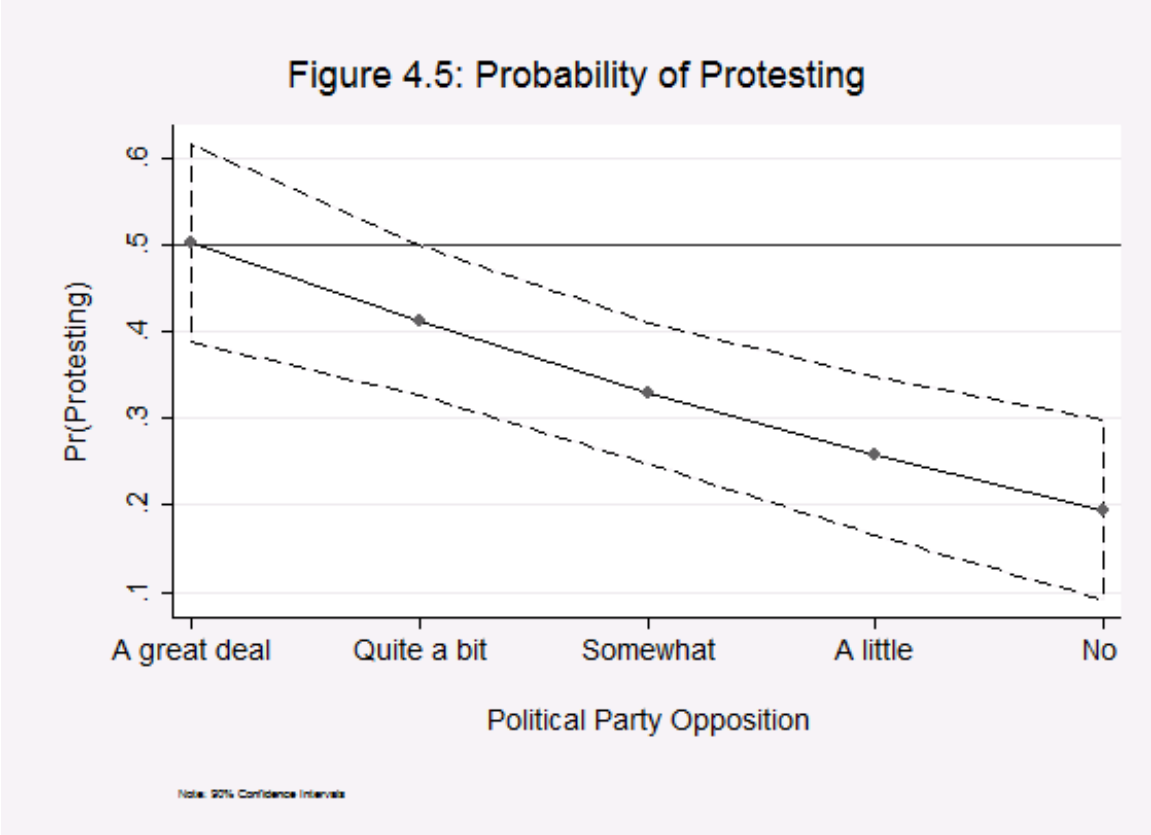
direct relationship between filing amicus briefs irrespective of the organization's belief about the law. The more frequently groups defend or challenge precedent the more likely they are to file amicus briefs often. They help the cause either way.

Table 4.2: Social Advocacy	
	Protests
Legislator	-0.00380
	(0.256)
Party	-0.775*
	(0.371)
Challenge Precedent	2.212*
	(0.942)
Defend Precedent	2.488**
	(0.891)
Client Affect	-1.157*
	(0.535)
Number of Similar Org.	0.321
	(0.320)
Attorney Number	-1.985*
	(0.795)
Inclusiveness	0.873
	(0.650)
Formalized	2.633*
	(1.087)
Staff Involve	-1.435+
	(0.740)
Constant	-3.040
	(2.610)
Pseudo R^2	0.465
AIC	56.47
BIC	77.28
ll	-17.24
chi2	29.96
Observations	49
Standard errors in parentheses + p<0.10, * p<0.05, ** p<.01, *** p<.001	

Social Advocacy

The social vertex, reported in Table 4.2, reports the likelihood that PILOs will engage in protest. Recall from the previous chapter that two-thirds of organizations do not protest, raising the question about why the remaining third do protest. The propensity to protest has implications for both the leverage and maintenance hypotheses. If public law groups believe their relationships with the public are bad, they need to work with them to improve their standing in the public. Conversely, if public law organizations believe that the public favors their clients then they do not need to mobilize the public to the same degree. The results confirm both the leverage and maintenance hypotheses. The more favorably the public views PILOs' clients the less they emphasize protesting. If groups perceive that the public strongly opposes their clients they are likely to engage in protests (55.5%) more than half the time.

The social advocacy domain performs double-duty for the leverage and maintenance hypotheses once again. If PILOs believe that their relationships with the political branches are poor, then they need the bargaining advantages that protests can offer (Lipsky 1968). Conversely, if PILOs perceive opportunities to work with legislators or parties, then they do not need protests to help them. Both hypotheses find support here as well. Figure 4.5 shows the probability of protesting by how strongly PILOs believe one of the political parties opposes one of their efforts. The baseline level of protesting is less than 50% because of how infrequently PILOs protest, so the perceived favorability of the parties (less unfavorability) is depressing an already unlikely event.



Public groups are more likely to protest irrespective of their perceived relationship with the law. This is a logical result. If groups are trying to change precedents that they believe are unjust, they need the public's support and awareness to convince reticent judges and political actors. They also need the public to help them defend hard-won legal principles. One can imagine environmental public law groups wanting to alert the public of challenges to the Clean Air Act, or women's legal groups wanting to do the same for challenges to *Roe v. Wade*. These results, combined with the other two, suggest that public law groups' beliefs about actors in all three domains (law, politics, and society) lead PILOs to try to convince the public to mobilize the public irrespective of their advocacy goals.

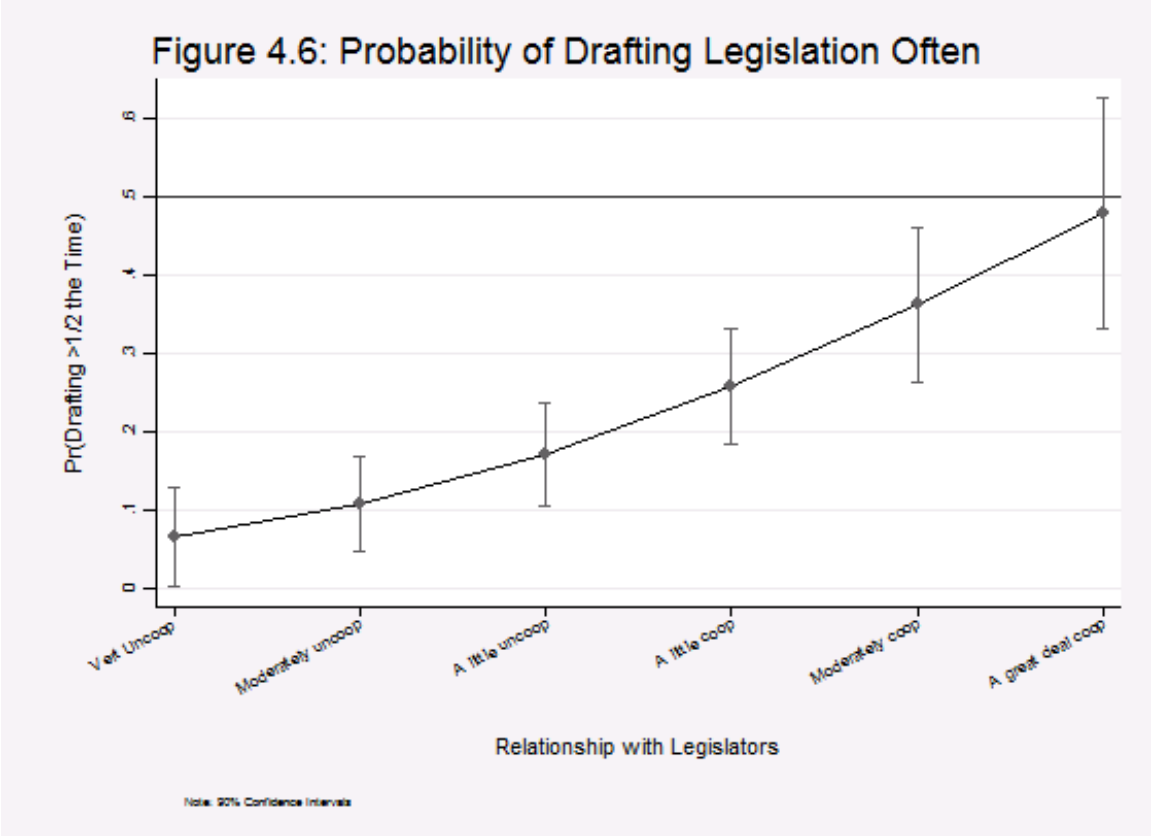
Table 4.3a: Political Advocacy I-"Never" vs. "Less than Half" and "More than Half"			
	Lobby-Legislators	Draft Legislation	Lobby-Agencies
Legislator	0.291	1.345+	0.0585
	(0.251)	(0.778)	(0.339)
Party	0.272	1.647	0.877*
	(0.329)	(1.013)	(0.380)
Challenge Precedent	1.483*	4.741+	0.500
	(0.692)	(2.781)	(0.585)
Defend Precedent	0.950*	2.595+	0.973
	(0.460)	(1.441)	(0.680)
Client Affect	0.262	1.286	-0.725+
	(0.331)	(0.937)	(0.417)
Number of Similar Org.	-0.334	0.994	-0.635
	(0.278)	(0.681)	(0.397)
Attorney Number	0.542	4.487+	1.787*
	(0.527)	(2.310)	(0.840)
Inclusiveness	-0.597	-5.266+	-1.575+
	(0.610)	(2.708)	(0.837)
Formalized	0.119	-0.489	-0.0849
	(0.539)	(1.049)	(0.591)
Staff Involve	1.138+	4.150+	1.234+
	(0.615)	(2.260)	(0.748)
Constant	-6.791*	-24.90+	-2.348
	(2.906)	(12.75)	(3.426)

Table 4.3b: Political Advocacy II-"Never" and "Less than Half" vs. "More than Half"			
	Lobby-Legislators	Draft Legislation	Lobby-Agencies
Legislator	0.819*	1.274*	1.301
	(0.392)	(0.614)	(0.950)
Party	0.336	0.157	-1.680
	(0.392)	(0.470)	(1.572)
Challenge Precedent	0.661	0.186	0.491
	(0.661)	(1.148)	(1.840)
Defend Precedent	1.489*	2.861*	0.0974
	(0.653)	(1.154)	(1.295)
Client Affect	-0.771	-0.189	3.091
	(0.499)	(0.609)	(2.316)
Number of Similar Org.	0.359	-0.137	0.739
	(0.427)	(0.492)	(0.864)
Attorney Number	-0.0424	0.426	-4.070
	(0.779)	(1.003)	(2.753)
Inclusiveness	-1.443+	-1.403	-0.881
	(0.778)	(1.154)	(1.247)
Formalized	-0.0789	-0.623	6.869
	(0.665)	(0.775)	(4.492)
Staff Involve	2.440*	3.298*	8.404
	(1.011)	(1.630)	(5.623)
Constant	-12.65**	-19.14*	-50.33
	(4.589)	(7.750)	(33.90)
Pseudo R^2	0.363	0.564	0.490
AIC	116.2	83.25	94.93
BIC	160.4	127.4	139.1
ll	-36.12	-19.62	-25.47
chi2	41.08	50.85	48.95
Observations	55	55	55
Standard errors in parentheses + p<0.10, * p<0.05, ** p<.01, *** p<.001			

Political Advocacy

The hallowed halls of state legislatures and Congress, as well as the hearing rooms of government agencies, are where all groups engage the most in "insider politics." The maintenance hypothesis argues that if public law organizations believe that they are "already on the inside" evidenced by their belief that political actors favor them, they need the other advocacy vertices less, and can maximize their efforts here. Tables 4.3a & 4.3b confirm these results in two different domains: with government agencies and with legislators. As for government agencies, the less that PILOs perceive a difference between the two political parties, the more likely public law groups are to lobby government agencies. Groups want their efforts to endure, and strong opposition from one side of the political spectrum may erode those efforts in the long-term. It is also possible that public law groups believe that government agencies want to be independent of political influences, and may reduce their efforts accordingly.

The most theoretically important test of the maintenance hypothesis is groups' relationship with legislators. If PILOs believe they work well with legislators they are more likely help them draft legislation (at a baseline level). Better relationships also lead PILOs to lobby legislators and draft bills *often* (defined as an increased likelihood of engaging in the activity "more than half the time" compared to both "less than half the time" and "never" combined). Figure 4.6 shows this relationship as it applies to drafting legislation often. The probability of drafting legislation at all, or frequently, like protesting, is low, as I reported in the last chapter. Better relationships, therefore, make an unlikely activity more likely.



PILOs' beliefs about the public and the law affect their political advocacy and support both hypotheses. There is a modest role for the beliefs of the public in the political domain, and they contradict the expectations of the maintenance hypothesis. The more strongly PILOs think that the public opposes their clients the more likely they are to lobby bureaucrats. If the public opposes groups' clients, PILOs are 64.05% likely to lobby government agencies less than half the time, but only 24.40% if the public favors their clients. Although I theorized that the public would be less relevant in this domain, these results still lend favorable support to both triangular advocacy and the leverage hypothesis. Government agencies are less subject to popular pressures than legislators and can achieve tangible successes for their clients with less concern about public

backlash. As for the role of PILOs' beliefs about the law, both challenging and defending precedent leads public law groups to lobby legislators and help them draft legislation, but has no influence on their lobbying government agencies. Irrespective of their general approach towards the law, legislators are the primary actors charged with changing or protecting the law. Public law groups direct their efforts at the source. Public law groups will lobby or draft legislation irrespective of their opinion about the law, but if PILOs believe that the law is on their side (defend), then they are more likely to lobby and draft legislation frequently. PILOs, in other words, engage legislators frequently when they are more comfortable with the legal status quo, which is also consistent with the maintenance hypothesis.

Institutional Factors

Two controls operate together as a pair across the models: the number of attorneys, and how much the PILO involves the staff in its decision-making process. The more lawyers a PILO employs the *less* likely they are to report filing amicus briefs and litigating in federal court more than half of the time. The same result holds for staff involvement. The more involved the staff is in organizational decision-making, the *less* litigious the organization is. These results are counterintuitive, but have prior empirical support (Strolovitch 2007). The more attorneys a group has, and the more that the staff (who are likely lawyers) involves itself in deciding the organization's goals, the more often it can file amicus briefs and sue. It appears that the employees of public law groups do not think that frequent legal activity is the most efficient use of their legal staff, however. The same results hold for protesting. PILOs with more attorneys and a more

staff-driven process lowers the likelihood of protesting. It appears that PILOs with many attorneys, and a staff-driven process have concluded that the best use of their additional resources is to work with the political branches. The number of attorneys increases the probability of helping draft legislation and lobby government agencies. The more involved the staff, the more likely public law groups are to engage in all forms of political activity (lobbying both legislators and administrators, and drafting legislation), and to work with legislators more than half the time. PILOs appear allocate their extra legal personnel to working with legislators and bureaucrats. The results show that contrary to the expectation that more lawyers would lead to more litigating, public law groups engage in majoritarian politics more comprehensively with their heightened relationships with legislators and the decreased need to accommodate outside actors.

The inclusiveness of PILO decision-making is also insightful. The more importance that public law groups place on hearing and respecting a diverse set of viewpoints the more public law groups are to file amicus briefs and sue more than half of the time. These results are analogous to prior research finding that interest groups file amicus briefs more often if they emphasize internal agreement (Solberg and Waltenburg 2006). The difference between these results and prior research is a matter of degree. Solberg and Waltenburg argued that meeting member incentives insured organizations' survival. Rather than offering members incentives, PILOs may allocate a higher proportion of effort towards legal work as a way of demonstrating the effectiveness of the public law group to those they consult. Inclusiveness does not affect PILOs propensity to protest, but the more inclusive the organization, the less likely they are to engage in

political activities. Inclusiveness makes PILOs less likely to help draft legislation and lobby government officials, and less likely to lobby more than half the time due to stakeholder's frustration with incrementalism.

Two other controls require brief comment. The models almost uniformly find no effect of other interest groups on the actions of PILOs. In only one model, does resource competition affect PILOs' actions; it increases their likelihood of suing in federal court. PILOs may seek to distinguish themselves from other organizations by suing in federal court, which is consistent with niche theory. The minimal effect of other groups on public law groups is not surprising. Other organizations and movements *matter*, but they are not *central* to public law groups' triangular strategy for social change for several reasons. Although other organizations and movements affect the three other vertices, they do not have the same central influence on the vertices as they have on each other. Other groups do not possess anything that is equivalent to the electoral connection, or court-curbing. PILOs, in other words, can safely ignore other groups without consequence in a way that they cannot ignore the public, government officials, or the courts if they want social change. This goal is the second reason why other groups are not as pivotal to public law groups—they don't have to convince allies, and cannot convince enemies. It would be a waste of organizational effort to focus on organizations and movements.

In keeping with the logic of the interest groups literature, there is a strong component of public law groups' advocacy that is a function of their internal characteristics. PILOs are constrained and enabled not only by external actors, but also by the norms and structures of their organizations. The results also show that more

formalized decision-making increases the probability of protesting. This suggests that the decision to protest may be strategic rather than tactical due to the more complex decision-making process that inhibits spontaneous action. It also suggests that, like other social movement organizations, such actions may be highly-ordered affairs (Staggenborg 1988, 600). This would also suggest that protests are meant to have specific effects that are meant to align with long-term goals.

VI: Conclusions

The results of this chapter help fill the gap between micro-level analyses of groups in policy domains or political contexts, and macro-level studies of structures that seek to explain the political behavior of a specific organizational form: the public interest law organization. The concept of power—as influence, shows that key actors affect PILOs' perceptions and their actions. PILOs *prioritize* the law, the public, and the political branches, and defer to actors in these domains because they believe that they are essential to their goals. This chapter captures some of the benefits of micro and macro-level analyses of group decision-making. It has some of the benefits of the former by showing the dynamics of PILOs' actions, while the breadth of the findings raises important questions about the nature of advocacy and how groups adapt to different power relationships with a certain level of social proximity—the meso level.

As part of a broader project, this chapter provides further empirical support for triangular advocacy, and offers a rejoinder to critics of cause lawyering that diagnose public law groups as suffering from social-change strategic myopia. These results strongly suggest the contrary. Public law groups not only engage in several types of

advocacy, rather than relying solely on the law, but their advocacy is highly sensitive to the influence of key actors. This project does not address the question of whether these strategies "succeed", or whether the triangular strategy is a wise one. The results would suggest that any question of "success" must not only be triangular in its orientation, but also conditional on the perceptions of public law groups. Even unsuccessful attempts to "leverage" law and society to move politics, for example, may be the best option given PILOs beliefs about what is possible.

Apart from the gap-filling function that I describe above and the contributions to triangular advocacy, the results also support the primitive notion underlying Cortner's Political Disadvantage Theory; certain actors turn to the courts partially because of limits they face elsewhere, not just from the political realm, but also from society. This *triangular* approach helps reinvigorate the PDT, and may help further discussions about the unique role of the law in political and social advocacy. This contrasts with the "substitute good" view of the judiciary that finds support in the venue-shopping literature. It is no doubt true that organizations pursue actions in any sphere that will help them achieve their goals, but these results show that the law provides additional benefits for strategic action apart from whatever gains one receives from the political branches. The law, but also society, helps public law groups achieve their goals, but they use them in different ways. They hope that legal and social work helps move stubborn political actors who resist their goals. If the political branches already support their goals, however, they can commit their efforts to "normal" insider forms. The many dimensions that make the law a distinctive tool for organizations merits further consideration.

Chapter V: Conclusions

The fundamental question of this dissertation is straightforward: how key actors have power with a particular type of formal organization: the public interest law organization. As this project illustrates, however, answering this question is not nearly as straightforward as the question itself because two necessary components of the conceptual apparatus were missing. Political scientists have largely accepted one understanding of power (as domination) that helps answer some questions, but makes some questions impossible to even ask. Through ordinary language analysis, this dissertation has been able to recover another sense of power lurking in the word itself, power as influence—the ability to affect others through imperceptible and non-coercive means. Power as influence is a tool that scholars can use to explain the relationships and interactions between a variety of political actors and entities. Once it is clear what it means for key actors to have power with public law groups, the next question is with respect to what actions. The concept of triangular advocacy explains how public law groups try to change society through a combination of legal, political, and social advocacy. While legal advocacy is central to public law groups' efforts, political and social advocacy complements their goals. The descriptive statistics reveal that PILOs tend to direct their efforts towards legal/social, or legal/political vertices of the advocacy triangle. Wedding the concepts of power as influence and triangular advocacy allows for a satisfactory answer to the question at the outset: how legal, political, and social actors influence the beliefs and (triangular) actions of public law groups. I find that legal and social advocacy are important ways for PILOs to overcome challenges that political

actors and the broader public place in their way. If public law groups perceive themselves as having good relationships with political actors then they can concentrate on insider forms of politics, and do not need to emphasize social change as strongly.

Power

The exploration of power from the perspective of ordinary language has several goals beyond the study of public law. The first, and more limited one, is introducing ("reintroducing" may be more appropriate, since Dorothy Emmet began this task earlier) alternatives definitions of power so that political scientists can more precisely know what they are studying, which has its own rewards—but also what they are not. The second is to encourage power theorists to discuss where they wish to draw the boundary on power—for they must draw such a boundary. I deliberated drew a boundary around the word "power" that left out mathematical and scientific senses of the term because they are not relevant to the study of politics or society. At the same time, I would discourage Lasswell-Kaplan-type of declarations that any one (domination) or two (domination and capacity) are the only senses of power relevant for understanding politics because it reinforces the unproductive tendency to search for the essence of power and it unduly disregards the others. This argument does not suggest that all senses of power could be the basis for theories of politics. "Gingrich and the Republicans' sweep *into power*, or the conniving foreign *powers* of the early Republic, for example, are statements of fact and markers of identity, respectively. These two senses of power do not lend themselves to in-depth discussion, nor do they apply in a range of circumstances. Language serves as a check on drawing too narrow a boundary around the concept because it undermines

theorists declarations of what a concept "is" if it doesn't accord with what scholars understand the term to mean, and they may safely proceed along without engaging theory at all. The fact that scholarship on power proceeds on *in spite of the theories*, and leads practitioners to ask "why mention power at all?" is evidence that the current boundary is too narrow. I hope that this project offers theoretical and empirical support for alternative discussions around the concept of power.

The Quest for Justice

Chapters Three and Four of this dissertation as well as recent systematic work on public law groups provides an important baseline of knowledge about the way that public law groups pursue social change. This dissertation has helped show that public law groups' view of the law, and their response to political, legal, and social actors is a bit more nuanced and realistic than prior scholarship would suggest. In the opening section of Chapter Three, I presented Thomas Hilbink's framework that distinguished public law groups from other cause lawyers, specifically proceduralists (traditional legal advocacy) and grassroots lawyers (often part of social movements). It differed along three dimensions. It is time to discuss the other two, the limits that they pose for the practice of public interest law and the possibilities they hold for future scholarship.

The second way that public law groups differ from other legal entities is the view of their cause. Since public law groups place the law above politics because they believe in the ideology of rights, they must translate their social goals into legal ones. The translation of the social into the legal has two consequences. The first is that it separates PILOs from the norms of the legal profession that emphasize using the law for its own

sake, or for legal remedies (the proceduralist view) and from many social movements (grassroots) that may reject the translation of social and political goals into legal ones because it's difficult, impossible, or inappropriate to do so (Bell 1976, Albiston 2011, Lobel 2007, Gabel and Harris 1983). A specific example of this argument is Serena Mayeri's *Reasoning from Race* (2011) which shows the ways in which the race-based legal arguments (which is the same logic many public law groups rely on), enabled gains for women from the courts, but, ultimately, the differences between the race and sex severely constrained the push for women's advancement in society. The second consequence is that the necessary translation of social goals into legal discourse directs PILOs efforts towards getting the attention of both social and legal elites, such as the media and foundations, rather than legal elites alone, that emphasize the rule of law (proceduralists), or the movements themselves (grassroots), which may be ignorant or dismissive of legal goals.

Future work on public law groups will want to systematically examine how much groups translate their social goals into legal ones, and what gets lost in translation. Public law groups will rarely be the only entities representing their cause. Other non-legal organizations and social movements may still offer the requisite social or political dimensions of their causes that public law groups may not due to their legal focus. Another issue is that public law groups vary substantially in the relationship that they have with social movements at the grassroots, there is likely a sliding scale of how thoroughly PILOs translate the social into the legal, and how much this constrains advocating for social change.

The third way that public law groups differ from other legal organizations is their view of the client-lawyer relationship. Although court decisions resolve individual dispute, they have the potential to benefit a wide range of people. The potential for legal victories to have a broad impact leads PILOs to view their clients as vehicles for ensuring substantive justice, evinced through the prior example of impact litigation. PILOs, therefore, are less concerned with ensuring that their individual clients receive a narrow legal remedy to their own personal problem (a proceduralist view in line with the norms of the legal profession). PILOs are also less concerned with balancing their cause with empowering their clients' sense of personal and political efficacy (a grassroots view).

There are many unanswered questions about the relationships that public law groups have with their clients. One important question is the extent to which groups recruit their clients rather than take whatever client needs their help. A planned litigation strategy may require more active recruitment on the part of public law groups, but as prior research noted earlier, this tends to be a smaller component of group litigation (Wasby 1984). If groups are more passive in their recruitment efforts, this may qualify the extent to which clients are a vehicle for the goals of public law groups. Open questions remain about the services that public law groups provide for their clients, whether it is merely legal relief, or whether there are other ways that PILOs try to increase the political efficacy of the communities and clients that they represent.

Power & The Quest for Justice

The absence of the ACLU, JACL, and the NAACP from the *Pérez* case was an unfortunate episode in the perpetual quest for social justice. The ones that suffered the

most were the litigants: Andrea Pérez and Sylvester Davis. While their absence was regrettable, this dissertation helps to show that for public law groups this choice was not likely due to malice or indifference on the part of these organizations, but was conditional on the power of other actors. Their power, as influence, of course. While the "strong upper class accent" in the "heavenly chorus" has been well documented for interest groups (Schattschneider 1960, Schlozman, Verba, and Brady 2012), as well as for some types of litigants (Galanter 1974), there has been less sustained attention to the political, social, and legal biases that systematically affect organizations, and even less from the actors in those domains. Public law groups epitomize contradictory statements about the nature of American democracy, and these results only highlight the tension between them. Public law groups believe that the political system is fair, if not now, then at some future date, if public law groups continue fighting for justice. Their sustained legal, political, and social advocacy, in spite of the hostility they perceive from actors in those domains, is proof of their commitment. Their very existence as organizations suggests that there are substantial blockages in the political system that inhibit both elites (the lawyers) and ordinary citizens (clients) from having their voices heard. These results contribute to broader conversations about the use of the law for extra-legal purposes, for they suggest that given the chance, public law groups will engage in democratically legitimate, "normal" politics if they believe that representatives (legislators and government agencies) want to represent them. This project suggests that there are many nuances and dimensions to this tension that merit further study.

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Appendix A: Sampling Frame of Public Interest Law Organizations[29]

Accountability Counsel
Advancement Project
Advocates for Basic Legal Equality (ABLE)
Advocates for Children of New York
Advocates for the West
AK
AL
Alaska Immigration Justice Project
Alliance Defending Freedom
American Association for Justice
American Association of University Women (AAUW) - Legal Advocacy Fund
American Center for Law and Justice (ACLJ)
American Civil Liberties Union (ACLU) - National Headquarters
American Civil Rights Union
American Immigration Council
Americans for Effective Law Enforcement
Americans for Immigrant Justice
Americans United for Life
Americans United for Separation of Church and State (Legal Dept.)
Animal Legal Defense
Anti-Discrimination Center
Appleseed
AR
ArchCity Defenders
Arizona Center for Law in the Public Interest
Asian American Justice Center
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice - AAJC
Asian Law Caucus
Asylum Access
Atlantic Legal Foundation (ALF)
Atlantic States Legal Foundation, Inc. (ASLF)
Attorneys for the Right of the Child (ARC)
AZ

[29] State Abbreviations are ACLU branches.

Battered Women's Justice Project
Battered Women's Legal Advocacy Project
Bazelon Center for Mental Health Law
Becket Fund for Religious Liberty
Business & Professional People for the Public Interest (BPI)
CA-SD
CA-Southern California
CA-Northern California
California Anti-SLAPP Project
California Women's Law Center (CWLC)
Catholic League
Cato Institute, Center for Constitutional Studies
Center for Children's Law and Policy (CCLP)
Center for Civil Justice
Center for Constitutional Rights (CCR)
Center for Death Penalty Litigation
Center for Democracy and Technology
Center for Equal Justice
Center for Equal Opportunity
Center for Human Rights and Constitutional Law
Center for Individual Freedom
Center for Individual Rights
Center for International Environmental Law (CIEL)
Center for Justice and Accountability
Center for Medicare Advocacy
Center for Public Representation (CPR)
Center for Reproductive Rights
Chesapeake Legal Alliance
Child Care Law Center
Children's Rights
Christian Legal Society
Claremont Institute Center for Constitutional Jurisprudence
CO
Colorado Center on Law and Policy
Colorado Lawyers Committee
Comic Book Legal Defense Fund
Community Law Center
Community Rights Counsel - DC

Competitive Enterprise Institute Free Market Legal Program
Connecticut Fund for the Environment
Connecticut Women's Education and Legal Fund (CWEALF)
Conservation Law Center
Conservation Law Foundation
Crag Law Center
Criminal Justice Legal Foundation
CT
DC
DE
Defend the Bay
Defenders of Property Rights
Defenders of Wildlife
Disability Rights Advocates (DRA)
Disability Rights Education and Defense Fund
Disability Rights Legal Center (DRLC)
Due Process of Law Foundation (DPLF)
Eagle Forum
EarthJustice
Earth Rights International (ERI)
Eastern Environmental Law Center
Education Law Center
Education Law Center
Electronic Frontier Foundation
Empire Justice Center
Environmental Defender Law Center
Environmental Defense Center
Environmental Integrity Project
Environmental Law Alliance Worldwide (E-LAW)
Environmental Law Foundation (Oakland, CA)
Equal Justice Initiative
Equal Justice Society (EJS)
Equal Justice Under Law
Equal Rights Advocates
European Centre for Law and Justice
Everglades Law Center
Family Defense Center
Family Violence Appellate Project

Farmers' Legal Action Group (FLAG)
Farmworker and Landscaper Advocacy Project
FIRST AMENDMENT PROJECT
First Shift Justice Project
FL
Florida Justice Institute, Inc.
Food Research and Action Center
Foundation for Moral Law
Free Press
Free Speech for People
Freedom Now
FreeState Legal Project
GA
Gay & Lesbian Advocates & Defenders (GLAD)
Gender Equality Law Center
Gender Justice
Global Workers Justice Alliance
Government Accountability Project (GAP)
Great Rivers Environmental Law Center
GreenLaw
Gulf Region Advocacy Center (GRACE)
Health Law Advocates
Heartland Alliance for Human Needs & Human Rights
HI
Home School Legal Defense Association
Homeless Persons Representation Project (HPRP)
Housing and Economic Rights Advocates
Housing Rights Center
Human Rights Defense Center
Human Rights First
IA
ID
IL
Immigrant Legal Resource Center
Immigration Reform Law Institute (IRLI)
IN
Indian Child Welfare Law Center (ICWLC)
Indian Law Resource Center

Individual Rights Foundation
Innocence Project
Institute for Justice
International Human Rights Law Group
International Justice Network
International Justice Resource Center
International Rights Advocates
James Madison Center for Free Speech
Judicial Watch
Justice at Stake
Justice At Work
Justice Fellowship
Justice Foundation
Justice In Aging
Justice League
Justice Now
Juvenile Law Center
KS
KY
LA
La Raza Centro Legal (LRCL)
LAMBDA Legal Defense & Education Fund - National Headquarters
Land Loss Prevention Project - Durham (NC)
Landmark Legal Foundation
Law Foundation of Silicon Valley
Lawyers' Committee for Civil Rights Under Law
Leadership Counsel for Justice and Accountability
Learning Rights Law Center (LRLC)
Legal Action Center
Legal Aid Association of California
Legal Momentum (formerly NOW Legal Defense Fund) - DC
Legal Voice
Liberty Counsel
Liberty Legal Institute (LLI)
Lincoln Legal Foundation
Los Angeles Center for Law and Justice
Louis D. Brandeis Center
Louisiana Center for Children's Rights

Louisiana Justice Coalition
Louisiana Justice Institute
MA
Mackinac Center for Public Policy
Maine Equal Justice Partners
Massachusetts Advocates for Children (Massachusetts Advocacy Center)
Massachusetts Law Reform Institute (MLRI)
MD
ME
Mexican American Legal Defense and Educational Fund (MALDEF)
MI
Michigan Immigrant Rights Center
Midwest Environmental Advocates
Minnesota Center for Environmental Advocacy (MCEA)
Mississippi Center for Justice (MCJ)
Mississippi Immigrant Rights Alliance (MIRA)
MN
MO
Mountain State Justice, Inc.
Mountain States Legal Foundation (MSLF)
MS
MT
Muslim Advocates
NAACP Legal Defense & Educational Fund, Inc. (LDF)
National Advocates for Pregnant Women (NAPW)
National Association of the Deaf - The Law and Advocacy Center
National Center for Law and Economic Justice
National Center for Lesbian Rights (NCLR)
National Center for Youth Law (NCYL)
National Center on Sexual Exploitation
National Consumer Law Center (NCLC)
National Federation of Independent Business Legal Center
National Health Law Program (NHeLP)
National Immigrant Justice Center (NIJC)
National Immigration Law Center (NILC) - DC
National Juvenille Defender Center
National Law Center for Children and Families
National Law Center on Homelessness & Poverty

National Legal Foundation
National Partnership for women and families
National Right to Work Legal Defense Foundation
National Voting Rights Institute
National Women's Law Center (NWLC)
Native American Rights Fund (NARF)
Native Hawaiian Legal Corporation
Natural Resources Defense Council (NRDC) - Washington, DC
NC
NC Justice Center
ND
NE
New Economy Project
New England Legal Foundation
New Jersey Institute for Social Justice (NJISJ)
New Mexico Center on Law and Poverty
New Mexico Environmental Law Center
New York Environmental Law & Justice Project (NYELJP)
New York Lawyers for the Public Interest (NYLPI)
NH
NJ
NM
Northstar Law & Policy Center
Northwest Arkansas Workers' Justice Center (NAWJC)
Northwest Environmental Advocates (NWEA)
Northwest Immigrant Rights Project (NWIRP)
Northwest Legal Foundation
NV
NY
OH
Ohio Justice and Policy Center
Ohio Poverty Law Center
OK
Oregon Justice Resource Center
Oregonians in Action Legal Center
PA
Pacific Justice Center
Pacific Justice Institute

Pacific Legal Foundation - Headquarters (CA)
Palestine Solidarity Legal Support
Partnership for Children's Rights (PFCR)
Partnership for Civil Justice (PCJ)
Pennsylvania Institutional Law Project
Plains Justice
Prison Law Office
Public Advocates Inc.
Public Citizen
Public Interest Law Center of Philadelphia
Public Interest Law Project
Public Justice - Oakland, CA
Public Justice Center
Puerto Rican LD & EF
Reporters Committee for Freedom of the Press
RI
Roderick and Solange MacArthur Justice Center
Romero Institute
Romero Institute
Rutherford Institute
San Diego Advocates for Social Justice
Sargent Shriver National Center on Poverty Law
SC
School Justice Project
SD
Senior Citizens' Law Offices
SeniorLAW Center
Sex Workers Project
Social Justice Collaborative (SJC)
South Carolina Environmental Law Project
Southeastern Legal Foundation
Southern Center for Human Rights
Southern Coalition for Social Justice
Southern Environmental Law Center (SELC)
Southern Legal Counsel, Inc.
Southern Poverty Law Center (SPLC)
Sylvia Rivera Law Project
Tahirih Justice Center

Tennessee Justice Center (TJC)
Texas Fair Defense Project
The Campaign Legal Center
The Center for HIV Law and Policy
The Connecticut Veterans Legal Center
The Constitution Project
The Domestic Violence Legal Empowerment and Appeals Project (DV LEAP)
The Exoneration Initiative (EXI)
The Goldwater Institute
Thomas More Law Center
TN
Towards Justice of Colorado
Transgender Legal Defense & Education Fund, Inc.
TX
U.S. Chamber Litigation Center
Unemployment Law Project
Urban Justice Center
UT
VA
VT
WA
Washington Forest Law Center (WFLC)
Washington Legal Foundation
Western Center on Law and Poverty, Inc. - Sacramento
Western Environmental Law Center - OR
Western Resource Advocates (WRA)
Western States Legal Foundation
WI
William E. Morris Institute for Justice
Women's Law Center of Maryland, Inc. (WLC)
Women's Law Project
Workers' Rights Law Center of New York (WRLC)
WV
WY
Young Minds Advocacy Project
Youth Law Center

Appendix B-Survey Questionnaire

1.) What is the name of your organization?

2.) Which best describes the geographic scope of your organization's legal efforts?

- ❍ Local (City or County)
- ❍ State
- ❍ Regional (Midwest, Northeast, etc.)
- ❍ National
- ❍ International

3.) Approximately how many full-time attorneys are on staff in your office or branch?

- ❍ 1-4
- ❍ 5-9
- ❍ 10-14
- ❍ 15-19
- ❍ 20-24
- ❍ 25+ [IF MORE, RESPONDENT ENTERS AMOUNT]

4.) Where does your organization get its funding from? (Please choose all that apply)

- ❑ Federal Funds
- ❑ Private Foundations
- ❑ Contributions & Gifts
- ❑ State Government Funds
- ❑ Attorney's Fees
- ❑ Fund raising Events
- ❑ Fellowships for New Lawyers
- ❑ Other

5.) What is the approximate budget of your organization (or branch) for the current year? [IF RESPONDENT SKIPS, ASK IF BUDGET IS GREATER THAN $1,$5, $10, $15, AND $20 MILLION]

- ❍ Less than $2 million
- ❍ $2 million-$3.9 million
- ❍ $4 million-$5.9 million
- ❍ $6 million-$7.9 million
- ❍ $8 million-$9.9 million
- ❍ $10 million-$11.9 million
- ❍ $12 million-$13.9 million
- ❍ $14 million-$15.9 million
- ❍ $16 million-$17.9 million
- ❍ $18 million-$19.9 million
- ❍ $20 million or more [IF MORE, RESPONDENT ENTERS AMOUNT]

6.) How formalized is your organization's priority-setting process? (ex: detailed planning, frequent meetings)

- ❍ Not at all formal
- ❍ Slightly formal
- ❍ Somewhat formal
- ❍ Very formal
- ❍ Extremely formal

7.) How inclusive is your organization's priority-setting process? (ex: outreach to members, potential clients, community groups, or stakeholders)

- ❍ Not at all inclusive
- ❍ A little inclusive
- ❍ Somewhat inclusive
- ❍ Very inclusive
- ❍ Extremely inclusive

8.) How involved is your staff in your organization's priority-setting process?

- ❍ Not at all involved
- ❍ A little involved
- ❍ Somewhat involved
- ❍ Very involved
- ❍ Extremely involved

9.) How involved is your board of directors in your organization's priority-setting process?

- ❍ N/A-We do not have a Board of Directors
- ❍ Not at all involved
- ❍ A little involved
- ❍ Somewhat involved
- ❍ Very involved
- ❍ Extremely involved

10.) How involved are your funders in your organization's priority-setting process?

- ❍ Not at all involved
- ❍ A little involved
- ❍ Somewhat involved
- ❍ Very involved
- ❍ Extremely involved

11.) How important is agreement within your constituency (members, donors, etc.) when deciding what issues the organization should prioritize?

- ❍ Not at all important
- ❍ Slightly important
- ❍ Somewhat important
- ❍ Very important
- ❍ Extremely important

12.) How willing is your organization to take a case even if it stands a low chance of succeeding in court?

- ❍ Not at all willing
- ❍ Slightly willing
- ❍ Somewhat willing
- ❍ Very willing
- ❍ Extremely willing

13.) What percentage of your organization's efforts are committed to: legal, political, and social movement activities? (Total must add up to 100%).

_____ Legal Activities (litigation or amicus briefs)
_____ Political Activities (working with legislators or government agencies)
_____ Social Movement Activities (mass media or grassroots work)

14.) How often does your organization engage in the following social movement activities?

	Never	Some of the time	About half the time	Most of the time	Always
Mobilize the public with mass media (press releases, websites, etc.)	❍	❍	❍	❍	❍
Public Education efforts (lectures, film screenings. etc.)	❍	❍	❍	❍	❍
Protests, demonstrations, pickets, boycotts, etc.	❍	❍	❍	❍	❍

15.) How often does your organization engage in the following legal activities?

	Never	Some of the time	About half the time	Most of the time	Always
Amicus Curiae Briefs (State Courts)	❍	❍	❍	❍	❍
Amicus Curiae Briefs (Federal Courts)	❍	❍	❍	❍	❍
Litigation (State Courts)	❍	❍	❍	❍	❍
Litigation (Federal Courts)	❍	❍	❍	❍	❍

16.) At what level of government do you concentrate your political activities (working with legislators or government agencies)? [BRANCH]

- ❍ Federal [17-25]
- ❍ State [26-34]

17.) How frequently does your organization engage in the following activities?

	Never	Some of the time	About half the time	Most of the time	Always
Lobby members of Congress	❍	❍	❍	❍	❍
Testify at congressional hearings	❍	❍	❍	❍	❍
Work with members of Congress to draft legislation	❍	❍	❍	❍	❍
Lobby federal agencies	❍	❍	❍	❍	❍
Work with federal agencies to draft, administer, or enforce regulations	❍	❍	❍	❍	❍
"Letterhead Litigation" (writing to government officials or agencies informing them of illegal or unconstitutional actions or practices)	❍	❍	❍	❍	❍

18.) In terms of furthering your organization's goals, are members of Congress cooperative or uncooperative? [BRANCH]

- ❍ Cooperative [19]
- ❍ Uncooperative [20]

19.) How cooperative are members of Congress?

- ❍ A little cooperative
- ❍ Moderately cooperative
- ❍ A great deal cooperative

20.) How uncooperative are members of Congress?

- ❍ A little uncooperative
- ❍ Moderately uncooperative
- ❍ A great deal uncooperative

21.) In terms of furthering your organization's goals, are federal agencies cooperative or uncooperative? [BRANCH]

- ❍ Cooperative [22]
- ❍ Uncooperative [23]

22.) How cooperative are federal agencies?

- ❍ A little cooperative
- ❍ Moderately cooperative
- ❍ A great deal cooperative

23.) How uncooperative are federal agencies?

- ❍ A little uncooperative
- ❍ Moderately uncooperative
- ❍ A great deal uncooperative

24.) Is one of the major political parties less supportive of the goals of your organization? [BRANCH]

- ❍ Yes [25]
- ❍ No

25.) How much less supportive is one of the major political parties to the goals of your organization?

- ❍ A little less supportive
- ❍ Somewhat less supportive
- ❍ Quite a bit less supportive
- ❍ A great deal less supportive

26.) How frequently does your organization engage in the following activities?

	Never	Some of the time	About half the time	Most of the time	Always
Lobby state legislators	❍	❍	❍	❍	❍
Testify at state legislative hearings	❍	❍	❍	❍	❍
Work with state legislators to draft legislation	❍	❍	❍	❍	❍
Lobby state government agencies	❍	❍	❍	❍	❍
Work with state agencies to draft, administer, or enforce regulations	❍	❍	❍	❍	❍
"Letterhead Litigation" (writing to government officials or agencies informing them of illegal or unconstitutional actions or practices)	❍	❍	❍	❍	❍

27.) In terms of furthering your organization's goals, are state legislators cooperative or uncooperative? [BRANCH]
- ❍ Cooperative [28]
- ❍ Uncooperative [29]

28.) How cooperative are state legislators?
- ❍ A little cooperative
- ❍ Moderately cooperative
- ❍ A great deal cooperative

29.) How uncooperative are state legislators?
- ❍ A little uncooperative
- ❍ Moderately uncooperative
- ❍ A great deal uncooperative

30.) In terms of furthering your organization's goals, are state government agencies cooperative or uncooperative? [BRANCH]
- ❍ Cooperative [31]
- ❍ Uncooperative [32]

31.) How cooperative are state government agencies?
- ❍ A little cooperative
- ❍ Moderately cooperative
- ❍ A great deal cooperative

32.) How uncooperative are state government agencies?
- ❍ A little uncooperative
- ❍ Moderately uncooperative
- ❍ A great deal uncooperative

33.) Is one of the major political parties less supportive of the goals of your organization? [BRANCH]
- ❍ Yes [34]
- ❍ No

34.) How much less supportive are one of the major political parties to the goals of your organization?

- ❍ A little less supportive
- ❍ Somewhat less supportive
- ❍ Quite a bit less supportive
- ❍ A great deal less supportive

35.) Are federal courts, in general, receptive or unreceptive to your organization's goals? [BRANCH]

- ❍ Receptive [36]
- ❍ Unreceptive [37]

36.) How receptive are federal courts to your organization's goals?

- ❍ A little receptive
- ❍ Moderately receptive
- ❍ A great deal receptive

37.) How unreceptive are federal courts to your organization's goals?

- ❍ A little unreceptive
- ❍ Moderately unreceptive
- ❍ A great deal unreceptive

38.) Are state courts, in general, receptive or unreceptive to your organization's goals? [BRANCH]

- ❍ Receptive [39]
- ❍ Unreceptive [40]

39.) How receptive are state courts to your organization's goals?

- ❍ A little receptive
- ❍ Moderately receptive
- ❍ A great deal receptive

40.) How unreceptive are state courts to your organization's goals?

- ❍ A little unreceptive
- ❍ Moderately unreceptive
- ❍ A great deal unreceptive

41.) How often does your organization challenge legal precedents?

- ❍ Never challenge
- ❍ Challenge some of the time
- ❍ Challenge about half the time
- ❍ Challenge most of the time
- ❍ Always challenge

42.) How often does your organization defend legal precedents?

- ❍ Never defends
- ❍ Defends some of the time
- ❍ Defends about half the time
- ❍ Defends most of the time
- ❍ Always defends

43.) How much conflict is there in the public towards the goals of your organization?

- ❍ No conflict
- ❍ A little conflict
- ❍ Some conflict
- ❍ Quite a bit of conflict
- ❍ A great deal of conflict

44.) How much does the public agree with the goals of your organization?

- ❍ Does not agree
- ❍ Agrees a little
- ❍ Agrees somewhat
- ❍ Agrees quite a bit
- ❍ Agrees a great deal

45.) How ignorant is the public of issues important to your organization?

- ❍ Not at all ignorant
- ❍ Slightly ignorant
- ❍ Somewhat ignorant
- ❍ Very ignorant
- ❍ Extremely ignorant

46.) Does the public favor, oppose, or are they neutral towards the clients that you regularly represent? [BRANCH]

- ❍ Favor [47]
- ❍ Oppose [48]
- ❍ Neutral

47.) Does the public favor your clients strongly or not strongly?

- ❍ Strongly favor
- ❍ Not strongly favor

48.) Does the public oppose your clients strongly or not strongly?

- ❍ Strongly oppose
- ❍ Not strongly oppose

49.) Approximately how many organizations oppose the goals of your organization?

- ❍ 0
- ❍ 1-2
- ❍ 3-4
- ❍ 5-6
- ❍ 7 or more

50.) How strongly do other organizations oppose your goals?

- ❍ Don't oppose at all
- ❍ Oppose a little
- ❍ Oppose somewhat
- ❍ Oppose quite a bit
- ❍ Oppose a great deal

51.) How often do you repeatedly face the same opponents?

- ❍ Never
- ❍ Some of the time
- ❍ About half of the time
- ❍ Most of the time
- ❍ Always

52.) How often do you collaborate with allied organizations or law firms on litigation?

- ❍ Never
- ❍ Some of the time
- ❍ About half of the time
- ❍ Most of the time
- ❍ Always

53.) Approximately how many organizations do work similar to yours?

- ❍ 0
- ❍ 1-2
- ❍ 3-4
- ❍ 5-6
- ❍ 7+

54.) How much do you compete for members, donors, or other resources with organizations similar to yours?

- ❍ Don't compete
- ❍ Compete a little
- ❍ Compete somewhat
- ❍ Compete quite a bit
- ❍ Compete a great deal

55.) Would you be willing to do an interview?

- ❍ Yes
- ❍ No

56.) Thank you. I appreciate your help. Please enter either your email address or phone number so that I may follow up with you.

57.) Would you like your organization to be entered in a random drawing to receive $50 for completing the survey?

- ❍ Yes
- ❍ No

58.) Please enter the email address or phone number of the appropriate person to send the donation.

Appendix C: Sample Correlation between Three Questions

Case	X	Y	Z
1	20%	56%	24%
2	21%	38%	41%
3	12%	78%	9%
4	28%	15%	57%
5	16%	35%	48%
6	93%	0%	7%
7	1%	22%	77%
8	20%	47%	33%
9	16%	39%	45%
10	13%	59%	27%

Correlations	
X&Y	-0.61
X&Z	-0.52
Y&Z	-0.36