Continuity as the Path to Change:
Institutional Innovation in the 1976 British Race Relations Act

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Abstract

Institutional innovation can, paradoxically, be a product of institutional continuity. New institutions often emerge in a bifurcated manner in which formal institutions (such as laws and written rules) are accompanied by informal institutions (such as ideas that motivate and help determine the precise nature of specific policies). When informal institutions include ideas that track policy developments in other spheres or other countries, they can influence innovations in formal institutions. The development of the 1976 British Race Relations Act illustrates this dynamic. When British race institutions were established in the 1960s, they reflected the prevailing idea that British policies should incorporate lessons learned from North America. When Britain revisited its anti-racism provisions in 1976, policy experts looked again to North America and found that much had changed there in the interim. They subsequently altered Britain's formal institutions to include U.S.-inspired "race-conscious" measures.

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The field of comparative politics has directed much attention in recent years to institutions,[2] describing and explaining how they structure political, social, and economic life, affecting our choices by constraining or enabling our actions. Because of their manifest significance, institutions have also been probed as dependent variables, as scholars have sought to understand how they originate, why they endure, and the circumstances under which they may break down. In seeking answers to these questions, a consensus seems to be forming that institutional continuity and change are, perhaps for obvious reasons, analytically distinct. Indeed, it is possible to say that something like a firewall has been erected between these two arenas. Theorists of path dependence, by virtue of their emphasis on processes of increasing returns and lock-in, have a difficult time accounting for institutional change.[3] By contrast, studies of institutional disruptions have rarely highlighted continuities before or during episodes of change.[4] To the extent that continuity and change have been brought together in the same model, it has most often been through the "punctuated equilibrium" metaphor, which sees their relationship as sequential, but by no means causal.[5] Periods of punctuation settle into equilibrium,

[1] I appreciate comments on this paper from Randall Hansen, Jeanette Money, and Kathleen Thelen.
[2] P.A. Hall, and R.C.R. Taylor, 'Political Science and the Three New Institutionalisms', *Political Studies*, XLIV (1996), 936-957; J. Kato, 'Review Article: Institutions and Rationality in Politics — Three varieties of Neo-Institutionalists', *British Journal of Political Science*, 26 (1996), 553-82; T.A. Koelble, 'The New Institutionalism in Political Science and Sociology', *Comparative Politics*, 27 (1995), 231-43.
[3] J. Mahoney, 'Path Dependence in Historical Sociology', *Theory and Society*, 29 (2000), 507-548; P. Pierson, 'Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review*, 94 (2000), 251-67. The exception to this rule may be what Mahoney (2000: 526-35) terms "reactive sequences," in which one event triggers a reaction or a backlash that may alter rather than simply reinforce existing institutions.
[4] Continuity after (or in spite of) change is a topic of much interest to scholars, dating back at least as far as Tocqueville's analysis of the Old Regime and the French Revolution.
[5] S.D. Krasner, 'Approaches to the State: Alternative Conceptions and Historical Dynamics', *Comparative Politics*, 16 (1984), 223-46.

perhaps to be upset again at a future date by another punctuation. In this image, although continuity and change are contiguous, they are more like strangers on a bus than like intimate friends.

The purpose of this paper is to examine the topic of institutional continuity and change, with an eye to exploring how these forces may be thoroughly entwined. Institutional change can, paradoxically, itself be a product of institutional continuity. This is possible because institutions often emerge in a bifurcated manner in which formal ones (such as laws and written rules) are accompanied by informal ones (such as norms or ideas that motivate and help determine the precise nature of specific policies). When informal institutions involve ideas that are linked to policy developments in other spheres or other countries, their continuity can serve to produce innovations in hard, formal institutions.

The introduction of race-conscious policies into the 1976 British Race Relations Act illustrates this dynamic. When formal British race institutions were established in the 1960s, they were fundamentally color-blind, eschewing the recognition of minorities qua racial groups, and avoiding policies that targeted "races" or ethnic groups. Informal British race institutions at the time included a strong identification of British race concerns with those in North America. The North American analogy drew policymakers' attention to lessons from across the Atlantic, which strongly influenced the eventual shape of Britain's hard institutions erected through anti-racism legislation in 1965 and 1968. When Britain revisited its formal anti-racism provisions in 1976, policy experts looked again to the North American context and found that much had changed there since the 1960s. They revised Britain's hard institutions to include race-conscious elements

developed in the United States. The continuity in the informal institutions—the North American analogy—thus accounts for important innovations in Britain's formal anti-racist institutions—the introduction of race-conscious policies.

In order to demonstrate how institutional continuity can produce institutional change, section one of this paper explores the difference between hard and soft institutions, arguing that it is imperative to distinguish between these types when discussing processes of institutional change. Section two reviews the birth of race relations laws in Britain, showing how British policy experts and politicians built and acted upon a belief that North America provided a model for the United Kingdom in the sphere of race relations legislation, and how this soft institution affected the Race Relations Acts of 1965 and 1968. Finally, section three examines the changes made to the 1976 Race Relations Act, demonstrating that the incorporation of specifically "race-conscious" elements to Britain's formal institutions resulted from an examination of the updated North American laws and policies in the field of race relations. The paper concludes by reflecting on the interaction between institutional continuity and change in wider spheres of politics.

Institutional Types and Interactions: Formal versus Informal

To date, each of the three "new institutionalist" schools of thought[6] has tended to favor a relatively inclusive definition of institutions, best summarized as "formal organizations and informal rules and procedures that structure conduct."[7] Following this lead, most scholars would thus group under the same umbrella institutions as varied as

[6] Hall and Taylor, 'Political Science and the Three New Institutionalisms'.
[7] S. Steinmo, K. Thelen, and F. Longstreth, eds, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992), p. 2. Of course, there are differences in these schools' definitions that typically revolve around whether an institution is a hard-and-

international regimes and the nuclear family, constitutions and norms of trust, contracts and hand-shakes. Casting such a wide definitional net is useful for bringing into dialogue a variety of examples of institutional creation, reproduction, and change that might not otherwise seem related.

However, such broad definitions can also create blind spots. Melding together various types of institutions tends to minimize the differences among them. Moreover, it draws attention away from our understanding of how institutions interact and affect one another. Although observers have explicitly noted that institutions can be formal or informal,[8] or political, social, or economic,[9] thus far such recognition has existed primarily in order to bring these seemingly diverse phenomena under the common heading of institutions. Rarely has it been used to analyze the differences between these types.

There are nonetheless meaningful differences within the category of institutions. As Douglass North recognized in his pathbreaking 1990 work *Institutions, Institutional Change and Economic Performance*, the distinction between formal and informal institutions is particularly important. According to North, formal institutions include "political (and judicial) rules, economic rules, and contracts" while examples given of informal institutions are "codes of conduct, norms of behavior, and conventions."[10] In short, North underlines the difference between written and unwritten rules or presumptions that influence behavior because of their taken-for-granted or enforced

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fast rule as opposed to just a convention, whether it includes social forces such as marriage and handshakes, or is more limited to political or economic spheres as exemplified by constitutions or contracts.

[8] Steinmo, Thelen and Longstreth, eds, *Structuring Politics*.

[9] M. Levi, 'A Model, a Method, and a Map: Rational Choice in Comparative and Historical Analysis', in M.I. Lichbach and A.S. Zuckerman, eds, *Comparative Politics: Rationality, Culture, and Structure* (Cambridge: Cambridge University Press, 1997), pp. 19-41.

status. This distinction is important in a number of ways. First, hard institutions, because written, are easier to track than soft institutions. In some cases, this very factor has drawn researchers' attention toward formal institutions and away from informal institutions which are difficult to pin down.[11] Second, hard institutions are enforced by the state or by a superior authority, whereas soft institutions may be enforced by peers through shunning, withering glances, and other such methods. Third, processes of origins, continuity, and change are likely to differ significantly between formal and informal institutions. Whereas changing a constitution, a law, or a contract necessitates negotiation and often a vote, reshaping norms, prevailing ideas, or cultural scripts is a process that typically entails more persuasion than "powering."[12] In short, although they share the common elements of being rules of the game that shape human interaction, it is useful to bear in mind the significant differences between formal and informal institutions.

Perhaps of equal importance is recognizing that formal and informal institutions, although analytically distinct, often travel together. When political scientists turn their attention to explaining the birth of a new institution, or to accounting for the adjustment of an existing institution, most often they are interested in formal institutions. Yet it is almost always the case that hard institutions are accompanied by soft institutions—that norms, prevailing beliefs, cultural presumptions or other informal yet influential ideas,

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[10] D.C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), pp. 47, 36.
[11] Efforts to gauge informal institutions such as value systems or civic community require enormous resources, both monetary and temporal. See R. Inglehart, *Modernization and Postmodernization: Cultural, Economic, and Political Change in 43 Societies* (Princeton: Princeton University Press, 1997); R. Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).
[12] To use Hugh Heclo's term. See H. Heclo, *Modern Social Politics in Britain and Sweden* (New Haven: Yale University Press, 1974).

rules, or procedures go hand-in-hand with new laws, policies, or court decisions.[13] So when we speak of the creation, continuity, or change in an institution, we have to reflect upon not just *an institution*, but the *set of institutions* involved, both formal and informal.

Acknowledging the distinction between formal and informal institutions raises questions about the topic of institutional continuity and change that might otherwise be overlooked. For example, is it always necessary to take soft institutions into account when examining hard institutional change? If they are significant, in what ways can changes or continuity in informal institutions prompt formal institutional change? The answer to the first question is clearly "no." Institutional change can come about for a wide variety of reasons, including crises or other exogenous shocks, shifting power configurations of political entrepreneurs, changing preferences or relative prices, a mismatch between institutions and the goals of powerful actors, etc.[14] Yet, soft institutions can also be critical to understanding shifts in hard institutions, in several ways. The most obvious reason is when a change in informal institutions generates a change in formal ones. Hard institutional change might also come about, however, under circumstances where there is no soft institutional change. One way this can happen involves a gradual recognition that formal and informal institutions are misaligned. In this case, unintended or unforeseen consequences of hard institutions may reveal that they are not consistent with the dictates of cultural norms, scripts, or rules.

[13] To scholars steeped in the sociological school of thought this observation risks being seen as mundane, since one focus of such work has been to explore the importance of informal institutions in political life. For one particularly interesting example of the complex interactions between hard and soft institutions, see F. Dobbin, *Forging Industrial Policy* (Cambridge: Cambridge University Press, 1994).
[14] See North, *Institutions, Institutional Change and Economic Performance*; K. Thelen. 'How Institutions Evolve: Insights from Comparative-Historical Analysis', 2000.

Another example of this phenomenon can occur when informal institutions in one policy sphere or nation are linked with external institutions that may themselves evolve. Here, the soft institutions typically entail an analogy or an identification across policy spheres, regions, or countries that induces mimesis, or a norm of competition that encourages hard institutional change not necessarily to mirror others, but rather to best them. In these cases, of course, the initial change originates outside of the formal institutional sphere of interest to the observer. It is, however, the informal institutions—and their continuous attention to a particular external exemplar—that provide the spur to action and inform the direction of change.

The Birth of Race Policies in Britain: Formal and Informal Institutions in the 1960s

In the field of British race relations, the soft institution that served this pivotal role was the North American analogy employed by British policymakers. Attention to the United States and Canada can be traced back to the mid-1950s when the Labour Party founded a small policy sub-committee to field complaints of racism among the country's growing immigrant ethnic minority community. In attempting to gather information and ideas for coping with increasing incidents of racism, members of the committee began a correspondence with organizations in the United States such as the NAACP.[15] Although this type of direct contact with North American groups was a rare occurrence in the 1950s, identifying with the trans-Atlantic situation became increasingly common in the early 1960s. In 1962, the Institute for Race Relations commissioned a landmark study on race in Britain, modeled on Swedish social scientist Gunnar Myrdal's *An American*

[15] See the Labour Party Archives (LPA) File Box: "Race Relations and Immigration / Racial Discrimination Debate 1958 / Notes and Memoranda 1958 / Press Cuttings 1960-61 / Memoranda etc. 1962-63, 1965."

Dilemma.[16] In the words of the IRR director Philip Mason, the goal was to find "A Myrdal for Britain while there was still time."[17]

While use of the North American analogy grew, however, it did not permeate all layers of the policymaking or political elite by the time the newly elected Labour government announced its intentions to pass the country's first Race Relations Act in the Queen's speech of November 1964.[18] Within the Home Office bureaucracy, one civil servant wrote in August 1964 to another, "...it has seemed to me for some time that our assertion that the collection of statistics 'by race' was objectionable in principle was curiously at variance with American practices. You might like to think about this!"[19] indicating that while at least one bureaucrat was reflecting on the U.S. situation, not all of his colleagues were aware of such new world policies.

Identifying British race relations problems with those across the Atlantic was not yet second-nature even within the Labour Party Cabinet whose job it was to craft the Government's legislative proposals. When formulating anti-discrimination provisions, Home Secretary Frank Soskice and his team drafted a bill that used the criminal law to punish perpetrators accused of denying goods or services (such as access to drink in a pub) to individuals on racial grounds.[20] While this provision may seem reasonable on its face (indeed, it is the preferred method for dealing with this kind of discrimination in

[16] G. Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy*. 2 vols. (New York: Harper & Brothers Publishers, 1944).
[17] E.J.B. Rose, *Colour and Citizenship* (London: Oxford University Press, for the Institute of Race Relations, 1969), pp. xix-xxiii.
[18] Hansard, Commons, v. 701: 37-41
[19] See Public Record Office (PRO) HO 376/3, letter from W.N. Hyde to Mr. R.M. Morris, dated 14 August 1964.
[20] Hansard, Commons, v. 711

France), North American experience had already indicated that the criminal law was a relatively inefficient method for coping with this type of racism.[21]

This argument was advanced quite strongly by a group of liberal Labour party lawyers who had been preoccupied with the question since joining forces in early 1964 to study the feasibility of anti-racist legislation.[22] In considering how best to fashion Britain's institutions, the group sent an emissary to study the ways in which U.S. states and Canadian provinces had set up their own anti-racist provisions. Jeffrey Jowell returned to Britain with information that strongly shaped the Labour Lawyers' perspective. Jowell argued that the weight of evidence from North America implied that administrative conciliation backed by the civil law—rather than criminal sanctions—was the optimal institutional structure for coping with problems of discrimination.[23]

A discussion of the pros and cons of the two models subsequently took center stage in debates over the Government's project. Criminal penalties for discrimination had been written into the Race Relations Bill, published in April 1965, yet there was a growing consensus among Labour backbenchers and members of the Opposition that the Government had made a mistake and that administrative conciliation was a better institutional mechanism for dealing with discrimination.[24] The Conservatives tended to feel that administrative conciliation was less confrontational (and therefore perhaps less rigorous) than criminal punishment, and supported it in part to wrong-foot the Government.[25] Labour party MPs, by contrast, felt that experience showed conciliation

[21] J. Jowell, 'The Administrative Enforcement of Laws against Discrimination', *Public Law*, (1965), 119-86.
[22] A. Lester, and G. Bindman, *Race and Law* (London: Longman, 1972), pp. 110-16.
[23] Jowell, 'The Administrative Enforcement of Laws against Discrimination'.
[24] Lester and Bindman, *Race and Law*, pp. 110-16; E.J.B. Rose, *Colour and Citizenship*, pp. 225-26.
[25] B.W. Heineman, *The Politics of the Powerless: A Study of the Campaign Against Racial Discrimination* (London: Oxford University Press for the Institute of Race Relations, 1972), p. 119.

backed by the civil law to be more effective than the criminal law alternative.[26] Regardless of the divergent reasons for support, each side used the rhetoric of the North American analogy to support its position. As the Conservative shadow Home Secretary stated:

> This attempt to import the taint of criminality into this aspect of our affairs will not work. ... [The Home Secretary] must have studied, as I and my right hon. Friends have studied, the practice in the United States of America. Everyone will tell him, if he will ask, or if his officials will ask, that it will not work in the United States of America. We have rather a good test case there, because some of the States have applied the criminal solution and others have adopted the conciliation method. Where they have adopted conciliation, it has, on the whole, worked not too badly; where they have tried the criminal approach, it has not worked at all, or practically not at all...[27]

Given these convergent pressures in a politically explosive issue area, the Labour Government with its narrow Parliamentary margin relented, redrafting the Bill midway through the legislative process to reflect the consensus that administrative conciliation was the best method for dealing with discrimination.

It is worth underlining the fact that the North American analogy was not accepted uncritically by everybody in the process of forming Britain's formal anti-racist institutions. The Government adopted administrative conciliation under pressure, and the Opposition capitalized on the American example primarily in an effort to score political points. What is noteworthy, however, is that a core group of influential actors within the Labour party and beyond it accepted that the North American analogy was useful when thinking about Britain's domestic institutions. Moreover, they had succeeded in drawing attention to this analogy, and others had legitimized it by evoking it in Parliamentary

[26] Lester and Bindman, *Race and Law*, p. 113; Hansard, Commons, v. 711: 926-1060.
[27] Hansard, Commons, v. 711: 948.

debates (the Conservatives) and by writing its prescriptions into the country's formal anti-racist institutions (the Government). In this sense it is true that by the time the Race Relations Act of 1965 was promulgated, the North American analogy had become an informal institution in this policy sphere.

In the years immediately following the law of 1965, Britain revisited its formal anti-racism institutions, eventually extending them via the Race Relations Act of 1968 to grant protections against discrimination in employment, in housing, and in provision of a wider range of goods and services. In large part, the issue of racism climbed back onto the domestic agenda because British activists, policy experts, and victims realized that the law of 1965 was not extensive enough to cover the important problems arising in British society.[28] In this quest for reform, however, identification with the North American situation aided their efforts.

The 1965 Act provided such limited protections in the area of discrimination principally because many political leaders thought that it was either inappropriate or impossible to punish discrimination in places of employment or housing.[29] Thus, part of the push for the 1968 extensions had to involve justifying the usefulness of the law in general, and in these domains in particular. To do this, the administrative agency responsible for implementing the 1965 Act (the Race Relations Board) stated that:

1. A law is an unequivocal declaration of public policy.
2. A law gives support to those who do not wish to discriminate, but who feel compelled to do so by social pressure.
3. A law gives protection and redress to minority groups.
4. A law thus provides for the peaceful and orderly adjustment of grievances and the release of tensions.

[28] Lester and Bindman, *Race and Law*; E.J.B. Rose, *Colour and Citizenship*.
[29] For the Cabinet's deliberations on this topic, see PRO CAB 128/39 Part 1, Minutes of the Cabinet Meeting of 22 February 1965.

5. A law reduces prejudice by discouraging the behavior in which prejudice finds expression.[30]

The Race Relations Board bolstered its conclusions about the usefulness of the law for punishing discrimination in employment, housing, and other areas by focusing on the North American analogy.[31] It advanced the argument that Britain had an "American future" full of trouble and strife unless it eliminated discrimination and promoted successful integration at an early stage.[32] Behind Labour Party doors, activists like Anthony Lester also promoted lessons from the law in North America in an effort to mobilize support among Members of Parliament. In an April 1967 confidential paper presented to the Labour's Race Relations Working Party, Lester argued that "The recent experience of the United States and Canada indicates that law can have a powerful and benign effect in discouraging discrimination and promoting racial equality."[33]

Interest in North American policies flourished in the late 1960s.[34] The Chairman of the Race Relations Board went to the United States to gather evidence and information of race relations practices.[35] British newspapers publicized and explained U.S. civil rights

[30] Race Relations Board, *Report of the Race Relations Board for 1966-67* (London: HMSO, 1967), p. 22.
[31] The Report argues that "our own experience of legislation against discrimination is supplemented by what we have learned of such legislation in the United States and Canada. There, despite initial doubts, the law is now regarded as essential to the success of other government policies and is a powerful stimulus to voluntary action. A combination of all these, to ensure equal opportunities for all, is the only sound basis for successful action against discrimination." See Race Relations Board, *Report of the Race Relations Board for 1966-67*, p. 21.
[32] Race Relations Board, *Report of the Race Relations Board for 1966-67*, esp. p. 16.
[33] LPA, Folder: Race Relations Working Party 1967.
[34] D.T. Studlar, 'Ethnic Minority Groups, Agenda Setting, and Policy Borrowing in Britain', in P.D. McCain, ed., *Minority Group Influence: Agenda Setting, Formulation, and Public Policy* (Westport, CT: Greenwood Press, 1993), pp. 15-32. Policy borrowing in the field of race relations also extended to distributive policies such as the 1968 Urban Programme (Studlar 1993: 26).
[35] Mark Bonham-Carter's report of his trip to North America and other documents influenced Conservative Party Shadow Cabinet members such as Quintin Hogg (Conservative Party Archives (CPA) ACP(67)38).

laws, "suggesting a positive and beneficial role for this approach at home."[36] And the race bureaucracies (the RRB and the NCCI)[37] sponsored events which sought to draw on lessons from across the Atlantic. The NCCI, for example, organized a conference in February 1967 designed to bring together employment experts from Britain and North America to discuss the usefulness of anti-discrimination policies in that field. Even more important for legitimizing the 1968 law was the October 1967 Street Report on anti-discrimination legislation. This publication was particularly authoritative given the prestige and diverse political stripes of its three authors. As Lester and Bindman recount, "the Street [R]eport received an extremely favourable response in the national press, and its strong recommendations were carefully studied in Whitehall."[38] It examined laws around the world, focusing the vast majority of its attention on the North American experience.[39] Like others, the Report concluded that the U.S. and Canadian experience proved that "the law is an acceptable and appropriate instrument for handling the problem,"[40] legitimizing the legislation solution and helping to place race back on the Parliamentary agenda.

By the end of the 1960s, Britain had erected and extended its set of anti-racism institutions—both formal and informal. Its hard institutions took the forms of the 1965 and 1968 Race Relations Acts. Commanding center stage among its soft institutions was the identification of British issues of racism as being analogous to North American concerns. While this analogy was not ubiquitous at the beginning of the march to the

[36] S. Saggar, 'Re-examining the 1964-70 Labour Government's Race Relations Strategy', *Contemporary Record*, 7 (1993), 253-81, p. 272.
[37] The National Committee for Commonwealth Immigrants.
[38] Lester and Bindman, *Race and Law*, p. 130.
[39] H. Street, G. Howe, and G. Bindman, *Anti-Discrimination Legislation: The Street Report* (London: PEP (Political and Economic Planning), 1967).
[40] Street, Howe and Bindman, *Anti-Discrimination Legislation*, p. 62.

1965 Act, it was powerful and widespread by the time of the 1968 Act. Looking to North America had become taken-for-granted as a useful tool for understanding racism and for acting to curb it. These hard and soft institutions had thus emerged and evolved hand-in-hand.

Continuity and Change in the 1976 Race Relations Act

Throughout the 1960s and early 1970s, British political leaders hewed to a notion that public policy in a multiracial society should be fundamentally color-blind. This was particularly true for progressive forces in Britain who vehemently opposed any legal provisions that allowed race to be taken into account in employment or housing decisions, such as a clause in the 1968 law permitting certain industries to limit the number of immigrant workers in the interest of preserving a "racial balance."[41] Although the racial balance clause was not in the interests of immigrants, the progressives also opposed provisions designed to benefit minorities, on the grounds that they were superfluous and possibly dangerous in that they might be interpreted as justifying segregated facilities.[42]

This color-blind norm was in keeping with the predominant understanding of civil rights laws in the mid-1960s across the Atlantic. In debates over the 1964 Civil Rights Act, prominent organizations in the USA such as the Southern Christian Leadership Conference and the NAACP supported color-blindness, and Senator Hubert Humphrey emphasized that "Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualification, not race or

[41] Lester and Bindman, *Race and Law*, pp. 140-41.

religion."[43] Anti-racism legislation on both sides of the Atlantic was therefore originally crafted to punish people who acted on race prejudice, not to encourage actions based on racial categories.

However, this adherence to color-blindness was soon to change in the United States. Affirmative action became a major tool in the American race policy repertoire in the late 1960s and early 1970s. The growth of affirmative action in this era signaled a shift away from color-blindness and toward policies that viewed race as real, and away from a focus on intentionally bigoted acts of racism and toward a concern with representation or utilization of minorities.[44] Debates about color-blind versus race-conscious policies are politically explosive and continue to preoccupy Americans to this day. The transition from one to the other therefore stands as an important turning point in the history of U.S. race policies. The cornerstone Supreme Court decision that legitimized this shift was rendered in the 1971 case of *Griggs v. Duke Power Co*.,[45] when the Court recognized that seemingly neutral job requirements could provide "built-in headwinds" that would disparately impact minorities applying for jobs.[46] The decision made it unlawful for employers to establish qualifications that had the effect of lowering minorities' job prospects, regardless of whether the qualifications were intended to do so.[47] The sum total of these bureaucratic and judicial decisions amounted to a significant shift in US policy toward race-consciousness between the late 1960s and the early 1970s.

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[42] Lester and Bindman, *Race and Law*, p. 138.
[43] Quoted in J.D. Skrentny, *The Ironies of Affirmative Action: Politics, Culture, and Justice in America* (Chicago: University of Chicago Press, 1996), pp. 2-3.
[44] Skrentny, *The Ironies of Affirmative Action*, pp. 7-8.
[45] 401 U.S. 424 (1971)
[46] Skrentny, *The Ironies of Affirmative Action*, pp. 166-71.
[47] There were exceptions for employment practices deemed necessary for businesses. While this constituted a potentially large loophole, in practice not every employment prerequisite could be deemed necessary to business, as proved by the outcome of the *Griggs* case itself.

During these years, formal anti-discrimination institutions were not altered in Britain. With the return of the Labour Party to power in 1974 and the recognition that more could be done in this area, however, inter-group relations returned to the legislative agenda. The Government passed the Sex Discrimination Act in 1975 and yet another Race Relations Act in 1976. This was to be the last overhaul of anti-racism institutions in the 20th century, and it was substantial.[48] For the first time, the 1976 Act included race-conscious provisions, such as permission for employers and others to engage in positive action (a toned-down form of affirmative action) and restrictions on indirect discrimination (the equivalent to disparate impact discrimination banned in the U.S. via the *Griggs* decision). In addition, although the Government did not mandate ethnic monitoring, it did encourage it. Although Britain's formal institutions are not nearly as race-conscious as North American ones, the transition from color-blindness to a recognition of race marked a significant shift in Britain's hard institutions, and is one that sets Britain apart from European countries with which it has much in common, such as France.

How did this important institutional change take place? When Labour Party leaders decided to revisit the topic of discrimination in the mid-1970s, they focused first and foremost on the issue of gender. Although there was some pressure to create an omnibus discrimination law that covered both gender and race, women and minorities in Britain did not themselves identify their problems or interests as sufficiently similar to support such a plan.[49] Therefore the Government (led by Home Secretary Roy Jenkins) treated

[48] Parliament recently passed the Race Relations (Amendment) Act in 2000 that significantly extended the scope of the 1976 Act, although it did not replace it.
[49] L. Lester, of Herne Hill QC, 'Making Discrimination Law Effective: Old Barriers and New Frontiers', *International Journal of Discrimination and the Law*, 2 (1997), 167-81, p. 171.

the two issues in turn, molding each with the other in mind. When the Government took up the issue of gender discrimination in 1974, for example, it referred explicitly to the 1968 Race Relations Act, acknowledging that in many important respects, "the principle of non-discrimination contained in the proposed [Sex Discrimination] Bill is identical to the principle of non-discrimination contained in the race relations legislation."[50] In addition, Jenkins argued in July 1974 that in fashioning the Government's proposals to legislate against sex discrimination he "tried to avoid a number of the weaknesses which have been revealed in the enforcement provisions of the race relations legislation."[51]

Indirect discrimination and positive action provisions were not originally slated to be part of the anti-discrimination program as it was developing at this time. When the White Paper *Equality for Women* appeared in September 1974 outlining the Government's proposals for the law, no mention was made of either new ingredient, and British commentators did not draw attention to their absence.[52] However, contacts between Britain and the U.S. continued to flourish in the mid-1970s. Before finalizing plans for anti-discrimination legislation, Home Secretary Roy Jenkins and his principal policy advisor Anthony Lester traveled to the United States in late 1974 where they held meetings with a range of American experts who alerted them to these omissions.[53] In 1975, members of the Parliamentary Select Committee on Race Relations and Immigration also traveled to the United States (and to the Netherlands) to gather information for their report on the organization of the race relations administration.[54]

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[50] Great Britain: Home Office, *Equality for Women* (London: HMSO, 1974), p. 9.
[51] Hansard, Commons, v. 877: 1298.
[52] Great Britain: Home Office, *Equality for Women*; A. Lester, 'Discrimination: What Can Lawyers Learn From History?', *Public Law*, (1994), 224-37, p. 227.
[53] Lester, 'Discrimination', p. 227.
[54] Great Britain: Select Committee on Race Relations and Immigration, *The Organisation of Race Relations Administration*. Vol. 3 (London: HMSO, 1975), p. 267.

One of the lessons learned from U.S. developments was that confining the definition of discrimination to direct intentional acts was insufficient. The Griggs decision was singled out as having a particular impact on British experts' thinking, with Anthony Lester stating that it was the "original intellectual inspiration"[55] for Britain's indirect discrimination provisions, which were seen by many as a major departure in British legal ideology.[56] In addition, U.S. experts also emphasized the value of special aid aimed at historically or structurally disadvantaged groups such as women and minorities, even if such aid did not include the quotas and targets of American affirmative action policies.[57]

Following his trip to North America in 1974, the Home Secretary softened his previously negative stance on recognizing race for the purpose of remedying inequalities. He argued in the House of Commons debate on the Sex Discrimination Bill that "we should not be so blindly loyal to the principle of formal legal equality as to ignore the actual and practical inequalities between the sexes, still less to prohibit positive action to help men and women to compete on genuinely equal terms and to overcome an undesirable historical link."[58] In response to information gleaned from North American experiences, the Government revised its proposals to include both indirect discrimination and positive action clauses in the Sex Discrimination Bill of 1975 and carried these over into the Race Relations Bill of 1976.

Unlike indirect discrimination and positive action provisions, the third significant race-conscious element of Britain's formal race institutions—ethnic monitoring—was not

[55] A. Lester, 'Anti-Discrimination Legislation in Great Britain', *New Community*, XIV (1987), 21-31, p. 23, ft. 7.
[56] J. Gregory, *Sex, Race and the Law: Legislating for Equality* (London: Sage, 1987), p. 35.
[57] Lester, 'Anti-Discrimination Legislation in Great Britain', p. 23.
[58] Hansard, Commons, v. 889: 514. For the parallel Parliamentary statement about positive action in the Race Relations Bill, see Hansard, Commons, v. 906: 1558.

mandated by the 1976 legislation. Instead, it has picked up momentum and been implemented incrementally between the 1960s and today. By the mid-1970s, official bodies such as the Race Relations Board,[59] the Community Relations Commission,[60] and the Parliamentary Select Committee[61] were arguing that ethnic monitoring was essential to government policy, even though they recognized that there was "strong and widespread opposition to the keeping of such records."[62] Under the pen of Lester and Jenkins, the Home Office's White Paper on race relations offered that "the Government considers that a vital ingredient of an equal opportunities policy is a regular system of monitoring,"[63] but suggested no statutory requirement to collect race statistics.

Opposition to monitoring is still strong in several pockets of British society and ethnic monitoring is pursued with nowhere near the vigor in Britain as it is in the United States. However, there has been a marked burgeoning in the locations and extent of such data collection in Britain since the 1970s. In 1981, following the Home Affairs Sub-Committee on Race Relations and Immigration's report on racial disadvantage, the Civil Service began to implement ethnic monitoring within its ranks on an experimental basis[64] and in 1989 it started comprehensive collection of ethnic data.[65] Ethnic monitoring has

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[59] Race Relations Board, *Report of the Race Relations Board for 1974* (London: HMSO, 1975), p. 9.
[60] Community Relations Commission, *Review of the Race Relations Act* (London: HMSO, 1975), p. 10.
[61] Great Britain: Select Committee on Race Relations and Immigration, *The Organisation of Race Relations Administration*. Vol. 1 (London: HMSO, 1975), pp. 20-22.
[62] Race Relations Board, *Report of the Race Relations Board for 1974*, p. 9.
[63] Great Britain: Home Office, *Racial Discrimination* (London: HMSO, 1975), p. 5.
[64] S. Ollerearnshaw, 'The Promotion of Employment Equality in Britain', in N. Glazer and K. Young, eds, *Ethnic Pluralism and Public Policy: Achieving Equality in the United States and Britain* (Lexington, MA: D.C. Heath and Company, 1983), pp. 145-61, p. 158; P. Sanders, 'Anti-Discrimination Law Enforcement in Britain', in N. Glazer and K. Young, eds, *Ethnic Pluralism and Public Policy: Achieving Equality in the United States and Britain* (Lexington, MA: D.C. Heath and Company, 1983), pp. 75-82, p. 75.
[65] Great Britain: Cabinet Office, *Civil Service Data Summary 1995: Women, Race, Disability* (London: Equal Opportunities Division, Cabinet Office, 1995). Other bureaucracies that collect ethnic data include the health service, the education department, and the prison service. See S. Beishon, S. Virdee, and A. Hagell, *Nursing in a Multi-Ethnic NHS* (London: Policy Studies Institute, 1995); Great Britain: Department for Education, *Ethnic Monitoring of School Pupils* (London: Department for Education, 1995); Great

also been adopted at the local policy level, especially in urban areas with high concentrations of ethnic minorities.[66] Moreover, official bodies have increasingly amassed ethnic information, beginning with the national Labour Force Surveys and General Household Surveys, and culminating in the implementation of the first ethnic question in the 1991 British census.[67]

The influence of the American model is observable in the growth of ethnic monitoring, although in a much less direct manner than in the cases of indirect discrimination or positive action. In part, attention to racial group inequalities can be seen as inspired by the civil rights movement in the United States and as following logically from debates occurring in 1960s' and 1970s' North America. Referring to Britain's use of an ethnic census question in 1991, the editors of the Office of Population Censuses and Surveys' first volume on the results reveal that:

> Britain's approaches to the development of a multicultural society, which underlie the census question, however, do have something in common with policy in the US and the Old Commonwealth, through ethnic monitoring, targets and the legal recognition of group rights and privileges, much of which need ethnic statistics.[68]

Britain: Home Office, *Race and the Criminal Justice System: 1994* (London: Home Office, 1994); Great Britain: Home Office, *Race and the Criminal Justice System: 1995* (London: Home Office, 1996).

[66] Ollerearnshaw, 'The Promotion of Employment Equality in Britain', p. 156.

[67] D. Coleman, and J. Salt, eds, *Ethnicity in the 1991 Census: Volume One—Demographic Characteristics of the Ethnic Minority Populations*. 4 vols. Vol. 1 (London: HMSO, 1996); C. Peach, ed., *Ethnicity in the 1991 Census: Volume Two—The Ethnic Minority Populations of Great Britain*. 4 vols. Vol. 2 (London: HMSO, 1996); P. Ratcliffe, ed., *Ethnicity in the 1991 Census: Volume Three—Social Geography and Ethnicity in Britain: Geographical Spread, Spatial Concentration and Internal Migration*. 4 vols. Vol. 3 (London: HMSO, 1996). See Bulmer (1996) for an exploration of the politics of the census question on ethnicity.

[68] D. Coleman, and J. Salt, 'The Ethnic Group Question in the 1991 Census: A New Landmark in British Social Statistics', in David Coleman and John Salt, eds, *Ethnicity in the 1991 Census: Volume One—Demographic Characteristics of the Ethnic Minority Populations* (London: HMSO, 1996), pp. 1-32, pp. 26-27.

As with Jenkins' position on positive versus affirmative action, however, British observers discussed how to apply less radical measures in the UK. The Parliamentary Select Committee wrote in 1975:

> The Committee during their visit to the United States were greatly impressed by the importance of an effective monitoring system to race relations policy. Nevertheless we emphasise that we are not recommending that we should follow the American precedent. It is too bureaucratic and legalistic and on a scale inappropriate to the circumstances obtaining in this country.[69]

In line with this logic, British experts who explored the possibility of a census question on race in the mid-1970s examined the U.S and West Indian censuses—but merely to demonstrate the feasibility of such a question.[70] The decisions to begin ethnic monitoring taken in subsequent years by a host of government and non-government organizations alike were undoubtedly not directly dependent upon North American influences. Nevertheless, the political culture that softened early entrenched opposition to collecting race statistics was certainly affected by race professionals' understandings of North American policies, practices, and attitudes.

Conclusion: Institutional Continuity and Change

This paper has explored the trajectory of race relations policies in Great Britain with an eye toward understanding the relationship between institutional continuity and change. It has demonstrated that these concepts are neither at loggerheads with one another (as might seem logical), nor are they merely sequentially related as in punctuated equilibrium

[69] Great Britain: Select Committee on Race Relations and Immigration, *The Organisation of Race Relations Administration*. 3 vols. Vol. 1, p. 22.
[70] M. Bulmer, 'The Ethnic Group Question in the 1991 Census of Population', in D. Coleman and J. Salt, eds, *Ethnicity in the 1991 Census: Volume One—Demographic Characteristics of the Ethnic Minority Populations* (London: HMSO, 1996), pp. 33-62, p. 46.

models. Instead, institutional continuity in this case has itself been an influential force for institutional change.

In order for this relationship to emerge clearly, it is necessary to recognize the differences between formal and informal institutions, and to explore the relationships between these factors. In the case of British race policies, the hard institutions embodied by the Race Relations Acts of 1965 and 1968 were deeply influenced by the soft institution of a North American analogy held by a wide variety of political and issue area elites. The continuity of this informal institution generated the introduction of race-conscious elements into Britain's Race Relations Act of 1976, and thus led to a significant shift in the country's formal anti-racism institutions. Moreover, the legacy of the identification with the United States impacted British policy decisions beyond the 1976 Act by helping to justify a move toward ethnic monitoring, officially incorporated into the British census as of 1991.

Looking beyond the horizon of British race institutions, the analysis presented here has implications for the study of institutional change that are relevant in a wide variety of settings. Once we have identified and isolated informal and formal institutions, we can reflect on the conditions under which soft institutional continuity is likely to foster hard institutional evolution. Most often, this process will transpire when the informal institution entails a norm of mimesis (such as an identification with a foreign country), or an embedded analogy between policy spheres or across jurisdictional boundaries.

Examples of this dynamic of continuity and change can potentially be found in instances of lesson-drawing.[71] In these cases, policymakers evaluate exemplars across time or space and judge them to be positive or negative models. If the model is positive, there may be a degree of copying, or at least inspiration, that generates policy change in hard institutions. Of course, not every case of policy borrowing implies that there is an informal institution in place. Many references to historical events, to foreign countries, or to arguably analogous policy spheres are likely to be isolated occurrences. Only if the reference recurs and becomes a taken-for-granted step in policy analysis can we call it an informal institution. Late nineteenth century Japan's attention to the West constitutes one significant instance of such lesson-drawing, given the repeated trips by government officials to France, Britain, and other Western countries to bring back information about institutions as diverse as the police and the postal system.[72]

Another example of the interaction of soft institutional continuity and hard institutional change comes when powerful norms generate widespread organizational conformity. In the quest to account for institutional isomorphism, scholars such as DiMaggio and Powell have argued that notions of legitimacy encourage actors in organizational fields to align their institutions with one another.[73] Neil Fligstein's work on diversification in large corporations posits that the transformation in American industry that occurred between 1919 and 1979 took place in part because of the leadership of a number of role models, but also in part because corporations began to

[71] R. Rose, 'What is Lesson-Drawing?', *Journal of Public Policy*, 11 (1991), 3-30; R. Rose, *Lesson-Drawing in Public Policy: A Guide to Learning in Time and Space* (Chatham, NJ: Chatham House Publishers, Inc., 1993).
[72] E.D. Westney, *Imitation and Innovation: The Transfer of Western Organizational Patterns to Meiji Japan* (Cambridge: Harvard University Press, 1987).

understand diversification as an appropriate strategy to follow.[74] In a similar vein, DiMaggio and Powell state that American firms' mimesis of Japanese strategies in the 1980s had "a ritual aspect; companies adopt these 'innovations' to enhance their legitimacy, to demonstrate they are at least trying to improve working conditions."[75] As these authors show, continuity in values—such as undertaking appropriate or legitimate actions—can serve as a motivation for formal institutional change.

The relationship between continuity in soft institutions and hard institutional change is thus potentially important in a number of spheres. However, it is worth emphasizing that even finer-grained analyses about interactions between types of institutions may prove necessary. Continuity in the North American analogy altered Britain's formal race institutions in 1976 by incorporating positive action and indirect discrimination provisions into that year's Race Relations Act. Yet, identifying with the United States also had an important impact on an informal institution in British race politics, namely the notion that tracking, categorizing, and targeting policies at groups defined by race was anathema. This belief, engrained in most British elites' worldviews in the 1960s, began to shift in the mid-1970s due to exposure to the North American model. Eventually the belief spread to the point where even ethnic monitoring—the most contested element of Britain's race-conscious measures—became widely accepted in bureaucratic, political, and public circles.

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[73] P.J. DiMaggio, and W.W. Powell, 'The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organization Fields', in W.W. Powell and P.J. DiMaggio, eds, *The New Institutionalism in Organizational Analysis* (Chicago: The University of Chicago Press, 1991), pp. 63-82.
[74] N. Fligstein, 'The Structural Transformation of American Industry: An Institutional Account of the Causes of Diversification in the Largest Firms, 1919-1979', in W.W. Powell and P.J. DiMaggio, eds, *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991), pp. 311-36.
[75] DiMaggio and Powell, 'The Iron Cage Revisited', p. 69.

This dynamic highlights the interactions between institutions that can easily go unnoticed in broad studies that emphasize similar features of such a rich concept. This paper has thus attempted to caution against overarching definitions of institutions that obscure the important differences among them. It has also capitalized on the disaggregation of formal and informal institutions to highlight a pathway of institutional change grounded in continuity that is so paradoxical as to have been overlooked.