

“The Latter-Day General Grant”: Forceful Federal Power and Civil Rights*

Minutes after midnight on September 30, 1962, President John F. Kennedy signed a series of orders authorizing the deployment of military force to enforce a federal court order that James Meredith, an Air Force veteran, be allowed to enroll in the University of Mississippi as the university's first African-American student (Kennedy 1962a, 1962b). By the time the president signed these orders, the crisis in Mississippi over Meredith's registration had been brewing for weeks. Mississippi Governor Ross Barnett had been secretly negotiating with Attorney General Robert Kennedy over arrangements to admit Meredith. But playing to a hometown crowd of white voters, Barnett had repeatedly backed away from his deals with the administration and physically blocked Meredith from registering, interposing himself between clear federal law and the increasingly frenzied political demands of his white constituents.¹ Meanwhile, the campus and the surrounding town of Oxford seethed with anger and resentment as white demonstrators gathered to protest as events unfolded. Violence seemed likely, but Kennedy and his team were determined to enforce the law, and so moments after the president finished signing these documents, Secretary of Defense Robert McNamara issued his own orders to send several United States Army units to a naval air station near Memphis, Tennessee, in preparation for deployment to Mississippi. He also placed the Mississippi National Guard under federal control, robbing Barnett of his most potent tool with which possibly to resist federal force (Mickey 2015, 212).

To the participants and to many observers as well, the prospect of the United States government sending troops to the South on behalf of the civil rights of African-Americans resonated historically with events a century earlier. As he stood up, President Kennedy tapped the table at which he had been sitting and told Norbert Schlei, the young Justice Department lawyer

who had drafted the orders, that that very table had belonged to General Ulysses S. Grant. But as they made their way out of the White House Treaty Room to brief the waiting press, the president pulled Schlei aside and said quietly, “Don’t tell them about General Grant’s table” (Branch 1988, 659; Eagles 2009, 339; Brauer 1977, 190). A young Army lieutenant who was deployed to Oxford to quell the unrest mused later that he and his fellow soldiers were “the latter-day equivalent of General Grant and his army in their visit to the town years earlier”—almost one hundred years exactly, as it turned out: in the fall of 1862, Grant’s advance south through Mississippi had stalled in Oxford and he established his headquarters there while preparing for the siege of Vicksburg that winter (Gallagher 2012, 77; *Newsweek* 1962; McPherson 1988, 579).

The symbolism of the Civil War, Reconstruction, Northern occupation, (and the invented so-called Lost Cause) was of course not lost on the whites resisting what they saw as overbearing and intrusive federal force. Oxford and Ole Miss (as the university is commonly known) were suffused with Confederate imagery; Confederate statues are prominent around town and on the campus, and the university’s athletic teams are still known as the Rebels. “In 1960,” writes historian Charles Eagles (2009, 359), “the university represented for whites one of the few remaining redoubts of the glories of the Old South. Ole Miss stood for the nobility of the Lost Cause, the honor of Confederate veterans, and the gentility of the state’s landed aristocracy.” During the riot that ensued on September 30 and October 1, Confederate battle flags and rebel yells were commonplace sights and sounds (Eagles 2009, 24, 359).

The successful integration of the University of Mississippi invites a research puzzle and a critical question: how and why did the United States pivot so dramatically in the mid-twentieth century, at least for a time, toward the vigorous enforcement of civil rights and promotion of racial equality? And why has this progress been so stilted and uneven? Accounts of the civil rights

revolution in American politics typically focus on two critical factors: the rise and decline of the civil rights movement and the dynamics of party politics (see, for example, McAdam 1982 and Schickler 2016).

As the theme of this special issue—“race and the presidency”—implies, Presidents often claim the starring role in these narratives, from Abraham Lincoln’s determination to end slavery to Harry Truman’s tentative embrace of civil rights in 1948, John Kennedy’s turn toward civil rights after the Birmingham campaign in 1963, and Lyndon Johnson’s full-throated championing of the Second Reconstruction in the mid-1960s. Presidential leadership on civil rights and racial equality, in turn, is generally understood in terms of presidential ideology, partisanship, or electoral calculations. Several of the papers collected in this issue bear on these “demand-side” accounts that considers why presidents might (or might not) find it in their political interest to support some measure of racial equality. Kjersten Nelson (forthcoming 2021), for example, shows that even among Democratic voters, racial conservatism can affect voters’ evaluations of presidential candidates, leading them to regard white male candidates over women and candidates of color. In a similar vein, both Matthew Jacobsmeier (forthcoming 2021) and Alexandra Filindra and her collaborators (forthcoming 2021) demonstrate the persistent power of racial attitudes to shape presidential voting in recent decades.

These and other studies suggest why we might expect presidents to be especially cautious in advancing forceful agendas in favor of civil rights and racial equality; it is not an unreasonable inference that presidents can generally expect to pay an electoral price for embracing a progressive racial agenda. Occasionally, however, presidential advocacy for racial equality has broken through and shaped the national political and policy landscape, and these—perhaps exceptional—episodes demand explanation. An approach that focuses solely on the electoral foundations of presidential support for civil rights cannot by itself explain the factors that might enable presidents to pursue this

course. Presidential authority and leadership are not self-executing; presidents rely on other parts of the American state to carry out their agendas.

We develop an alternative supply-side account of presidential power and civil rights, which focuses on the distinctive evolution of the American state, particularly the presidency and the executive branch. Mid-century progress toward racial equality required the engagement of the American state, centered in the presidency, and would not have been possible without the state's direct and forceful intervention. As Martin Luther King Jr. himself described the Southern Christian Leadership Conference strategy leading up to the Selma voting rights march in 1965, his aim was “dramatize the situation to arouse the federal government” (Garrow 1978, 39), since the federal government had the capacity to enforce reform against malevolent localism.

The key to this transformation is what we call “Forceful Federalism,” vigorous federal government policy and the full mobilization of means to enforce those policies. Although it was the most visible and arresting element of the Meredith episode, coercive military force was only one dimension of the federal effort in Mississippi; the national government also deployed legal, associational, and fiscal tools to work its will, each a critical element of the power of the American state alongside coercive force. These multiple strands of state power often operate largely independently and at cross-purposes. But they came together powerfully for a short time in the mid-twentieth century as the American national state in all its dimensions largely embraced its role as a protector of the civil rights of African-Americans across many (although tellingly not all) of the areas of American life under its substantial jurisdiction. The moment was brief. Counter forces in American politics began quickly to chip away at each element of the civil rights structure that was built during the “Long 1960s” (roughly from *Brown v. Board of Education* in 1954 to the early 1970s). But for that moment, in the 1960s and 1970s, it was the government's commitment—spurred of course by the civil rights movement's moral leadership and strategic acumen, but no less essential

for that—that was responsible for the most productive and progressive era in the nation’s mostly sorry history of racial oppression. Much of this development in the middle third of the twentieth century was animated by presidential leadership, which evolved from presidential reluctance (Franklin Roosevelt) to limited or grudging engagement (Truman, Eisenhower, and Kennedy), to a more full-throated embrace of the civil rights agenda (Johnson).

But presidential leadership in civil rights also depended on the president’s ability to deploy the tools of state power through the executive branch—that is, through Forceful Federalism. The executive, as will see, led by the president is crucial to how forceful federalism works or fails, a characteristic which speaks to the themes of this special issue. But presidential leadership is not by itself sufficient to move the notoriously kludgy and fragmentary apparatus of the American state toward the enforcement of racial inequality in the face of a resilient white supremacy (King and Smith 2011). Franklin Roosevelt, for example, found even his limited support for civil rights measures stymied by southern dominance of Congress and the Democratic party (Sitkoff 1978; McMahon 2004). Harry Truman successfully began the desegregation of the armed forces but otherwise further deepened the split in the Democratic coalition by endorsing what now seem like tepid civil rights measures at the party’s 1948 convention. Dwight Eisenhower reacted with resignation to the Supreme Court’s decision to ban segregated schools in *Brown v. Board of Education* in 1954 and intervened reluctantly and dutifully in the Little Rock crisis three years later. Eisenhower also signed the first federal civil rights law to pass in eighty-two years, the Civil Rights Act of 1957, which established both the U.S. Civil Rights Commission and the Civil Rights Division of the Department of Justice, both of which would become critical parts of the emerging Civil Rights State. Presidential leadership may be a necessary component of vigorous federal action toward racial equality, but it is not sufficient.

In this essay, we define and employ “Forceful Federalism” to describe and evaluate the multiple dimensions of the American state that bear on the enforcement of civil rights and the state’s capacity to enforce (or undermine) racial equality. Our puzzle is to explain how the notoriously weak federal government has proved on certain occasions a forceful actor, amplifying presidential leadership and challenging and displacing local racial hierarchies, given the historical dominance of federal infirmity in the arch of American history. We delineate the four critical dimensions of American state power that make up Forceful Federalism—standard-setting, coercive, associative, and fiscal—and explore their extraordinary confluence in the mid-twentieth century, tracing theoretical explanation as well as empirical application. We then describe how these dimensions of the American state evolved and came together in the case of James Meredith and Ole Miss, both as an illustration of Forceful Federalism at work and as a theoretically grounded depiction of a critical moment in the history of American state building.

Our account of Forceful Federalism and the Meredith case are intended not as a definitive demonstration of its causal force but rather as an exploratory probe of a theory of state action that can plausibly account for both the rise and fall of the short-lived Civil Rights State. A further test of the theory of Forceful Federalism will require a broader investigation of the conditions that either enabled or frustrated the state’s pursuit of racial egalitarianism.

Forceful Federalism and the Multidimensional American State

From Stephen Skowronek’s (1982) pathbreaking work through nearly four decades of subsequent studies, the American state has long been viewed through a Weberian lens, particularly focused on the existence (or absence) of formal, coercive administrative power (Nettl 1968; King and Lieberman 2017, 180). This approach to the American state, foundational as it has been to the study of American politics and the subfield of American political development, contained a large

puzzle at its core: given the apparent “weakness” of the American state, how has it been able to exert so much power so consistently over so many domains of American life? Historians as well as political scientists have taken up this question extensively in recent years to show how American governance has been more robust and vigorous than previously thought, through the power that resided in state and local governments, for example, or through associational connections between the government and civil society that enabled and channeled the private pursuit of public purposes (Novak 1996, 2008; Balogh 2009, 2015; Sparrow, Novak and Sawyer 2015; Morone 2003). A key theme of this line of work has been the tension between competing impulses toward the preservation of liberty, on the one hand, and the often-restrictive and moralistic regulation of society on the other (Gerstle 2015; Morone 1990). And recent works in American political development highlight a variety of ways in which the state has extended its regulatory and coercive power through a variety of indirect means (see, for example, Frymer 2017; Gottschalk 2015; Johnson 2016). We have argued elsewhere that the narrow focus on the state’s bureaucratic form is misplaced and advocated a multidimensional approach to include a range of means by which the state exerts power and executes authority embracing the entire country (King and Lieberman 2009, 2017; see also Nettl 1968).

But although they have carefully charted the range of venues and pathways of American state power, these excursions still skirt the state’s sheer coercive force, encapsulated in Max Weber’s (1946, 78; original emphasis) core definition of the state: “a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory.” Because the American state’s coercive apparatus tends to be scattered across different parts of the government (via the separation of powers) and different levels of government (via federalism)—and, moreover, because its force tends to be exerted through what Michael Mann has called “infrastructural” rather than “despotic” means—it is common to dismiss the state as an unimportant element of American

policymaking and governance and also to dismiss Weber's insight, with its focus on coercion and force, as more relevant to other countries, such as the powerful military-bureaucratic German state that Weber had in mind when he wrote the phrase in 1919 (Mann 1984).

A focus on force as the basis of the American state may seem misplaced. But force is, in fact, central to understanding the state's role in both making and unmaking racial inequality. Violence—both ostensibly “private” violence such as lynching and more explicitly state-sanctioned force, from the Black Codes of the post-Civil War South to the policing tactics and carceral state of the contemporary era—is central to upholding segregation and perpetuating the denial of rights to African-Americans. To an African-American in any era of American history, the description of the American state as “weak” or “indirect” would be laughable. In the lived experience of black Americans, the state and its agents have been a perpetual and oppressive (rather than a protective) presence. “In America,” Ta-Nehisi Coates (2015, 103) has written, “it is traditional to destroy the black body—*it is heritage*,” and the state has been often been at least complicit, if not a deliberate partner, in that legacy (see Kato 2015; Katznelson 2005; Harris and Lieberman 2013; Francis 2014; Rothstein 2017). Criminal justice trends reinforce this pattern (Alexander 2010; Goffman 2009).

In light of this reality, then, Weber's definition of the state has surprising resonance for America's struggle against racial inequality; the state is Janus-faced, on occasions advancing racial equality but historically responsible through inaction at best or policy at worse, for the perpetuation of racial oppression. But returning to Weber's core insight about forceful coercion at the heart of the state does not negate more recent insights about the multiple dimensions and pathways of state power. There is much more to the American state than bureaucrats and soldiers (although, as we will see, both bureaucrats and soldiers, as agents of the state's authority, play an important role in the story). Understanding the complex and often-hidden American state is far from straightforward, and

we offer an alternative perspective that breaks the American state down into four separate characteristics, each of which follows its own logic and has its own history.

Forceful federalism.

We describe our account of the American state and its potential for attacking racial inequality as “Forceful Federalism”—vigorous federal government policy and the means by which those policies are enforced (King 2017). Forceful federalism entails not just federal coercion, although the federal government’s coercive apparatus certainly plays a role. Rather, it involves multiple dimensions of the American state, which build a variety of routes by which the national state can construct and exert its power: standard-setting, coercive, associational, and fiscal. Each of these dimensions of the state’s power, contributed to the American state’s turn toward the protection of civil rights and the promotion of racial equality in the middle of the twentieth century. None was by itself sufficient, however; what was necessary for progress was the fortuitous convergence of all four that defines the civil rights era.

As numerous scholars have noted, the emergence of Forceful Federalism coincided with the peak of the Cold War (Klinkner with Smith 1999). The Civil Rights State and the National Security State evolved together, and competition with the Soviet Union undoubtedly provided incentives for presidents in the post-World War II decades to take pro-civil rights stances as Dudziak (2000) and Tillery (2011) show. But the Cold War arguments for civil rights progress cannot necessarily account for the specific mechanisms and timing of the civil rights surge during the Long 1960s, which brought together elements of the American state that had been evolving for a long time. Why did the push for civil rights peak in the 1960s, and not earlier or later in the Cold War’s long arc? Moreover, as Richard Valelly (n.d) notes, many of the same elements of state power were simultaneously being used to persecute gay and lesbian Americans, who were portrayed as security risks in the Cold War era.

Standard-setting: The first critical dimension of forceful federalism is standard setting. “The US state has been identifiable through its efforts to standardize key aspects of the American experience,” Desmond King and Marc Stears (2011, 508) argue. They define a “standard” as “a publicly-stated expectation of uniform and equal experience that is blind to the contingencies and particularities of individual cases, and that both private citizens and public officials seek to guarantee in all like cases.” Actions taken by the federal government create standards and uniform expectations for behavior and establish common national benchmarks for the conduct of public affairs. This occurs primarily through the adoption of laws, but also through other federal actions, including court decisions and regulatory actions, and can be influenced by the public pronouncements of national officials, particularly the president and federal courts.

In the civil rights realm, the standard-setting capacity of the American state has a checkered history. During Reconstruction, the federal government sought to establish national standards for the protection of voting rights and civil rights for freed slaves that would be applied uniformly across the country, through both Constitutional amendments (apparently guaranteeing equal legal protection and voting rights) and legislation, particularly a series of civil rights acts that sought to establish equal legal status and citizenship (1866, anticipating the Fourteenth Amendment), protected voting rights (1870) and to ensure equal treatment in public accommodations, public transportation, and jury service (1875). But these enactments met violent resistance from Southern whites, as state governments were reconstituted, federal Reconstruction formally came to an end, and the forces of segregation and white supremacy reasserted themselves in Southern governance (Blackmon 2008). The Supreme Court hollowed out legal and constitutional protections, holding that the Fourteenth Amendment prohibited only unequal legal treatment and not private discrimination, and ultimately declaring that even state-sanctioned segregation was permissible (*Civil Rights Cases* 1883; *Plessy v. Ferguson* 1896).

The dynamics of national party competition changed to the detriment of civil rights protection. For decades after the Civil War, the major parties were evenly balanced, elections were close, and control of Congress and the presidency seesawed back and forth between Democrats and Republicans, giving the Republican Party every incentive to support voting rights for Southern blacks, a reliable—and often pivotal—bloc of Republican voters (Frymer 1999). But with the demise of populism in the nineteenth century's waning years, Republicans found that they could reliably win national elections without Southern states, and they let their commitment to federal standards for racial equality slide; Senator Henry Cabot Lodge's failed federal elections bill of 1890, which would have empowered direct federal supervision of Southern elections, proved to be the last major push for federal civil rights legislation for decades (Kousser 1974, 29-33; Valelly 2004, 246-48; Bensel 2000, 500-6; King and Tuck 2007). Meanwhile, Southern states, politically and legally left to their own devices, were systematically dismantling the democratic protections that Reconstruction had established, constructing the legal system of Jim Crow segregation and voting restrictions that would prevail through most of the twentieth century (Woodward 1955; Mickey 2015, chap. 2). Thus, on the eve of the civil rights era, Burke Marshall (1964, 7), assistant attorney general for civil rights in the Kennedy administration, described the legal situation as one of "nonrecognition of federally guaranteed rights," and "open failure to comply with unquestioned standards of federal law."

Coercion: Second, the state generally possesses the means of coercion, the legitimate ability to enforce its standards by laying down rules, identifying and rectifying violations, and punishing transgressors. The state's coercive power has many arms, from the courts and the police to regulatory agencies to the president's executive authority—ultimately founded (going back to Weber's definition) on its *legitimate* control of the means of violence. (We emphasize legitimacy here. The state's forceful actions are subject to the rule of law. We are *not*, of course, advocating

governance through violence or fear or the whim of those in power; these are the tools of authoritarianism.)

The state's coercive apparatus has a long and two-faced history in the realm of civil rights and racial equality. Reconstruction after the Civil War was a sustained attempt by the federal government to democratize the former Confederacy and to advance civil and political rights for African-Americans, backed by law as well as military occupation across much of the South (Du Bois 1935; Foner 1988; Valelly 2004). After the retreat from Reconstruction and the removal of federal troops, the lack of a national police power to enforce civil rights law, as we have seen, severely constrained the federal government's capacity to promote racial equality even if it had been so inclined (and it was, for the most part, decidedly *not* so inclined). Moreover, Reconstruction and military occupation provoked an exceedingly violent reaction on the part of white Southerners, and for most of the twentieth century the state effectively ceded the means of coercion through violence to organized, and often sanctioned groups (such as the Ku Klux Klan) and activities (such as lynching) that obviated any possibility of real civil rights enforcement (Stewart and Kitchens 2018). Reconstruction, moreover, was viewed for much of the twentieth century as a shameful episode of corrupt and illegitimate federal overreach and not a program worth emulating. This state of affairs formed the backdrop for the common strategy, generally shared by government and nongovernmental actors alike, of relying primarily on the courts, and also on the illusory cooperation of the states, to enforce federal civil rights law (Marshall 1964; Tushnet 1987).

Associational. Third, the American state does not consist only of the government or the “public sector.” Since Tocqueville, observers of American society have noted that American civil society—the vast and intricate web of groups, organizations, affiliations, and identities that exist outside of the formal government—can appear more, or at least as influential as, the government in shaping American life. A strong civil society, these observers contend, goes hand in hand with a

weak state. But the American state also encompasses and embraces and depends on close links with the civil society.

In many (if not most) instances, actions taken by the American government are limited and only partially equipped to serve the intended ends of governance, constrained by the imperatives of political compromise, fragmented or contested authority, or fiscal limitations. In many instances, public aims are achieved through the mobilization and participation of ostensibly private actors—pensions and health insurance provided by employers rather than the government, for example, or social services provided by nonprofit organizations, or prisons run by private companies.

By the mid-twentieth century, there was a long background and a deep repertoire of associational connections between civil society and the state that extended and enhanced formally limited instrumentalities of state power (see Balogh 2015; Clemens 2006). In the case of civil rights and racial equality, for example, organizations such as the NAACP and the NAACP Legal Defense Fund, played a critical role in helping the government develop its ability to enforce the rights protected by the Civil Rights Act of 1964, which actually granted very limited power to the federal government. In order to understand how the American state works, then, we must look beyond the boundaries of government and view what we call its “associational” connections (Lieberman 2017; Mulroy forthcoming; Balogh 2015; Pedriana and Stryker 2004). In effect, the associational state generated forces complementing the use of direct federal power. Chloe Thurston (2018), for example, shows how civil rights reformers were able to expand the remit of federal housing authorities to include previously excluded groups in access to federally guaranteed mortgages in a system commonly blurring the public-private boundary—hence the title of her book, *At the Boundaries of Homeownership*. The significance of actors linked to the federal state through associational ties powers Megan Ming Francis’s (2014) study of the influence of the NAACP and other reformers on federal policy. Francis shows that trajectory of the development of the American State was

deeply shaped by the activities and energy of such nongovernmental reformist organizations. Francis shows that this trajectory and these associational type influences were crucial to state expansion for civil rights. This activity fed directly into Kennedy's exceptional use of forceful federalism in 1962.

Fiscal. Finally, the state relies heavily on the fiscal capacity of the federal government—its authority to tax, spend, and set rules for the receipt of federal funding—to exert power and effect important social and economic change throughout American society. The state's fiscal authority is critical to its standardizing mission because it can use financial carrots and sticks to induce others, such as state and local governments and public organizations such as universities or private organizations, to behave in a particular way. This role has been bitterly resisted in states' rights ideology. We recognize that federalism does not allude just to the national government in action but identifies a system with vertical as well as horizontal elements and that for states protecting that state element is a core rationale for federalism. That the capacity of national government to act against states at times is highly contested and indeed denounced as illegitimate by the most fervent defenders of states' rights adds to the point about the exceptional circumstances in 1962 at the University of Mississippi.

This fiscal dimension nonetheless is a key policy tool for an executive interested in exercising national authority forcefully. Again, the use of fiscal instruments such as grants-in-aid, which offer federal grants to states and other entities as long as they comply with federally-determined rules as a means of exerting national influence over state policy is an old one. The technique dates back to the Morrill Act of 1862, which established land grant colleges, took root particularly during the Progressive Era, and was sanctioned explicitly by the Supreme Court in the 1920s (Johnson 2007; *Commonwealth of Massachusetts v. Mellon* 1921).

For example, there is no federally mandated speed limit on American highways; the regulation of motor vehicles and drivers is generally considered to be an area of state responsibility.

But during the 1973 oil embargo that led to severe gasoline shortages in the United States, President Richard Nixon and the Congress wanted to impose a speed limit of 55 miles per hour on American highways in the interests of energy efficiency (as well as safety). The law that Congress passed and Nixon signed, however, did not simply set a speed limit, an action that was not clearly constitutional; rather, it simply made a state's adoption of the 55-MPH speed limit a condition for receiving federal highway funds. Simply put, like a parent requiring chores in return for an allowance: no speed limit, no money. Similarly, the federal government typically requires that organizations receiving federal funding, such as universities (even private universities receive ample support for purposes such as financial aid and scientific and medical research), refrain from discrimination and adhere to a host of rules and regulations. More recently, under the Affordable Care Act (ACA, colloquially known as "Obamacare") one of the key tools to expand health insurance coverage was the expansion of Medicaid, the program that provides health insurance for low-income Americans. But Medicaid is a joint federal-state program, and it is state governments that set the rules about who is eligible for coverage. Congress and the president could not unilaterally mandate expansion of coverage. Instead, the ACA provides a fiscal inducement to states by paying 100% of the additional cost of expanded coverage (phasing down to 90% after three years), a substantial subsidy to state governments for whom health care costs have increasingly become a crushing fiscal burden.

But fiscal inducement, though powerful, is an imperfect instrument of state power; in the case of the ACA, fourteen states (as of March 2020) still have not adopted Medicaid expansion. This state resistance of federal power is long standing. It shows how fiscal authority remains a critical element of American state power but an insufficient prop for forceful federalism without the presence of other dimensions of state authority. It can combine with other federal powers such as the standard setting and coercive ones—for example, accreditation of universities and compliance with federal regulations as a condition of receiving federal grants. A combination of the Forceful

Federalism elements are especially necessary in any attempted exercise of national authority focused on racial hierarchy. Historically and currently most disputes about the meaning of federalism as a political system and most usages of states' rights arise from robust efforts to resist any change to local racial hierarchies. This proposition may seem stronger historically but recent Republican Party policies toward the states reveal a continuing attachment to states' rights as a strategy to resist increasing racial equality. This resort to states' rights defenses of national inaction frequently has judicial authority in support—for example, the Supreme Court's decision in *NFIB v Sebelius* (2012) that weakened the Affordable Health Care Act by declaring the requirement for states to expand Medicaid was unconstitutional. In the Meredith case the executive arm of the state could act in part because the desegregation had been ruled by the Court. The Court was in favor of racial equality during the Long 1970s decade but decreasingly so after.

In the 1950s, Representative Adam Clayton Powell Jr., who represented Harlem, pioneered the legislative strategy of applying this tool to civil rights. He repeatedly proposed amendments to spending bills that would deny federal funds to programs or jurisdictions that practiced segregation. Although the controversial "Powell Amendment" was routinely defeated by the House of Representatives, the approach was gaining legitimacy in the early 1960s and eventually formed the basis of Title VI of the Civil Rights Act of 1964 (Hamilton 1991, 226-35). Each of these elements—standardizing, coercive, associational, and fiscal—is essential to understanding how the American state has, at times, been able to effectively counter historically embedded patterns of racial inequality in American society. But what is critical about the rise and fall of the American state is that these four dimensions do not necessarily operate together or move in a synchronized way. "The state," it turns out, is a composite of these four dimensions, which rise and fall over time, each charting its own history and unfolding according to its own logic. Often these processes work against each

other, creating at least the appearance of chaos and confusion, inaction and anemia, the illusion that “the state” is either absent or hopelessly muddled in its pursuit of policy goals and expectations.

Forceful federalism in action.

But occasionally—*very* rarely, in fact—these factors align with each other, so that rather than contradicting one another and canceling each other out they line up together, pointing in a common direction toward a state that can pursue and achieve even difficult and challenging policy aims in a focused way. War mobilization is an instance. And the New Deal is another example of such a transformative moment of state building in American history.

During the presidency of Franklin Roosevelt in the 1930s and 1940s, the country engaged all four dimensions of forceful federalism to combat the Great Depression and wage World War II. Laws such as the Social Security Act and the Fair Labor Standards Act and agencies such as the Home Owners’ Loan Corporation and the Federal Housing Administration set established national standards for social insurance, working conditions, and housing. The government assumed new coercive regulatory powers over financial markets through agencies such as the Securities and Exchange Commission and statutes such as the Glass-Steagall Act. The state’s associational engagement with civil society was also critical to its expanded reach—through the Wagner Act, which guaranteed workers’ right to collective bargaining through labor unions, and programs such as the Tennessee Valley Authority and the Federal Deposit Insurance Corporation, which mobilized private organizations to serve public ends (with both positive and negative consequences) (see McConnell 1966). And the state’s fiscal instruments grew amply during this period, both directly through increased spending on relief, public works, and ultimately war procurement and through incentive mechanisms that induced states to adopt programs such as income support for poor families and unemployment insurance.

The cumulative effect of these and other reforms was a remarkable expansion in the state's scope and capacity that had a profound and durable impact on American society and the political economy. Through these mechanisms, the New Deal achieved significant progress toward economic security for workers and in some measure toward greater inclusion of African-Americans in the political economy largely through the broad provision of relief from the depths of the Depression. Black voters (in the North; African-Americans in the South were prevented from voting) responded in the 1930s by switching their political allegiance from the Republicans (the "Party of Lincoln") to the Democrats, a political alignment that survives to this day. At the same time, however, the New Deal was in thrall to the dominance of Southern members of Congress and failed seriously to challenge the prevailing racial hierarchy of American society.

But the most startling, and pertinent, example of this alignment in American history is the evolution of the Civil Rights State (King and Lieberman 2017). The Civil Rights State was built primarily during what we call the "Long 1960s"—the period of activism, protest, and deeper engagement with the challenges of racial hierarchy and inequality in the United States, that extended roughly from the Supreme Court's ruling in *Brown v. Board of Education* in 1954 through the downfall of Richard Nixon in the Watergate scandal of the early 1970s and extended to the South and North. This period encompasses most of the critical events of the civil rights revolution: the Supreme Court's decisive and historic repudiation of its own earlier embrace of segregation; the rise and peak achievements of the civil rights movement and its assault on Jim Crow segregation in the South as well as against systematic discrimination in the North; the legislative achievements of the 1960s that secured legal protection for civil and voting rights; and the evolution of affirmative action, voting rights enforcement, and other active policies to address wide and longstanding disparities of opportunity in the American political economy; and the first flowering of African-American political empowerment.

As a moment for expanding the American state's role as an upholder of democratic and other civil rights and locating the multidimensional transformation of the state, the Long 1960s seemed propitious (King and Lieberman 2009, 191-3). Each of these dimensional transformations occurred on its own temporal scale and unfolded according to its own logic; often the various dimensions of the state work at cross purposes (Lieberman 2002; Pierson 2004). This disjointed and often incoherent mode of governance is what makes the American state seem absent or weak, and it also underscores why American political *development*—"durable shifts in governing authority," in Karen Orren and Stephen Skowronek's influential formulation—is disorderly and elusive (Orren and Skowronek 2004). But there are rare moments, by contrast, where things line up and point in the same direction to produce more thoroughgoing change, and the Long 1960s constituted such a moment when they fortuitously converged. Coming near the apex of this era, the Meredith affair exemplifies the convergence of these processes of change.

We turn to a key case which we survey empirically and then interpret through four dimensional framework.

Forceful Federalism as Coercive Authority: James Meredith at Ole Miss

In January 1961, James Meredith applied for admission to the University of Mississippi. A twenty-seven-year-old native of Kosciusko, in the middle of the state, he had graduated from high school in Florida and then enlisted in the Air Force where he rose to the rank of sergeant. While he was in the service he took college-level courses at a variety of institutions. When he returned to Mississippi after his discharge in 1960, he enrolled at Jackson State College, a historically-black state institution, and by the winter of 1961 he was close to graduating. But Meredith was determined to integrate the University of Mississippi. Knowing that this would be a dangerous enterprise, he consulted Medgar Evers, the secretary of the Mississippi chapter of the NAACP (who had himself applied unsuccessfully to the university in 1954) (Motley 1998, 165). On Evers's advice, Meredith

wrote to Thurgood Marshall of the NAACP Legal Defense Fund (LDF) in New York several days before filing his application to the university. Marshall assigned the case to Constance Baker Motley, an LDF staff attorney. The following week, Meredith also contacted Burke Marshall, the assistant attorney general for civil rights in the new Kennedy administration to alert him to his plans.

Predictably, the university rejected Meredith's application toward the end of May. On May 31, Motley filed a class-action lawsuit in federal district court challenging the university's decision on the grounds that it was impermissibly motivated solely by race. After a trial, the district court ruled in February 1962 that, "the evidence overwhelmingly showed that [Meredith] was not denied admission because of his race" and dismissed Meredith's suit (*Meredith v. Fair* 1962a, 226). Motley promptly appealed to the Fifth Circuit, which on June 25, 1962, ruled in his favor and ordered the University of Mississippi to admit him (*Meredith v. Fair* 1962b). Justice Hugo Black, on behalf of the Supreme Court, ultimately upheld the appeals court's ruling on September 10. Meredith prepared to register for the fall semester, which was due to begin on October 1.

The various parties to the dispute were girding for battle, in some cases quite literally. The university's board of trustees cravenly voted to empower Governor Ross Barnett to deal with the Meredith matter on their behalf. In mid-September, Barnett issued a proclamation to "interpose State Sovereignty" between federal law and the university and addressed the public and the state legislature about his intentions. Called into special session the state legislature passed a law prohibiting anyone who had been convicted of a misdemeanor from enrolling in the university—on the same day Meredith was convicted (in absentia) of voter fraud, as a pretext both for denying his registration and arresting him (Lord 1965, 152). In Washington, the Department of Justice was alarmed about Mississippi's brazen flouting of federal law. While attorneys in the Civil Rights Division were beginning to involve themselves in Meredith's legal matter, department officials were also preparing for a confrontation with the university and the state government. Attorney General

Robert Kennedy eventually began negotiating by phone with Governor Barnett to try to find a solution that would allow Meredith to enter the university while Barnett saved face with his inflamed segregationist constituents.

Public pressure on Barnett ratcheted up with the growing frenzied fulminations of retired Army General Edwin Walker. Walker had commanded combat troops in both World War II and Korea and was a fixture in fringe right-wing, white supremacist politics, including active membership in the John Birch Society. (Walker is reputed to have been the model for the deranged General Jack D. Ripper in Stanley Kubrick's film, *Dr. Strangelove*.) In September 1962, Walker began organizing protests against Meredith's entry into the University of Mississippi, summoning white supremacists from around the South and beyond to converge on Oxford to resist federal force. And beginning in early September, Secretary of War Cyrus Vance and General Creighton Abrams, the army's deputy chief of staff for operations (who would later command American forces in the Vietnam War), began planning for the possible involvement of the military in the Meredith affair.

These forces converged in Mississippi in the last weeks of September 1962. On September 14, Governor Barnett issued a proclamation calling the federal court's order to admit Meredith an "unwarranted, illegal, and arbitrary usurpation of power" and declaring that he and the state legislature intended to "interpose the State Sovereignty and themselves between the people of the State and any body politic seeking to usurp such power" (Meredith 1966, 167). For his own security amid the gathering threat of violence in Mississippi, Meredith slipped out of state to Memphis, where he met Chief United States Marshal James McShane, dispatched by the Justice Department to protect Meredith and escort him to the university. Accompanied by McShane and Assistant Attorney General John Doar, Meredith attempted to register at the university three times between September 20 and September 26, twice on campus in Oxford and once, by prior arrangement, in Jackson, the state capital. Each time he traveled from out of state, either from Memphis or New

Orleans (where the Fifth Circuit Court of Appeals sat). The first two times, Governor Barnett met Meredith himself and refused to register him, each time reading a public statement asserting Mississippi's sovereignty for the benefit of the gathered spectators and the press. The final time, it was Lieutenant Governor Paul Johnson, backed by armed state troopers, who turned Meredith away, although not before a small physical scuffle between McShane and Johnson.

The next day, September 27, Meredith left Memphis to drive the eighty miles to Oxford for yet another attempt to register. This time the entourage included the largest complement of U.S. marshals yet—about fifty—and they brought riot gear, including tear gas and gas masks. An accompanying plane overhead provided mobile communication between the convoy and the Justice Department. When they reached Batesville, Mississippi, roughly three-fourths of the way to Oxford, the order came from Robert Kennedy himself: turn around. Barnett was waiting at the university, surrounded by a growing mob, and the attorney general feared that the showdown would turn violent, for which the federal government was not yet prepared.

Since September 15, Kennedy had been negotiating with Barnett by phone about the Meredith affair (Doyle, 2001, 69-70). Kennedy's goal was to enforce federal law and the authority of the courts, while Barnett wanted to keep Ole Miss segregated, or, failing that, put up enough of a show of resistance to satisfy his white constituents and burnish his segregationist bona fides. Several times, Kennedy thought he had an agreement that Barnett would allow Meredith to register. At one point on September 27, the negotiation came down to how much of a show of force the federal authorities would make on Meredith's behalf. Barnett wanted the U.S. Marshals to come at him with their weapons drawn so that he could be seen to be yielding to federal force. Kennedy, for his part, preferred to keep force to a minimum, and offered that a single marshal would draw his gun. This did not satisfy Barnett. "This could be very embarrassing," he told the attorney general. "We got a big crowd here, and if one pulls his gun and we all turn, it would be very embarrassing. Isn't it

possible to have them all pull their guns?” Kennedy then offered to have the other marshals keep their hands on their holsters, but Barnett demurred: “They must all draw their guns. Then they should point their guns at us and step aside” (Branch 1988, 651; Doyle 2001, 91; Lord, 1965, 167–68). Another version of the deal involved equally theatrical misdirection: marshals would sneak Meredith into Jackson to register quietly while everyone was distracted by the turmoil in Oxford (Branch 1988, 658). By this point, President Kennedy was also directly involved in the negotiations with Barnett, but the Kennedys could only watch helplessly while each apparent agreement crumbled as Barnett’s resistance to any integration plan was emboldened by public pressure.

On Saturday night, September 29, Barnett made an impromptu appearance on the field during halftime of the Mississippi-Kentucky football game in Jackson. His three-sentence speech—“I love Mississippi! I love her people! I love her customs!”—was enough to work the crowd to a frenzy (Branch 1988, 659; Dittmer 1994, 140). And although Barnett and Robert Kennedy continued to talk on Sunday, this moment marked the end of realistic negotiations to avert a direct confrontation between Mississippi and the federal government.

Having all but exhausted diplomatic options, the federal government prepared to turn to force. Acting on President Kennedy’s overnight orders, the Army moved to a higher level of readiness and began to mobilize military police and infantry units from Fort Dix in New Jersey and Fort Bragg in North Carolina to assemble at Millington Naval Air Station, near Memphis. President Kennedy prepared to address the nation on television. In a last-ditch negotiation by telephone, Robert Kennedy told Barnett that Meredith would be escorted onto campus that afternoon by U.S. marshals and asked for the state highway patrol to provide additional protection. When the governor balked, the attorney general threatened that the president would reveal Barnett’s secret deals and reversals to the public—a revelation that would have spelled political doom for the governor—and a chastened Barnett relented. A delegation of Justice Department officials led by Deputy Attorney

General Nicholas Katzenbach flew from Washington to Oxford to oversee the affair, and several hours later, Meredith, Doar, and McShane flew from Memphis to Oxford, where Meredith (1966, 211) remarked on “rows of Air Force planes ... and hundreds of marshals.” Escorted by marshals and Barnett’s promised (although unenthusiastic) highway patrolmen, they drove to campus, where Meredith moved into his dorm room in Baxter Hall in the early evening.

A crowd that included students, local residents, and whites from around the South who had answered General Walker’s call had gathered in front of the Lyceum, the campus’s iconic central building. Inflamed by Barnett’s prearranged statement that federal authorities had “physically overpowered” state forces and that Meredith was on campus, the mob grew restless and violent. Roughly an hour after Meredith’s arrival at Baxter Hall, the highway patrol officers left the scene, apparently ordered away by a state official unaware of Barnett’s secret deal with the Kennedys (Lord 1965, 205-6). As they entered Oxford later that night, one army unit encountered a group of highway patrolmen standing by their cars blocking the road and watching the scene. The unit’s lieutenant radioed to headquarters for instructions about how to deal with the situation, and the answer came back: “Loyalties of local law enforcement units at this time uncertain.” After asking for this instruction to be repeated, the incredulous lieutenant ordered his men to disperse the troopers (Gallagher 2012, 70-72).

With the marshals now left exposed, Katzenbach asked for troops and Secretary of War Vance ordered the waiting army units to advance toward Oxford from Millington. In Washington it was 9:30 PM. Thirty minutes later, President Kennedy went on the air to deliver a nationally televised address. He couched his remarks not as a vindication of Meredith’s substantive case or—as he would do less than a year later after Martin Luther King’s Birmingham campaign—as a defense of civil rights or racial equality but as a rather matter-of-fact statement of the federal government’s intention to uphold the law and an appeal to the reasonableness of white Mississippians. Despite his

rather cold and legalistic tone, Kennedy's speech was an extremely unusual public utterance on behalf of the enforcement of racial equality, as Rodney Hero and Morris Levy (forthcoming 2021) show elsewhere in this special issue. "My obligation under the Constitution and the statutes of the United States," he told the public, "was and is to implement the orders of the court with whatever means are necessary, and with as little force and civil disorder as the circumstances permit," although he was prepared to deploy "whatever ... civil and military enforcement might be required." He announced that Meredith's arrival on campus had "been accomplished thus far without the use of National Guard or other troops" (Kennedy 1962c).

By the time Kennedy finished speaking, events rendered his words false. While he was on the air, marshals fired the first tear-gas canisters into the crowd. Within an hour, shots were fired, casualties began to mount, and the marshals, who were under attack from an armed crowd, were unable to maintain order (Branch 1988, 666). Katzenbach, having received the necessary authority from Washington, ordered Colonel Murry Falkner—a nephew of the novelist William Faulkner, an Oxford resident who had died less than three months earlier—to bring a Mississippi National Guard unit to the Lyceum (Belknap 1987, 95; Eagles 2009, 365). Falkner's troops arrived at around 11:00 PM to find a full-scale riot underway. By the time regular army units arrived in the small hours of Monday morning after a night of mayhem in Mississippi and anxiety in the White House, several hundred people, including some 160 U.S. marshals and forty soldiers, were injured and two were dead: a local bystander and a French journalist, who was shot in the back at close range (neither shooter was ever identified) (U.S. Department of Justice 2011). At one point during the night, a group of rioters had learned where Meredith was and started heading toward Baxter Hall. Fearing what might happen, the Kennedys considered taking Meredith off campus but found this impossible given the chaos and danger. When order was finally restored by dawn on Monday, October 1, Meredith was still there. On Monday morning, Meredith and McShane drove across campus to the

Lyceum where Meredith registered and received his class schedule and then, with federal escort, he arrived late to his first class, in colonial American history. A detail of regular Army soldiers remained at the university to protect Meredith, living alongside him in Baxter Hall and accompanying him wherever he went. His protection detail remained in place until he graduated with a bachelor's degree in 1963.

Bolstering Meredith with Forceful Federalism

The Meredith affair marked a significant advance in federal backing for the civil rights struggle. For perhaps the first (and perhaps only) time in the post-World War II era, all four dimensions of the civil rights state were engaged on behalf of the protection of civil rights and the advancement of racial equality. To be sure, the state had begun to back the cause of racial equality in a variety of ways in the preceding decades: Truman's integration of the armed forces and establishment of the President's Committee on Civil Rights; *Brown v. Board of Education*; Little Rock; and the Freedom Riders. But given the contentious and unsettled nature of racial alliances in American politics during this period, presidents continued to shy away from a deep political commitment to the civil rights agenda while Congress was generally stymied by the pivotal power exerted by Southern Democrats (King and Smith 2011; Katznelson 2013). With the Meredith events, all of the elements of forceful federalism were in place, and the episode marks a critical turning point in the mobilization of the state, across all of its dimensions, on behalf of a move toward racial equality.

Significantly, the mobilization of the Civil Rights State and this assembly of the elements of Forceful Federalism in 1962 come *before* the full-throated rhetorical embrace of civil rights by the national parties and their leaders—before Kennedy's Birmingham speech of June 1963; before Lyndon Johnson's championing of the Civil Rights and Voting Rights Acts of 1964 and 1965; before

Barry Goldwater's nomination signaled the divergence of the national parties on racial issues; before Richard Nixon's "Southern Strategy" came to define a new Republican strategy on race; and long before the establishment of the new alignment of race-conscious and color-blind race alliances, which King and Smith date to the late 1970s (King and Smith 2011, chap. 4).²

This sequence suggests the independent importance of the elements of the civil rights state and of the notion that the elements of Forceful Federalism constitute separable strands of political development, and that each progresses according to its own logic and on its own temporal scale. We add that we are not making a strong claim here about the *causal* importance of the Civil Rights State in determining the race policy outcomes of the late twentieth century; that more complete exploration remains for future work. But we do note, importantly, that the evolution of Forceful Federalism and the Civil Rights state was decidedly not simply a response to political direction from above or to a straightforward ideological impulse. Rather, these dimensions of state power emerged and intertwined, combining powerfully and coming into sharp focus over the 1960s. The Meredith episode serves as both a critical turning point in the run of history since it marked such a decisive intervention and an illustrative example.

Standard-Setting. The Meredith case clearly exemplified the federal government's attempt to set national standards. With *Brown v. Board Education* (1954, 495) the federal government decisively reentered the field by articulating a clear national standard for public education: "separate educational facilities," Chief Justice Warren wrote for a unanimous court, "are inherently unequal." This pronouncement followed several generations during which federal policy accommodated segregation by enabling local control, among other means (Lieberman 1998; Katznelson 2005). The first half of the twentieth century saw halting and limited efforts on the part of the federal government to establish national standards for racial equality. Some New Deal relief agencies, for example, managed to challenge practices of segregation in local labor markets, although this was by

no means the norm (Sitkoff 1978; Sullivan 1996; Brueggemann 2002). In 1941, Franklin Roosevelt, under pressure from the Brotherhood of Sleeping Car Porters, signed an executive order to prohibit discrimination by government defense contractors and established a Committee on Fair Employment Practice, although there was also substantial variation among states in their embrace of, and resistance to, fair employment policies (Chen 2009). But until *Brown*, the federal government remained unwilling or unable to deploy its full standard-setting authority in the realm of racial inequality. Building on earlier decisions, *Brown* changed the agenda.

But even the clear legal standard articulated in *Brown* was not self-executing. The Supreme Court itself tempered its own standard-setting claim in the second phase of the case, when, in 1955, it declined to order the immediate desegregation of public schools but rather instructed the lower courts to enforce its ruling “with all deliberate speed,” a phrase that advocates and opponents of desegregation alike took as an invitation to delay and resistance (*Brown v. Board of Education* 1955, 301). Resistance, of course, is exactly what ensued. Local school districts simply refused to comply. Many jurisdictions established segregated private schools that were essentially shadow public schools. Others reinterpreted taxes as for whites only. Some public school systems simply shut down, as in Prince Edward County in central Virginia, whose public schools remained closed for five years while white parents sent their children to publicly-funded, segregated “private academies” (Bonastia 2012; Green 2015; Lassiter and Lewis 1998). “The process of reassertion of federal constitutional policy over state law,” noted Burke Marshall (1964, 83), “was completed by the school segregation decisions. The law was made clear, but there was no general compliance.”

The federal government’s customary tools to enforce civil rights law, primarily resting on individual prosecutions, were weak. As Marshall (1964, 7-8) wrote,

This has not necessarily meant massive resistance in the sense of outright defiance of federal authority, although we have had that, but it does mean an open failure to comply with unquestioned standards of federal law until forced to do so. There is no parallel to be found in law enforcement. It is as if no taxpayer sent in a return until

he personally was sued by the federal government, or no corporation respected the Sherman Act until an injunction was issued against it. The crisis is more deplorable, of course, because it is not private persons, individual or corporate, who are failing to comply with the laws, but the states themselves, and the instrumentalities of state law.

By the time of the Meredith affair, of course, the federal government's ability to overcome massive resistance and enforce federal standards was clearly at issue, and it was becoming increasingly apparent that the legal route to enforcement of federal civil rights law was inadequate. As Meredith's lawyer, Constance Baker Motley (1998, 179), put it, "the issue that massive resistance plainly presented was whether the law, as announced by the Supreme Court, was binding on all states or whether there was such a thing as state's rights that permitted the Southern states to resist implementation of a Supreme Court decision with which a Southern state might disagree." In other words, did federal standards apply throughout the federal system?

The Meredith case, then marked a critical moment in the federal government's determination to reestablish the supremacy of federal law and set national standards in the civil rights realm. This demonstrated supremacy was long sought by civil rights reformers and explains why the protests occur locally but with an aim to catch national intervention.

Coercive Federalism. In order to enforce the court decision and ensure Meredith's admission to the university, the United States essentially had to invade the state of Mississippi. This was not a decision that the Kennedy administration took lightly. The necessity of the decision is explained by legal scholar and former federal civil rights attorney Brian Landsberg (1997, 50): "the United States as enforcer provides some strengths not provided by private parties. Generally, it can bring greater resources to enforcement, and, if need be, its enforcement actions are backed by brute force."

Although it was not the first time the federal government had had to deploy military force to enforce national civil rights standards, previous efforts had been limited and halting. President Dwight Eisenhower had of course federalized the Arkansas National Guard and deployed the

Army's 101st Airborne Division to enforce the integration of Central High School in Little Rock in 1957. Importantly, the Little Rock episode resulted from controversy over the city's own plan to desegregate its public schools in order to comply with *Brown*. Although Governor Orval Faubus famously opposed the plan and mobilized the Arkansas National Guard to prevent black students from enrolling, Little Rock was not a case of total state-level resistance to integration or of thoroughgoing challenge to federal standard-setting. Moreover, Little Rock predated the peak of the "massive resistance" movement against desegregation, which came later in the 1950s and into the early 1960s. By the time of the Meredith challenge, Little Rock had come to be regarded as a breakdown of federal law enforcement and a failure of presidential power, particularly as portrayed in Richard Neustadt's *Presidential Power* (Landsberg 1997, 36; Neustadt 1960). (Neustadt's book was published during the 1960 presidential campaign and influenced John Kennedy, who relied on advice from Neustadt during his presidency) (Neustadt 2000, 460-61).

The Little Rock school close for a year and the fate of the seven children was insecure: their families suffered hardships including losing their jobs with white employers and discrimination. And although the Kennedy administration had sent federal marshals to keep order during the Freedom Rides through the South in 1961, the administration carefully avoided taking sides in the dispute between federal and state law; and remarkably neither intervened when white mobs attacked the riders nor objected when the riders were arrested for violating state segregation laws, even though federal law (as interpreted by the Supreme Court) clearly prohibited segregation on public buses (Belknap 1987, 90).

The prospect of federal military directed at Southern states was framed by the prevailing view of Reconstruction, in both professional historiography and the popular mind, as a failure because it was the product an oppressive alien occupation that trampled on local democracy and states' rights, fostered corruption, and empowered African-Americans, who were typically portrayed

as incapable of democratic citizenship (see Foner 1988, xix-xxi).³ The Kennedy brothers, conscious of history and their place in it, had absorbed this historical understanding, and were consequently apprehensive about seeming to recapitulate what they saw as the mistakes of the previous century (Brauer 1977, 180). Hence Robert Kennedy's determination, in his negotiations with Barnett, to keep the visible use of federal force to a minimum, as well as Kennedy's admonition to Norbert Schlei to keep quiet about General Grant's desk. The administration hoped to rely on a contingent of federal marshals augmented with border patrol officers and prison guards, but these personnel amounted only to a small, ill-trained force that proved inadequate to the task (Mickey 2015, 212; Belknap 1987, 89).

Confronted with the state's recalcitrance and the threat of violent reprisal, however the Kennedys understood that reliance on the traditional law enforcement strategy would not suffice and they calculated that letting the state of Mississippi show up the federal government would be worse than sending in the army, and so they called Barnett's bluff and mobilized a major military operation. At the same time, the administration began to lay plans for a military campaign. As early as September 8, before the Supreme Court ruled and almost two weeks before Meredith's first registration attempt in Oxford, Secretary Vance and General Abrams began meeting at the Pentagon to prepare for a possible military operation (Gallagher 2012, 6). By the 19th, the Army had its own intelligence sources on the ground in Oxford and by the next day plans were drawn up for what was code named Operation Rapid Road. On Friday, September 28, the day after Meredith had been instructed to turn around en route to what would have been his fourth registration attempt, Robert Kennedy met with Vance and General Maxwell Taylor, the president's top military advisor (and about to become Chairman of the Joint Chiefs of Staff), in the Pentagon's War Room and later that day Vance and the attorney general briefed President Kennedy in the White House about the army's plans. Both Kennedy brothers canceled travel plans (the president to Newport, his brother to

California) and Secretary McNamara flew back from Germany so they could be in place to direct the military operation (Eagles 2009, 329-30. 340-45).

Once Kennedy signed the orders on Saturday night, army units involved in the operation were instructed to be ready to move within four hours (Branch 1988, 653). On the transport planes to Millington on Sunday, the soldiers, who had not been told where they were going, speculated among themselves: either Vietnam or Cuba, they imagined. They assumed they were heading for war (Gallagher 2012).

The operation clearly brought military force to bear and threw the full weight of the federal state's coercive power—direct, physical ballast—behind the enforcement of federal law as a supplement and support to legal enforcement. In the end, a total of 31,000 soldiers were mobilized for Operation Rapid Road, exceeding the number the United States had stationed on the Korean peninsula at the time. Fifteen thousand of these troops were eventually stationed in Oxford, three times the American force in West Berlin (Doyle 2001, 278). Mississippians certainly perceived the episode as a military occupation which they considered reminiscent of a hated Reconstruction. They were not altogether wrong, although they and the administration seem to have taken different lessons from it (Belknap 1987, 96). The Mississippi state legislature reacted with what Taylor Branch (1988, 670-71) describes as “self-pity and trampled virtue” and accused the federal forces of premeditated atrocities, while Lieutenant Governor Johnson was elected governor in 1963 on the strength of his defiant performance during the Meredith affair. For his part, after reflecting on Mississippi's open defiance of federal law, President Kennedy, a quick learner, told Ted Sorenson, “it makes me wonder whether everything I learned about the evils of Reconstruction was really true” (Eagles 2009, 431, 434; Dittmer 1994, 189).

The Associational State. The Meredith case also involved a critical partnership between the federal government and ostensibly “private” actors. Meredith's case was brought privately, with the

support of the NAACP and the NAACP Legal Defense Fund. The NAACP had been mobilizing for decades with incremental successes (Francis 2014). Unlike Rosa Parks, the central actor in an earlier confrontation with Jim Crow, James Meredith was not an activist or a veteran of the civil rights movement, but something of a solitary, if determined, figure. But anticipating the difficulties of integrating the University of Mississippi, he consulted with movement figures, particularly Medgar Evers, the head of the Mississippi chapter of the NAACP, as well as William Higgs, a local white civil rights lawyer in Jackson who later represented the Student Nonviolent Coordinating Committee and later helped organize the Freedom Summer voting rights campaign in 1964. It was through Higgs that Meredith made initial contact with Burke Marshall of the Justice Department, first by phone from Higgs's office in early February 1961 and then in a letter in which Meredith implored the federal government to use its "power and prestige ... to insure the full rights of citizenship for our people" (Meredith 1966, 59-61; Branch 1988, 671). Motley, Meredith's LDF lawyer, carried his case through the courts. But America's associational state had its powerful detractors: white Mississippians (like whites in many other states) speedily organized with protective vigilante groups to maintain their racial hierarchy. These were also part of de Tocqueville's celebrated civil society. But although electorally connected to the US Senate, these segregationists lacked traction in the Kennedy controlled executive state.

At times Motley's relationship with Marshall and Doar of the Justice Department was contentious. She resented what she perceived as their rather distant approach to the case and their tendency to swoop in at big moments while she, a female African-American lawyer appearing in Southern courtrooms, bore substantial risk (although she conceded that Marshall and Doar were "extraordinary lawyers") (Motley 1998, 178-82). Later, as the affair hurtled toward its violent denouement, Jack Greenberg, the LDF's new director (succeeding Thurgood Marshall, who had been appointed to the U.S. Court of Appeals in New York), did not believe that Mississippi officials

would honor any deal they made and urged the government toward a greater show of force at the outset rather than the incremental approach they followed (Lord 1965, 173; Brauer 1977, 187).

But in the end, the partnership between the Justice Department and the LDF proved effective. Motley skillfully guided the case through the federal courts, along with Greenberg and her young associate, Derrick Bell Jr. Through their efforts, the federal courts came down clearly on the side of Meredith's admission and the federal government's authority to establish and enforce national civil rights standards. Alongside these efforts, the Justice Department pursued its own legal strategy, and ultimately joined the case as a friend of the court as the case entered its closing phase, fully backing Meredith and cooperating in seeking contempt-of-court citations against Barnett and Johnson. Though often fraught, the relationship proved a productive one; the lawyers shared information, argued about strategy, and reinforced each other's roles.

Without the LDF's "private" litigation in the case, the federal government would neither have been forced to take on Meredith's case nor would it have had the legal basis to do so. And without the federal government's crucial intervention at the back end, the LDF would likely have seen its efforts at claiming Meredith's rights come to naught. This is a fundamental point about the integrative effects of forceful federalism's elements.

Fiscal Force. The fiscal dimension of Forceful Federalism, crucial to compelling school integration after 1968 (Clotfelter 2004), played a role in the Meredith affair. Two fiscal maneuvers threatened Mississippi's resistance. One was a threat to limit or stop federal funds to the university. This move came from both Congress and the administration. In Congress, Representative William Ryan, a New York Democrat, introduced a bill in the House to prohibit federal funds to institutions of higher education that discriminated on account of race, along the lines of the Powell Amendment (Eagles 2009, 307). Independently, the Justice Department began compiling information about

federal programs that benefited the University of Mississippi particularly (Eagles 2009, 287), a strategy used much more widely by the American state later.

The second fiscal threat arose in collaboration with the associational state: the Southern Association of Colleges and Schools (SACS), the agency responsible for accrediting the University of Mississippi. SACS was a private entity, not formally part of the government, but its approval in the accrediting process served a critical public fiscal purpose. Accreditation was, then as now, a necessary condition for receiving federal funding and a critical indicator of quality and legitimacy for American college and universities. Since 1952, for example, only accredited institutions were eligible to enroll students under the GI Bill, which had become a major source of revenue for many institutions. Thus, when the SACS executive council voted on Friday, September 28, to recommend de-accrediting all of Mississippi's institutions of higher education, the governor and the university's board took notice.

This element of the state was not especially reform-minded. (SACS, which had been monitoring the situation for at least a week and had signaled its displeasure with the drift of events, was careful not to mention Meredith or endorse integration per se; their accreditation standards did not include integration. Rather, their complaint was that Barnett's assumption of authority over university operations, with the university board's acquiescence, constituted undue political interference that violated SACS's governance standards. But the implication of their action was clear.)

Barnett was sufficiently alarmed that he spent nearly an hour speaking on the phone with Henry King Stanford, the president of SACS, on Friday night and into Saturday morning (Eagles 2009, 307). As historian Charles Eagles (2009, 330) notes, "the call confirmed [Barnett's] awareness that SACS threatened Ole Miss's academic viability."

Conclusion

Reflecting decades later on the Meredith episode, lawyer Constance Baker Motley (1998, 187) claimed that “the *Meredith* case effectively put an end to massive resistance in the Deep South.” This is too strong a conclusion. But whether it is accurate or not—and there is evidence on both sides of this question—the affair marked a significant shift in the federal government’s direct involvement in civil rights enforcement, with notable consequences both for the cause of desegregation and for the transformation of the American state. Pressure built on Kennedy’s White House successor, the former segregationist Lyndon Johnson, which was un-ignorable.

The episode certainly illustrates the efficacy of Forceful Federalism, the convergence of multiple dimensions of state power, in building the Civil Rights State and engaging the state fully in the move to enforce civil rights for African-Americans and advance racial equality. And it offers cautious evidence for the supposition that Forceful Federalism was a necessary condition for the emergence of the Civil Rights State. Here we have shown its efficacy in a single, albeit significant, case as a window onto further research that might demonstrate this relationship more systematically.

At least two issues will be crucial to evaluating the plausibility of forceful federalism as a key mechanism in desegregating America. One is the replication of its dimensions in other major areas of enforcement, for example in enforcement of the Voting Rights Act after 1965, which necessitated sustained and multi-dimensional federal led intervention. The second is how the absence and deliberate erosion of key dimensions of forceful federalism from the 1970s weakened the embeddedness of the Civil Rights State. Thus, for example, President Gerald Ford’s refusal to deploy federal authority and resources in support of school boards and district courts implementing busing in Boston (with the approbation of senators such as Joseph Biden) severely undermined these policies. And a weakly allied Justice Department and federal judiciary after 2000 permitted the re-segregation of schools by eroding the enforcement of integration programs.

The Meredith episode, furthermore, underscores the critical and still under-explored connections among the presidency, civil rights, and the contours of the American state. Presidential leadership was an important ingredient in the periodic success of racial egalitarianism in twentieth-century American politics, but it was not the whole recipe: the leadership needed resources to mobilize. The shifting contours of the American state, and particularly the full engagement of the dimensions of Forceful Federalism, contributed to the progress of civil rights supplying the resources that enabled these key episodes of presidential leadership. The federal government's capacity and willingness to deploy all of these tools of power that came together in the early 1960s pushed the United States toward the official embrace of racial equality that would reach its peak with the major civil rights enactments of the mid-1960s.

But the Meredith episode cast a long shadow, and the government's expansions of each of these dimensions of its power provoked resistance. And with the resistance to Forceful Federalism, the long, slow unraveling of the Civil Rights State began.

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¹ The doctrine of “interposition”—the notion that a state could simply refuse to enforce federal government actions that it deemed unconstitutional or otherwise objectionable—had been explicitly rejected by the Supreme Court several years earlier in *Cooper v. Aaron* (1958).

² As Eric Schickler (2016) notes, the shift of party alignments on racial issues was a long-brewing change that dated from the 1930s, although the national parties did not diverge until the 1960s.

³ This portrayal of Reconstruction also pervaded popular culture, as in Margaret Mitchell’s novel, *Gone With the Wind* (and the film based on it), as well as films such as *Birth of a Nation* and *Song of the South*.