PAR | Public Administration Review

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Tough Policy Issues Confronting Public Administration

Civil Rights, Federalism, and the Administrative Process: Favorable Outcomes by Federal, State, and Local Agencies in Housing Discrimination Complaints

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Some theorists argue that cooperative intergovernmental relations are critical to policy implementation in the United States. This assertion is explored in the context of fair housing enforcement by comparing favorable administrative outcomes in fair housing complaints at the federal, state, and local levels from 1989 to 2004. What conclusions can be drawn from this systematic comparison of intergovernmental enforcement in one policy area over an extended period of time? First, cooperative federalism works well in fair housing enforcement. Second, of special significance, state civil rights agencies resolve complaints in favor of complainants nearly as often as the Department of Housing and Urban Development, and localities sometimes do so even more frequently.

> [This article] . . . explore[s] a fundamental question in federalism: when a national program is designed to be enforced by federal, state, and local agencies, does pursuing a remedy at one level of government or the other make a difference in the outcome?

Two models of intergovernmental relations have dominated the theoretical literature on American federalism. First, the cooperative federalism or state-centered approach of Elazar (1962, 1972) and Grodzins (1966) advanced an optimistic argument that asserts a historic pattern of cooperative relations among levels of government to resolve policy problems. As Elazar stated, "virtually all of the activities of government in the nineteenth-century United States were co-operative endeavors, shared by federal and state agencies in much the same manner as governmental programs are shared in the twentieth century" (1962, 1). The second model, sometimes called creative federalism, is reflected in the work of Beer (1993). In this model, the national government assumes a much more prominent role in developing programs and overseeing their implementation at the state and local levels, as witnessed during President Lyndon B. Johnson's Great Society. In reaction to the Great Society, some skeptics (e.g., Derthick 1972, 1975; Pressman and Wildavsky 1984) wondered whether big government was even capable of successfully designing and implementing programs to achieve national goals through the use of intergovernmental channels.[1]

Against this backdrop, we explore a fundamental question in federalism: when a national program is designed to be enforced by federal, state, and local agencies, does pursuing a remedy at one level of government or the other make a difference in the outcome? To address this question, we investigate outcomes resulting from the administrative enforcement of national fair housing policy by federal, state, and local civil rights agencies between 1989 and 2004. "Substantially equivalent" state and local agencies processed most discrimination complaints throughout this period, under the oversight and direction of the U.S. Department of Housing and Urban Development (HUD). Yet in many instances, HUD handled these complaints, frequently because the state or locality where the complaint originated had passed no substantially equivalent fair housing law (Lamb and Twombly 1993; Schwemm 2009). Because all three levels of government processed identical types of complaints, we should be able to determine whether state and local governments produced as favorable outcomes for fair housing complainants as HUD. Beyond that, an important federalism issue is involved: how does venue matter not only for complainants, but also, in a more macro sense, for the functioning of the federal system, as a system? This is an uncommon approach, as it is rare that a study systematically compares federal, state, and local enforcement in one policy area over time.

Civil rights enforcement provides an intriguing test of state and local responsiveness to federal policy oversight and direction. It is widely known that

some states and localities, especially in the South, deliberately evaded and delayed school desegregation in the 1950s and 1960s (Bullock and Rodgers 1976; Orfield et al. 1996; Peltason 1971). Strong resistance to busing arose at the state and local levels, inside and outside the South, in the 1970s and 1980s (Green and Cowden 1992; McConahay 1982;
Orfield 1978). In addition, public housing has long been intentionally segregated by local housing authorities, including those in the North (Bickford and Massey 1991; Hirsch 1998; Massey and Denton 1993). These experiences might prompt some to argue that a creative federalism program is essential in this situation—that fair housing policy and its enforcement should be the responsibility of the federal government alone. Cooperative federalism simply could not work, according to this argument, because states and localities cannot be trusted to enact and enforce adequate civil rights protections.

In this article, we briefly describe the administrative process in fair housing enforcement in the American federal system. Then, relying on a large and distinctive database obtained from HUD under the Freedom of Information Act (HUD 2005a), we analyze the administrative outcomes in federal, state, and local fair housing enforcement over a 16-year period. What we see emerge is a lesson in how federal policy can be administered through intergovernmental cooperation when enforcement capacity is vested not only in a federal agency, but in state and local agencies as well. Our analysis indicates that both state and local entities are responsive to national policy oversight and direction in fair housing, and the lessons we learn from fair housing enforcement may inform the intergovernmental administration of other national policies. Indeed, it is reasonable to suggest that the substantial equivalency requirement used in fair housing enforcement could have applications in other policy areas in the American federal system.

The expanded state and local enforcement of national fair housing policy is somewhat similar to general trends in national environmental policy (see Kraft and Scheberle 1998; Rabe 2006; Wood 1991, 1992). Primary enforcement responsibility ("primacy") for clean air and other forms of environmental protection rests with state agencies—not the U.S. Environmental Protection Agency. Federal enforcement power is not granted to a state agency unless that agency meets a federal requirement; that is, the agency must prove that it has the legal authority to enforce federal law (Crotty 1987; Scheberle 2004, 2005; Zimmerman 2005). This is similar to the substantial equivalency requirement in housing discrimination.[2] However, the fair housing context offers an additional level of administration—the local level—providing a view into how local governments perform delegated federal enforcement responsibilities.

This research has significant implications for public policy administration. If both state and local agencies are shown to have successfully enforced fair housing policy, as many states have done in environmental enforcement, this approach might provide a model that Congress could apply in other policy areas. An expansion of the cooperative federalism approach would then lead to a rise in the number of state and local agencies working toward national policy objectives, and would accompany a shift in enforcement power from federal to state and local agencies.

The Administrative Process in Fair Housing Enforcement

Housing segregation and discrimination have long existed in America (Farley and Frey 1994; Kushner 1995; Massey and Denton 1993). While not as severe as in the past, they remain today (Briggs 2005; Crowder, South, and Chavez 2006; Emerson, Yancey, and Chai 2001; Logan, Stults, and Farley 2004). Congress passed the Fair Housing Act of 1968, also known as Title VIII of the Civil Rights Act of 1968, to combat discrimination and segregation in the housing market (Lamb 2005; Massey and Denton 1993; Yinger 1995). The act outlawed discrimination on the basis of race, color, religion, sex, and national origin in the sale, rental, and financing of housing, and in the operation of brokerage services.[3] Title VIII was bolstered in 1988 by the Fair Housing Amendments Act, which both strengthened fair housing enforcement and prohibited discrimination against persons with disabilities and families with children (see Kushner 1995; Lamb and Wilk 2009; Schwemm 2009). These two laws empowered individuals claiming discrimination to seek redress in two ways: either by filing a discrimination complaint with HUD or by filing a private lawsuit. The focus of this article is the efficacy of the former, which serves as a vehicle of equality for those who file housing discrimination complaints.

Title VIII requires all federal agencies to promote equal housing opportunity in their programs, but HUD is designated the lead agency in federal enforcement. The lead agency concept itself suggests the potential for enforcement problems. Theoretically, if one agency is legislatively assigned the lead in the enforcement process, then effective policy execution should be more likely than if no lead agency were named (Goggin et al. 1990, 125). Yet "pooled interdependence" usually does not produce highly effective enforcement (O'Toole and Montjoy 1984, 493–94). True to form, other federal agencies with Title VIII enforcement roles all have weak enforcement records (Kushner 1995; Schwemm 2009).

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While lead agency enforcement responsibilities were vested in HUD, the broader ambition of the Fair Housing Act was to create a civil rights partnership in the federal system (U.S. Commission on Civil Rights 1992). State and local civil right agencies were to be given the first opportunity to investigate, conciliate, and close discrimination complaints filed with HUD. This multilevel design reflects cooperative federalism in theory, but from the late 1960s to the late 1970s, the Fair Housing Act was carried out much like a creative federalism program. HUD had sole enforcement responsibility in a large percentage of all Title VIII complaints. Not until the 1980s did a more cooperative federalism partnership emerge, and HUD's Fair Housing Assistance Program (FHAP) became a key element of the partnership. Under FHAP, nurtured by the Ronald Reagan administration's New Federalism (Conlon 1998), state and local entities that passed fair housing laws that were substantially equivalent to the

Fair Housing Act would receive federal funds to process Title VIII complaints sent to them by HUD or by complainants.

The substantial equivalency requirement has significant implications for state and local discrimination policy and for intergovernmental cooperation in fair housing enforcement. It requires that state and local governments pass fair housing laws that are substantially equivalent to Title VIII—in terms of rights, procedures, remedies, and the availability of judicial review—before they can be considered for certification under FHAP. Substantial equivalency also requires that HUD periodically recertify all state and local FHAP agencies based on their past performance and current practices (Schwemm 2009). These and other substantial equivalency requirements mean that intergovernmental interaction and coordination are necessary, as HUD provides direction and oversight in this federal/state/local civil rights partnership.

During the rebirth of federalism in the 1990s (Walker 2000), state and local governments actively began to seek federal funds to enforce national fair housing standards. Despite the obstacle presented by the substantial equivalency requirement, the number of participating state and local programs grew dramatically, mainly because of the financial incentives provided by FHAP (Lamb and Twombly 1993).[4] In this era of state resurgence and improved functioning, states were creating new agencies, consolidating old ones, doing more merit-based hiring, and increasing the transparency of their procedures, all of which increased their capacity (Hedge 1998; Walker 2000). This resurgence, along with enhanced intergovernmental cooperation, led to state and local agencies handling almost two-thirds of all Title VIII complaints between 1995 and 2004 (HUD 2005a).[5] This percentage continued to climb after 2004. According to HUD (2007, 46), FHAP agencies processed 76 percent of all Title VIII complaints in fiscal year 2005 and 73 percent in fiscal year 2006. Hence, as state and local civil rights agencies shouldered the lion's share of Title VIII responsibilities between the 1980s and the early 2000s, Title VIII enforcement was converted from a creative federalism program into a cooperative federalism program.

Measurement and Data

We test the ability of federal, state, and local civil rights agencies to process and resolve Title VIII complaints based on five possible enforcement outcomes that may result from a discrimination complaint being filed (HUD 1996, 15–16; 1997, 38–40; 1999, 12–13; 2007, 53–54; 2008, 55; GAO 2004, 10). They are as follows:

- *Administrative closures.* Administrative closures include situations in which federal, state, or local civil rights agencies lose contact with a complainant or are unable to locate a respondent (the alleged offender); a complainant refuses to cooperate with an investigation or withdraws a complaint without resolution; or a trial begins in a private lawsuit brought by a complainant.
- *Irrelevant claims.*[6] Following an investigation, federal, state, and local agencies may determine that housing discrimination is not the basis of a complaint. A complaint may in fact be irrelevant to Title VIII. The dispute, for example, may be between a tenant and a landlord that is unrelated to fair housing.
- *Conciliations.* Federal, state, and local civil rights agencies engage in a process of conciliation in some instances, serving as an informal mediator between the complainant and the respondent, with the goal of reaching a resolution. Conciliations occur when a voluntary agreement is reached with government assistance or when a Title VIII complaint is withdrawn because the parties arrive at a private agreement.
- *No cause determinations.* When an investigation does not lead to conciliation, federal, state, and local agencies decide whether there is reasonable cause to think that Title VIII was violated. If no reasonable cause is found, the result is a no cause determination, and no further action is taken.
- *Cause determinations.* If, however, enough evidence indicates that housing discrimination did indeed occur, federal, state, and local agencies make a cause determination. Adjudication then proceeds, either before an administrative law judge or in an appropriate court.

We examine favorable complainant outcomes by federal, state, and local agencies using a large data set previously unexplored by scholars (HUD 2005a). This rich database contains a wide variety of details on all Title VIII fair housing complaints processed by HUD and by state and local civil rights agencies from 1989 through 2004.[7] Previously, we were limited to sporadic data from different sources, the most reliable being HUD's fair housing reports to Congress (e.g., HUD 1992, 1996, 1999). These reports included only aggregate data, and sometimes contained inconsistencies from one report to the next.

The new database allows each complaint to be viewed as an individual unit of analysis, making a more comprehensive analysis possible. The detailed data lend insight into each individual case, the reasons why a complaint was filed, and how it was resolved. For each complaint, we now know whether HUD, a state agency, or a local agency processed it; the date it was received and closed; the type of discrimination alleged; whether conciliation was attempted, and if so, the dates that conciliation was attempted and eventually achieved; the number of failed conciliation attempts before success was achieved; whether monetary relief was awarded and, if so, the amount; and the reason why a case was closed.[8] This information allows us to determine, among other things, how long it takes for complaints to be conciliated or closed and to compare the performance of local, state, and federal agencies. Additionally, the database provides the date that each state and local civil rights agency was certified or decertified under FHAP. In short, it contains consistent data over time and permits the development of important variables for measuring positive outcomes across three levels of government in resolving Title VIII complaints.

Favorable versus Unfavorable Administrative Outcomes

Two of the five enforcement outcomes are favorable for complainants and three are not. Administrative closures, no cause determinations, and irrelevant claims are unfavorable because the complainant's position is not improved by virtue of filing a complaint. In contrast, cause determinations and conciliations both represent an improvement for the complainant because they enhance the chances of getting a remedy. To capture the dichotomy of favorable versus unfavorable outcomes, we coded conciliations and cause determinations as 1,

Table 1 Title VIII Complaints by Protected Class, 1989–2004

	Percent						
Year	Based on Race	Disability	Family Status	Sex	National Origin	Color	Religion
1989	49.5	10.2	27.3	16.7	11.3	13.5	2.5
1990	49.8	14.2	26.8	15.5	11.1	9.9	1.9
1991	48.1	16.5	24.8	13.7	12.8	9.4	5.7
1992	47.5	19.5	25.4	14.7	12.5	5.9	2.5
1993	48	22.5	25.1	14	12.5	3.2	2.4
1994	46.2	24	25.6	13.5	11.7	4.2	2.5
1995	45	25.2	25.4	13.9	12.1	5.9	1.8
1996	42.8	26.4	24.8	12	12.9	8.8	1.5
1997	43	30.7	21.2	12	12.1	9.9	2.1
1998	44.7	29.5	20.2	10.5	11.8	7.6	2.1
1999	37.9	34.9	18.7	9.4	12	2.9	2.4
2000	38.7	34.9	18.4	11	12.2	4.2	2.3
2001	38.4	36	16.9	12	13.3	4.1	2.4
2002	39.7	37.7	16.6	11.3	12.6	2.3	2.7
2003	39.1	39	16	11.1	13	2.1	3
2004	39	37.1	14.5	10.9	14	1.6	3.9
Total	44	26.9	21.7	12.8	12.4	5.9	2.7

and administrative closures, no cause determinations, and irrelevant claims as 0.[9]

Independent Variables

Processing responsibility. Dummy variables indicating what type of agency handled a complaint served as our main independent variable of interest. The state agency variable was coded as 1 if a complaint was handled by a state agency and 0 otherwise. The same coding scheme was applied to the local agency dummy variable. Complaints handled by HUD served as the base category. This allowed a direct comparison of favorable outcomes between federal, state, and local agencies. However, another dummy variable had to be incorporated to account for cases that originally were handled by subnational agencies but ended up being resolved by HUD for any number of reasons.[10] Because a large share of these complaints took longer than normal to be resolved, combining them with cases that were entirely handled by HUD from initiation to closure would have biased the results in favor of state and local agencies. Therefore, the returned variable was coded as 1 if a complaint was resolved by HUD after initially being processed by a state or local agency, and coded as 0 otherwise.

Type of discrimination. Although the capacity of federal, state, and local agencies to handle Title VIII complaints and provide remedies is critical to our analysis, the characteristics of the complaints could also influence how they were resolved. It is possible, for instance, that some agencies are inclined to pursue claims of racial discrimination more vigorously than other forms of bias. Because complaints can be based on more than one type of discrimination, a dichotomous variable was created for each of the seven types of discrimination. This will lend insight into whether certain kinds of complaints were more apt to be favorably resolved than others. Even though a dichotomous variable was created for each type of discrimination, it was important to know that the categories were not mutually exclusive. For example, complainants could claim that they had been discriminated against only on the basis of race, or they could claim that they had suffered discrimination on the basis of race and familial status.[11] This has two consequences. First, the sum of the percentages presented in table 1 for each year exceeds 100 percent because one or more types of discrimination could be cited. Second, none of the variables drop out (the dummy variable trap) of the logistic regression that is conducted later in the analysis because the types of discrimination are not mutually exclusive.

Table 1 presents trends in the types of discrimination cited by complainants over time. Interestingly, complaints citing racial discrimination have consistently been the most common, yet the percentage of cases involving race has been slowly declining since 1989. In contrast, the percentage of cases based on disability steadily grew to nearly equal the percentage of complaints based on race in 2003.[12] Apparently the emphasis on discrimination against the disabled in the Fair Housing Amendments Act took some time to produce results, but ultimately had the effect of increasing awareness among those experiencing such discrimination. Another notable trend is that the percentage of cases involving discrimination on the basis of family status has steadily declined since 1989. Our analysis will go beyond these simple descriptive statistics to examine whether the probability of a case resulting in a positive outcome is dependent on the type of discrimination cited.

Issue. Like the type of discrimination, the issue involved may affect the resolution of fair housing complaints. Federal, state, and local agencies may be more sensitive, for example, to issues that occur most often. For the period from 1989 to 2004, the most common issue raised was terms and conditions, as shown in table 2. These complaints charged that different terms or conditions were illegally imposed on the sale or rental of housing. Refusal to rent has been a common issue raised in complaints as well, although it has been decreasing recently. Less common complaints have claimed a refusal to sell, false representation of the availability of housing, discriminatory advertising, discriminatory financing, or coercion. Another category was created that includes all other issues raised. Because a complaint may involve more than one issue, a dichotomous variable for each of the eight issues was included. Again, the dummy variable trap did not apply because the issues were not mutually exclusive.[13]

Table 2 Title VIII Complaints by Issue, 1989–2004

	Percent							
Year	Terms and Conditions	Refusal to Rent	Coercion	Advertising	Finance	Refusal to Sell	False Representation	Other
1989	51.4	42.5	4.4	4.5	3.4	7.4	4.1	6.8
1990	57.2	43.6	9.1	3.8	3	3	3.9	3.8
1991	56.8	43.8	11.8	4.7	3.4	2.6	4.1	3.5
1992	61	40.8	12.1	1.9	5.7	1.8	4.3	4.8
1993	62.1	36.2	16.7	3	7.3	2.4	4	8.1
1994	63	35.5	15.1	2.9	7.8	1.9	3.6	5.6
1995	63.7	39.2	13.6	3.3	4	2.2	3.2	7.4
1996	62.9	36.4	13.5	4.1	3.5	2.5	2.6	10.5
1997	64	26.6	12	5.3	4.9	2.6	2.8	15.1
1998	59	23.8	16.8	7.1	4.3	3.7	3.1	21.9
1999	58.3	30.1	11.8	10.9	3.6	3	2.8	25.9
2000	57.7	28.2	12.7	9.3	4.8	3.9	2.6	25.4
2001	57	27.4	11.5	9.2	6.1	3.6	2	24.7
2002	53.8	25.5	12	6	5.9	3.7	2.5	30.4
2003	55.4	23.4	13.6	6.3	6.5	3.4	2.4	29.9
2004	57.9	23.8	12.6	5.9	6.3	3.9	2.5	28
Total	58.8	33.3	12.5	5.2	5.2	3.2	3.2	15.1

Segregated region. Some areas of the nation have traditionally been more racially segregated than others (Farley and Frey 1994; Massey and Denton 1993). The history of segregation in these areas may make it less likely that alleged victims of housing discrimination will receive favorable treatment, independent of the government agency that deals with their claim. Moreover, traditionally segregated areas may be less likely to have state and local agencies with substantially equivalent powers. If so, the proportion of cases in areas where segregation has been prevalent would be higher among cases handled by HUD, thus biasing the results in favor of state and local agencies. Therefore, a control variable that accounts for area was included. We coded an area as having a history of segregation based on a measurement developed by Farley and Frey (1992). Their index of dissimilarity gauges the degree of spatial separation between racial groups. According to Massey and Denton (1988, 601, 605), any metropolitan area with a score of greater than .60 has a "high" degree of spatial separation between the races. Hence, a case originating in a city located within a county that has a score of .60 or higher was coded as 1 under the segregated area variable, and all others were coded as 0.[14]

Pattern or practice. The Fair Housing Act authorizes the U.S. Department of Justice to initiate lawsuits against any person or group of persons engaged in a pattern or continuing practice of housing discrimination and in cases raising issues of "general public importance" (Schwemm 2009). Title VIII provides no definition of what constitutes a pattern or practice of discrimination, although complaints may be filed with HUD claiming that discriminatory acts are not simply sporadic or isolated in nature, but are part of a regular practice. When HUD has reason to believe that a pattern or practice of housing discrimination has occurred in complaints it has received, it may refer those complaints to the Justice Department for possible litigation. Charges of a pattern or practice have been rare, making up only 285 of the total 126,081 cases in the database. Still, given the complexity of these cases, their difficulty in reaching a pro-complainant outcome was controlled for by including a variable where a case was coded as 1 if the issue was pattern or practice and 0 otherwise.

Methods and Results

Because our dependent variable is a dichotomous one, where a case was coded as 1 if it resulted in a favorable administrative outcome and 0 otherwise, a logistic regression model was employed to compare the outcomes of federal, state, and local agencies. A fixed-effects approach was taken by including dummy variables for each year to control for yearly variation (Wooldridge 2002, 278–79). The base category is 1989. Table 3 displays the results for the years 1989 to 2004. The coefficients and their standard errors are presented, along with the effect that each independent variable has on the probability of a favorable outcome.[15] To address possible problems with heteroscedasticity, robust standard errors are reported. The findings reveal that states have been somewhat less apt to provide favorable outcomes. Title VIII complaints processed by HUD were 3 percent more likely to result in pro-complainant outcomes than those handled by state agencies, but the effect was not overwhelmingly large, and the results did not show that states are incapable of reaching favorable results. Importantly, the results further indicate that there was no statistical difference between HUD and local agencies in producing outcomes favorable to complainants. As expected, claims originally processed by subnational agencies but ultimately closed by HUD were less likely to result in positive outcomes than those handled exclusively by HUD or by state or local agencies.

Although table 3 generally indicates how likely federal, state, and local agencies have been to reach outcomes favoring complainants, it does not reflect any temporal fluctuations in the performance of agencies at each level. Table 4 shows how processing agency and type of case have affected the probability of a favorable administrative outcome over time by applying the model to each individual year.[16] While state agencies were less likely to attain a positive outcome in the initial analysis, the difference between the ability of HUD and state agencies to achieve such outcomes was not statistically different from zero in 10 of the 16 individual years. Still, states were less likely to generate favorable outcomes than HUD in seven of the years, and never outperformed HUD in any one year. The performance of local agencies has been much more varied in relation

Table 3 Relationship between Processing Agency and Probability of a Favorable Outcome, 1989–2004

Dependent Variable: Favorable Outcome	Coef (se)	Prchange
Responsibility		
State agency	–.139***	–.03
	(.016)	
Local agency	.001	—
	(.021)	
Returned	–.386***	–.08
	(.018)	
Discrimination Type		
Race	–.348***	–.07
	(.017)	
Disability	.023	—
	(.019)	
Family status	.477***	+.11
	(.018)	
Sex	–.254***	–.05
	(.020)	
Color	.119***	.03
	(.028)	
National origin	–.264***	–.06
	(.022)	
Religion	–.414***	–.08
	(.042)	
Issue		
Terms and conditions	–.057***	–.01
	(.015)	
Advertising	.374***	+.09
	(.027)	
Finance	.085*	+.02
	(.031)	
Refusal to rent	.053***	+.01
	(.016)	
Refusal to sell	–.284***	–.06
	(.039)	
Coercion	–.122***	–.03
	(.020)	
False representation	.064	—
	(.036)	
Other issues	.247***	+.06
	(.020)	
Segregated Region	–.018	—
	(.013)	
Pattern or Practice	1.899***	+.44
	(.149)	
Years^		
1990	.044	—
	(.036)	
1991	.089	—
	(.035)	
1992	.022	—
	(.035)	
1993	.093	—
	(.035)	
1994	.264***	+.06
	(.035)	
1995	.296***	+.07
	(.036)	
1996	.373***	+.09
	(.038)	
1997	.336***	+.08
	(.039)	
1998	.186***	+.04
	(.039)	
1999	.186	—
	(.039)	
2000	–.033	—
	(.039)	
2001	–.064	—
	(.039)	
2002	.010	—
	(.037)	
2003	.095	—
	(.037)	
2004	.802***	+.19
	(.035)	
Constant	–.697	
	(.034)	
N	125,381	
Wald Chi^2 (34)	5549.68	

* = p < .01; *** = p < .001.
Notes: Robust standard errors in parentheses; *prchange* indicates the probability of a favorable outcome if the independent variable increases from 0 to 1, all else being equal.
^ 1989 serves as the base year.

Dependent Variable:
0 = Administrative closure, no cause determination, and claims.
1 = Cause determination, conciliation, monetary relief, or housing relief.

to HUD. Table 3 reveals no statistically significant difference. Yet table 4 indicates that local agencies actually outperformed HUD in four years but were outperformed by the federal agency in four others. The difference was not statistically different in seven of the years. As a consequence, even though the initial analysis did not show a difference between local agencies and HUD, a variation did occur when the performance of each agency was examined year to year, demonstrating that local agencies have sometimes produced quite favorable outcomes in enforcing federal policy, although the results from year to year are somewhat volatile. Curiously, the local agency coefficients have negative signs in 1989 and in the mid- to late 1990s. In 1989, HUD was in the early stages of recertifying the substantial equivalency of state and local FHAP agencies, and in the mid- to late 1990s, HUD was more actively enforcing fair housing policy during the Bill Clinton administration (Lamb 2005, 190–98). This may explain why HUD was more likely than local agencies to reach favorable outcomes during those periods of time.

A separate look at each individual year reinforces the earlier finding that local agencies often reached favorable outcomes in Title VIII complaints relative to federal and state civil rights agencies. Local agencies, in particular, have generated pro-complainant outcomes with similar and sometimes greater regularity than HUD, while state agencies have lagged behind. The different level of favorable outcomes by state and local entities is intriguing, as both are given the same administrative guidelines by HUD, and both have substantially equivalent laws and enforcement mechanisms. Future research should investigate this finding. Although state and local entities are operating under substantially equivalent laws and enforcement mechanisms, different governmental actors are deciding how to implement national fair housing standards. This may

well relate to the proximity of local decision makers to discrimination and claims of discrimination. Compared to state civil rights officials, local FHAP officials should be more familiar with local history, conditions, and the likelihood of various types of discrimination occurring in that geographic area. This is attributable, of course, to the relative closeness of local agencies to their constituents compared to state agencies. These differences could impact decision making on the part of FHAP officials at different levels of government.

Conclusions

This research has examined trends in Title VIII housing discrimination complaints between 1989 and 2004, the responsive role of subnational governments in enforcing the Fair Housing Act during these years, and favorable administrative outcomes for complainants in fair housing enforcement by all three levels of government in the United States. Relying on a unique database from HUD, we reach two general conclusions. First, cooperative federalism is still at work in America. In this instance, a potentially contentious issue—fair housing—has been absorbed into the workings of intergovernmental relations through the adoption of sharing mechanisms. In fair housing enforcement, neither a national, state, nor local approach has dominated since the 1970s. From the late 1960s through the late 1970s, a creative federalism program essentially existed in fair housing enforcement, with HUD responsible for the vast majority of all Title VIII complaint processing. However, since the early 1980s, even though fair housing enforcement standards are still developed at the federal level, a successful cooperative federalism program has emerged, with FHAP financial assistance providing a strong incentive for state and local governments actively to assist in the enforcement of national legislation. During a period of state resurgence, administrative responsibilities and enforcement power have been shared between federal, state, and local governments where states and localities have passed housing discrimination laws substantially equivalent to Title VIII. The result is that state and local civil rights entities now function better and have handled more than 70 percent of all Title VIII complaints in recent years (HUD 2007, 46). In all, they have responded to federal oversight and direction, taken their enforcement responsibilities seriously, and assisted national fair housing enforcement in valuable ways.

Table 4 Relationship between Processing Agency and Probability of a Favorable Outcome for Individual Years, 1989–2004

Year	State Agency Logit Coef. (se)	Local Agency Logit Coef. (se)	N	Wald Chi² (19)
1989	–.394***	–.354***	7,060	504.22
	(.085)	(.107)		
1990	–.178	.189	7,670	387.91
	(.083)	(.095)		
1991	.037	.352***	9,358	438.78
	(.076)	(.092)		
1992	.034	.140	9,650	339.58
	(.074)	(.118)		
1993	.021	.282***	10,235	335.73
	(.063)	(.079)		
1994	.015	–.142	9,559	368.09
	(.056)	(.082)		
1995	–.089	–.142	7,802	322.57
	(.059)	(.082)		
1996	.017	–.070	6,197	264.59
	(.065)	(.087)		
1997	–.207*	–.320***	5,809	314.74
	(.070)	(.092)		
1998	–.174	–.360***	6,057	376.32
	(.068)	(.092)		
1999	–.365***	–.446***	6,338	381.25
	(.068)	(.093)		
2000	–.030	.183	6,924	220.45
	(.068)	(.087)		
2001	.012	.250*	7,036	305.33
	(.068)	(.086)		
2002	–.061	.417***	7,881	296.59
	(.063)	(.079)		
2003	–.241***	.139	8,255	313.14
	(.060)	(.077)		
2004	–.389***	–.048	9,521	425.87
	(.054)	(.066)		

* = $p < .01$; *** = $p < .001$

Notes: Robust standard errors in parentheses; coefficients for all other independent variables are omitted for the sake of clarity.

Dependent Variable:
0 = Administrative closure, no cause determination, and claims
1 = Cause determination, conciliation, monetary relief, or housing relief

Second, the federal government's enforcement of national policy does not necessarily lead to the most favorable administrative outcomes for complainants—even in civil rights, where state and local governments have had poor records in the past. When compared to state agencies, HUD-processed Title VIII complaints were more likely to result in a favorable outcome for complainants. However, this was not true when HUD's outcomes were compared to those of local civil rights agencies. Local agencies were more likely to reach a pro-complainant result than state agencies in fair housing enforcement and, in some years, were more likely to reach a favorable outcome than HUD as well. When the data from 1989 through 2004 were combined, the difference between local agencies and HUD was not statistically different from zero. Looking at each individual year, however, local agencies were more likely to produce outcomes favorable to complainants in 1991, 1993, 2001, and 2002. State agencies, on the other hand, lagged behind HUD and local agencies in generating favorable administrative outcomes, although the 3 percent difference was not overly large and the difference between the states and HUD was not statistically different from zero in 11 of the 16 years. State civil rights agencies were never more likely to reach pro-complainant outcomes than either HUD or local agencies in any given year. While the differences may not be large, state agencies produced less favorable results than either their federal or local counterparts. This highlights the importance of the substantial equivalency requirement in the ability of cooperative federalism to function in this—and potentially

. . . the federal government's enforcement of national policy does not necessarily lead to the most favorable administrative outcomes for complainants—even in civil rights, where state and local governments have had poor records in the past.

other—policy areas. In other words, if the substantial equivalency requirement can effectively motivate state and local governments to enforce federal civil rights policy, it may also promote cooperative federalism in other areas.

Overall, our research focuses on the enforcement of national fair housing policy by federal, state, and local civil rights agencies. Importantly, we show that state and local agencies are capable of successfully enforcing national legislation in a policy area—civil rights—where they previously performed poorly. Other studies show that state governments have successfully assisted the Environmental Protection Agency in enforcing national environmental policy (Kraft and Scheberle 1998; Rabe 2006; Scheberle 2004, 2005; Zimmerman 2005). These findings, as examples of productive partnerships in federalism, are important for the administration of public policy. Congress might view them as possible models in the future where intergovernmental partnerships are desirable to achieve other national policy goals.

Acknowledgments

We thank the Baldy Center for Law and Social Policy, University at Buffalo, State University of New York, for supporting this research. We are also grateful to Michelle Benson, Marc Davies, Joshua Dyck, Mark Hurwitz, Gregg Johnson, Barry Rabe, Donald Rosenthal, Denise Scheberle, and three anonymous reviewers for their valuable comments.

Notes

1. Of course, the literature on federalism theory is much more expansive than is suggested by this brief discussion; see, e.g., Bradford and Oates (1971), Chubb (1985), Oates (1977), and Riker (1964). For federalism theory as part of the larger literature on intergovernmental relations, see O'Toole (2007) and Walker (2000).
2. Other similarities exist between the enforcement of national fair housing policy and national environmental policy. Compare Rabe (2006) and Rosenbaum (2008) to U.S. Department of Housing and Urban Development (1996, 2007, 2008). For instance, federal financial incentives are provided in both policy realms for the enforcement of federal laws, program administration, staff training, and technical assistance. Federal aid likewise requires a demonstration of state capabilities in both policy arenas. Differences in the FHAP program and environmental programs are more obvious concerning state capabilities, however. Some states have increasingly complained over the years that federal environmental capabilities standards are inappropriate or unwarranted, while such objections appear less evident under FHAP.
3. Throughout the twentieth century, federal civil rights legislation outlawed discrimination based on both race and color. The difference between the two concepts is not always clear, however, and the courts have often treated them synonymously.
4. Three years following the Reagan administration, 120 state and local agencies were certified for FHAP (HUD 1992, 4). However, state and local agencies had to be recertified by HUD under the more demanding standards of the Fair Housing Amendments Act. Recertification was slow, but 101 FHAP agencies had qualified by 2004 (HUD 2005b). As of March 2008, 107 FHAP agencies operated in 38 states and the District of Columbia. At that time, the 12 states not certified for the FHAP program were Alabama, Alaska, Idaho, Mississippi, Montana, Nevada, New Hampshire, New Mexico, Oregon, South Dakota, Wisconsin, and Wyoming (HUD 2008, 45–47).
5. State agencies processed 40 percent of all Title VIII complaints between 1989 and 2004; local agencies processed 13 percent. These percentages increased over time. Between 1995 and 2004, state agencies handled more than 50 percent of Title VIII complaints, whereas local agencies processed more than 16 percent (HUD 2005a).
6. While HUD refers to these outcomes as "claims," we adopt the term "irrelevant claims" to distinguish them from actual claims of discrimination.
7. The HUD data set actually contains some complaints filed in 1988, but they were dropped from the analysis because of the extremely small number of complaints in 1988 compared to other years. While 700 complaints were filed with HUD in 1988, that number surged to 7,060 in 1989. Furthermore, those 700 complaints do not appear to constitute a representative sample of the remainder of the population of cases in terms of processing agency, types of discrimination, and issues involved. The small number of cases in 1988 is attributable to the fact that the Fair Housing Amendments Act was passed and went into effect in the fall of that year, and a lag period occurred before the new law could be fully implemented.
8. A list of all variables contained in the database is available upon request.
9. A distinction should also be made between our definition of administrative outcomes favorable to the complainant and "just" outcomes. Not every claim of discrimination is in fact true, and it may be that sometimes discrimination is found and the complainant receives a positive outcome when no discrimination actually occurred. A determination of a just outcome cannot be made in this article, though, without more detailed information about every case than we have available.
10. Examples include cases in which HUD takes responsibility for a Title VIII complaint because the 100-day limit imposed on FHAP agencies has passed, or those in which a state or local agency has been decertified before it can close a case.
11. From 1989 through 2004, 77.4 percent of all Title VIII complaints cited one type of discrimination, 17.3 percent cited two types, 3.6 percent cited three types, 0.7 percent cited four types, 0.1 percent cited five types, 0.02 percent cited six types, and 0.00 percent cited seven types. Percentages do not add up exactly to 100 percent because of rounding.
12. HUD (2008, 50) has reported that disability complaints equaled those based on race in fiscal year 2006 and actually outnumbered them in fiscal year 2005 (38 percent to 36 percent) and in fiscal year 2007 (42 percent to 36 percent).
13. From 1989 to 2004, 70.3 percent of all Title VIII complaints cited one issue, 23.4 percent cited two issues, 5.8 percent cited three issues, 0.5 percent cited four issues, 0.04 percent cited five issues, 0.01 percent cited six issues, and 0.00 percent cited seven issues. Percentages do not add up exactly to 100 percent because of rounding.
14. A list of counties accounted for by the segregated area variable is available upon request.
15. This effect, or discrete change, is calculated by taking the difference in the predicted value of a favorable outcome when the given independent variable is at its minimum value from the predicted value when it is at its maximum while all other independent variables are held at their means (Long and Freese 2005).
16. For purposes of a simplified presentation, only the coefficients for the state agency and local agency variables are listed in table 4. The entire model is available upon request.

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