



# Governing to Build Power

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## I. Introduction

If and when progressives secure electoral victories in 2020 at the federal, state, or local levels, the next challenge will be to approach the task of governing. A progressive governing agenda will have to address the urgent needs of our communities.

But we will also have to find ways to build greater progressive impact through the strategic use of governing power so that policy wins are more durable, and our communities have greater ability to prevail in future policy battles. For too long, progressives have been fighting for policies to meet the urgent needs of working families, and particularly of Black and brown communities, while operating on fundamentally hostile terrain: seeking expanded safety nets derided by an anti-government ideology and conservative judiciary; advancing a vision of equity in the face of persisting structural racism and institutions built to serve wealthy interests and turn a blind eye to the needs of Black and brown communities. We are operating in a democracy in name only, where institutions enable the hoarding of political power and wealth among wealthier and whiter constituencies. Any governing agenda will have to grapple with this reality.

When progressives gain control of government, a familiar battle ensues over policy priorities—which issues should move first. But what is often overlooked in these debates is the issue of power. A focus on

power prompts a different question: not “what issues should we move first,” but rather “what levers do we embed in any legislative agenda to move power toward working families and Black and brown communities in particular?”

In past moments of transformative progressive change, this attention to underlying levers of shifting power has been crucial to make progressive wins outlast a single election or administration. The Civil Rights Movement embedded its vision of equity and inclusion through the creation of new forms of federal power charged with enforcing voting rights and civil rights: the Voting Rights Act (VRA) and Civil Rights Act created a federal bureaucracy that, for all its limitations, successfully advanced civil rights ideals—and created a space for movement actors to have greater voice, power, and influence by bringing civil rights enforcement claims through measures like VRA preclearance, or Title VI. Similarly, the New Deal created policies that outlasted the New Deal coalition itself by structurally limiting corporate power through antitrust measures and expanding the power of labor through the Wagner Act.

Progressives must seize governing opportunities in 2021 as a way to deconcentrate power and shift it toward working families. This means thinking about policy fights through a focus on levers of power, not the typical focus on issues. **Every policy fight is an opportunity to shift power.**

This memo outlines some strategies drawn from history and from recent successes for how policymaking can be approached with a power-building lens.

## II. Defining Power

We can think of power as operating on 4 levels:<sup>1</sup>

1. Individual power
2. The power of organized resources—money, people, votes, information
3. Structural power—how background rules stack the deck in favor of (or against) particular outcomes or coalitions
4. Ideological/narrative power—how background norms, culture, values, and worldviews stack the deck in favor of (or against) particular outcomes or coalitions

Most policy disputes operate at Level 2: competing factions organize resources (money, people, votes, information) to drive policy wins. As

we all know, one of the key reasons the Right wing has been so successful in hoarding wealth and power has been their attention to Levels 3 and 4. Policies like “right to work” laws, financial deregulation, voter suppression, and Citizens’ United were structural power moves that systematically undercut the political strength of working families and Black and brown communities in particular, while concentrating greater wealth and influence at the top. The decades-long investment in an ideas infrastructure that encompassed Washington think tanks, media nodes like Fox News, the ideological capture of the courts, and a wider cultural narrative strategy embedded ideas into the political culture of individualism, free markets, and hostility to racial equity, economic justice, and government intervention, thus establishing a “conventional wisdom” that makes progressive ideas harder to advance.

If and when progressives secure electoral victories in 2020, we will have a brief window of governing power. It will be imperative that progressives use that moment not just to roll back these power grabs of the Right, but also to affirmatively build more Level 3 structural power and Level 4 narrative power for our communities, making policy successes more durable, winning the larger narrative war of ideas, and expanding our ability to gain and hold power and make policy in the future.

### III. Power-Shifting Policy Design Strategies

Progressives have historically leveraged policymaking to shift structural power and change the wider ideological context. From the fight against industrialization in the New Deal era to the Civil Rights Movement to more recent experiments, we can identify several key strategies for how policymaking can build longer-term power for our communities:

- A. Policies can shift the background balance of power among rival constituencies and organized interest groups.
- B. Policies can create constituencies, developing greater public durability and shifting wider narratives.
- C. Policies can create (or dismantle) governing institutions that systematically tilt the policy environment in one direction.
- D. Policies can embed mechanisms for expanding leverage, allowing communities to directly challenge or share in policymaking decisions.

## A. *Shift the background balance of power*

Disparities in political power often stem from gaps in how different constituencies are able to marshal resources needed to exercise political influence—in particular *money, people, votes, and information*.

The power-shifting strategies of the Right work by driving more resources to the Right, and undercutting progressive groups' access to those same resources. For instance, “right to work” laws undermine the capacity of workers to organize effectively; empirically, such laws result in a large decrease in Democratic vote shares as well as an increase in business-friendly policies at the state level. Similarly, undoing economic regulations or campaign finance rules helps business interests hoard and deploy greater sums of money to exercise influence. The battles over voter suppression and ballot access are straightforward attacks on progressive power, couched in disingenuous rhetoric of protecting against voter fraud. The control of information represents another hidden power-shifting strategy on the Right: by weaponizing information and control over media, whether through Facebook or Fox, the Right is able to permanently skew the public conversation in ways that immunize conservatives from public opinion and backlash, while preventing more progressive ideas from being converted into policy.

A power-shifting approach to policy for progressives would need to alter the background distribution of these key resources, thereby shifting power.

One set of policies would aim to break up concentrations of power among interest groups and communities. For example, structural limits on corporate power—through **antitrust policies**, or efforts to **break up financial firms**—have historically been advanced not just on economic equity grounds, but also on the grounds that these policies limit the profits and resources that these firms can leverage to exercise political influence.

Other policies would work by expanding resources for constituencies we seek to empower. **Voting rights** represent a fundamental protection to assure the democratic people power of grassroots constituencies. **Labor law reform** helps directly resource worker organizing. Explicit recognition of the right to organize makes it easier for constituencies to build collective power. **Collective bargaining** can also be expanded not just in a worker context through labor law reform, but also through other venues, such as proposals to legislate the right for tenants to bargain collectively against landlords.

Other policies can drive more financial resources through membership-based organizations. In the past, federal programs have often

included **financing streams** through which community organizing could be resourced: the Affordable Care Act (ACA) included some provisions of this sort, and the War on Poverty's use of community action programs provided revenue streams for grassroots organizing groups.

**Information** is another important background resource that is often overlooked. One of the main sources of Right-wing ideological and structural power today is their dominance of a modern media ecosystem that is built and hard-wired to facilitate white supremacy, misinformation, and concentrating economic power. But we have historically used **media law** to prevent concentrations of power over the communications infrastructure and the public sphere. A key focus of early 20th-century antitrust activists, for example, was the telegraph and the emerging television and radio infrastructure, preventing monopolistic control of information that could be weaponized for political ends. In the civil rights movement, racial justice advocates brought strategic challenges to local radio and TV relicensing petitions on grounds that these stations were not providing an equal platform to Black voices. Through strategic organizing and with the support of a favorable D.C. Circuit court, the movement was able to transform a recalcitrant Federal Communications Commission to push for integration of the airwaves as a condition of continued federal licensing that stations needed to exist.<sup>2</sup> Long-term progressive power is likely to require structural change to our current media landscape dominated by online disinformation and propagandistic conservative cable and radio media.

### *B. Create constituencies*

In the 1990s and 2000s, one of the dominant policymaking strategies was to “submerge” economic benefits by making them automatic, yet invisible. Think of the preference among mainstream liberal policymakers for tax credits to incentivize people to enroll in benefits (like health care or child care), or tax credits that kick in when you file your taxes at the end of the year. The conventional wisdom was that these policies would be more efficient, reducing administrative costs and inducing more people to participate.

But this approach has it exactly backwards. Viewed through a political lens, it is better for **public benefits to be visible, universal, well-functioning, and race-forward**.<sup>3</sup> Consider the experience of Social Security: one of the main reasons Social Security is so durable is because it has a built-in constituency of beneficiaries who can be organized against efforts to cut it. This is also a big reason why progressives were able to defeat the ACA rollback in 2017-18: removing a visible, salient benefit

is politically much harder than winning that benefit in the first place. The reverse is also true. Public benefits can produce negative feedback where support for the benefit decreases the more benefit policies are on the defensive, the less well they work, or the more means-tested they are. And race remains a key fault line that the Right weaponizes to undercut support for public benefits. Advancing public benefits without centering race in the narrative or ensuring racial equity is baked into the provision and implementation of the benefit will be self-defeating.

### *C. Create (or dismantle) public enforcement regimes*

Another way progressive movements can expand power and create more durable gains is by creating (or dismantling) governmental institutions that enforce policies we favor (or disfavor). By embedding power in institutions, we can make particular policy wins more long-lasting.

Consider the legacy of the Civil Rights Movement. We now face a moment where landmark civil and voting rights regimes are being gutted: the Civil Rights Act and Voting Rights Act have both been undermined by the Supreme Court, while the Trump administration has accelerated efforts to co-opt the Department of Justice and undermine civil rights enforcement offices. But at the same time, it is important to remember that the creation of the Civil Rights Act and VRA and the institutional apparatus of civil rights enforcement effectively institutionalized the policy vision of the Civil Rights Movement, projecting that vision forward for over 50 years—long outlasting the on-the-ground mobilization itself. By **creating a new bureaucracy** stacked with civil servants committed to the long-term mission of civil rights, armed with state power to enforce rules and to create new rules as times change, the Civil Rights Movement effected a structural shift in power, creating a playing field where social justice advocates had more allies and tools to advance our ideals in the years that followed.

This same dynamic explains the recent battles over offices like the Consumer Financial Protection Bureau (CFPB). The creation of the CFPB in 2010 represented a structural shift in power away from the weak, fragmented, and captured financial regulatory apparatus to a new, zealous, and committed agency. It is one reason why the Trump administration has been so laser-focused on gutting the CFPB (just as it has dismantled other civil rights and economic equity-enforcing offices from the DOJ to the Office of Environmental Justice).

The lesson for progressives is that when we secure enough governing power to pass legislation and remake governmental authorities, it is

critical that we create institutions that can enforce our policy ideas and values in the years to come. It is also important that, like the Right, we look to dismantle those institutions that are bound up in the perpetuation of white supremacy and economic inequity (for example, contemporary calls to abolish ICE or to radically reform immigration and policing institutions). We also must look to the new kinds of administrative institutions that we need to create, to centralize more authority and power that is committed to enforcing progressive policy goals. For instance, we might look at new forms of civil rights enforcement powers as we rebuild a post-Trump Department of Justice, or look to create more effective and powerful institutions charged with enforcing climate equity.

We could view debates over the future of the courts in a similar fashion. By colonizing the judiciary, the Right has defused the threat of liberal courts as a source of progressive reformist power. Going forward, progressives will have to consider different strategies for overcoming a reactionary judiciary. Judicial appointments, court expansion, or legislation immunizing some policies from judicial review are all strategies for moving power away from a hostile enforcement regime (the conservative courts) to a more hospitable one.

#### *D. Create more leverage for communities in the day-to-day process of policymaking*

A fourth way background rules can shift the balance of power is by creating additional points of leverage or influence in the policymaking process. On the Right, little-noticed policies like the Congressional Review Act or the imposition of regulatory cost-benefit analysis have functioned as an additional leverage point where conservative politicians and interest groups can plug in to the policymaking process to override a rule, or to influence the design of the policy. Progressives have a history of creating policies that institutionalize points of leverage for affected communities. That history can be recaptured in a 2021 governing moment.

First, policy designs can directly empower representatives of frontline communities through **decision-making boards and commissions**. For example, the New Deal experimented widely with representative decision-making commissions that included members of affected communities, particularly labor, in governing everything from the Tennessee Valley Authority to the drafting of federal regulations. At the state level, many states already have laws allowing for worker or community

voice in shaping regulations. In New York state, for instance, the Labor Commissioner can commission a wage board that includes representatives from industry, employees, and the general public to set wages for a sector, conduct hearings, issue subpoenas, and conduct investigations.<sup>4</sup> The 1964 Economic Opportunity Act (EOA) similarly experimented with policies that created leverage for advocates pushing for racial and economic justice at the city level, involving community organizations in implementing poverty-reduction programs such as training centers, legal services clinics, and constituting “community action agencies” that required representation from affected communities and had the power to shape urban planning decisions. These policies not only provided a revenue stream for community organizing; they also disrupted urban power relations. By creating institutionalized sources of political power and leverage, the community action approach inspired many local community organizations to channel funds toward expanding membership, providing services, and mobilizing constituencies as a political force in defense of poverty-reducing policies.<sup>5</sup> As some recent historical accounts suggest, the collapse of the War on Poverty owes much to a backlash against this community empowerment—in a sense, proving just how potent these new institutional structures could be in shifting the balance of power at the local level. As community action programs catalyzed the mobilization of grassroots constituencies to advocate for more accountable and equitable economic policies, the backlash from local power elites—from the political establishment to business interests—led to systematic efforts to defund and dismantle community action.<sup>6</sup>

In addition to establishing decision-making boards that include representatives of affected communities, policies can also **deputize community groups to monitor and enforce regulations**—creating another form of leverage and power.

In the federal regulatory context, the Community Reinvestment Act (CRA) of 1977 offers an example. While the substantive focus of the CRA is to address racial disparities in credit access and lending, the most important innovation of the CRA was its system of engaging community groups in its enforcement regime. Three important design features of the CRA process enabled this countervailing power—features that can be replicated in other regulatory policy designs. First, the CRA process expanded the ability of citizens to define and then monitor outcomes. The CRA proposed flexible standards for judging whether a bank met local credit needs without specifying what these needs might



be. This created space for community groups to participate in defining local needs, and evaluating whether those needs were met.<sup>7</sup> Second, the agency collected and made public data on bank lending that helped citizens conduct these evaluations. Third, the CRA process provided citizens with leverage on banks by empowering them to request agency examinations for banks that community groups felt were falling short of local needs. These examinations had real consequences, as banks needed a good CRA score to gain regulatory approval for mergers—giving banks an incentive to engage with those groups. The result was that in cities with well-organized community groups, the CRA institutionalized some degree of countervailing power, which often led to banks pro-actively engage those groups in direct negotiations over alternative lending practices and projects.

Medicare offers another compelling example. A big reason why Medicare remained a universal entitlement that avoided the racialized and fragmented experience of Medicaid has to do with how pressure from movement organizations and bureaucratic innovation by allied policymakers together shifted power and altered the institutionalization of Medicare.<sup>8</sup> In the early days of Medicare, there was a very real threat that the program would be administered in racially discriminatory and exclusionary ways. The health system emerging in the mid-20th century reflected the legacy of racial exclusion and hierarchy in the Jim Crow South, marked by segregated and geographically-concentrated hospital systems, and driving vast racial disparities in health outcomes and mortality rates. Civil Rights Movement groups like the NAACP, SCLC, SNCC, and CORE made the integration of hospitals and the health care system a focal point—taking the lead from Black health professionals who led these campaigns. Pressure from civil rights groups led to a major shift in leadership and culture in the federal Health, Education and Welfare department. By December 1965, the agency issued a new internal memo that declared its mission to include the compliance and enforcement of civil rights goals, through the administering of Medicare funding for hospital systems. The Agency created an Office of Equal Health Opportunity in February 1966 to enforce Title VI compliance for any hospital receiving Medicare payments. This new office in turn hired teams of investigators, coordinating with civil rights groups to train them and to identify hospitals that might be violating civil rights requirements.

## IV. Implications

Many of us have spent a lot of time thinking through questions of power and policymaking. As we enter what might be a governing moment in 2021—whether at the federal, state, or local level—we need to seize the opportunity to increase the power for Black and brown communities and for working families so that our policy wins are more durable, and our future policy fights more winnable. This memo outlined 4 strategies for using policymaking to shift structural power.

The first implication of this account is that **these strategies can be implemented at any level of government, and in context of almost any substantive area of policy.** We should seize the opportunity provided by emerging policy fights to bake in power-shifts wherever possible. A power-shifting approach to the 2008 financial crisis, for example, would look very different from what progressives passed in 2010. Instead of bailing out the banks and ignoring the devastation of wealth in Black and brown communities, a power-shifting approach would have prioritized slashing the power of financial firms by breaking up the banks, emphasizing the wider narrative fight by leaning into prosecutions and naming of white collar villains, and embedding direct leverage and power for affected communities in the decision-making around allocating federal stimulus dollars. Similarly, should we succeed in making a big legislative push on the climate crisis, it will be critical that such a bill also dismantle the concentrated economic power of fossil fuel corporations and financial firms that bankroll the climate crisis, while looking for ways to institutionalize a commitment to racial equity and to empowering frontline communities in climate policymaking.

A second key implication of this approach to governing is that **we succeed when we combine grassroots pressure with strategically-positioned allies within the legislative, executive, and judicial branches.** Both are needed to embed power-shifting policies and institutions. This underscores the importance of movement advocacy around personnel decisions and appointments: finding people who are credible for roles not just at the cabinet level but crucially in the sub-cabinet and staffer level, credentialing them, and advancing them for appointment. It also means being clear about what kinds of appointees we need to prevent—an example is in the recent push to reject corporate lawyers for future appointment to the judiciary.

## Endnotes

1. See for example Archon Fung, “Four Levels of Power: A Conception to Enable Liberation,” *Journal of Political Philosophy* 28:2 (2020)
2. See, e.g., Sidney Shapiro, “United Church of Christ v. FCC: Private Attorneys General and the Rule of Law,” *Administrative Law Review*, Wake Forest University, 2006, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=910930](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=910930).
3. There is now an extensive political science literature on the particulars of policy feedback and how to design benefits to expand, rather than lose, political support over time. See, e.g., Suzanne Mettler, *The Submerged State* (University of Chicago Press, 2011); Jamila Michener, “Policy Feedback in a Racialized Polity,” *Policy Studies Journal* 47:2 (2019).
4. “New York Department of Labor Wage Board for Fast-Food Workers,” National Employment Law Project, May 2015, <http://www.nelp.org/content/uploads/Fact-Sheet-New-York-Labor-Department-Fast-Food-Wage-Board.pdf>; see NY Labor Law § 653 (1) (2017), <http://codes.findlaw.com/ny/labor-law/lab-sect-653.html>.
5. See e.g. Tara J. Melish, “Maximum Feasible Participation of the Poor: New Governance, New Accountability, and a 21st Century War on the Sources of Poverty,” *13 Yale Hum. Rts. & Dev. L.J.*(2010), <https://digitalcommons.law.yale.edu/yhrdlj/vol13/iss1/1>; and Noel Cazaneve, *Impossible Democracy: The Unlikely Success of the War on Poverty Community Action Programs* (Albany: State University of New York Press, 2007).
6. See generally Annelise Orleck and Lisa Hazirjian eds., *The War on Poverty: A New Grassroots History, 1940-1980* (Athens, GA: University of Georgia Press, 2011).
7. Michael Barr, “Credit where it counts: The Community Reinvestment Act and its critics,” *NYU L. Rev.* 80 (2005), at 183-6; Raymond Brescia, “Part of the Disease or Part of the Cure: The Financial Crisis and the Community Reinvestment Act,” *60 S.C. L. Rev.* 618 (2008), at 635-6.
8. David Barton Smith, *The Power to Heal: Civil Rights, Medicare, and the Struggle to Transform America’s Health Care System* (Nashville: Vanderbilt University Press, 2016); see also Vann R. Newkirk, “The Fight for Health Care Has Always Been About Civil Rights,” *The Atlantic*, June 27, 2017, <https://www.theatlantic.com/politics/archive/2017/06/the-fight-for-health-care-is-really-all-about-civil-rights/531855/>.



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