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How HR Created Affirmative Action

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While civil rights activists fought for equality in the streets and politicians passed formal legislation in Congress, equal opportunity policies were the product of a revolution from within American corporations waged by personnel managers. The central thesis of Frank Dobbin's excellent historical analysis of the design and implementation of equal opportunity measures in American firms is that personnel managers were the unsung heroes of America's civil rights history. It was personnel managers—not judges, activists, or elected officials—who designed policies and programs that since the 1960s have radically redesigned how firms recruit, hire, and promote workers. But personnel managers did not merely design policies: They also constructed the meaning of equal opportunity that continues to shape how Americans think about equality in the workplace. Dobbin writes that one outcome of the rise of equal opportunity programs has been "an expanded sense of workplace fairness" among American workers (102). Why were personnel managers able to impact corporate practice in such far-reaching and lasting ways? Dobbin argues that personnel managers' influence on policy and practice was made possible by three key factors. First, civil rights legislation—ranging from Kennedy's 1961 affirmative action degree to the Civil Rights Act in 1964 and beyond—was written in bold but vague language. As Dobbin writes, such regulations "outlawed discrimination without saying what it was" (4). In the context of weak and fragmented government enforcement, ambiguity in the law allowed firms generally and personnel managers specifically to design compliance from within. Dobbin argues that this is the "paradox" of America's weak state, namely that fragmented enforcement with potential judicial and administrative enforcement powers that was spread across multiple branches at the local, state, and federal levels created uncertainty among corporate leaders that motivated them to aggressively anticipate how laws and legal interpretations might evolve. This uncertainly led to internal efforts to avoid legal liability through expanded—even anticipatory—compliance measures.

Personnel managers' jurisdiction over equal opportunity policy and practice was also enabled by incentives of the personnel profession itself. During a period when traditional duties of industrial union management were waning, personnel managers sought to fortify the value of their profession to corporate leaders. By promoting compliance measures that would protect firms from legal liability, personnel managers were able to use equal opportunity programs to solidify and expand their professional grasp on corporate practice. Finally, because personnel managers were able to advance equal opportunity as a bureaucratic remedy to potential legal liability and regulation, they were able to usurp any potential authority of corporate lawyers over compliance. Lawyers—unlike personnel managers—were hesitant to promote compliance measures that courts had not yet mandated; personnel managers successfully argued that compliance could and should provide a vaccine against any current or future legal regulations. And, according to Dobbin, personnel managers were right: Courts repeatedly translated dominant compliance measures into law. Dobbin writes that "what personnel made popular gradually became lawful" (5). Thus by appropriating equal opportunity compliance, personnel managers were able to solidify their profession's utility to corporate decision-makers and thereby influence corporate practice and, eventually, law.

The book supports these arguments with a stunning array of data collected over the course of Dobbin's highly productive career, including several waves of surveys of corporate practices and programs as well as in-depth interviews with personnel managers. These data allow Dobbin to demonstrate quantitatively as well as qualitatively how and why American firms responded to legal advances and varied regulatory environments in the particular ways that they did. These data allow Dobbin to trace the "diffusion of innovations" across a variety of firms and over several decades. He buttresses these data with analyses of a variety of secondary sources, including articles from management journals and management press, surveys conducted by management groups, personnel reports, and oral histories. Taken together, these data allow Dobbin to meticulously trace the institutionalization of

Frank Dobbin. *Inventing Equal Opportunity.* Princeton, NJ: Princeton University Press, 2009.

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corporate equal opportunity policies and programs from the early 1960s through the 1990s.

The story of the invention of equal opportunity in American firms begins with Kennedy's 1961 decree mandating that all firms seeking contracts with the U.S. government take "affirmative action" to eliminate discrimination in employment. While the decree required all bidding contractors to submit evidence of compliance via a "Compliance Report," nothing in the decree specified what compliance would look like. In response, personnel experts at several of the largest government contractors, beginning with Lockheed's Marietta Georgia plant, spearheaded new equality measures. These measures included contract clauses prohibiting racial discrimination, new recruitment programs targeted at inner-city high schools and historically black colleges, and the introduction of new training programs aimed at blacks (and, eventually, women).

A subcommittee called Plans for Progress emerged out of Kennedy's President's Committee on Equal Employment Opportunity, which had been charged with overseeing the enforcement of the decree. Plans for Programs comprised several large government contractors and aimed to elicit voluntary compliance from among large federal contractors; Within a year of its organization, 85 leading government contractors had signed on. According to Dobbin, Plans for Progress "became the breeding ground for affirmative action policies" (33), including progressive recruitment measures modeled on Lockheed's example. Thus at time of the passage of the Civil Rights Act in 1964 and the formation of the Equal Employment Commission, personnel experts at many large companies were already committed to implementing policies aimed at ending discrimination, defined as the refusal to consider minorities and women for jobs. And, like Kennedy's decree before it, Title VII of the Civil Rights Act used bold language to outlaw discrimination but provided little guidance on how firms' compliance would be measured or evaluated. Thus, once again designing compliance was left to personnel managers within firms.

Importantly, however, personnel experts did not invent equal opportunity compliance measures out of whole cloth. Rather, they drew heavily from their industrial labor relations toolkit from the 1930s. For example, they modeled antidiscrimination clauses based on race on similar clauses prohibiting discrimination against union members and activists. And rather than inventing new recruitment and training programs to address the needs of blacks and women, personnel managers simply extended existing recruitment and training programs from white men to blacks and women. In doing so, personnel managers at leading firms were able to expand their role in the firm, disseminate a particular brand of equal opportunity compliance across firms as smaller firms mimicked these practices, and influence federal regulation as federal agencies—including the EEOC—endorsed the compliance practices of leading firms.

Yet another revolution in personnel practices emerged in the 1970s, as federal regulation and enforcement of Title VII were expanded and increasingly targeted nonblatant forms of discrimination, including apparently racially neutral practices. In particular, the expansion of the EEOC's enforcement power and the Supreme Court's 1971 "disparate impact" decision in *Griggs vs. Duke Power Company* created growing uncertainty and anxiety among corporate leaders regarding what constituted legal compliance. Enter personnel managers who responded with a new compliance regime that they argued would provide evidence of employers' "good faith" efforts at complying with Title VII. The new compliance measures took three forms. First, in response to the growing ambiguity of the law, personnel experts successfully argued that their ability to track legal innovations and implement appropriate response measures was vital to protecting corporations from litigation. Thus was born the modern equal opportunity office, which was charged with monitoring firms' compliance with employment law as well as tracking and anticipating court decisions on issues relevant to equal opportunity.

Second, personnel managers convinced decision-makers of the necessity of setting goals and tracking progress through performance evaluations. By holding managers accountable via formal performance evaluations, personnel experts argued, firms could inoculate themselves against liability. Dobbin notes that such evaluations were widespread by the 1990s but that leading firms implemented this practice as early as the late 1970s. Finally, the new compliance regime included grievance procedures for workers that were modeled on the union grievance process. The purpose of these procedures, argued personnel managers, was to catch discrimination complaints before they reached the courts. Dobbin's central argument is that in the absence of concrete federal compliance requirements, personnel experts were able to seize control of compliance practices yet again, thereby proving highly adaptive to the changing regulatory environment. In doing so they shaped equal opportunity policy as well as law in lasting ways and once again solidified their profession's value to corporate decision-makers.

The result of this adaptive process, according to Dobbin, was a system in which the primary tools for fighting bias and discrimination in the American workplace became an expanded corporate bureaucracy that included highly formalized hiring, wage-setting, and promotion programs designed and overseen by personnel managers. In the evolving regulatory environment, personnel experts "championed every tool in their bureaucratic arsenal as an equal opportunity measure" including validated job tests, job descriptions, job postings, job and salary classifications, job ladders, and performance evaluations (130).

Yet another paradigm shift in equal opportunity enforcement occurred after the election of Ronald Reagan in 1981. Reagan championed deregulation and was adamantly critical of affirmative action, among many other regulations

of business practices. Indeed, in his presidential campaign, he specifically targeted equal opportunity policies, vowing to end "bureaucratic regulations which rely on quotas, ratios, and numerical requirements" (136). Reagan's deregulation efforts and his attack on affirmative action in particular represented a threat to the personnel profession's hold on corporate practices. If corporations were no longer facing federal enforcement of equal opportunity, then corporate leaders might come to view the costs of personnel programs and equal opportunity offices as unnecessary. Personnel experts responded by rebranding programs and practices heralded under the "equal opportunity" banner as either "human resource management" broadly defined or as "diversity management." Thus personnel experts adapted to the new regulatory environment by emphasizing the business case for human resource and diversity management and downplaying the legal protections these policies would provide to firms. According to Dobbin, "[e]qual opportunity experts seemed to be under attack, but they turned the challenge to their advantage, popularizing a host of new programs under a new rhetoric linking diversity to efficiency" (134–135).

Personnel experts provided two rationales for diversity management centered not on equality or legal compliance but on efficiency and productivity. First, in order to recruit the most skilled and talented workers, employers should manage diversity strategically. Second, a more diverse workforce would increase creativity and productivity for an increasingly diverse customer base. The rebranding of policies along these lines changed the emphasis of personnel practices from equal opportunity compliance to diversity management, leading to new diversity training workshops, diversity culture audits, mentoring and networking programs, and diversity task forces.

The deregulation revolution of the 1980s could have decimated the personnel profession as corporate leaders shut down equal opportunity functions no longer deemed critical. However, according to Dobbin, "the [personnel] profession was sustained by changing focus, and by claiming that its expertise was relevant to new problems" (159). A profession that had emerged in order to manage industrial labor relations and then adroitly readapted the tools of the trade to address equal opportunity compliance, now adapted once again, by refashioning its tools to address diversity management.

As the personnel profession adapted to survive in a changing legal and regulatory environment, so too did the demographics of the profession evolve. Over time the profession became increasingly feminized and, according to Dobbin, increasingly mobilized around work-family issues. In fact, by the 1990s, this highly mobilized and feminized profession launched a campaign from within corporate human resource offices to advance work-family programs, including paid maternity leaves, flexible work arrangements, child care benefits, and separate offices for the management of work-family conflicts. These programs were justified in the name of building employment loyalty and commitment, attracting and retaining highly qualified women professionals, improving worker productivity and efficiency, and increasing corporate diversity. As with the rise of diversity management, gone was any language regarding legal compliance with equal opportunity. In its place was a strong business case for "quality of work-life programs" generally and "work-family programs" specifically.

One of Dobbin's central arguments throughout the book is that popular corporate practices regarding equal opportunity were eventually codified by courts. In other words, courts tended to follow—not lead—corporations in the advancement of equal opportunity programs and practices. In the introduction he writes that courts could not "invent compliance structures from scratch, so they took their cues from leading firms" (5). Those practices that became widespread were often eventually deemed part of a set of "best practices" by courts, and firms without such practices were at risk for failing to show good faith in preventing discrimination. The strongest support for this argument comes from Dobbin's analysis of the rise of sexual harassment policies in American firms. By the time the Supreme Court ruled in the late 1990s that harassment prevention training and well-advertised grievance procedures could be effective defenses against harassment lawsuits, a large majority of corporations already had these programs in place. According to Dobbin, "harassment grievance procedures and training programs did not become popular because they were unlawful, they became lawful because HR experts had made them popular" (191). As with civil rights enforcement, once feminists had identified harassment as a major impediment to women's advancement in the workplace, the design and implementation of antiharassment policies fell under the authority of personnel experts. The tools that personnel experts used to fight harassment became codified in law as a set of best practices to prevent harassment in the workplace. According to Dobbin, it was less important to corporate leaders that mechanisms such as training and grievance procedures adequately addressed harassment; what was important was that personnel experts successfully convinced executives that these tools would reduce their legal risks.

Dobbin concludes the empirical section of the book with this analysis of the rise of sexual harassment prevention in American corporations, leaving the reader curious about the efficacy of any or all of the personnel programs Dobbin analyzes—from formal job and wage ladders to discrimination and harassment grievance procedures to flexible work arrangements—in addressing issues of gender and racial/ethnic equality. Dobbin writes in the introduction that the result of personnel managers' efforts over the past five decades has been that "firms have changed how they recruit, hire, discipline, evaluate, compensate and fire workers" (1). This is indeed true, but the reader is left wondering whether any of these changes actually promote the broader goals laid

out in Title VII of the 1964 Civil Rights Act to prohibit discrimination based on race, color, religion, sex, and national origin.

Dobbin himself is skeptical about the impact of the personnel practices he tracks. When discussing one of the primary remedies institutionalized to address sexual harassment—grievance procedures—Dobbin writes that the "[executives'] focus on legal risk led them to ignore the lack of evidence that grievance procedures actually reduce harassment, and so America institutionalized a compliance regime that has yet to be shown to alleviate harassment" (218). Similarly, Dobbin cites a 1985 study by economist Jonathan Leonard that suggests that employers rarely achieved even a fraction of their own equal opportunity goals. Indeed, there is little evidence in the book to suggest that any of the changes implemented in the name of equal opportunity since the 1960s were or are effective in increasing opportunities for women and racial/ethnic minorities in employment.

Scholars of work-based inequality have good reasons to be cynical about America's unique brand of equal opportunity as defined and designed by personnel managers within American firms. Indeed, several recent studies (Pager 2009; Budig and England 2001; Elliott and Smith 2004) have shown the continued presence of barriers that disproportionately bar women (especially mothers) and racial/ethnic minorities from jobs, equal wages, and leadership positions. In a recent paper, Tomaskovic-Devey and Stainback (2007) argued in particular that despite the presumed advances made in American workplaces since the Civil Rights Act of 1964, organizational practices that reproduce discrimination and exclusion continue.

But why should this be so, given Dobbin's assessment that personnel experts had a genuine commitment to equality of opportunity and that most of their contributions within firms were eventually sanctioned by courts and the EEOC? For example, Dobbin writes that personnel experts and consultants like Barbara Boyle were deeply committed to advancing equality at work, and their policy proposals, such as creating a formal internal labor market to increase the promotion of women and racial/ethnic minorities, reflected this commitment. Similarly, Dobbin writes that contemporary work-family programs owe their existence to the advocacy of personnel professionals strongly committed to increasing gender equality. And, according to Dobbin, there are several examples of such proposals' becoming the standard of legal compliance. Thus, why did not the commitment of personnel experts such as Barbara Boyle among many others combined with the unprecedented power of the personnel profession over corporate practice translate into more substantial progress toward equality in paid work?

At least some of these questions regarding the efficacy of equal opportunity efforts could be answered comparatively, with a rigorous comparison of the U.S. model of equal opportunity with alternative models. Dobbin does attempt to provide a degree of comparative evidence to support his argument that the weakness of the state in the U.S. led to a unique approach to equal opportunity in paid work. For example, throughout the book, he includes several paragraphs about a competing equality paradigm in France, which has a comparatively strong state, and where equality measures are codified at the federal level through France's civil law system. In France's system, personnel experts lacked a window of opportunity to solidify their value to corporations by advising them on strategies to avoid legal liability for discrimination, as they had in the United States. Thus, in France the lack of ambiguity over the meaning of and compliance with the law precluded activism at the firm level. However, these brief comparative asides are ineffective in demonstrating either the singularity of the U.S. system or the relative effectiveness of firm-level design and implementation of equal opportunity measures.

While Dobbin provides strong empirical support for his central thesis, namely that personnel managers were successful in designing, legitimizing, and institutionalizing policies aimed at protecting firms from discrimination and harassment liability, he is much less interested in the efficacy of these efforts. His neglect of these questions leaves the reader with several pressing questions. Do grievance procedures or formal job ladders actually increase employment opportunities for women and racial/ethnic minorities? How? Under what conditions? How might we measure the impacts of particular policies? While the book provides a dazzling history of the rise of a uniquely American version of equal opportunity in employment, it will be less satisfying to scholars of stratification interested in the history of institutional mechanisms that promote or hinder access to good jobs, decent wages, leadership positions, and job security. Dobbin's neglect of any analysis of the efficacy of these programs, however, is far from a fatal flaw. Rather, his outstanding history of the rise, evolution, and spread of equal opportunity policies at the firm level provides an ideal stepping stone for future research engaged in questions about the lasting impacts of these policies on outcomes.

Overall Dobbin's book makes several substantial contributions to the scholarship on the history of equal opportunity policy in the United States. With an incredible depth and breadth of historical evidence, the book provides a convincing history of the revolution from within in which personnel experts determined what equal opportunity would look like in the American workplace. The books' theoretical sophistication is also impressive. You will not find theory only in the introductory chapter; rather, Dobbin continually reminds the reader why and how his empirical analysis advances theory on organizations, institutions, and professions. The book is also clearly written, easily accessible, and expertly reasoned. For these reasons, I expect Dobbin's book to be of broad interest to scholars and students of the history of law, social movements, institutional change, workplace policy, and work and occupations.

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