



**The Two Faces of Governance: Responses to Legal Uncertainty in U.S. Firms, 1955 to 1985**

John R. Sutton; Frank Dobbin

*American Sociological Review*, Vol. 61, No. 5. (Oct., 1996), pp. 794-811.

Stable URL:

<http://links.jstor.org/sici?sici=0003-1224%28199610%2961%3A5%3C794%3ATTFOGR%3E2.0.CO%3B2-V>

*American Sociological Review* is currently published by American Sociological Association.

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/about/terms.html>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/journals/asa.html>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

---

JSTOR is an independent not-for-profit organization dedicated to and preserving a digital archive of scholarly journals. For more information regarding JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

---

## THE TWO FACES OF GOVERNANCE: RESPONSES TO LEGAL UNCERTAINTY IN U.S. FIRMS, 1955 TO 1985\*

---

**John R. Sutton**

*University of California, Santa Barbara*

**Frank Dobbin**

*Princeton University*

*Recent neoinstitutional analyses have associated the rapid diffusion of due-process governance mechanisms in the American workplace with government pressure for equal employment opportunity and affirmative action. We carry the argument forward in three ways. First, we focus on grievance procedures and employment-at-will clauses to show that the legalization process produces both rights-enhancing and rights-negating rules. Second, we focus on the private for-profit economic sector to test more effectively the efficiency and labor-control theories that have fared poorly in previous neoinstitutional studies. Third, we explore the interactions among personnel professionals, lawyers, and the state in the adoption of legalistic governance mechanisms. Results sustain the neoinstitutional argument, but also offer new support for efficiency and labor-control hypotheses.*

In the 1980s, writers in the business and management literature began to remark on the growing trend toward legalization of the employment relationship. "Legalization" in this case refers to the use of law-like rules and practices—typically grievance procedures—to settle disputes within the workplace. Policies of this sort have long been standard for union workers, but this new wave of legalization is aimed primarily at nonunion, white-collar employees. Management writers have promoted legalization as an enlightened strategy to gain the loyalty of

an increasingly highly skilled and mobile labor force and to forestall the formation of unions (Ewing 1989; McCabe 1988, chap. 2; Westin and Feliu 1988). Sociologists have been more interested in the empirical dimensions of this trend and have analyzed different aspects of legalization—not just the diffusion of grievance procedures (Dobbin et al. 1988; Edelman 1990; Sutton et al. 1994), but also the renaissance of internal labor markets (Dobbin et al. 1993), the creation of affirmative-action policies and offices (Edelman 1992), and the professionalization of employment-relations policy (Edelman, Abraham, and Erlanger 1992).

This stream of sociological research flows from a common source in neoinstitutional theory. Neoinstitutional and management accounts overlap on one point: Legalization implies a qualitatively new image of the worker as a self-actualizing, career-oriented, rights-bearing individual—in short, more of a citizen and less of a subordinate than in earlier management regimes. But these accounts differ profoundly regarding the *sources* of legalization. To writers in the general management literature (Ewing 1989; McCabe 1988), as well as to economists (Williamson 1975, 1985) and labor-control theorists (Edwards 1979), legalization is a rational strategy for maintaining investments in firm-specific skills. The neoinstitutional

---

\* Direct all correspondence to John R. Sutton, Department of Sociology, University of California, Santa Barbara CA 93106 (sutton@sscf.ucsb.edu). An earlier version of this paper was presented at the 1994 meetings of the American Sociological Association in Los Angeles, CA. This research was supported by the National Science Foundation (grant #SES-8511250). We are grateful to John W. Meyer and W. Richard Scott, our collaborators on the larger project this study draws on, for sharing their insights and criticisms. Thanks also go to Keith Allum, Jessica Torres, and Roberta Stich for helping us conduct the survey and code the data, and to Bill Bielby, Lauren Edelman, Roger Friedland, Don Palmer, J. Hoult Verkerke, and the *ASR* Editor and reviewers for comments on earlier drafts. [Reviewers acknowledged by the authors are Rikki A. Abzug, Patricia Gwartney, Terence C. Halliday, and Anne S. Miner. —Ed.]

account, by contrast, emphasizes the national polity as the source both of the new image of workers and of legalistic models for organizational governance. More specifically, neo-institutionalists argue that increasing government concern for employee rights in the late 1960s and 1970s—expressed through equal employment opportunity legislation, affirmative-action orders, and court decisions at the federal and state levels—raised considerable uncertainty among employers about the legality of their personnel practices and encouraged the adoption of law-like governance policies as symbolic demonstrations of compliance. It is important to recognize, however, that government mandates called for no specific changes in organizational governance (Skrentny 1996). Thus the neo-institutional account emphasizes the mediating role of the human relations professions—these professions construct standards of compliance with ambiguous government mandates and disseminate recipes for organizational governance.

Empirical support for the neoinstitutional argument is now rather strong. Studies converge on three broad points. First, diffusion patterns of specific governance policies show time-trends that correspond to the flow and ebb of federal equal employment opportunity/affirmative action (EEO/AA) enforcement activities: Adoption rates rise in the late 1960s and early 1970s, and in some cases decline in the 1980s when the Reagan Administration pulled back from the federal commitment to civil rights. Second, pressure for legalization emanates from the state: Organizations that are closer to the public sphere are more amenable to legalization than others. Third, research has confirmed the intermediary role of the professions: Personnel experts and labor lawyers independently construct the mandates of employment-relations law in terms that enhance their professional authority, and organizations with stable links to these professions are more avid adopters of due-process governance policies. These studies offer no evidence that legalization is driven either by efficiency or control considerations.

We carry the analysis of due-process governance forward in three ways. First, we show that legalization in the workplace has two aspects that reflect distinctly different

governance strategies and images of the worker. Previous literature has tended to accept uncritically Selznick's (1969) view that legalization is inherently inclusive and empowering (also see Nonet and Selznick 1978). But Pfeffer and Baron (1988) have documented a counter-trend toward *exclusionary* management practices, such as part-time and temporary employment, reduced benefits packages, home work, contracting out for services, and outsourcing production to foreign plants, that trade employee commitment for flexibility and reduced overhead. We identify a correlative practice—the “employment-at-will” clause—that uses legal language to declare the disposability of employees. We argue that the legalization process produces both rights-enhancing and rights-negating rules, and we analyze the diffusion of each.

Second, while previous studies have used broad samples of organizations drawn from several economic sectors, we focus on legalization in private for-profit firms. This allows more fine-grained tests of efficiency and labor-control theories, which are ill-suited to explaining the behavior of noncompetitive public and nonprofit organizations.

Third, we offer more complex specifications of the neoinstitutional model. Most prior studies have treated the effects of the legal environment and the influence of personnel professionals and legal professionals as additive (Edelman 1992 is an exception). In this view, the state constructs the legal environment and professionals interpret it to their own advantage. We argue instead that the legal environment is constructed through the *interaction* between shifting government policies and professional influence.

Our empirical analysis focuses on two examples of legalization: *grievance procedures* for nonunion salaried employees and *employment-at-will clauses* appearing in printed material aimed at workers. These represent, respectively, the inclusionary and exclusionary faces of employee governance. Nonunion grievance procedures are interesting because they are offered unilaterally by firms, they tend to be more open-ended than procedures specified in collective bargaining agreements, and they represent the most conspicuous area of growth in legalization. We focus on grievance procedures for nonunion *salaried* em-

ployees because workers in this group are presumably the most highly skilled and difficult to replace. Thus, our analysis permits strong tests of efficiency and labor-control arguments. Employment-at-will (EAW) clauses are statements published in employee handbooks, application forms, or other employee material that explicitly declare the employer's right to discharge employees without having to show cause. While EAW clauses are *legalistic* in the narrow sense that they declare a formal rule, they are clearly contrary to the normative spirit of legalization as described by Selznick (1969). They award no rights to employees. On the contrary, they explicitly deny employees any proprietary right to employment and reserve the right of arbitrary action for the employer. We include EAW clauses in our analysis precisely because they represent an alternative to due-process governance mechanisms and a repudiation of a wider scheme of legal norms.

## CONVENTIONAL ACCOUNTS OF LEGALIZATION

### *Efficiency Theory*

The conventional rationalist view of organizations suggests that formalization of the employment relationship is driven by the logic of efficiency: Formalized personnel practices reduce uncertainty and increase efficiency by ordering decision-making authority within the firm (Simon 1957) and stabilizing interactions with the environment (March and Simon 1958; Thompson 1967; Williamson 1975). More specifically, efficiency models suggest that employment-relations policies are adaptations to labor market uncertainty. Economists have argued that labor turnover costs create a strong incentive for firms to implement employment stabilization measures, especially when firms rely heavily on firm-specific skills (Doeringer and Piore 1971; Schlichter 1961; Williamson 1975). The most obvious strategy for reducing turnover is to pay high wages (Becker 1964), but Williamson (1985:256) suggests that governance policies, such as grievance procedures and internal labor markets, are also important. In this view, formalized governance is a supplementary, nonwage form

of compensation for investments in human capital.

We have no direct measures of turnover costs or firm-specific human assets. Instead we approach these issues indirectly, focusing on organization size and industry-level labor market characteristics. Size is important because large organizations are more likely to need formal rules to govern workplace relations and are better able to afford the associated administrative costs. This argument is supported by cross-sectional studies that find size to be associated with several types of procedural formalization (Blau and Schoenherr 1971; Bridges and Villemez 1991; Pugh et al. 1969). In addition, economists suggest that size is a reasonable proxy for a wide range of relevant labor market variables: Employees in large organizations earn higher wages, receive more generous fringe benefits, hold their jobs longer, and have more firm-specific skills than do employees in small organizations (Oi 1990).

Our use of industry-level variables follows the arguments of Althauser (1989) and Bridges and Villemez (1991). Neoclassical labor economists assume that firm-specific skills influence the formation of internal governance structures only when external labor markets are unable to assure an adequate supply of workers with appropriate skills. Althauser (1989) concludes that the empirical literature offers little evidence that firm-specific skills influence governance but strongly supports the influence of labor scarcity. Bridges and Villemez (1991) find some effects of firm-specific skills on the availability of due-process governance, but also find strong independent effects of external labor markets.

We focus on three features of industry-level labor markets. The first is wages: If formalized governance is a supplementary form of compensation, governance structures should diffuse most readily in primary industries in which high wages are already the norm (Doeringer and Piore 1971). The second feature is capital intensity: Because jobs in capital intensive sectors tend to be difficult to disentangle and to monitor, firms in these industries are likely to adopt governance policies to discourage employees from shirking or leaving (Bulow and Sum-

mers 1986:387). The third feature is employers' dependence on employees in high-status occupations: High status workers are by definition scarce and enjoy relatively numerous opportunities for interfirm mobility (Baron, Davis-Blake, and Bielby 1986:261), thus they more often have access to due-process governance structures (Bridges and Villemez 1991).

Thus, efficiency arguments suggest four hypotheses:

- H<sub>1</sub>: Large firms adopt grievance procedures and EAW clauses more rapidly than do small firms.
- H<sub>2</sub>: The higher the average wage in an industry, the more rapid the diffusion of grievance procedures and EAW clauses.
- H<sub>3</sub>: Firms in capital-intensive industries adopt grievance procedures and EAW clauses at a faster rate than do firms in less capital-intensive industries.
- H<sub>4</sub>: Grievance procedures and EAW clauses diffuse more rapidly in industries that have a relatively high proportion of employees in prestigious occupations.

It might seem incongruous to suggest that grievance procedures and EAW clauses will appear in the same sorts of firms, but this is exactly what a strict efficiency argument would predict.<sup>1</sup> The logic behind this prediction is that firms that encourage long-term employment face the greatest legal risk—longevity of employment has been a key factor in court decisions that have undermined the at-will employment doctrine.

### *Labor-Control Theory*

To labor-control theorists, the overriding priority of the firm, regardless of its stated goals, is to contain and appropriate labor power. Formal structures that effectively control labor may in fact lead to economic inefficiency (Braverman 1974; Clegg and Dunkerley 1980; Edwards 1979). Several writers have suggested that the private-sector U.S.

economy can be divided into two subsectors with distinct forms of labor control: "Core" industries contain large, capital-intensive firms that depend on skilled workers; "peripheral" industries contain small, labor-intensive firms that employ largely unskilled workers (Edwards 1979; Gordon, Edwards, and Reich 1982; Hodson 1978; Tolbert, Horan, and Beck 1980). Core firms implement a cluster of formalized mechanisms—what Edwards (1979) calls "bureaucratic control"—that effectively constitute an internal labor market. The point of these practices is not to allocate labor power efficiently, but rather to motivate workers, assure their loyalty, and minimize voluntary separations by promising workers regular career advancement and a range of extrinsic incentives. This leads us to a hypothesis that relates bureaucratic control to legalization:

- H<sub>5</sub>: Firms with more elaborate internal labor markets adopt grievance procedures more rapidly, and publish EAW clauses less frequently, than do firms with less elaborate internal labor markets.

To this point, labor-control and efficiency models are not demonstrably different (Goldberg 1980). A distinctive feature of the labor-control model, however, is the argument that labor markets are segmented not only by skills, but by the ascriptive status of workers. Secondary labor markets, for example, are composed disproportionately of women, older workers, and racial minorities. Finally, labor-control theory also offers a distinct argument about the role of unions. Edwards (1979:21) argues that nonunion firms are likely to create grievance procedures for their employees as part of a strategy designed to preempt unionization. Unionized firms probably resisted EAW clauses as well, since the right of arbitrary discharge threatens union control over the seniority process. This suggests two more hypotheses:

- H<sub>6</sub>: Firms that draw on secondary labor markets are slower to create grievance procedures than those that do not, and quicker to publish EAW clauses.
- H<sub>7</sub>: Unionized firms are more resistant than nonunionized firms to adopting grievance procedures and EAW clauses.

<sup>1</sup> We are grateful to J. Hoult Verkerke (personal communication) for suggesting this argument to us.

## THE NEOINSTITUTIONAL ACCOUNT

Early formulations of neoinstitutional theory sought to explain organizational conformity with highly institutionalized, and therefore broadly legitimate, models of structure and practice (DiMaggio and Powell 1983; Meyer and Rowan 1977). This approach has been useful in explaining the diffusion of established institutional forms, but has been less successful in accounting for institutional *change*—an issue that requires greater attention to interest and agency (DiMaggio 1988; Jepperson 1991; Perrow 1985). The present study offers an opportunity to address this issue. In general terms, neoinstitutional theory suggests that law-like rules of governance appear not as instrumental means to achieve managerial efficiency or to control workers, but rather as symbolic evidence that the firm is attentive to wider norms of equity and justice. But how did legalization achieve institutional status?

Our analysis focuses on change in the legal environment, specifically the impact of equal employment opportunity and affirmative action (EEO/AA) law on U.S. employers. In some instances, legal changes may be unambiguous and organizational responses are relatively straightforward (Fligstein 1990), but this is rarely the case. Legal changes often carry ambiguous mandates, and standards of compliance are often unspecified (Carruthers and Halliday 1994; Suchman and Edelman 1994). Under these conditions, organizations do not simply respond to legal change; they help to constitute it. EEO/AA law and collateral legal changes invalidated the most egregiously discriminatory forms of personnel policy, undermined employers' right to hire and fire, and raised uncertainty about the kinds of policies that would henceforth be considered legitimate. By the late 1970s or early 1980s, legalized governance was institutionalized as a legitimate strategy for reducing uncertainty in the legal environment.

To explain this institutionalization process, we build on DiMaggio and Powell's (1983) distinction between "coercive" and "normative" isomorphism among organizations. We agree that the state and the professions are key agents of organizational change, but argue that the DiMaggio and Powell model

must be respecified in two ways to account for legalization as a process. First, they describe coercive isomorphism as conformity with presumably clear and authoritative government mandates. We argue that the most important feature of U.S. employment relations law is its ambivalence and ambiguity. Second, their discussion of normative isomorphism tends to assume the existence of established professional groups with relatively secure charters over specific domains of organizational activity. Our analysis emphasizes competition among professions to gain control over the emergent domain of employee governance. Finally, their account implies that the influences of the state and the professions are independent and additive—in some institutional sectors the state is a dominant influence and in others the professions dominate. In our account, their roles are interdependent and mutually constitutive.

We build our hypotheses on a more concrete set of arguments about (1) salient developments in EEO/AA law over the period of our study, and (2) the roles played by personnel and labor-law professionals in the construction of the legal environment.

### *The Role of the State*

The U.S. state has conventionally been viewed as "weak" and incapable of dictating the behavior of private actors, whether they are individuals or firms. Recent studies have revised that image (Hamilton and Sutton 1989): Government in the United States has had a profound influence on the ordering of civil society, but that influence often works indirectly, through moral suasion and the manipulation of market incentives rather than through direct mandates. As research by Baron and his colleagues has shown (Baron, Dobbin, and Jennings 1986; Baron, Jennings, and Dobbin 1988), the U.S. federal government has influenced firm governance in this fashion at least since the 1940s. Our story begins later, with the surge of government interest in equal employment opportunity and affirmative action that began in the mid-1960s (Burststein 1985; Kohl 1985).

We argue that shifts in the posture of the federal government toward enforcement of Title VII of the 1964 Civil Rights Act, as well as key court decisions in some states,

influenced the perceived attractiveness of legalization to employers. Title VII by itself was probably not materially responsible for the spread of due-process mechanisms in the workplace. Title VII's nondiscrimination mandate was ambiguous and in important ways was contradicted by the parallel mandate for affirmative action issued to government contractors in Executive Order 11246 (1965). The Equal Employment Opportunity Commission (EEOC), the agency created to enforce Title VII, had little real enforcement power. The Office of Federal Contract Compliance (OFCC), the agency charged with enforcement of EO 11246, had formidable power to revoke contracts, but failed for several years to develop compliance standards (Edelman 1992; Lempert and Sanders 1986:378–79).

Pressures for legalization increased after about 1972, when actions by all three branches of government increased the potential for enforcing Title VII and EO 11246. In 1970, the OFCC required federal contractors to file workforce statistics and affirmative action plans, making it possible for the first time to monitor progress in affirmative action. In 1972, Congress amended Title VII to give the EEOC authority to bring suit against employers in federal court. In 1971 and 1975 the Supreme Court ruled in the cases of *Griggs v. Duke Power Company* (401 U.S. 424 [1971]) and *Albemarle Paper Co. v. Moody* (422 U.S. 405 [1975]) that employers were liable for the discriminatory effects of their employment tests, even if discriminatory outcomes were unintended. These decisions applied only to testing procedures, but they raised the specter of a pro-employee shift in the liability standard for employment discrimination cases generally. As a result of these and other changes, the legal environment became more threatening to employers. The number of employment discrimination suits grew sharply after about 1972, and the volume of class-action suits multiplied (Donohue and Siegelman 1991). In addition, the focus of employment discrimination legislation changed from “hiring” cases, involving rejected job applicants, to “firing” cases, involving claims of unjust discharge. The spotlight moved from blatantly segregated workplaces to workplaces that already employed significant numbers of women and minori-

ties, and Title VII became “a sort of implicit tort of wrongful discharge . . . for virtually all workers except white males under the age of 40” (Donohue and Siegelman 1991:1033).

After about 1980 the legal environment changed again, but in somewhat contradictory ways. On one hand, the new Reagan Administration quickly put the brakes on civil rights enforcement (Days 1984:313–19), and enforcement against federal contractors of EEO/AA rules virtually halted (Edelman 1992:1541).<sup>2</sup> On the other hand, a few state courts raised new uncertainties by undermining the traditional common-law doctrine of at-will employment under which employers may discharge workers without cause. Courts in California were particularly aggressive in this regard. In three seminal cases—*Tameny v. Atlantic Richfield Co.* (164 Cal. Rptr. 839 [1980]), *Cleary v. American Airlines* (168 Cal. Rptr. 722 [1980]), and *Pugh v. See's Candies, Inc.* (171 Cal. Rptr. 917 [1981])<sup>3</sup>—California courts broadened employers' liability for wrongful discharge and in some instances required employers to honor their own due-process governance procedures and implied promises of career employment (Jensen 1988). Note that these were not employment discrimination cases. Indeed, plaintiffs tended to be White males with long records of service and regular promotions. But nonetheless, because they tended to target core-sector employers and raised vexing questions about the legitimate grounds for dismissal, these cases dovetailed with contemporaneous trends in employment-discrimination litigation.

This argument suggests that rates of legalization are time-dependent, with changes corresponding to trends in EEO/AA enforcement and wrongful discharge litigation. Our data cover the period from 1955 to 1985, and

<sup>2</sup> There were long-term effects as well, as an increasingly conservative Supreme Court progressively narrowed the applicability of the *Griggs* and *Albemarle* decisions. Key cases in this regard are *Price Waterhouse v. Hopkins* (109 S.Ct. 1777 [1989]), *Atonio v. Wards Cove Packing Co.* (109 S.Ct. 2115 [1989]), and *Lorance v. AT&T Technologies* (109 S.Ct. 2261 [1989]).

<sup>3</sup> The *Pugh* case echoed a landmark Michigan case, *Toussaint v. Blue Cross and Blue Shield* (292 N.W. 2d 880, 115 LRRM [BNA] 4708 [Mich. 1980]).

we treat time-dependence in terms of period effects:

H<sub>8</sub>: Adoption rates for grievance procedures are higher in the 1973–1980 period than earlier, and they decline again after 1980; adoption rates for EAW clauses are higher in 1973–1980 period than earlier, and rise still higher after 1980.

We offer two more substantive hypotheses about the role of the state in the legalization process, also in time-dependent terms. Federal contractors were first required to submit affirmative action plans to the OFCC in the early 1970s, and inclusive governance policies such as grievance procedures would have provided a simple and attractive means of demonstrating good-faith compliance. OFCC scrutiny offered no encouragement for exclusionary governance policies like EAW clauses, so we suspect that federal contractors were indifferent, or perhaps resistant, to them:

H<sub>9</sub>: Federal contractors show higher-than-average adoption rates for grievance procedures after 1972; their adoption rates for EAW clauses are average or lower than average in all periods.

The legal climate in California probably encouraged the adoption of grievance procedures as well as EAW clauses, but only after 1980:

H<sub>10</sub>: California employers show higher than average adoption rates for grievance procedures and EAW clauses in the 1981–1985 period, but not before.

### *The Role of the Professions*

While none of the federal or state policies we have reviewed mandated legalized governance, legalization was encouraged by the drift toward a procedural rather than substantive interpretation of EEO/AA law. That is, courts and administrative agencies required employers to use personnel procedures that were demonstrably race- and gender-blind, but they tended not to require race- or gender-neutral outcomes. This procedural interpretation left employers with considerable room to improvise, but also added to their uncertainty as long as the legality of specific

personnel practices could only be determined post hoc through litigation. It is at this point that the boundary-spanning activities of professional groups involved in labor recruitment and governance—specifically personnel administrators and labor attorneys—become crucial.

The role of the professions as carriers of managerial ideologies and of legalization policies in particular has been noted for some time (Selznick 1969:91; Vollmer and McGillivray 1960). Here we draw on a study by Edelman et al. (1992) of the professional literature on wrongful discharge to suggest a more complex pattern of influence. They argue that personnel administrators and labor lawyers sought to establish secure jurisdiction over the domain of employment relations, in part by dramatizing the perils of wrongful discharge law and offering court-proof recipes for compliance. Based on analyses of appellate cases and articles in professional journals, Edelman et al. show that personnel experts and labor lawyers exaggerated the threat of wrongful-discharge litigation and encouraged employers to adopt proactive governance strategies.

We extend the findings of Edelman et al. (1992) in two ways. First, we argue that professionals responded opportunistically, not just to wrongful-discharge law, but also to a much broader range of threats posed by EEO law, affirmative action rules, and the growing case law on sexual harassment. In the early 1970s, several articles in the professional personnel literature urged personnel administrators to use managers' uncertainty over standards of compliance as leverage for upgrading and formalizing the personnel function within firms (Froehlich and Hawver 1974; Garris and Black 1974; Gibling and Ornati 1974). Literature aimed at personnel administrators, labor attorneys, and managers recommended the adoption of legalistic governance mechanisms—including grievance procedures (Ewing 1982; Gery 1977; Leap, Holley, and Field 1980; Linenberger and Keaveny 1981; Marino 1980; Soutar 1981; Staudohar 1981; Thorp 1973; Westin and Feliu 1988) and employment-at-will clauses (Baskin 1987; Witt and Goldman 1988; Youngblood and Tidwell 1981)—as a strategy to immunize firms against litigation. This suggests that firms in which personnel



and legal professionals are influential would be more likely to adopt these innovations.

Second, additional findings from the study by Edelman et al. (1992) suggest that personnel administrators and labor lawyers emphasized different kinds of responses to legal uncertainty. They found that literature aimed at personnel professionals grossly exaggerated the threat of litigation and encouraged preemptive measures—such as EAW clauses—designed to protect the employer's "right to fire." The legal literature was more conservative in its assessment of the legal threat to employers and was more likely to recommend fair treatment—including grievance procedures—as the best preventive strategy (Edelman et al. 1992:68–69). We argue that both groups promoted grievance procedures, but at different points: the personnel profession has encouraged nonunion grievance procedures for several decades (Selznick 1969; Vollmer and McGillivray 1960), but the legal profession seems to have weighed in later in response to growing legal uncertainty in the 1970s. More categorical differences are likely to appear in the case of EAW clauses. While Edelman et al. (1992) report that labor attorneys did not actively support EAW clauses, we found evidence that, at least from 1955 through 1985, they were skeptical of the legal value of such clauses (Abbassi, Hollman, and Murrey 1987; Baskin 1987; Condon and Wolff 1985; Steiner and Dabrow 1986; Winters 1985). Thus we suspect that although personnel administrators may have promoted EAW clauses, labor attorneys did not.

These arguments suggest that personnel administrators actively supported grievance procedures earlier than did labor attorneys, and that support for EAW clauses came primarily from personnel administrators:

$H_{11}$ : Firms with personnel offices show higher adoption rates for grievance procedures in all periods and higher adoption rates for EAW clauses after 1972 than do firms lacking personnel offices.

$H_{12}$ : Firms that retained outside labor attorneys show higher adoption rates for grievance procedures after 1972; among these firms, adoption rates for EAW clauses are average or below average throughout the period of study.

## DATA AND MEASURES

### *Sample and Data Collection*

Our sampling and data-collection procedures have been described in earlier papers (Dobbin et al. 1993; Sutton et al. 1994). Here we present only the details that are relevant to the present analysis.

Data are from a stratified random sample of 154 private, for-profit firms in three states (California, New Jersey, and Virginia) and seven industries (publishing, chemical manufacturing, machinery manufacturing, electrical manufacturing, transportation, retail trade, and banking).<sup>4</sup> Data were collected using a survey instrument containing questions about organizational structure and demographics, employment relations policies, and links to other organizations during the period from 1955 to 1985. These data were transformed into annual spells, yielding a data set with an  $N$  of 3,608 organization-years. We supplemented this organization-level data set with data on industrial and labor-market conditions (U.S. Bureau of the Census 1986; U.S. Department of Labor 1975–1987). Wages, benefits, and capital investments are measured at the national level by industry; data on workforce characteristics (employment by race, gender, age, and broad occupational categories) are broken out by industry and by state.

### *Measures*

**Dependent variables.** Two items on our questionnaire provide outcome variables for the analysis. Employers were asked when, if ever, they first (1) created a formal grievance procedure for nonunion, exempt (salaried) employees, and (2) published an employment-at-will clause in material routinely distributed to employees (including employment applications, employee rule books, orientation materials, or other memos). We analyze our data using event-history techniques (Tuma and Hannan 1984), and we treat adoption of grievance procedures and EAW clauses as separate events.

<sup>4</sup> These for-profit firms comprise a subsample of the data described in earlier papers. The full sample includes nonprofit organizations and government agencies.

Figure 1 shows temporal patterns of adoption in the form of cumulative hazard plots. In event-history terms, the dependent variables—adoption rates—are the continuous slopes of the hazard plots. Comparison of the two plots reveals different patterns of time-dependence. Grievance procedures had a foothold among nearly 10 percent of firms in 1965, and by 1985 they had spread to about 30 percent of firms.<sup>5</sup> Diffusion occurred at a fairly steady rate—there is no evidence here that adoption rates were higher in the 1970s, as we hypothesized. EAW clauses took off slowly but diffused at an exponentially increasing rate: Fewer than 5 percent of the firms in our sample had published EAW clauses by 1970, and by 1985 they appeared in 29 percent. Thus, while the pace of diffusion differed markedly for the two innovations, by the end of the observation period they had penetrated our sample of firms to about the same degree. Note that while grievance procedures and EAW clauses are not mutually exclusive, they rarely appear together: By 1985, only 11 percent of the firms in our sample had both grievance procedures and EAW clauses, and 52 percent had neither; about 19 percent had grievance procedures but not EAW clauses, and about 18 percent had EAW clauses but not grievance procedures.

**Independent variables.** Efficiency hypotheses are operationalized using one firm-level measure—the (*log*) number of employees, which is an indicator of firm size—and three industry-level measures—the *average wage*, which is measured as the annual change in the ratio of total wages and salaries to total employees; *capital intensity*, which is measured as the ratio of total capital consumption allowances to total wages and salaries; and *dependence on high-skill, high-status employees*, which is measured by the per-

<sup>5</sup> The percentage figures mentioned here do not correspond to the hazard rates shown in Figure 1, in part because they are calculated using different bases. Percentages include firms that had grievance procedures before 1955 (no firms had EAW clauses at that time), as well as firms that were founded between 1955 and 1985 with either of the two policies in place at the time of founding. Hazard rates and subsequent analyses are calculated using only firms adopting either policy subsequent to founding and during the 1955–1985 period.

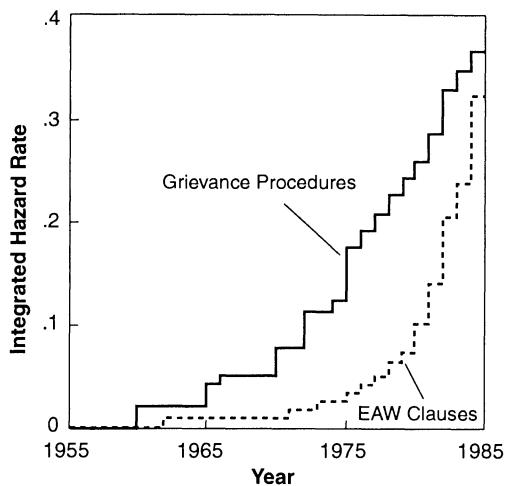


Figure 1. Integrated Hazard Functions for the Creation of Grievance Procedures and the Publication of Employment-at-Will (EAW) Clauses: Private, For-Profit Firms, 1955 to 1985

centage of all workers who fall into the top two tiers of the standard nine-level occupational scale (technical/professional and managerial/administrative employees). We first-difference the wage series to correct for an upward secular trend that appears in all industries represented in our study. Efficiency arguments suggest that all independent variables will be positively associated with the adoption of grievance procedures and EAW clauses.

Labor-control hypotheses are tested using three measures. To measure the formation of *internal labor markets* (ILM), we use an additive index that shows whether in any given year the employer used written job descriptions, tests for employment, promotion tests, salary classifications, performance evaluations, job ladders, centralized hiring, or centralized promotion and discharge. The ILM variable should have a positive effect on grievance procedures and a negative effect on EAW clauses. We use annual growth in the percentage female among workers, measured within industries by state, as an indicator of *secondary labor markets*. As segmentation theorists might predict, our early tests showed that percent female, percent Black, and percent over 65 are all highly inter-correlated. Percent female was most strongly associated with the adoption of grievance procedures, however, and is used here as a

proxy for secondary labor market status. As with the wage measure, we have calculated annual changes in percent female employees to control for secular increases across all industries. The segmentation argument suggests that this variable will be negatively associated with grievance procedures and positively associated with EAW clauses. An indicator of *unionization*, coded 1 for firms with union contracts and 0 for nonunionized firms, permits a test of whether legalization is used by employers to resist unionization. Negative effects of unionization are expected on both outcomes.

Neoinstitutional hypotheses suggest two kinds of effects: main effects of government EEO/AA policy, and interactions between government policy and organization attributes. We think that direct federal pressure accelerated the adoption of grievance procedures in the years 1972 to 1980 and might have led to a decline in adoption rates after 1980. Figure 1 suggests that adoption rates for EAW clauses continued to accelerate through 1985. Our estimation model divides the adoption process into three periods—1955–1972, 1973–1980, and 1981–1985—with period-specific constants denoting shifts in the baseline rates of adoption. *Federal contracting*, *location in California*, *existence of a personnel office*, and association with a *labor attorney* are coded as binary variables (0,1). In general, we expect that most organization-level effects should appear after 1972 in response to Title VII amendments and the *Griggs* decision. Federal contracting is expected to have positive effects on grievance procedures and negative effects on EAW clauses; coefficients are likely to show strongest effects in the second period (1973–1980), and reduced effects in the third period (1981–1985), when the threat of aggressive federal enforcement of EEO/AA regulations receded. A positive effect of location in California on both innovations is expected in the third period (1981–1985), in response to the *Tameny*, *Cleary*, and *Pugh* decisions. Because personnel administrators were early sponsors of grievance procedures, we should find a significant effect of personnel offices in the first period, before the advent of EEO law. We expect a positive effect in the second and third periods as well, but cannot anticipate when the

effect was strongest. The effects of labor attorneys on grievance procedures and of personnel administrators on EAW clauses probably appeared only after 1972, but we have no grounds to hypothesize whether those effects were stronger in the second or third periods. We anticipate no effect of labor attorneys on the diffusion of EAW clauses in any period.

### Models

Our hypotheses suggest three general types of effects: (1) effects due to population heterogeneity, which are expected to operate without regard to period (efficiency and labor-control models); (2) period effects, which are expected to operate without regard to differences among firms (institutional hypotheses about changes in federal enforcement efforts); and (3) interaction effects, in which differences among firms become important only in certain periods (institutional hypotheses about federal contracting, location in California, and the influence of the professions). In an event-history framework, the appropriate specification is an exponential piecewise model in the form:

$$\log r_{jkp} = \Phi_{jk}x + \Theta_{jkp}z_p.$$

In this equation,  $r$  is the rate of transition between states  $j$  and  $k$ —in our case, the adoption of grievance procedures or EAW clauses—and the subscript  $p$  refers to one of three periods. Efficiency and labor-control hypotheses are represented by the term  $\Phi_{jk}x$ , in which  $x$  is a vector of variables and  $\Phi$  is a vector of coefficients. While the values of the variables in  $x$  vary across firms and over time, their effects (in  $\Phi$ ) are assumed *not* to vary across periods. The term  $\Theta_{jkp}z_p$  represents neoinstitutional hypotheses:  $z_p$  is a vector of causal variables and  $\Theta_{jkp}$  is a vector of coefficients for each period, including a constant. The direct effects of federal policy are represented by the constants in  $\Theta$ ,<sup>6</sup> and  $z$  represents organizational attributes as they are observed within time periods.

<sup>6</sup> Because there is a constant term in  $\Phi_{jk}$  and three period-specific constants in  $\Theta_{jkp}$ , the equation cannot be identified. We estimate models in this form by constraining the constant for 1955–1972 to equal 0.

**Table 1. Maximum-Likelihood Estimates for Time-Dependence Models of the Adoption of Grievance Procedures: Private, For-Profit Firms, 1955 to 1985**

| Independent Variables                              | Model 1     |         | Model 2     |        |
|--|-------------|---------|-------------|--------|
|  | Coefficient | (S.E.)  | Coefficient | (S.E.) |
| <i>Time-Independent Effects</i>                    |             |         |             |        |
| Constant   | -10.100***  | (1.179) | -9.159***   | (.926) |
| Number of employees (log)                          | .340***     | (.140)  | .328**      | (.137) |
| Annual change in average wage                      | .380        | (.432)  | —           | —      |
| Capital-labor ratio                                | 4.399       | (3.201) | —           | —      |
| Percent technical, professional,<br>and managerial | .102***     | (.025)  | .105***     | (.021) |
| Internal labor market index                        | -.147       | (.105)  | —           | —      |
| Annual change in percent female                    | -.191       | (.554)  | —           | —      |
| Union contract                                     | -1.862***   | (.586)  | -1.518**    | (.515) |
| <i>Period Effects, 1955-1972</i>                   |             |         |             |        |
| Constant   | .000        | (.000)  | .000        | (.000) |
| Federal contractor                                 | .441        | (.632)  | —           | —      |
| In California                                      | .308        | (.631)  | —           | —      |
| Has personnel office                               | 1.747**     | (.707)  | 1.208*      | (.525) |
| Has labor attorney on retainer                     | -1.000      | (1.082) | —           | —      |
| <i>Period Effects, 1973-1980</i>                   |             |         |             |        |
| Constant   | 2.171**     | (.833)  | 1.407***    | (.491) |
| Federal contractor                                 | .356        | (.607)  | —           | —      |
| In California                                      | -.297       | (.658)  | —           | —      |
| Has personnel office                               | -1.452*     | (.641)  | -1.436*     | (.597) |
| Has labor attorney on retainer                     | 2.031***    | (.629)  | 1.897***    | (.588) |
| <i>Period Effects, 1981-1985</i>                   |             |         |             |        |
| Constant   | .747        | (1.010) | .000        | (.000) |
| Federal contractor                                 | 1.340*      | (.689)  | 1.586**     | (.602) |
| In California                                      | 1.422**     | (.611)  | 1.611**     | (.554) |
| Has personnel office                               | -.196       | (.694)  | —           | —      |
| Has labor attorney on retainer                     | .928        | (.638)  | —           | —      |
| Chi-square   | 77.75***    |         | 65.41***    |        |
| Number of spells                                   | 3,098       |         | 3,098       |        |
| Number of events                                   | 42          |         | 42          |        |

Note: In both models, the constants for the 1955-1972 period are constrained to equal 0; in Model 2, the constant for the 1980-1985 period is constrained to equal 0.

\* $p < .05$     \*\* $p < .01$     \*\*\* $p < .001$  (one-tailed tests)

## RESULTS

Two models of the adoption of grievance procedures are reported in Table 1. Model 1 includes all hypothesized effects; Model 2 omits nonsignificant effects. Some efficiency and labor-control variables show strong ef-

fects. The coefficients for firm size and percent technical, professional, and managerial employees are positive and significant, while the coefficient for unionization is negative and significant. Four of the seven variables in this group show no significant effect: wage growth, capital intensity, formation of ILMs,

and change in the percentage female in the labor force have no association with the diffusion of grievance procedures.

Hypotheses generated by neoinstitutional theory also fare well. As we predicted, adoption rates were significantly higher (net of measured covariates) in the 1973–1980 period than before or after. In Model 1 the constant term for 1955–1972 is constrained to equal 0, which means that the baseline adoption rate for that period is the same as the time-independent constant. The constant for 1973–1980 is positive and significant, while the constant for 1981–1985 is not significant, indicating that during the Reagan Presidency federal influence on the adoption of grievance procedures dropped to its pre-1973 level. Substantive measures of the legal environment also show interesting results. The coefficients for federal contracting only partially conform to the hypothesis: The estimated effect is positive, but is significant only in the 1981–1985 period. California firms created grievance procedures more rapidly than others in the sample, but only after 1980; this fits our expectations exactly. Results concerning the role of the professions contain some surprises. The coefficient for the personnel office variable is positive and significant in the first period, suggesting strong early support for grievance procedures, but for the second period the coefficient is significant and negative, and for the third period it is effectively 0. The effect of labor attorneys is as anticipated: Firms that retained a labor attorney were significantly more likely to create grievance procedures only in the middle period of relatively strong EEO enforcement.

Model 2 omits nonsignificant substantive variables and constrains the constant term for 1981–1985 to equal zero. Elimination of noise from the equation changes the coefficients little. Standard errors are smaller than in Model 1 for all variables; the period constant for 1973–1980 drops in magnitude by about one-third but remains strong and significant; and post-1980 coefficients for federal contracting and location in California increase a bit. Likelihood-ratio tests show that there is no significant loss of fit in Model 2 relative to Model 1.

Table 2 shows results from models for the publication of EAW clauses. Despite the

small number of significant coefficients (3 of 22), the chi-square statistic shows that Model 1 achieves a significant fit to the data. Efficiency and labor-control variables show no significant effects, and as expected there are no significant institutional effects prior to 1973. There are no direct effects of federal EEO enforcement: The constant term for the 1973–1980 period is positive as hypothesized but not significant, and the constant for the 1981–1985 period is effectively 0. This seems rather peculiar because, as the hazard plot in Figure 1 shows, diffusion rates for EAW clauses began to accelerate in the mid-1970s and continued to accelerate throughout the early years of the Reagan Administration, despite the decline in federal EEO pressure.

Further results shed light on how this occurred. First, Model 2 shows that the constant term for 1973–1980 becomes significant when we drop the other nonsignificant variables from the equation, supporting our argument that employers perceived the legal environment as riskier during this period. Second, in the 1973–1980 period, firms with personnel offices were no more likely than other firms to publish EAW clauses, but after 1980 the effect of having a personnel office is impressive. Also as predicted, EAW clauses spread rapidly to firms in California, but only after 1980 when the legal environment in that state became more hostile. As expected, links to labor attorneys had no effect. These findings suggest that the diffusion of EAW clauses occurred in two phases. In the initial phase (1973–1980), they diffused among all sorts of firms, probably in response to the general uncertainty created by EEO/AA law. Diffusion accelerated in the second phase (1981–1985), but the increase was concentrated in firms that faced the greatest apparent risk (those in California), and firms with direct links to agents of diffusion (those with personnel offices).

We summarize by noting similarities and differences in these two sets of models. The major similarities are that, for both innovations, adoption rates rose across the board during the 1970s, and rose particularly in California during the early 1980s. This lends strong support to our fundamental argument that legalization in for-profit firms is driven by legal uncertainty: As the source of uncer-

**Table 2. Maximum-Likelihood Estimates for Time-Dependence Models of the Adoption of Employment-at-Will Clauses: Private, For-Profit Firms, 1955 to 1985**

| Independent Variables                              | Model 1     |          | Model 2     |        |
|--|-------------|----------|-------------|--------|
|  | Coefficient | (S.E.)   | Coefficient | (S.E.) |
| <i>Time-Independent Effects</i>                    |             |          |             |        |
| Constant   | -6.928***   | (1.064)  | -6.075***   | (.449) |
| Number of employees (log)                          | .072        | (.123)   | —           | —      |
| Annual change in average wage                      | -0.088      | (.360)   | —           | —      |
| Capital-labor ratio                                | .259        | (3.170)  | —           | —      |
| Percent technical, professional,<br>and managerial | .029        | (.018)   | —           | —      |
| Internal labor market index                        | .081        | (.089)   | —           | —      |
| Annual change in percent female                    | -0.025      | (.629)   | —           | —      |
| Union contract                                     | .406        | (.389)   | —           | —      |
| <i>Period Effects, 1955-1972</i>                   |             |          |             |        |
| Constant   | .000        | (.000)   | .000        | (.000) |
| Federal contractor                                 | -.118       | (1.371)  | —           | —      |
| In California                                      | -9.618      | (10.900) | —           | —      |
| Has personnel office                               | .039        | (1.386)  | —           | —      |
| Has labor attorney on retainer                     | -9.71       | (15.100) | —           | —      |
| <i>Period Effects, 1973-1980</i>                   |             |          |             |        |
| Constant   | 1.311       | (.961)   | 1.581**     | (.549) |
| Federal contractor                                 | -1.685      | (1.076)  | —           | —      |
| In California                                      | -.007       | (.735)   | —           | —      |
| Has personnel office                               | .822        | (.682)   | —           | —      |
| Has labor attorney on retainer                     | -1.487      | (1.105)  | —           | —      |
| <i>Period Effects, 1981-1985</i>                   |             |          |             |        |
| Constant   | .233        | (1.089)  | .000        | (.000) |
| Federal contractor                                 | .247        | (.397)   | —           | —      |
| In California                                      | .830**      | (.344)   | .783**      | (.329) |
| Has personnel office                               | 2.459***    | (.749)   | 3.527***    | (.495) |
| Has labor attorney on retainer                     | .066        | (.399)   | —           | —      |
| Chi-square   | 136.7***    |          | 117.24***   |        |
| Number of Spells                                   | 3,269       |          | 3,269       |        |
| Number of Events                                   | 50          |          | 50          |        |

Note: In both models, the constants for the 1955-1972 period are constrained to equal 0; in Model 2, the constant for the 1980-85 period is constrained to equal 0.

\* $p < .05$     \*\* $p < .01$     \*\*\* $p < .001$  (one-tailed tests)

tainty changed, patterns of adoption shifted accordingly. Otherwise the two innovations moved along different paths. While adoption rates for grievance procedures were higher in large firms, nonunion firms, and industries that draw on high-status labor pools, the diffusion of EAW clauses was unaffected by the

structural characteristics of firms or labor markets. Federal regulatory activity seems to have had some direct effects: In the 1981-1985 period, firms with federal contracts tended more than other firms to adopt grievance procedures, but they were indifferent to EAW clauses in all periods. Finally, results

show distinctly different roles played by the human relations professions. Personnel offices may have helped to popularize grievance procedures early on, but results suggest that from 1973 to 1980 they discouraged the adoption of grievance procedures. We are not sure how seriously to take this result because we find no other evidence that personnel professionals actively opposed grievance procedures. Clearly though, as the level of legal uncertainty rose in the mid-1970s, labor attorneys replaced personnel administrators as the chief agents in the diffusion of grievance procedures. By contrast, personnel offices appear to have played an increasingly important role in the diffusion of EAW clauses, and labor attorneys had no impact.

## DISCUSSION

We draw three broad inferences from our findings. First, while previous research has treated legalization as a unitary and highly normative phenomenon, the diffusion of grievance procedures and employment-at-will clauses suggests the emergence of two modes of legality in U.S. firms. Both are defensive responses to shifts in federal and state policies, but they imply different perspectives on governance. One, exemplified by grievance procedures, is inclusionary and rights-generating; the other, exemplified by employment-at-will clauses, is exclusionary and rights-limiting. This contrast is sharpened by the observation that *none* of the public agencies in our larger sample reported publishing EAW clauses, and previous research has shown that public agencies have adopted grievance procedures for their non-union employees much faster than have private firms. Thus, these two modes of legality, and the exclusive and inclusive management regimes they symbolize, are defined in part by the reach of the state. But we do not want to overdraw this distinction. As we have pointed out, these two policies are not mutually exclusive in our sample; in fact they are statistically independent. We are not surprised that some firms implemented progressive and regressive governance policies simultaneously, because firms can hardly be expected to make sharply discriminant responses to a legal environment that is shifting and ambiguous. Our major point is that

the menu of legitimate responses has changed over the last 20 years: Despite their procedural and political differences, both grievance procedures and EAW clauses define the employment relationship in *legal* terms.

Second, our results lend some new support to efficiency and labor-control theories of legalization: Large firms, firms that draw on more professionalized labor markets, and nonunion firms all established grievance procedures for their exempt employees at higher-than-average rates. The failure of earlier studies to detect effects of this sort is probably a result of the fact that they aggregated nonprofit and public-sector employers together with for-profit firms, thus obscuring any causal influences that might be unique to the latter. Our results suggest that employers in the for-profit sector adopt grievance procedures strategically to protect valuable employee assets and to forestall unionization. EAW clauses, by contrast, diffused without regard to firm size, development of ILMs, unionization, or labor-market characteristics.

Our third and most important inference concerns the interactive influence of the state and the professions. Government provided the original impetus for both forms of legalization. Initiatives by all three branches of the federal government circa 1972 declared an effective federal interest in equal employment opportunity, invalidated the traditional rule of at-will employment in the cases of women and minorities, and raised uncertainty about standards of compliance with federal policies and judicial doctrine. When federal EEO enforcement activities declined in the early 1980s, courts in a few states, such as California, challenged at-will employment as applied even to White males. Our modeling strategy, which used time-periods as proxies for different enforcement regimes, undoubtedly oversimplified the fluidity of the process. But the models yielded convincing results: Analyses showed that federal pressure directly accelerated adoption rates of both policies between 1973 and 1980. More important, analyses showed that the boundary-spanning activities of the professions were contingent on shifts in government policy. Our results extend the research of Edelman et al. (1992)

by suggesting something like a "succession effect" in the relative roles of personnel experts and labor lawyers. Personnel experts were the first to promote grievance procedures outside the collective bargaining context. Only later, as nonunion grievance procedures became more common and the legal environment became more threatening, did labor lawyers become the main agents of diffusion. In the early 1980s, personnel experts began to sponsor EAW clauses as a preemptive defense against lawsuits, while labor lawyers remained skeptical. Since that time, a few more court decisions have validated EAW clauses as legal disclaimers (see the early cases cited in Baskin 1987:593-94). If this trend continues, lawyers may take up the cause, perhaps once again becoming more influential than personnel administrators.

In terms of the two innovations studied here, it appears that personnel administrators were "explorers" and labor lawyers were "settlers." Of the two groups, personnel administrators are less committed to legal norms and legal logic, and their marginal position in firms inclines them to embrace unproven compliance recipes. The legal profession is, by nature, conservative and self-referential. Because their jurisdiction over the legal field is secure by definition, labor attorneys have neither the inclination nor the incentive to be as adventurous as personnel administrators in proposing new governance policies. We cannot say whether this pattern can be generalized to other changes in organizational governance. We suspect, however, that our findings are relevant for debates about the role of interest and agency in the construction of the legal environment and the institutionalization of new organization practices. The findings suggest that institutionalization can be conceptualized as a sequential process in which different sets of agents—each of which occupies a different position in the organizational field, has different stakes in the outcome, and controls different kinds of discursive resources—commit themselves to a given practice only at certain stages of the game. In the early stages, when the practice lacks legitimacy, semiprofessions like personnel administration are important sponsors because they act opportunistically and

are relatively unconstrained by professional orthodoxy. More thorough institutionalization, signified by the achievement of taken-for-granted legitimacy, seems to require the sponsorship of mature professions like the law. The "settlers'" role is to theorize practices as integral parts of the organizational field in which they are the dominant actors.

Finally, our analysis contravenes conventional views of the U.S. state as weak and incapable of ordering the "private" behavior of firms and citizens. As recently as 20 years ago, U.S. employers took for granted their unfettered authority to discharge employees and saw no need to state it explicitly. Today that authority is contested, and is thus more often articulated in formal legal terms. The legalization of managerial authority has been encouraged by the state, but not in a straightforward way. While the federal government seldom mandates the use of specific organizational practices—unlike, for example, the more statist regulatory regimes of France and Germany—it has nonetheless developed a formidable regulatory apparatus that generates models of organizational compliance through an iterative process. Legislation and court decisions establish broad guidelines for behavior, and professional agents advise firms on the design of practical compliance strategies that are in turn reviewed by courts and administrative agencies. Once approved, these strategies are interpreted as recipes for compliance by other organizations and subsequent policy makers (Abzug and Meziaris 1993; Carruthers and Halliday 1994; Dobbin et al. 1993; Edelman 1992). Thus, the compliance recipes devised by U.S. firms become powerful institutional models, just as do the solutions that are directly mandated by "strong" states (Meyer and Scott 1983). This iterative process has contributed to the evolving understanding of the nature of workplace discrimination, and to the search for possible remedies (Burstein 1990). The emergent conception of employee rights and the construction of legalistic models of governance are products of that search, but we are reluctant to predict how far this process will go. Political support for individual rights is precarious, and as we have shown, legalization has both an inclusionary and an exclusionary face. Thus the future of legality in the workplace is uncertain.



**John R. Sutton** is Professor in the Department of Sociology at the University of California, Santa Barbara. This paper is the latest in a series of reports on the impact of EEO/AA law on organizational governance that he has coauthored with Frank Dobbin, John W. Meyer, and W. Richard Scott. He is currently working on a study of the relationship between prison growth and welfare regimes in modern Western democracies.

**Frank Dobbin** is Associate Professor of Sociology at Princeton. He is studying how equal employment law affected corporate maternity policies, how the employment rights revolution and the reengineering fad reshaped corporations, and how antitrust law changed the business strategies of early railroads. His book, *Forgoing Industrial Policy: The United States, Britain, and France in the Railway Age* (Cambridge University Press, 1994), received the 1996 Max Weber Award from the American Sociological Association section on Organizations, Occupations, and Work.

## REFERENCES

- Abbasi, Sami M., Kenneth W. Hollman, and Joe H. Murrey Jr. 1987. "Employment at Will: An Eroding Concept in Employment Relationships." *Labor Law Journal* 38:21-32.
- Abzug, Rikki and Stephen Mezas. 1993. "The Fragmented State and Due Process Protections in Organizations: The Case of Comparable Worth." *Organization Science* 4:433-53.
- Althaus, Robert P. 1989. "Internal Labor Markets." *Annual Review of Sociology* 15:143-61.
- Baron, James N., Alison Davis-Blake, and William T. Bielby. 1986. "The Structure of Opportunity: How Promotion Ladders Vary Within and Among Organizations." *Administrative Science Quarterly* 31:248-73.
- Baron, James N., Frank R. Dobbin, and P. Devereux Jennings. 1986. "War and Peace: The Evolution of Modern Personnel Administration in U.S. Industry." *American Journal of Sociology* 92:350-83.
- Baron, James N., P. Devereux Jennings, and Frank R. Dobbin. 1988. "Mission Control? The Development of Personnel Systems in U.S. Industry." *American Sociological Review* 53:497-514.
- Baskin, Maurice. 1987. "The Value of Employee Handbook Disclaimers in Defending Post-Employment Litigation." *Labor Law Journal* 38:591-95.
- Becker, Gary S. 1964. *Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education*. New York: Columbia University Press.
- Blau, Peter M. and Richard A. Schoenherr. 1971. *The Structure of Organizations*. New York: Basic Books.
- Braverman, Harry. 1974. *Labor and Monopoly Capital*. New York: Monthly Review Press.
- Bridges, William P. and Wayne J. Villemez. 1991. "Employment Relations and the Labor Market: Integrating Institutional and Market Perspectives." *American Sociological Review* 56:748-64.
- Bulow, Jeremy I. and Lawrence H. Summers. 1986. "A Theory of Dual Labor Markets with Application to Industrial Policy, Discrimination, and Keynesian Unemployment." *Journal of Labor Economics* 4:376-414.
- Burstein, Paul. 1985. *Discrimination, Jobs, and Politics: The Struggle for Equal Opportunity in the United States Since the New Deal*. Chicago, IL: University of Chicago Press.
- . 1990. "Intergroup Conflict, Law, and the Concept of Labor Market Discrimination." *Sociological Forum* 5:459-79.
- Carruthers, Bruce G. and Terence C. Halliday. 1994. "The Recursivity of Law: Professional Innovation in Corporate Bankruptcy Reforms." Working Paper #9424, American Bar Foundation. Chicago, IL.
- Clegg, Stewart and David Dunkerly. 1980. *Organization, Class, and Control*. London, England: Routledge and Kegan Paul.
- Condon, Thomas J. and Richard H. Wolff. 1985. "Procedures to Safeguard Your Right to Fire." *Harvard Business Review* 63:16-20.
- Days, Drew S., III. 1984. "Turning Back the Clock: The Reagan Administration and Civil Rights." *Harvard Civil Rights-Civil Liberties Law Review* 19:309-47.
- DiMaggio, Paul. 1988. "Interest and Agency in Institutional Theory." Pp. 3-21 in *Institutional Patterns and Organizations: Culture and Environment*, edited by L. G. Zucker. Cambridge, MA: Ballinger.
- DiMaggio, Paul J. and Walter W. Powell. 1983. "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizations." *American Sociological Review* 48:147-60.
- Dobbin, Frank R., Lauren Edelman, John W. Meyer, W. Richard Scott, and Ann Swidler. 1988. "The Expansion of Due Process in Organizations." Pp. 71-98 in *Institutional Patterns and Organizations: Culture and Environment*, edited by L. G. Zucker. Cambridge, MA: Ballinger.
- Dobbin, Frank, John R. Sutton, John W. Meyer, and W. Richard Scott. 1993. "Equal Opportunity Law and the Construction of Internal Labor Markets." *American Journal of Sociology* 99:396-427.
- Doeringer, Peter B. and Michael J. Piore. 1971. *Internal Labor Markets and the Manpower Analysis*. Lexington, MA: Heath.

- Donohue, John J., III and Peter Siegelman. 1991. "The Changing Nature of Employment Discrimination Litigation." *Stanford Law Review* 43:983-1033.
- Edelman, Lauren B. 1990. "Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace." *American Journal of Sociology* 95: 1401-40.
- . 1992. "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law." *American Journal of Sociology* 97:1531-76.
- Edelman, Lauren B., Steven E. Abraham, and Howard S. Erlanger. 1992. "Professional Construction of Law: The Inflated Threat of Wrongful Discharge." *Law and Society Review* 26:47-84.
- Edwards, Richard C. 1979. *Contested Terrain*. New York: Basic.
- Ewing, David W. 1989. *Justice on the Job: Resolving Grievances in the Nonunion Workplace*. Boston, MA: Harvard Business School Press.
- Fligstein, Neil. 1990. *The Transformation of Corporate Control*. Cambridge, MA: Harvard University Press.
- Froehlich, Herbert P. and Dennis A. Hawver. 1974. "Compliance Spinoff: Better Personnel Systems." *Personnel* 51(1):62-68.
- Garris, Steve and Ann Black. 1974. "Revising Personnel Management Procedures." *Personnel* 51(6):50-58.
- Gery, Gloria J. 1977. "Equal Opportunity—Planning and Managing the Process of Change." *Personnel Journal* 56:184-203.
- Giblin, Edward J. and Oscar A. Ornati. 1974. "A Total Approach to EEO Compliance." *Personnel* 51(5):32-43.
- Goldberg, Victor P. 1980. "Bridges Over Contested Terrain: Exploring the Radical Account of the Employment Relationship." *Journal of Economic Behavior and Organization* 1:249-74.
- Gordon, David M., Richard Edwards, and Michael Reich. 1982. *Segmented Work, Divided Workers*. London, England: Cambridge University Press.
- Hamilton, Gary G. and John R. Sutton. 1989. "The Problem of Control in the Weak State: Domination in the United States, 1880-1920." *Theory and Society* 18:1-46.
- Hodson, Randy. 1978. "Labor in the Monopoly, Competitive, and State Sectors of Production." *Politics and Society* 8:429-80.
- Jensen, Michael L. 1988. "Developments in California Wrongful Discharge Law." *Industrial Relations Law Journal* 10:27-39.
- Jepperson, Ronald. 1991. "Institutions, Institutional Effects, and Institutionalism." Pp. 143-62 in *The New Institutionalism in Organizational Analysis*, edited by W. W. Powell and P. J. DiMaggio. Chicago, IL: University of Chicago Press.
- Kohl, John P. 1985. "Equal Employment Opportunity in America: An Historical Past and Emerging Trends." *Labor Law Journal* 36: 835-41.
- Leap, Terry L., William H. Holley Jr., and Hubert S. Field. 1980. "Equal Employment Opportunity and Its Implications for Personnel Practices in the 1980s." *Labor Law Journal* 31: 669-82.
- Lempert, Richard O. and Joseph Sanders. 1986. *An Invitation to Law and Social Science*. New York: Longman.
- Linenberger, Patricia and Timothy J. Keaveny. 1981. "Sexual Harassment: The Employer's Legal Obligations." *Personnel* 58(6):60-68.
- March, James G. and Herbert A. Simon. 1958. *Organizations*. New York: John Wiley.
- Marino, Kenneth E. 1980. "Conducting an Internal Compliance Review of Affirmative Action." *Personnel* 57(2):24-34.
- McCabe, Douglas M. 1988. *Corporate Nonunion Complaint Procedures and Systems*. New York: Praeger.
- Meyer, John W. and Brian Rowan. 1977. "Institutionalized Organizations: Formal Structure as Myth and Ceremony." *American Journal of Sociology* 83:340-63.
- Meyer, John W. and W. Richard Scott. 1983. *Organizational Environments*. Newbury Park, CA: Sage.
- Nonet, Philippe and Philip Selznick. 1978. *Law and Society in Transition: Toward Responsive Law*. New York: Harper and Row.
- Oi, Walter Y. 1990. "Employment Relations in Dual Labor Markets ('It's Nice Work If You Can Get It')." *Journal of Labor Economics* 8:S124-49.
- Perrow, Charles. 1985. "Review Essay: Overboard with Myth and Symbols." *American Journal of Sociology* 91:151-55.
- Pfeffer, Jeffrey and James N. Baron. 1988. "Taking the Workers Back Out: Recent Trends in the Structuring of Employment." *Research in Organizational Behavior* 10:257-303.
- Pugh, Derek S., David J. Hickson, and Robert Hinings. 1969. "An Empirical Taxonomy of Structures of Work Organizations." *Administrative Science Quarterly* 14:115-26.
- Schlichter, Sumner. [1919] 1961. *Potentials of the American Economy: Selected Essays of Sumner S. Schlichter*. Reprint, Cambridge, MA: Harvard University Press.
- Selznick, Philip. 1969. *Law, Society, and Industrial Justice*. New York: Russell Sage Foundation.
- Simon, Herbert. 1957. *Administrative Behavior*.

- 2d ed. New York: Macmillan.
- Skrentny, John D. 1996. *The Ironies of Affirmative Action: Constructing Justice in a Turbulent America*. Chicago, IL: University of Chicago Press.
- Soutar, Douglas. 1981. "Preempting Governmental Regulation of the Work Place through Self-Enlightened Policy Planning." *Employee Relations Law Journal* 7:67-76.
- Staudohar, Paul D. 1981. "Exhaustion of Remedies in Private Industry Grievance Procedures." *Employee Relations Law Journal* 7:454-65.
- Steiner, Julius M. and Allan M. Dabrow. 1986. "The Questionable Value of the Inclusion of Language Confirming Employment-at-Will Status in Company Personnel Documents." *Labor Law Journal* 37:637-45.
- Suchman, Mark C. and Lauren B. Edelman. 1994. "Legal Rational Myths: Lessons for the New Institutionalism from the Law and Society Tradition." Paper presented at the annual meeting of the Law and Society Association, June 18, Phoenix, AZ.
- Sutton, John R., Frank Dobbin, John W. Meyer, and W. Richard Scott. 1994. "The Legalization of the Workplace." *American Journal of Sociology* 99:944-71.
- Thompson, James D. 1967. *Organizations in Action*. New York: McGraw-Hill.
- Thorp, Cary D., Jr. 1973. "Fair Employment Practices: The Compliance Jungle." *Personnel Journal* 52:642-49.
- Tolbert, Charles, Patrick M. Horan, and E. M. Beck. 1980. "The Structure of Economic Segmentation: A Dual Economy Approach." *American Journal of Sociology* 85:1095-116.
- Tuma, Nancy Brandon and Michael T. Hannan. 1984. *Social Dynamics: Models and Methods*. Orlando, FL: Academic Press.
- U.S. Bureau of the Census. 1986. *The National Income and Product Accounts of the U.S., 1929-82*. Washington, DC: Government Printing Office.
- U.S. Department of Labor, Bureau of Labor Statistics. 1975-87. *Handbook of Labor Statistics*. Washington DC: Government Printing Office.
- Vollmer, Howard W. and Patrick J. McGillivray. 1960. "Personnel Offices and the Institutionalization of Employee Rights." *Pacific Sociological Review* 3:29-34.
- Westin, Alan F. and Alfred G. Feliu. 1988. *Resolving Employment Disputes without Litigation*. Washington, DC: Bureau of National Affairs.
- Williamson, Oliver E. 1975. *Markets and Hierarchies: Analysis and Antitrust Implications*. New York: Free Press.
- . 1985. *The Economic Institutions of Capitalism*. New York: Free Press.
- Winters, Richard Harrison. 1985. "Note: Employee Handbooks and Employment-at-Will Contracts." *Duke Law Journal* (1):116-220.
- Witt, Maureen Reidy and Sandra R. Goldman. 1988. "Avoiding Liability in Employee Handbooks." *Employee Relations Law Journal* 14:5-18.
- Youngblood, Stuart A. and Gary L. Tidwell. 1981. "Termination at Will: Some Changes in the Wind." *Personnel* 58:22-33.