

Book Reviews

Inventing Equal Opportunity.

Frank Dobbin. Princeton, NJ: Princeton University Press, 2009. 310 pp. \$37.50.

Frank Dobbin's *Inventing Equal Opportunity* shows the value of building a cumulative research program. In articles spanning more than two decades, Dobbin and his coauthors examined quantitatively the changing face of U.S. firms in response to equal employment opportunity (EEO) and other U.S. regulatory laws. More recently—again with coauthors—Dobbin has begun to investigate quantitatively whether administrative and court enforcement of EEO law, and policies adopted by U.S. business in response to EEO law, do or do not work to increase race and gender diversity in business management. Now comes *Inventing Equal Opportunity*, in which Dobbin provides in-depth “process tracing” to explain more fully how and why U.S. firms responded to EEO law as they did, constructing the meaning and practice of equal employment opportunity.

Dobbin begins provocatively: “Not a single sentence remains from the corporate personnel manual of 1960. Firms have changed how they recruit, hire, discipline, evaluate, compensate, and fire workers” (p. 1). John F. Kennedy issued his executive order mandating affirmative action for government contractors in 1961. Then Congress passed Title VII of the 1964 Civil Rights Act, prohibiting discrimination in employment based on race, sex, color, national origin, and religion. Neither law defined EEO or directly created EEO programs. Instead, “personnel experts . . . concocted equal opportunity programs and later diversity management programs . . .” (p. 1). Consistent with an “endogeneity of law” argument (Edelman, Uggen, and Erlanger, 1999), judicial law often ratified policies and programs that personnel experts advocated.

The civil rights movement and passage and federal enforcement of anti-discrimination legislation and executive orders were the first three “acts” of the EEO saga. Dobbin argues that scholars “neglect[ed] the long fourth act, in which the personnel profession’s compliance efforts translated the law into practice” (p. 3). Using employer surveys conducted with John Meyer, Richard Scott, John Sutton, Alexandra Kalev, and Erin Kelly, in-depth interviews with human resource managers conducted with Kalev, Kelly, and Shawna Vican, and a variety of documents, including articles in the management press, oral histories, histories of firms, and surveys and reports done by management groups, Dobbin’s book accounts for how and why personnel experts constructed—and employers adopted and diffused—“wave upon wave of corporate programs” (p. 13).

In the 1960s, personnel experts wrote anti-discrimination policies, advocated job posting, and designed recruitment and training programs for minorities and women. In the 1970s, these experts defined formal-rational employment rules and systems to counter bias, “equating fairness with the rule of law” (p. 16). In the 1980s, while the Reagan administration undermined affirmative action, personnel experts relabeled EEO as diversity management. From 1990 on, a mostly

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female human resource profession promoted anti-harassment and work-family programs. In short, the meaning of discrimination and anti-discrimination continued to evolve, with that evolution powered by an evolving personnel profession.

Broad scope, good writing, and meticulous research make the book worth reading by scholars of organizations and law and society as well as by managers, personnel and human resource professionals, and anyone interested in post-World War II U.S. history, economy, and culture. Dobbin's book also delivers a thoughtful, well-supported analytic argument.

Dobbin suggests that personnel's social construction project was possible because (1) Congress outlawed employment discrimination without defining discrimination; (2) a fragmented group of agencies and courts enforced anti-discrimination law piecemeal, leaving at any moment much ambiguity about what would make firms liable or what they might do to insulate themselves from liability; and (3) initially there was sufficient high-profile enforcement against large, visible employers that business executives became anxious about potential liability and being seen as bad corporate citizens. Personnel experts were motivated to spearhead the construction of compliance because their traditional bailiwick was waning as unions declined, and these experts could push programs already in their arsenals. Thus professional networks used civil rights law strategically to cement and then expand their turf and numbers within the firm.

Legal expertise likely would have trumped the personnel profession had firms' legal counsel also been motivated to construct compliance. But this "objective possibility" did *not* happen because, in the face of legal ambiguity, lawyers' interests and ethics would not have been served by suggesting that any specific strategy could or would avoid legal liability. For firms' legal counsel, legal ambiguity was constraining. For personnel professionals, the absence of evidence that policies they promoted would forestall litigation signaled opportunity rather than constraint.

Finally, personnel experts' ongoing construction project had staying power, remaking U.S. employment practices again and again, for two reasons. On one hand, judges could not "invent compliance structures from scratch, so they took their cues from leading firms" (p. 5). Once policies diffused broadly in U.S. business, courts began presuming that companies failing to adopt the new "best practices" were not acting in good faith to prevent discrimination. Conversely, courts presumed that companies adopting the practices *were* acting in good faith to curb discrimination. Thus, "what personnel made popular gradually became lawful" (p. 5). On the other hand, what personnel made popular also gradually became decoupled from its roots in response to EEO law and instead became taken for granted as good practice to attain business efficiency, productivity, and profitability. Judicial ratification of new business strategies as EEO compliance at the same time that managers and personnel professionals were busy divorcing American firms' justification for these practices *from* EEO compliance was no accident. Both processes stemmed

from the same set of political-cultural values: those extolling a non-interventionist U.S. state.

Though this short summary cannot do justice to the evidentiary richness of *Inventing Equal Opportunity*, it does highlight some of the book's key contributions to current scholarly debate. First, the institutional change processes highlighted by Dobbin combine the cognitive-cultural mechanisms often privileged by new institutionalists with the strategic, resource mobilization, and turf-building mechanisms emphasized by scholars of institutional politics. An adequate approach to law and organizations likely requires both a cultural and a political institutionalism.

Second, while supporting EEO law's endogeneity to regulated business, Dobbin does *not* presume that legal endogeneity must equal regulatory weakness. It is an open question—and one to which Dobbin is devoting his next book—which, whether, and how firms' compliance strategies work to improve employment outcomes for women and minorities. Meanwhile, Dobbin argues that business-constructed compliance and its subsequent reframing and institutionalization as good business practice yielded a greater, more permanent transformation of U.S. business than would have been the case had the U.S. state not fueled business anxiety through fragmented, unclear, and nonspecific enforcement. Dobbin's argument is buttressed with intermittent comparative evidence showing similarities between business's response to U.S. EEO law and to some other U.S. regulation, while suggesting that French EEO law, promulgated through legal codes of a centralized state, did not result in business's extensive construction of compliance.

Inventing Equal Opportunity is not flawless. Because the outcome of litigation often hinges on procedural rules mandating what must be proved and by whom, Dobbin is right to highlight Supreme Court decisions in which such burdens of proof are at stake, but his description of the Supreme Court's 1989 *Wards Cove* ruling is inaccurate. He states that the case "returned to plaintiffs the onus of proving discriminatory intent" (p. 137, emphasis mine); however, the case *bypassed* the issue of employer intent because it proceeded under what is called the "disparate impact" legal theory of discrimination. Under this longstanding judicial doctrine (enunciated in the 1971 *Griggs* case that Dobbin does discuss), an employer can be found liable for discrimination even without bad intent, as long as the employer used an apparently racially neutral employment practice (e.g., employment testing) that nonetheless had a disproportionate negative effect on racial minorities, and the employer cannot prove that the practice was a "business necessity." Traditional disparate impact doctrine was helpful to plaintiffs, because it was easier for plaintiffs to prove negative effects than to prove negative intent, and it typically is hard for employers to prove that a business practice is an absolute necessity. In *Wards Cove*, the Supreme Court tried to make it much easier for employers to defend against plaintiffs claiming discrimination via negative effects by stating that "the burden of proving" discrimination remained with the plaintiff at all times and that all employers needed to do to avoid liability was to produce

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some evidence of “legitimate business justification” for using employment practices with disproportionate negative effects on minorities. This would have been quite easy for employers to do. Congress enacted the Civil Rights Act of 1991 in part to nullify *Wards Cove* and ensure it would be harder—rather than easier—for employers to absolve themselves of liability under disparate impact standards for proving discrimination.

More important, lack of full development for his comparative referent—France—leaves some ambiguity in Dobbin’s analytic argument. Was the legal ambiguity created by state fragmentation enough by itself to fuel the anxiety that led to businesses giving personnel experts their opening to construct compliance? Or did ambiguity work conjointly with the early, unexpected state efforts to strengthen enforcement (cf. Pedriana and Stryker, 2004)? Much causal import is given to U.S. state fragmentation, but what exactly is doing the heavy lifting? Multiple executive branch and administrative law enforcers, judicial interpretation through a system of case law, federalism, or all of the above?

Such criticisms are very minor, however. Overall, Frank Dobbin’s *Inventing Equal Opportunity* is exemplary for its thought-provoking ideas, its careful empirical research, and for the way it combines the two through a compelling cumulative research design. The book won the 2010 Max Weber Award for Distinguished Contribution to Scholarship from the Section on Organizations, Occupations and Work of the American Sociological Association, a distinction it fully deserves.

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