

Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma

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Equal employment opportunity and affirmative action mandates, like many other laws regulating organizations, do not clearly define what constitutes compliance. Thus compliance depends largely on the initiative and agenda of those persons within organizations who are charged with managing the compliance effort: in the case of civil rights, "affirmative action officers." This paper draws on case studies of affirmative action officers to suggest that the political climate within which affirmative action officers work, together with the officers' interpretations of the law, their role conceptions, and their professional aspirations have important implications for the nature and extent of organizational compliance with law. We conclude that compliance should be understood as a process that evolves over time rather than as a discrete event or non-event.

I. INTRODUCTION: ORGANIZATIONAL COMPLIANCE AS PROCESS

Equal employment opportunity and affirmative action (EEO/AA) mandates, like many other laws regulating organizations, do not clearly define what constitutes compliance. Thus, compliance depends largely on the initiative and agenda of those persons within organizations who are charged with managing the compliance effort: in the case of civil rights, "affirmative action officers." We argue that the political climate within which affirmative action officers work, together with the officers' interpretations of the law, their role conceptions, and their professional aspirations have important implications for the nature and extent of organizational compliance with law.

The literature on regulation and on organizational behavior tends to emphasize the capacity of organizations to resist compliance with law. This is especially true for studies of regulatory agencies, which overwhelmingly emphasize noncompliance (for example, Katz, 1977; Vaughan, 1983; Wirt, 1970; and Blumrosen, 1965). In explaining noncompliance, these accounts tell us that resources for enforcement are inadequate (for example, Cranston, 1979; Conklin, 1977), and that regulatory agencies (and their field agents) negotiate the meaning of compliance with, or succumb to pressure or "capture" by, the organizations they regulate (Clune, 1983; Diver, 1980; Wirt, 1970; Blumrosen, 1965).

Virtually all accounts of regulation emphasize the discretion of regulatory agencies, especially the discretion to overlook noncompliance (Ackerman, Ackerman, Sawyer, and Henderson, 1974; Diver, 1980; Hawkins, 1984). For example, in his analysis of the enforcement of antipollution efforts in England, Hawkins (1984) shows that regulatory enforcement of antipollution law tends to be persuasive rather than coercive: there is a strong preference among regulators for informal enforcement and negotiated compliance, in part due to social and political ambivalence concerning the law. He concludes that the selective use of hard enforcement primarily serves to maintain the legitimacy of the regulatory agency rather than to achieve compliance.

Studies of organizations subject to regulation show how organizational structure encourages inattention to legal requirements (Stone, 1975), and how the internal normative environment of organizations often encourages individuals to place organizational goals over legal goals when the two conflict (Vaughan, 1983). Both Stone and Vaughan point out that task specialization, decentralized decision-making, and interdivisional competition are conducive to noncompliance. Katz (1977) shows how officials within organizations can be very effective in masking violations from outside review. In a study of organizational response to federal securities law, Burk (1988) shows that legal goals may be frustrated or altered because social actors use law as a resource to pursue their individual interests.

While we do not take issue with the literature on organizational compliance with law, we seek to shift the focus of inquiry from the existence or nonexistence of compliance to the *process* of compliance. Much of the regulation literature treats law as a clear mandate to which organizations either comply or fail to comply. In contrast, we suggest that compliance is a social and political process that evolves over time. Our view of compliance builds upon institutional analyses of organizations, which emphasize that organizations must be understood as emergent and dynamic institutions that are responsive to both internal and environmental normative pressures.

Early institutional theories of organizations suggest that normative forces within organizations play a significant role in determining organizational practices and the development of organizational ideologies. Selznick (1957, 1969) points out that organizational ideologies and missions are shaped both by the internal politics of the institution, reflecting the diverse interests of various organizational personnel, and by societal expectations. The more recent institutional literature emphasizes organizational response to external normative pressures: institutional theorists point out that organizations react to their environments by creating symbols and ceremonies designed more to achieve legitimacy than to achieve technical goals (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; March and Olsen, 1989).

The institutional literature provides a context for studying organizational response to law: organizations seek to comply with law in order to marshal

legitimacy and environmental resources (Edelman, 1990). Yet laws regulating organizational behavior are generally quite vague, setting forth broad and ambiguous principles rather than dictating specific behaviors (Diver, 1980; Hawkins, 1984; Edelman, 1992). Moreover, as March and Olsen (1989) have noted, even specific rules often become ambiguous when they are applied to particular situations. As a result, there is often widespread legal and social debate as to the meaning of legal rules. As long as the debates are unresolved, organizations have wide latitude to determine how, if at all, to comply. In this context, the creation of symbolic structures is especially attractive: an organization can point to structural change as evidence of its compliance, without necessarily creating significant change in behavior.

Edelman (1992) shows that in response to the vague prohibition against discrimination, organizations often create "symbolic structures" such as special affirmative action officers, anti-discrimination rules, and, affirmative action officer positions. Given ambiguity in the law, legal provisions that emphasize procedural rather than substantive compliance, and weak enforcement mechanisms, it is unclear what organizations must do to comply with law. Edelman argues that this poses a dilemma to organizations: they must appear attentive to law in order to gain legitimacy and public resources and, at the same time, seek to minimize law's constraints on traditional managerial prerogatives. Organizations respond to this dilemma by creating symbolic structures, which serve as visible efforts to comply with law. Edelman points out that because the normative value of these structures does not depend on their effectiveness, they do not guarantee substantive change in the employment status of minorities and women.

However, the creation of symbolic structures is only the first stage of organizational response to law. Once in place, structures within organizations tend to develop a life of their own (Selznick, 1949). To understand the role that symbolic structures play in the construction of compliance, then, it is important to study the evolution of such structures within organizations. This paper focuses on the developing character of one such structure: the position of affirmative action officer.¹ It builds directly on Edelman's earlier analysis by focusing on consequences of structural change in response to law. As suggested by Selznick, we argue that once in place, affirmative action officers develop their own EEO/AA agendas, form alliances with various constituencies, and take actions that generate new tensions, thus playing a critical role in the implementation of EEO/AA law within the organizations. The agenda of affirmative action officers is significantly influenced by conflict, bargaining, and coalition-building among individuals or groups with diverse interests (March, 1962), by the diffusion of ideas among organizations (DiMaggio and Powell, 1983), and especially by the structural contradictions inherent in their position.

II. EEO/AA LAW AND ITS IMPLEMENTATION BY AFFIRMATIVE ACTION OFFICERS

Equal employment opportunity and affirmative action law² is open to organizational definition because it gives little guidance on the meaning of discrimination. For example, Title VII of the 1964 Civil Rights Act, §703(a)(1) states that:

It shall be an unlawful employment practice for an employer: to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. (42 U.S.C. §2000e-2)

While seemingly specific, the meaning of such phrases as "because of such individual's race, color, religion, sex, or national origin" is unclear.³ This ambiguity has engendered debate over two basic interpretations of EEO/AA law: a "procedural interpretation" and a "substantive interpretation." The procedural interpretation defines equality in terms of equal treatment in employment decision-making. The substantive interpretation defines equality in terms of the substantive outcome of organizational practices. Procedural equality does not guarantee substantive equality, because the former perpetuates existing inequalities that are the result of past discrimination.⁴

These different interpretations of equality result in different views of "affirmative action" – measures to improve the employment status of minorities and women. The procedural interpretation holds that affirmative action is inconsistent with Title VII because, by giving preference to minorities or women, employers are making race- or gender-conscious decisions.⁵ The substantive interpretation asserts that affirmative action is required under Title VII because the effects of discrimination will persist unless employment decisions include an affirmative effort to promote the interests of previously underrepresented groups.⁶

This ambiguity in EEO/AA law affects affirmative action officers in three ways. First, affirmative action officers must construct the law in shaping their organizations' compliance programs. Officers' constructions of law critically affect the form, strength and comprehensiveness of their organizations' responses to law. Several factors may influence how an affirmative action officer constructs EEO/AA law. Public opinion is one factor: the public and legal debate over whether the law requires or permits special compensatory treatment of minorities and women feeds into affirmative action officers' constructions of law. Judicial decisions are another: they affect affirmative action officers' constructions of law by legitimating or rejecting practices that develop within organizations.

Secondly, ambiguity in EEO/AA law allows multiple "clienteles," often with competing interests, to make legitimate claims to the loyalties of

affirmative action officers. Affirmative action officers must often negotiate among the demands of women and minorities who claim a protected legal status; white and male employees who worry about “reverse discrimination;” and community members who claim that the organization discriminates in hiring. These competing claims flow directly from the conflict between the procedural and substantive interpretations of civil rights law. Where intent to discriminate is blatant, the law is clear that policies and actions that follow from that discriminatory intent are illegal. Where intent to discriminate is not apparent, persons in protected classes generally rely upon the “outcome” approach to claim the allegiance of affirmative action officers. At the same time, whites and males often claim – based upon a procedural interpretation of the law – that affirmative action officers should protect them from being disadvantaged by affirmative action programs.

An even deeper source of conflict for the affirmative action officer is the structural dilemma that arises from the constraints that EEO/AA law imposes upon traditional managerial prerogatives. On the one hand, the affirmative action officer has a responsibility to act as an extension of the state; from this perspective, the officer’s clientele are employees who may claim protected status under EEO/AA law. On the other hand, because the office is situated within the bureaucratic hierarchy, the administration is also a “client.”⁷

Affirmative action officers must be attentive to the administration’s interest because they are structurally part of management and often seek promotion to higher management positions. Too many challenges to organizational practices might result in conflict with top management and the affirmative action officer’s loss of authority or dismissal. Yet too much deference to the administration’s interest can result in tensions between the office and employees in protected classes as well as in lawsuits and findings of noncompliance by regulatory agencies.

Affirmative action officers vary significantly in how they resolve these contradictory claims to their services, adopting either a partisan or neutral strategy in response to claims from competing clienteles (Larson, 1977). A partisan affirmative action officer may favor either the administration’s interest in minimal restriction, or the interests of previously disenfranchised employees to special treatment.⁸ A neutral client orientation may be conciliatory, involving an active attempt to mediate among conflicting interests, or it may be indifferent, reflecting a passive lack of attention to competing interests.

The third way that legal ambiguity affects affirmative action officers is that it allows professionals within organizations to gain power through the assertion of expertise regarding what constitutes compliance. How professionals use that power depends in part on their professional interests and expectations. Larson (1977) suggests that professionals may use their

expertise either to claim power within the bureaucratic hierarchy or to claim countervailing power vis-à-vis the bureaucratic hierarchy. She argues that power within the bureaucratic hierarchy yields participation and integration in administrative decision-making while power vis-à-vis the bureaucratic hierarchy yields autonomy from the administration. In general, professionals who strive to move up the bureaucratic hierarchy will claim power within that hierarchy while professionals whose status derives from external sources (such as educational credentials) will claim power to act autonomously.

Structural conflict in affirmative action officers' roles, then, forces them to make choices about constructions of law, client interests, and professional orientations. These three dimensions are not independent. Orientation to the administration as client or to success in the bureaucratic hierarchy will tend to be associated with the procedural interpretation of EEO/AA law, while orientation to underrepresented interests and to recognition outside the organization will tend to be associated with the substantive interpretation of the law. Affirmative action officers' resolution of role conflict will have major ramifications for the type of compliance that affirmative action officers seek and achieve.

The role conflict experienced by affirmative action officers reflects a tension that is often found in enforcement positions in organizations. Hawkins, for example, found that the field agents in an antipollution enforcement agency were subject to conflicting pressures because of a multiplicity of roles. The field agent "may sometimes be consultant and analyst; sometimes investigator and policeman; but he must also be negotiator and judge, inspector, educator, and public relations representative" (Hawkins, 1984: 56). Auerbach (1984) and Rosen (1984) have also noted the role conflict experienced by lawyers directly employed by corporations ("inside counsel").

Arguably, however, the affirmative action officer is in a more tenuous position than either the regulatory field officer or the inside counsel. Field officers manipulate their roles in an attempt to elicit compliance, but, since the objects of enforcement are outside the organization, field officers generally have a secure position within their own agency. Balancing organizational and legal interests inevitably creates role conflicts for the personnel involved, whether they are within or outside of the organization. For internal personnel, however, the role conflicts are more intense since, in addition to balancing conflicting interests and claims to their assistance, they must be concerned with their tenure and promotion opportunities. Like affirmative action officers, inside counsel experience role conflict because of their position within the organization, since they owe their employment to the firm while simultaneously being subject to professional norms as representatives of the legal system. However, inside counsel have an independent base of legitimacy as professionals and a more generic set of skills (as lawyers) than affirmative action officers, whose status and career

will generally be more dependent on the employing organization (Chambliss, 1989).

III. DATA AND METHODS

To explore the politics of the compliance process, we conducted three case studies of the implementation of EEO/AA policies. Because we wanted access to organizational personnel and documents, all three are public or educational organizations, where we found it easier to secure access. We recognize that the response to EEO/AA law in these organizations is likely to be unrepresentative of for-profit firms in the private sector. For this and all the usual reasons relating to small, ad hoc samples, our findings must be considered suggestive and tentative.

Each case study consisted of in-depth interviews with principal actors on the organizations' response to and implementation of EEO/AA policies. We also relied on a variety of secondary materials, such as internal documents, affirmative action plans, newspaper accounts, and press releases.

The first case is a medium-sized eastern city, which made its first serious effort to introduce affirmative action policies in 1978. The second case is a small liberal arts college and its decision to hire an affirmative action officer in 1988. Our third study is of the local government of a midwest city with a population of about 175,000. Because the first case study involves three different affirmative action officers, these three cases yield five examples of the interaction between affirmative action officers and their employing organizations.

IV. OFFICERS' RESPONSES TO STRUCTURAL CONTRADICTIONS

In this section, we use examples from our case studies to illustrate how structural contradictions in affirmative action officers' role force them to make political choices that result in significantly different forms of compliance. Four strategies for handling structural contradictions could be discerned from the interviews we conducted. We do not claim that these are the only types of response to EEO/AA law: clearly there may be other strategies, especially in private organizations, but the responses we observed show that different strategies for responding to competing interests can result in very different forms of compliance. For heuristic purposes, we characterize the four strategies we observed as: the Advocate, the Team Player, the Professional, and the Technician.

A. THE ADVOCATE

One strategy is to adopt a strong substantive construction of the law and therefore to pursue minorities' and women's interests aggressively. This

strategy requires that the affirmative action officer place the interests of the minority and female employees clearly above any conflicting interests of the administration. We refer to this as the "Advocate" strategy. The Advocate strategy is the most likely to produce significant social reform but carries high risk: advocates continuously risk failure because their role as champions of the law (and those protected by law) continuously brings them into conflict with, and evokes resistance from, organizational management.

A substantive construction of law often requires major reforms in organizational practices and significant constraints upon traditional managerial prerogatives. It therefore tends to exacerbate the conflict inherent in the affirmative action officer's role. But Advocates' resolution of that conflict is clear: they contend that legal requirements (as they construe them) require them to represent and advocate the interests of minority and female employees and they deny any allegiance to management. Advocates draw on their knowledge of the law, and on community and employee support, to justify and buttress their efforts to bring about changes in employment practices. Both of these factors become a source of countervailing power vis-à-vis the administration.⁹ Advocates also draw upon the symbolic value of their position; they are somewhat insulated because the public may view an attack on the affirmative action officer as an attack on civil rights.

We have two examples of Advocates in our case studies. Both cases demonstrate the potential of the Advocate strategy for social reform, but, at the same time, the volatility of that strategy. Both of our Advocates were affirmative action officers in city governments, both were public advocates of civil rights prior to their appointments, and both were appointed amidst considerable civil rights conflict. Importantly, both had short tenures due to the controversy that their actions generated.

One of these Advocates was employed in a medium-sized eastern city, which did not make a serious effort to introduce affirmative action policies until 1978. This city has an unusually high poverty rate and a weak tax base, and therefore has faced considerable financial problems over the past few decades as it tried to stretch its resources to provide basic public services. The city's Hispanic population has grown dramatically, from 3.2 percent in 1970 to 12.6 percent in 1980.¹⁰ This rapid growth has created considerable tension between the older ethnic white population and the more recent settlers. Given these problems, the employment of minorities by the city and the creation of affirmative action structures are politically charged issues.

With heightened racial tension as the backdrop, it was community action that precipitated the development of a municipal affirmative action program. In the late 1970s, a Hispanic community group filed a complaint against the city with the Department of Housing and Urban Development (HUD) in which it alleged that the city had made itself ineligible for federal grants because of its failure to hire minorities.¹¹ HUD threatened to withhold development funds if the city did not improve its minority hiring

record.¹² The city agreed to minority hiring goals and promised to create a centralized office to monitor EEO/AA in employment as well as an oversight committee of community members.¹³

Shortly after the agreement was reached, the city hired its first affirmative action officer, Juan Martinez (a pseudonym), a Hispanic community leader. Martinez' appointment was clearly intended to appease the rapidly growing Hispanic community. But his commitment to implementing a strong form of EEO/AA law brought him into immediate conflict with the administration that hired him. Shortly after Martinez took office, a conflict arose over the role of the community oversight committee, the Equal Opportunity Council (EOC). About half of the EOC members appointed by the mayor were minorities, many of them prominent Hispanic leaders. The issue was how much oversight the EOC would have over the city's EEO/AA policy. The mayor's purpose would best be served by a visible but nonpowerful EOC, and he sought to narrow the council's powers, stating that: "[t]he EOC will not set equal opportunity policy but will instead serve as advisors to [the mayor]."

Martinez, however, supported an active role for the EOC, which could back him in foreseeable fights with the city administration. Demonstrating his willingness to challenge the mayor, Martinez was quoted in the local newspaper as saying, "[i]f the council makes a recommendation for the benefit of the community and the mayor doesn't go along with it, I will resign, because my job will be nothing more than [to occupy] a cubby hole [in the City Hall Annex]." By tying his own fate to that of the EOC, Martinez clearly established himself as an advocate of the Hispanic community, and demonstrated his commitment to strong affirmative action.

Martinez continuously reiterated his commitment to the minority community and his willingness to challenge the administration. A newspaper article reported that although "he is a mayoral appointee, [Martinez] stressed that 'his first commitment is to the minority [population]'. When a city agency was found to not be in compliance with the affirmative action guidelines and [the mayor] refused to remedy the situation, [Martinez] said he would 'go directly to federal authorities to remedy the problem.'"

Martinez also worked hard to promote a substantive construction of EEO/AA law, one that focused on equality of outcome rather than equality of treatment. This is shown in his statement that "the city has improved its equal opportunity procedures but I don't want to wait ten years to get eleven percent minority personnel [in municipal departments]." And after only seven months on the job, he joined several other Hispanic leaders in asking the state EEO agency to report that the city was not in compliance with the affirmative action agreement reached with HUD.

Due to his advocacy of minority interests and repeated challenges to the mayor, the autonomy and authority of Martinez' position became a point of contention. Martinez proposed that his office be granted more autonomy,

arguing that his ability to act as an advocate was constrained by the mayor's tight control over his job. The mayor denied this charge: "I don't control [Martinez]. I want him to do his job independently . . . I don't agree with his report, but it doesn't affect his position with me one iota."

After this contest over Martinez' autonomy, Martinez' relationship with the mayor quickly deteriorated and a few months later he resigned. In his letter of resignation, Martinez "expressed his disappointment and disgust with the unfulfilled promises . . . 'I have decided to terminate my services with your racist administration.'" In this case, then, a zealous advocate of the minority community was progressively discouraged as the administration that hired him reacted negatively to his attempts to implement a strong form of affirmative action.

Our second example of an Advocate also shows that the Advocate strategy promotes a strong form of compliance but is highly volatile. "John Brown" (pseudonym) was the affirmative action officer for a mid-western college town, which has a reputation as politically liberal. As in the previous case, the position of affirmative action officer was created amidst political controversy. Brown, an outspoken leader of the minority community, was chosen as the city's first affirmative action officer. He had been involved in city politics since his youth, and in 1969 at the age of twenty-one was elected as the city's first black alderman. During the course of his political career Brown developed a reputation as an outspoken civil rights activist.

Once appointed, Brown made it clear that even as a mayoral appointee, he saw himself as an advocate of disenfranchised groups. In a 1988 interview, he stated: "I consider it my job to oppose racism, sexism and militarism wherever it exists . . . isn't that what public officials are supposed to do?" Brown also repeatedly used the term "we" to refer to himself and the public, and "them" to refer to the city administration. For example, "[w]e're telling officials in this city we don't want any more jive, we want some action. We're telling them in no uncertain words, we want real integration, we want affirmative action." And like Martinez, Brown was willing to bring in federal and state forces to change the policies of the organization he worked for. In April 1988, Brown called for FBI and U.S. Justice Department investigations of an assault on a black woman and other racial incidents on the local college campus.

Brown's statement about "real integration" shows that he, like Martinez, constructed EEO/AA law as a substantive requirement, requiring affirmative action to effect equal treatment of minorities and women. Brown's substantive interpretation of EEO/AA law led him to become frustrated with procedural requirements when they conflicted with substantive EEO/AA goals. He repeatedly pointed out that formal procedures could be used as a substitute for, rather than a means of implementing, EEO/AA in the workplace, and announced that he hoped to expose city policies "to remove the veneer of liberalism - the facade."

Finally, as in Martinez' case, Brown was able to command power vis-à-vis the administration, at least for a time, by successfully mobilizing public support. He made his disputes with the mayor and other city officials public in order to take advantage of the fact that the city would incur a significant legitimacy cost by crushing his efforts at reform: "[h]ad I not had the ability to be heard by the public, I would have been fired long ago. The media has been my first line of defense."

Initially, the city administration tried to control Brown by redefining the chain of command. In June of 1988, the mayor proposed a reorganization of the affirmative action office that would subsume the office under the Human Resources Department, which also handled personnel and labor relations matters. Brown condemned the plan as a means of weakening the office by inserting a "manager" – another level of bureaucracy – between the Director of Affirmative Action and the mayor. He described the plan as "a prelude to the elimination of the affirmative action program" and claimed that the reorganization would "[provide] the system (politicians) with another excuse for why they didn't know about an abuse." The mayor's response was that "[t]he Affirmative Action Office will be more effective when it's integrated into a better functioning system."

Perhaps frustrated by the structural difficulties in implementing a strong form of affirmative action, Brown became openly hostile toward the mayor and other officials. Three days after criticizing the reorganization plan, Brown shouted insults at a board member of a local technical college, calling him a coward, a racist and a liar, for reneging on his promise to vote for a black district director. This led to a written reprimand from the mayor, unfavorable press coverage of Brown, and a rapid deterioration of public support. More public confrontations followed and the mayor ultimately fired Brown, who then filed an unsuccessful lawsuit against the city for discriminatory discharge.¹⁴

The Advocate strategy, then, is to take an aggressive view of what constitutes compliance, which often requires an adversarial stance against management. An obvious question is why organizations would choose Advocates rather than officers who would be less likely to challenge the existing policies. In some cases, of course, the administration may be unaware of the affirmative action officers' client orientation and construction of law. But in the two examples we observed, the Advocates were well-known public figures and were selected precisely because of their strong public stand on EEO/AA issues. The appointment of an Advocate constitutes a visible symbol of commitment to EEO/AA law and thus may represent an attempt to gain legitimacy for the organization.

For Advocates, the legitimacy they confer on organizations can be the key to their power and effectiveness within the organization. The administration always has the formal authority to replace the affirmative action officer or eliminate the position. However, organizations risk loss of

legitimacy by public confrontation of affirmative action officers who adopt a strategy of advocacy. Advocates can draw upon the clientele they serve to support their actions; employee and community support for the affirmative action officer raises the cost to legitimacy that the administration would incur by exercising control.

When the Advocate becomes too adversarial, the administration may attempt to preserve legitimacy by relocating the affirmative action officer position so as to reduce its autonomy and effectiveness – this occurred in the Brown example. But as the examples show, the autonomy of the affirmative action officer position can itself become a political issue: when administrations try to withhold autonomy, Advocates can point to that control as evidence of a lack of commitment to EEO/AA law. Administrations, accordingly, tend to claim that their affirmative action officers do possess autonomy, as the mayor did when Martinez claimed that he lacked sufficient autonomy. But a deterioration of the relationship between the Advocate and the administration may also cause the Advocate to lose community or employee support. The Advocate can then be terminated with less of a cost to legitimacy, as was the case for Brown.

The threat of termination does not seem to deter use of the Advocate strategy. The Advocates we spoke to judge professional success on the basis of their achievement of substantive goals rather than on the basis of their position in or progression up the bureaucratic hierarchy. Since their career goals are relatively independent of any particular bureaucracy, termination is less of a threat and they are willing to risk it in order to pursue EEO/AA goals.

In both our examples, the Advocates tried to push EEO/AA law to its limits. Martinez was in office only a short time and therefore was unable to achieve significant results, but Brown was able to effect real reform. The proportion of women, minorities and other protected workers increased every year that Brown held the affirmative action officer position. However, these examples suggest that forms of compliance that embody substantive constructions of EEO/AA law are likely to be short-lived. By openly challenging the administration's policies, Advocates render their power and autonomy unstable; they are at high risk of discharge or, at a minimum, lack of administrative support for their efforts at compliance.

B. THE TEAM PLAYER

A second strategy is to resolve the conflict inherent in the affirmative action officer role in favor of the administration. The "Team Player" views the administration as the primary client and is attentive to the threat that EEO/AA law poses to traditional managerial prerogatives. In order to protect these prerogatives, the affirmative action officer constructs EEO/AA law as a procedural requirement, requiring like treatment of all employees. This construction preserves maximum managerial freedom

because it does not require – or indeed even allow – employers to take affirmative action to correct imbalances or inequities in their workforces.¹⁵ It could, however, require changes in formal policy if extant rules or procedures clearly discriminate on the basis of a protected status.

Affirmative action officers who use the Team Player strategy are unlikely to be seen as a threat to the organization and may therefore be granted considerable autonomy. But, for the same reason, they are unlikely to use that autonomy to challenge administration policies or practices. It is in the Team Player's career interest to resolve EEO/AA related problems efficiently (not to ignore them), but to do so in a manner that is minimally disruptive to the organization.¹⁶ Serious challenges to administrative policy would be inconsistent with their career goals.

Whereas the Advocate strategy engenders conflict with the administration, the Team Player strategy, due to its procedural interpretation of EEO/AA law, is likely to evoke criticism from the minority and female community both within and outside of the organization. The Team Player strategy puts form over substance, that is, as long as there is not overt discrimination, the affirmative action officer does not seek change. But where the substantive position of minorities or women is clearly inferior to that of whites or males, those who may claim legal protection are likely to demand change. Although management is likely to support the Team Player strategy, it is not free from challenge.

The Team Player strategy is likely to be used by affirmative action officers who see their position as part of the bureaucratic management structure and as a stepping stone to higher (non-EEO/AA) bureaucratic positions.¹⁷ When career aspirations are defined in terms of the progression up the bureaucratic hierarchy, affirmative action officers have strong motivations to use their expertise to justify participation and integration in administrative matters and are less likely to judge professional success by their achievements in reaching EEO/AA goals (Larson, 1977).

Our example of a Team Player is the affirmative action officer who was hired by the eastern city after Martinez left. The mayor appointed a hiring committee to review candidates for the position vacated by Martinez, and the committee selected and ranked three finalists. The mayor, however, "apparently ignoring the recommendations of his own interview committee," appointed a Hispanic woman, Maria Lopez (pseudonym).¹⁸ The appointment clearly lacked the legitimacy that Martinez' appointment had provided and alienated the Hispanic community that had supported Martinez. Lopez was especially criticized for her inability to work with the city's minority community. "The appointment of [Lopez]," said a Hispanic leader, "is geared to serve the Mayor's political interest and it is not an appointment that will prove beneficial."

Lopez demonstrated her allegiance to the city administration early in her tenure in a hiring dispute between the Board of Aldermen and the Mayor's office. Using her authority to review applications, she refused to appoint

the aldermen's choice for the Assistant Director of Parks and Recreation and instead endorsed the selection of another candidate, a handicapped man, preferred by the mayor. Outraged aldermen began to call Lopez the "patronage secretary" for the mayor's administration. One alderman said "he is harsh on the [EEO/AA] office because 'the job is not being done.'"¹⁹

Lopez' tenure continued to be characterized by her close relationship with the mayor and consistent support for his positions. Lopez stated that "[a]s far as the mayor is concerned and everybody else, my job is not to make policy, it's to implement policy." In her last year in office, "pundits" said the affirmative action office "is simply an instrument and extension of the mayor. . . . They charge [Lopez] with being the mayor's puppet. . . . High level public officials say privately they don't know if she is unqualified for the job or whether the mayor has tied her hands."

Whereas Martinez derived support from the EOC, Lopez came into conflict with the EOC. Lopez refused to attend EOC meetings and instead sent her assistant (who, new to his job, was unfamiliar with the agreement reached with HUD). Further, while the EOC was working on an affirmative action plan for the city, city officials disclosed as a *fait accompli* their own plan, which was negotiated privately with HUD over the previous six months. Stunned EOC members requested at least the opportunity to review the plan before it was implemented.

Lopez was not ineffective in implementing EEO policies. In 1985, a news article reported that the city "is in compliance with state regulations which require the proportion of minorities hired to reflect their number in the city. Last year [1984], out of the ninety-one city employees hired, twenty-two percent were minorities." But even as the city improved its minority hiring record, the Hispanic community did not rally behind Lopez or the mayor. The consensus among Hispanic activists was that the mayor was committed to affirmative action only because it brought in federal grants. In 1985, even though the mayor was reelected, minorities "turned out in unprecedented numbers to cast their vote for his challenger." After a five year tenure, Lopez resigned at the end of 1985, not in protest, but for a better job.

Team Players' identification with administration interests, then, do not necessarily preclude implementation of EEO/AA law as long as the administration is somewhat sympathetic to the law or at least interested in complying with it. But the form of compliance they implement is likely to be of the weakest sort. Although blatant discrimination will be reduced, inequalities resulting from past discrimination will be perpetuated and significant social change is unlikely to occur. Furthermore, when Team Players work for administrations that are unsympathetic to EEO/AA law, they can take advantage of the ambiguity of EEO/AA law to put into place a skeletal means of compliance. Even when Team Players effectively implement EEO programs, moreover, they are – along with their programs – likely to lack legitimacy in the eyes of the minority and female community. This in turn

tends to perpetuate tensions among interest groups and to preclude an employment environment free of discrimination.

Administrators are more likely to choose a Team Player when the need to control the affirmative action officer and the implementation of EEO/AA law outweighs the need to appease a threatening minority or female constituency. For example, the mayor hired Lopez after the departure of Martinez, the Advocate who had created significant trouble for the mayor. In this case, and perhaps in others, the organization sought an officer who would be a Team Player in order to thwart an aggressive form of compliance.

C. THE PROFESSIONAL

Whereas the Advocate and Team Player strategies involve partisan client orientations, the third strategy is to maintain a stance of detached neutrality. We refer to this strategy as the "Professional" strategy because the professional management literature advances it as the best strategy for compliance with EEO/AA law. In keeping with its neutral orientation toward parties, the Professional strategy does not embrace either the procedural or the substantive construction of EEO/AA law. Rather it circumvents the conflict between these approaches by constructing EEO/AA law as a simple matter of fairness and good personnel policy.

By equating EEO/AA requirements with those of good personnel management, Professionals reframe EEO/AA goals in terms of traditional managerial interests: efficiency and productivity. For example, in a 1975 issue of *Personnel*, Giblin and Ornati argue that:

Most business organizations have failed to realize that intelligent compliance with Title VII of the Civil Rights Act of 1964 and related laws can serve as a catalyst for constructive change – a trigger for the introduction of a rational, effective human resource system. In short, it is time for businessmen to think of Title VII not just as a problem but as an opportunity to utilize their human resources more effectively, to increase the efficiency of their operations, and to benefit their organizations economically. . . . Systemic discrimination does not result primarily from racial, sexual, or religious bias. Rather, it is caused by ineffective personnel or human resource development systems that do not sufficiently match objective capabilities of employees with the growth and production requirements of the organization.

The emphasis on fairness leads to concerns both with formal personnel policy that meets legal criteria and with conflict-resolution procedures. The professional management literature emphasizes the importance of formalizing personnel policies against discrimination in hiring, placement, promotion, and discharge as a means of avoiding lawsuits (for example, Cunningham, 1976; Deutsch, 1976; Gery, 1977; Dube Jr., 1986). Further, that literature promotes dispute resolution structures as a way of both diffusing conflict before it leads to a lawsuit and of creating evidence of fair

treatment that could be helpful if a lawsuit develops (for example, Westin and Feliu, 1988; Fry and Wiebe, 1978).

By constructing the law as fairness and good personnel policy, the affirmative action officer avoids making a public commitment to either a substantive or procedural construction of law, and to either management or protected employees. The formalization of personnel policies is unlikely to engender political opposition because the ambiguity of EEO/AA law can simply be incorporated into organizational rules; organizations can incorporate legal language without clarifying its ambiguity or resolving its contradictions (Edelman, 1992). For example, an affirmative action plan can mandate equal treatment of all employees without addressing the question of whether equal treatment means equality of process or equality of outcome.

Similarly, the creation of structures for dispute resolution creates an aura of neutrality even though affirmative action officers of necessity confer substantive benefits on one party or the other. Dispute resolution procedures highlight impartiality in the process and create the impression that the outcome of that process must also be fair. Further, formal procedures to resolve allegations of discrimination deflect political tension from the EEO/AA arena because they highlight individual problems as opposed to systemic discrimination.

Of course, the extent to which dispute resolution procedures seem fair depends upon the apparent impartiality of the decision-maker, who is usually the affirmative action officer. Here Professionals can draw upon their professional training and background to claim the capacity to remain neutral in a highly politicized realm. Just as lawyers and judges can use ambiguous statutes to support contradictory positions, affirmative action officers – employing the Professional strategy – can turn to broad organizational rules to legitimate their decisions. When organizational policy supports affirmative action officers' actions, even top administrators are pressed to defer to their judgment; thus the Professionals' use of expertise to claim neutrality helps them to procure power within the organizational hierarchy.

Our example of a Professional is an affirmative action officer who was hired as the first officer in a college that did not create an affirmative action office until 1988.²⁰ As in the case of the two cities we discussed earlier, the college's decision to create an affirmative action office and officer position came after a series of racist incidents. But rather than turning to a local civil rights activist, the college undertook a nationwide search. Jones [pseudonym], the person eventually hired, was a black lawyer who had worked in the affirmative action and equal employment opportunity field for twenty years, and had held academic and state government affirmative action officer positions.

Whereas the Advocates and Team Player we discussed defined their tasks in terms of their respective clienteles, Jones told us that her task was to implement the college's affirmative action plan and to serve as an ombuds-person who would resolve discrimination-related disputes. She argued that her position was neither structurally problematic nor politically controversial, and stated emphatically that her orientation would be one of neutrality: she would not serve as an advocate for either party in a dispute. Jones believed that the affirmative action plan constituted closure on political battles, and that "taking sides" would undermine her position. She also rejected any notion that she might need to develop a constituency to support her in her endeavors.

Jones' characterization of the affirmative action plan as a binding set of rules bolstered her claims to neutrality. As Edwards (1979) observes, formal policies tend to obscure the power and volition of officials so that the policies appear to dictate decision-making. To date, Jones' relationship with the administration has been largely unproblematic. She appears to have considerable autonomy and authority and has not developed either antagonistic or very close relationships with any of the parties that might make claims to her loyalty.

We saw that the Advocate strategy invites criticism from the administration while the Team Player is open to criticism from protected employees and potential employees. The Professional's stance of detached neutrality and reliance on formal rules renders this strategy far more stable than either the Advocate or the Team Player strategies because these factors help to insulate the affirmative action officer from criticism.

Perhaps for this reason, the personnel management profession is helping to institutionalize the Professional strategy as the dominant strategy for compliance with EEO/AA law. Professional networks, which provide a regular means of interaction through management journals, workshops run by organizations such as the Bureau of National Affairs, and professional conventions, strongly endorse formal EEO/AA policy and dispute resolution as key elements of compliance. Affirmative action officers participate in professional conventions and workshops as a means of acquiring and demonstrating expertise and because these activities help to create an aura of professionalism, which Professionals can then rely upon to support their claims of neutrality. These networks both diffuse and legitimate the Professional model.

D. THE TECHNICIAN

We have left until last a strategy that is almost a nonstrategy for handling role conflict, which is that of the "Technician." Technicians concentrate on the mundane aspects of the affirmative action officer job, such as collecting

workforce statistics and completing required forms for the EEOC. Officers who adopt this strategy are largely uninvolved in creating EEO/AA policy. Like the Professional, the Technician maintains a nonpartisan client orientation. However, whereas the Professional engages in a studied neutrality, the Technician is indifferent to the political demands of various constituencies. And whereas the Professional assumes a prominent conciliatory role, the Technician either retreats from, or is barred from, any substantive role within organizations.

For our example of a Technician, we now return to the eastern city that had first hired an Advocate (Martinez, who resigned under pressure), and then a Team Player (Lopez, who left for a better job). After Lopez left and before the mayor appointed Lopez' replacement, the affirmative action office was essentially gutted. Four positions were merged into one, that of the affirmative action officer. In an interview with the current officer, Smith [pseudonym], we were told that the staff reduction was intended to weaken the office.

Comparing her tenure to that of Lopez (she was unaware of Martinez), Smith noted that the affirmative action issue has "quieted down," which, interestingly, she attributed to characteristics of the office, namely, the smaller staff, lack of resources and, consequently, her inability to act forcefully. Whereas Lopez acted as an agent of the mayor in various conflicts with the Hispanic community and the board of aldermen, Smith has not assumed a political role: "[i]t's their government," she said, "they can do as they please." She also did not dwell on her relation to the Hispanic community except to note that some persons feel she should be doing more. Although the current officer still believes she is on a "hot seat" – due to continued resistance to affirmative action in some quarters of the city government – she copes by shying away from a public role.

For the Technician, then, compliance becomes a minimalist endeavor: it consists only of filing required documents.²¹ The Technician avoids conflict by recording workforce composition rather than trying to justify or to change it. Given the ambiguity of EEO/AA law, the Technician will probably still be in compliance as long as there is no blatant exclusion of minorities and women. Unlike the other three strategies, Technicians are not likely to claim professional expertise or attempt to acquire power within the bureaucracy. They are subordinates in all respects and, therefore, tend passively to support the administration's interests.

V. DISCUSSION AND IMPLICATIONS

Of course, the Advocate, Team Player, Professional, and Technician, do not exist in pure form. At times, affirmative action officers are likely to use mixtures of the strategies suggested by these types opportunistically.

Advocates, for example, can attempt to portray themselves as neutral Professionals in order to gain autonomy from administrations. Team Players may mimic the Professional model to gain legitimacy in the eyes of minorities and women. Professionals, on the other hand, may portray themselves to appropriate audiences as Advocates, which may help them to bring community support to bear against administrations, or as Team Players, which may help them to gain access to inside managerial circles. Our argument is that the choice of these strategies has a significant effect on the compliance process.

Although we cannot generalize on the basis of five examples, we suggest some tentative conclusions about the internal politics of compliance. First, although the Advocate strategy has the greatest potential for substantively oriented reform, that strategy is likely to be frustrated by the very factors that give it that potential: a client orientation that favors minorities and women, a substantive construction of EEO/AA law, and the use of expertise to challenge the administration. Each of these factors intensifies the threat to traditional managerial prerogatives. Organizations select Advocates as symbols of compliance, but Advocates are not likely to serve as passive symbols. Advocates tend to generate rather than quell political tension. That tension may undermine their community support and claims to professional expertise in such a way that the administration can exercise control without significant loss of legitimacy. Thus the strong form of compliance that Advocates tend to favor is unlikely to occur.

None of the other affirmative action officer types exacerbate the structural contradictions of the position as much as Advocates because they pose far less of a threat to management. Unless the administration is serious about reform, Team Players are likely to engender compliance with EEO/AA law at a minimal level; they may eliminate overt procedural discrimination but are unlikely to reduce the substantive differences in employment status between white males and other groups. Where organizations have Technicians as affirmative action officers, the responsibility for compliance usually remains elsewhere within the administration. As with the Team Player, unless an administration strongly favors substantive change, it is unlikely to occur.

The Professional approach is likely to be the most stable and effective in producing some change. Because of their claims of neutrality, Professionals can be more effective because they are relatively insulated from serious political challenge and because they are likely to enjoy more autonomy from the administration. And, because the power and status of their profession depends upon the continued importance of EEO/AA law and their management of it, Professionals have a vested interest in instituting EEO/AA programs that are visibly effective.

Professionals' network ties are an important component of their capacity to institutionalize EEO/AA measures. In order to demonstrate and main-

tain their professional status, they participate in a set of institutionalized activities in which models of compliance are exchanged, negotiated, and standardized. Over time, the network connections of Professionals help to define and institutionalize formal affirmative action rules, programs and plans. As these formal structures become more prevalent, they may help to entrench EEO/AA norms into formal organizational policy.

Affirmative action officers, then, are important actors in a highly political process of compliance. As individuals, their strategies for resolving conflicting demands affect the character and agenda of their organizations' compliance programs. As a profession, they collectively construct and help to institutionalize the meaning of compliance with EEO/AA law. If the Professional strategy is in fact becoming the dominant one, two conclusions may be drawn. First, the institutionalization of formal EEO/AA policies and dispute resolution structures means that they will not be erased by the political and legal climate of the 1980s, which disfavors affirmative action. Second, since the thrust of the Professional approach is to accommodate competing interests, it is not one that will evoke striking reform.

More generally, the process of compliance we have begun to illuminate suggests that accounts that emphasize efforts by officials within organizations to mask violations (Katz, 1977) or to place organizational goals over legal goals (Vaughan, 1983) do not apply universally and may oversimplify the process of compliance. Rather than overt noncompliance, we find that compliance is a complex process of defining a response to mandates that are often ambiguous. Our research bears out Selznick's (1949) observation that structures within organizations develop "lives of their own." EEO/AA law does not evoke immediate compliance or non-compliance, but rather a process of definition and adjustment. That process is shaped by the way in which affected parties mobilize the law to put pressure on organizations, by the politics and professional orientations of the affirmative action officers charged with managing EEO/AA law, and by the volatile nature of the relationship between affirmative action officers and their administrations. These factors help to shape the strategies of affirmative action officers, which in turn shape the character of compliance. As conditions, politics, and personalities change, the character of compliance will continue to evolve.

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NOTES

1. Although the term "affirmative action officer" is used rather broadly to refer to heads of affirmative action offices, other staff members of those offices, or functionaries with responsibility for handling EEO/AA-related complaints, we use the term to refer to the organizational personnel who have principal responsibility for handling EEO/AA mandates.
2. EEO/AA law consists of a number of legislative acts and executive orders, most of which were created during the mid-1960s as a result of the Civil Rights Movement. The EEO/AA laws that have had the greatest impact on organizations are Title VII of the 1964 Civil Rights Act (42 U.S.C. §2000e) which became effective on July 2, 1965, and Executive Order (EO) 11246, (3 C.F.R. §339), issued by President Johnson in 1965. Title VII precludes private employers and labor unions with fifteen or more employees from discriminating on the basis of race, color, religion, sex, or national origin. It was amended by the Equal Opportunity Act in 1972 to cover public sector employers. EO 11246 requires federal employers and private contractors, subcontractors, and unions doing work under or related to a federal contract of \$10,000 or more to engage in affirmative action. Other EEO/AA laws include: the Equal Pay Act of 1963 (29 U.S.C. 206(d)); the 1967 Age Discrimination in Employment Act (29 U.S.C. §621); the Rehabilitation Act of 1973 (29 U.S.C. §793); and the Vietnam Era Veterans Act of 1972 (38 U.S.C. §2011). The policy changes we discuss are sufficiently general to affect compliance with most of these laws. However, organizations appear most concerned with Title VII and, for federal contractors, EO 11246. Thus, our paper focuses on organizational response to these two mandates.
3. For example, if an employer refuses to hire persons who did not graduate in the top twenty-five percent of their high school class, is the employer discriminating against minorities who, because of previous discrimination and lower economic status, are less likely to have done well in high school?
4. Our characterization of these two approaches risks oversimplifying a number of complex legal issues (among them: whether statistical disparities may be used to infer intent to discriminate; whether compensatory measures are available to classes of employees or only to actual victims of discrimination; and how to determine the labor market for a particular job or company). Nevertheless it describes the broad social debate concerning EEO/AA law. For a more extensive discussion of "equal treatment" versus "equal opportunity," as theories of equality and in relation to the mandates of Title VII, see Belton (1981), Blumrosen (1972), Freeman (1982), and Fiss (1974).

5. To avoid awkward writing, we sometimes refer to minorities and women rather than to all classes of employees that are protected under the law.
6. The inconsistency between the equal treatment and affirmative action approaches is even more problematic under EO 11246 than under Title VII, because the language of EO 11246 requires *both* affirmative action and equal treatment not based on race, sex, or other protected statuses. Under EO 11246, contractors must "take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, or national origin" (3 C.F.R. §169:1 (1974)).
7. In many cases, the employer position is represented by boards of directors and high level officials (a group we will refer to as the administration).
8. In theory, an affirmative action officer could also favor the interests of one protected group over another (for example, blacks over women). We do not discuss such cases specifically, but they would not differ substantially from partisan officers who favor the interests of women and minorities except in their client orientation.
9. Larson's (1977) analysis of "public service" professionals in bureaucratic settings informs our analysis of the role of Advocates. She defines public service professions as those generated by the expansion of state public service functions into bureaucratic settings (for example, social work, teaching, urban planning), and points out that public service professionals derive their credentials externally (for example, from universities) and can use those credentials as a source of countervailing power vis-à-vis the hierarchy.
10. These figures are based on census data. Some unofficial estimates of the Hispanic population from the early 1980s are much higher – as high as twenty-two percent. According to 1980 census figures, sixty percent of the Hispanic population lives below the poverty level.
11. At that time, only two percent of the employees in the eleven city agencies receiving HUD money were Hispanic. According to 1975 figures, the proportion of Hispanics in the city was eight percent.
12. A parallel issue, not discussed here, was the city's treatment of minorities in public housing.
13. The minority hiring goals that the city agreed to were to bring the number of minorities in government positions up to a point where it would reflect the number in the city, and to hire one minority for every white hired until that goal was met.
14. In a review of retaliatory discharge cases involving affirmative action officers who were fired following advocacy activities, Chambliss (1989) argues that courts favor conciliatory approaches, and are not likely to uphold retaliatory discharge claims where affirmative action officers act as aggressive advocates for women and minorities.
15. Team Players tend also to be more attentive of the interests of non-minority and male employees in not being subjected to "reverse discrimination" since the interests of those employees are usually coterminous with administrations' interests.
16. We do not consider the hypothetical case where an affirmative action officer is partisan toward an employer's interest in intentional discrimination for two reasons. First, we are primarily interested in variation in organizational response that may occur *within* the bounds of legal activities. And second, such employers are far less likely than other employers to create affirmative action officer positions.
17. Our analysis is again informed by Larson (1977). Team Players fit her "technobureaucratic" model of professionals. She suggests that technobureau-

cratic professions are those generated by bureaucratic growth and that technobureaucratic professions derive status from their position in the hierarchy and aspire toward higher positions.

18. Lopez was originally hired by the Mayor to fill one of the newly created positions in the affirmative action office. (This occurred after Martinez had resigned.) While Lopez was among the three finalists, "insiders" claimed that she was included by the committee as a matter of courtesy. The two other candidates ranked above her were clearly more qualified.
19. The Board of Aldermen was by no means a bastion of progressivism. They demanded that the affirmative action office be abolished, not reformed. To some extent, the issue between the mayor and the Board of Aldermen was how to organize a patronage system, not their respective commitment to affirmative action.
20. The college's earlier affirmative action efforts, which were quite successful, had been directed toward hiring and retaining women faculty members. However, until recently there had not been a comparable effort to hire minority faculty members.
21. We suspect that the Technician strategy is most likely to be found in organizations that do not have a separate affirmative action office and that do not have any government contracts. Organizations that do not have federal contracts are not required to have a written affirmative action plan. In addition to avoiding illegal discrimination, the only act necessary for such organizations to be in compliance is to submit annual workforce and applicant statistics to the EEOC. The needs of firms that have federal contracts of \$50,000 or more, and therefore must file an affirmative action plan with the OFCCP, are unlikely to be met by Technicians alone. However, it is not uncommon for such firms, especially if they are small, to hire an outside consultant to formulate the affirmative action plan. If the plan requires active recruiting or training on the part of the affirmative action officer, however, then an officer who complies with the plan would need to take a more active role, and would not fit the Technician model.

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