

# ***The Declining Significance of Race in Federal Civil Rights Law: The Social Structure of Employment Discrimination Claims\****

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We examine changes in the nature and rate of complaints filed with the federal Equal Employment Opportunity Commission (EEOC) in the past 35 years. The EEOC's role has shifted over this period from ensuring job access for racial minorities to providing diverse protections for a much broader class of incumbent workers. We first describe trends in discrimination complaints, most notably the shift from racial discrimination to other bases of discrimination, and develop a conceptual model of choice among socially structured alternatives to account for them. We then test the model with a time series analysis of changes in the complaint rate among different worker groups to evaluate the relative importance of legal, political, and socioeconomic determinants of civil rights complaints. Net of changes in the political climate, benefit compensation, inequality, and education levels, we find that legal changes and group-specific unemployment rates are the strongest and most consistent determinants of the rate of race, sex, and total discrimination complaints. Our results suggest that people will bear the costs of filing a complaint when legal options are relatively attractive and when employment options on the external labor market are unattractive.

This paper uses civil rights complaints to the federal Equal Employment Opportunity Commission (EEOC) as the setting to explore several broader issues in the sociology of law and the sociology of work. We first present some descriptive data showing how civil rights claims have been extended to new groups of claimants. Although antidiscrimination protections such as Title VII of the 1964 Civil Rights Act were initially intended to enhance the employment prospects of African-American males (Blankenship 1993)<sup>1</sup> they are currently invoked by diverse worker groups (Donohue and Siegelman 1991; Rutherglen 1995). Today, as men over 40, disabled workers, and others have successfully raised discrimination claims, more than three-fourths of the US labor force enjoys protected "minority group" status. As Smith (1993, p. 79) notes, African Americans are now a "minority within the protected minority class, which itself represents the majority."

Changes in discrimination complaints reveal what workers expect (and do not expect) from their employers as well as their willingness to mobilize their legal rights. Such changes also reflect, in part, the perceived legitimacy of grievances made by different groups of workers. After outlining trends in civil rights complaints since 1967, we develop a conceptual model to explain the

trends. We then test this model's ability to account for the level and form of discrimination complaints using time series analysis, building on previous work (e.g., Burstein 1994; Donohue and Siegelman 1991) in three ways. First, we standardize our dependent variables by the number of eligible workers to take account of changing labor force participation rates and population bases associated with different protected classes. Second, we offer a conceptual model and multivariate time series analysis to specify the relative influence of legal, political, and socioeconomic structures on group-specific complaint rates and changes in the complaint mix over time. Third, because we measure *complaints* to the EEOC rather than actions taken by that agency, our outcomes are more likely to reflect the behavior of workers than the prerogatives of an enforcement agency.

### **The EEOC: Measuring Discrimination Claims**

We examine information on complaints filed with the EEOC between 1967 and 1994<sup>2</sup> and charges filed between 1986 and 2001. The EEOC was created to process complaints and monitor compliance with Title VII of the 1964 Civil Rights Act. When the act was strengthened in 1972 the EEOC was empowered to initiate complaints on its own, though individual victims of discrimination continued to raise the vast majority of complaints (Edelman 1992). These data are well suited to measure changes in complaint rates for several reasons. First, the EEOC operates as a "claims adjustment bureau" rather than a law enforcement agency, so complaint levels are relatively insensitive to agency practices (Hill 1990, p. 15). Second, the agency reports all complaints received annually and provides considerable information on the type of discrimination alleged. Third, the EEOC maintained a standard reporting procedure throughout the study period for key outcomes.

The EEOC records complaint data by base, issue, and total charges. Claimants alleging multiple bases of discrimination within a single charge are counted once per base complaint (e.g., race, sex, religion). For example, the EEOC would count a worker alleging both race and sex discrimination as a single charge with two base complaints (one for race and one for sex discrimination). The EEOC further categorizes complaints within base categories by issue (e.g., firing and promotion). We examine complaints (or "claims") rather than charges to disaggregate base and issue categories and thereby document the changing nature of civil rights claims over the last 35 years. It is important to caution that these data cannot determine whether discrimination occurred in a given case or whether the overall level of discrimination has increased or decreased. Rather, they indicate trends in the number of employees perceiving discrimination who elect to mobilize the law by filing a complaint.

### **Describing Trends in Complaint Levels**

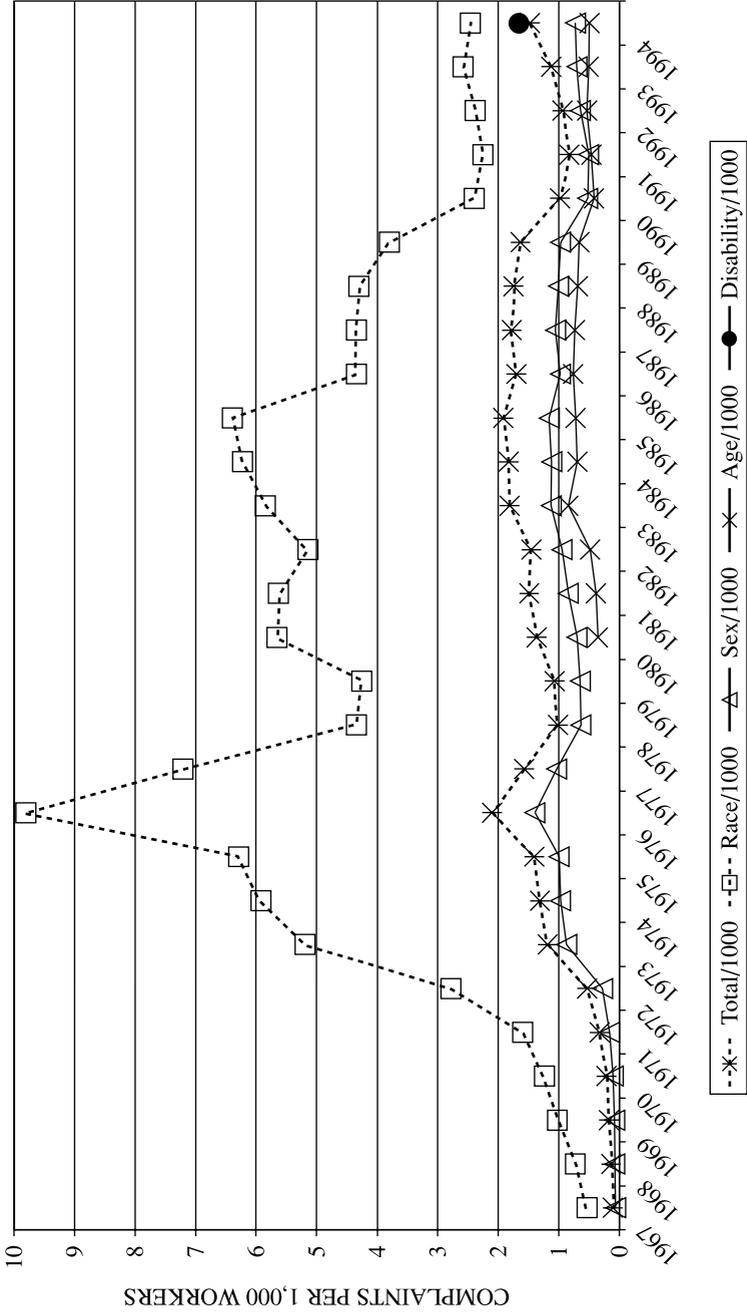
Those drafting and enforcing antidiscrimination law have historically viewed race discrimination as distinct from other forms of discrimination. For example, the Equal Pay Act was primarily directed at sex discrimination and the Civil Rights Act of 1964 at race discrimination. During the advent of federal EEO enforcement, complaints on the basis of race were clearly the most legitimized form of discrimination grievance (Blankenship 1993; Rutherglen 1995). In fact, some suggest that the sex discrimination prohibition was only added to Title VII in an effort to prevent its passage in Congress (Blankenship 1993, p. 205; Burstein 1985, p. 23; Smith 1993, p. 79; but see Harrison 1988).

If equal employment opportunity law was initially directed toward reducing discrimination against African Americans, then race complaints should comprise the lion's share of all complaints early in the EEOC's history. Over time, we expect gradual growth in sex complaints as a result of specific legal changes, increasing female labor force participation, greater inclusion of women's issues in civil rights discourse and public policy, and the women's movement in general. Similarly, the gradual expansion of the Age Discrimination in Employment Act to include workers age 40 or over should raise the number of age-based complaints in the 1980s and the Americans with Disabilities Act (ADA) should increase the number of disability-based complaints in the 1990s.

#### ***Changes in Overall Complaint Levels***

Figure 1 shows the rate of total complaints, race complaints, sex complaints, and age complaints per 1,000 workers, standardized by the number eligible to complain within each base category.<sup>3</sup> We use US Census data to standardize total complaints by the number of workers in the labor market (US Bureau of Census 1998, p. 403), age complaints by the number of workers over age 40 (Kirkland 2001), and disability complaints by the number of employed disabled workers (US Bureau of Census 1997, p. 409). Though Whites may file race complaints and males may file sex complaints, the incidence of such claims is relatively rare (Parker 1991). We thus standardize race and sex complaints by the number of non-White and female workers, respectively.

Total complaints to the EEOC accelerated rapidly during the first 10 years of the agency's existence, to an early peak of about 2.2 complaints per 1,000 workers (or almost 204,000) in 1976. Race complaints also peaked in 1976, with a rate of almost 10 EEOC complaints per 1,000 non-White workers. By 1994, this rate was only about one-fourth as high, at 2.5 complaints per 1,000. The decline in the rate of race complaints since 1976 is dramatic, due in part to a more racially diverse labor force in recent years. The rate of sex complaints was also halved over this period of increasing female labor force participation, from



**Figure 1**  
EEOC Complaints Per 1,000 Workers by Base Category, 1967-1994

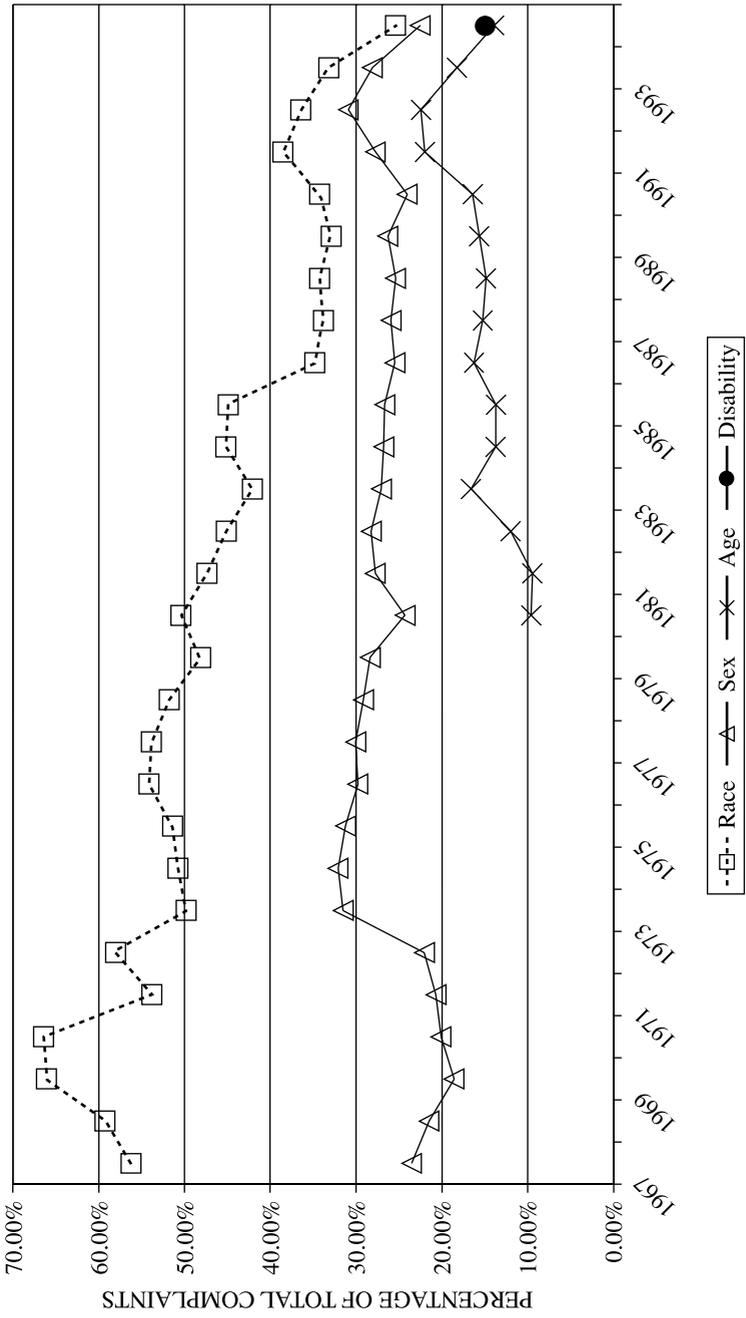
its peak of 1.4 per 1,000 in 1976 to its 1994 rate of .7 per 1,000 female workers. Further, though EEOC funding declined significantly during the Reagan administration (Wood 1990), the initial reduction in complaints occurred during the Carter regime. The rate of race-specific and total *complaints* (if not enforcement) actually rose during the early Reagan years.

### ***Changes in the Proportional Complaint Mix***

If race complaints have declined, as Figure 1 suggests, which bases of discrimination have taken their place? Figure 2 shows the relative proportion of complaints on the basis of race, sex, age, and disability by year (although EEOC disability complaints were not reported separately prior to 1994, they are reflected in the total numbers in Figure 1 and in the denominator of total complaints used to calculate the percentages in Figure 2). Until recently, the modal complaint filed with the EEOC involved race discrimination. The late 1960s and early 1970s were marked by a high proportion of race complaints relative to other bases of discrimination. It is notable that this period coincides with a “sharp acceleration” in African-American male wage gains (Smith 1993, p. 83).

Sex complaints rose as a proportion of total complaints after the 1972 amendment to the Civil Rights Act, though they have never accounted for more than about one-third of all complaints. The growth in sex complaints has been attributed to women’s increasing labor force participation, political organization, and legal consciousness as well as greater societal acceptance of civil rights claims alleging bases other than race (Blankenship 1993; Burstein 1985, p. 20, 1994). Nevertheless, sex complaints as a proportion of total complaints remained relatively *stable* from 1973 to 1992 and cannot explain the proportional decline in race complaints. Since the early 1990s, the proportion of both race *and* sex complaints has declined. Together, race and sex complaints accounted for almost 80 percent of all EEOC complaints in 1967 but less than half of all complaints by 1994. Age and disability complaints comprised a greater share of the caseload as the EEOC gained enforcement power over the Age Discrimination in Employment Act in 1979 and the Americans with Disabilities Act in 1990. Although the raw numbers of race and sex complaints remain relatively high, age and disability discrimination complaints comprised almost one-third of all complaints in 1994, representing a major change in the groups invoking civil rights law.

Taken together, these trends document a profound shift from race to other bases of labor market discrimination. Numerous explanations for fluctuating complaint levels have been proposed, including new liability theories such as hostile work environment, sexual harassment (Abram 1993, p. 65), temporal shifts in the relative merit of complaints (Davila and Bohara 1994), and changes in the political and economic strength of racial groups (Dawson 1995). The next section



**Figure 2**  
Percentage of Total EEOC Complaints by Base Category, 1967–1994

of the paper develops a conceptual model to account for the observed trends, based on changes in the legal, political, and socioeconomic opportunity structure.

### **Explaining the Trends**

#### ***Macro-Social Determinants of Discrimination Complaints***

Civil rights complaints represent both potentially discriminatory actions by employers and the behavior of workers in perceiving a wrong and filing a complaint. If one experiences workplace discrimination, EEOC officials do not immediately appear to solicit a complaint. Rather, employees must first perceive discrimination, decide whether to file a claim, and finally, initiate a formal charge through a bureaucratized process. A confluence of legal, political, and economic forces thus shapes the decision to file a discrimination complaint.

Whether and how workers perceive discrimination influences whether they will “name” an action discriminatory, “blame” the employer as culpable, and ultimately “claim” their grievances by seeking formal redress (Felstiner, Abel, and Sarat 1981). Bumiller (1987) describes complaint filing as a process of choosing to attach a label of “victim” to oneself. Accepting this label is a lengthy process that begins well before a complaint is filed. Complainants must overcome the stigma attached to filing discrimination charges and the negative public perceptions associated with litigiousness. Even if workers perceive discrimination and believe they are entitled to redress, they may be unwilling to initiate a long and stressful process when they can easily find comparable work elsewhere.

We therefore suggest that discrimination complaints are the product of individual choice among socially structured alternatives. Individual decisions to file complaints are ultimately based on the worker’s expectation that the benefits of going forward with a claim outweigh the costs (Bumiller 1987; Donohue and Siegelman 1991; Ewick and Silbey 1998). Macro-level forces, such as the legal opportunity structure and economic conditions, guide such choices by shaping the perceived attractiveness of complaining relative to other options.

***Legal Opportunity Structure.*** Before any complaints may be filed, the law must define what constitutes discrimination, organize some mechanism for counting and processing claims, and offer some hope of redress. Changes in employment discrimination law redefine the protected class of workers and therefore alter the opportunity structure for filing complaints. Though the availability of internal grievance forums and alternative dispute resolution has increased in recent decades (Edelman and Petterson 1999; Edelman 1992; Sutton et al. 1994), workers generally have few legal options to redress unfair treatment by employers, particularly in light of recent declines in unionization and its attendant

protections (US Bureau of Census 1998, p. 445). For example, despite the concerns of personnel professionals, “wrongful discharge” litigation—in which workers sue employers for termination without just cause—has yet to seriously threaten employers’ prerogative to fire workers at will (Edelman, Abraham, and Erlanger 1992). Thus, as protected status and the eligibility to file with the EEOC are extended to more groups, we expect complainants to invoke the agency to resolve a variety of new employment problems.

Though we cannot completely separate the effects of legal changes from political and socioeconomic effects, we can account for legal structure using periodization indicators that correspond to the legal environment at a given time. In each multivariate model, we include dichotomous indicators for the 1972 Civil Rights Amendment (coded 1 for 1972–1994), changes in the Age Discrimination in Employment Act and equal pay legislation in 1979 (coded 1 for 1979–1994), and implementation of the Americans with Disabilities Act (ADA) in 1991 (coded 1 for 1992–1994). Because these changes successively expanded the classes eligible to file complaints, we expect each legal indicator to raise the total rate of complaints. We anticipate that the 1972 Amendment will have the greatest influence on the rate of race and sex complaints, since it dramatically increased the EEOC’s power at a time when such complaints comprised the majority of the caseload. The later legal changes emphasized older and disabled workers, and are therefore less likely to affect race and sex complaints.

**Macroeconomic Performance.** The health of the economy determines the demand for labor and the relative attractiveness of “grieving” versus “leaving.” The unemployment rate, a strong positive predictor of discrimination lawsuits in prior research (Donohue and Siegelman 1991), indicates the attractiveness of “exit” (Hirschman 1970) to the labor market as an alternative to filing a formal complaint. In tight labor markets with low unemployment, workers perceiving discrimination can more easily find comparable jobs elsewhere. As unemployment rises, they may be more willing to bear the costs associated with voicing a formal complaint to obtain or keep a desirable position. A weak economy thus increases the attractiveness of filing discrimination claims, net of the legal and political climate.

**Political Climate.** Fluctuations in political power convey messages to potential complainants about the legitimacy and viability of different types of civil rights claims (Feagin and Sikes 1994). The State defines what constitutes workplace discrimination, legitimates some types of complaints, and sets federal enforcement priorities. For instance, the Reagan–Bush regime reframed public debate on civil rights by opposing the Civil Rights Act, describing earlier anti-discrimination policy and collective action on the basis of race as a threat to

American democracy, and arguing that most forms of discrimination had been eliminated (Omi and Winant 1986, pp. 131–3). Such discourse and shifts in policy delegitimize certain causes of action (most notably hiring and race discrimination under President Reagan) and likely diminished discrimination claims overall. The Reagan administration also cut EEOC funding, making enforcement more difficult and perhaps raising questions in the minds of potential complainants (Wood 1990; Omi and Winant 1986). Finally, because Republicans have a smaller minority and female constituency and are generally more resistant to government intervention in the economy than Democrats (e.g., Manza and Brooks 1999), we expect fewer complaints during times of Republican strength. Since the EEOC chair is a presidential appointee, our political indicator emphasizes the executive branch. Following Jacobs and Helms (1996), it is coded 1 when the chair is a Republican appointee multiplied by the mean of the percentage of Republican governors, congresspersons, and self-identified Republican Gallup survey respondents.

**Compensation Structure.** Macroeconomic, demographic, and political forces have increased workers' extraeconomic interests in their jobs. The "long reach of the job" (Menaghan 1991) is manifest in on-site childcare centers and health benefits (Hochschild 1997), changes in family leave policy (Scharlach and Grosswald 1997), and changing cultural expectations about work (Edelman 1990; Rubin 1996). Moreover, worker specialization and firm-specific skills give workers a "stake" in the organization that is reflected in seniority-based promotion policies and buyouts for early retirement (Coleman 1990, p. 562). Both of these related trends—the interpenetration of work and family life and workers' increasing stakes in their jobs—are likely to affect the rate and nature of discrimination complaints. As a reflection of these changes, remuneration in the form of non-wage benefits has risen as a proportion of total compensation. Such payment in kind and the costs associated with duplicating health insurance, pension benefits, and other non-wage compensation are likely to make complaints more attractive than exit for employees. As benefit compensation increases in absolute and relative terms, workers' stakes in preserving their relationship with employers may also rise, leading to more discrimination claims. Our benefit compensation measure is the proportion of total compensation paid in the form of non-wage benefits, taken from *National Income and Product Accounts* (US Bureau of Economic Analysis 1998).

**Social Inequality.** The actual level of discrimination almost certainly affects the volume and rate of civil rights claims. Although no direct measure is available, we use inequality in remuneration as a proxy to indicate equality of result, if not equality of opportunity. We use standard inequality measures, such as the

ratio of African-American to White median household income and the ratio of female to male individual income to indicate wage inequality (US Bureau of the Census 1998, pp. 468, 475). As these ratios approach unity, we expect less labor market discrimination and correspondingly fewer civil rights complaints.

***Knowledge of Grievance Forums.*** Historical trends in complaint rates are a function of knowledge and rights consciousness as well as discrimination levels. Since workers must be informed of their rights and legal alternatives before filing a discrimination claim, rising education levels are likely to increase workers' awareness and use of EEO grievance forums. For example, high complaint rates in government agencies and educational institutions likely reflect an educated workforce and a legal environment that is sensitive to civil rights claims, rather than especially egregious discrimination in these organizations (Edelman, Uggen, and Erlanger 1999). More educated targets of discrimination may be more aware of their rights and potential grievance forums, have greater experience with the legal system (Ewick and Silbey 1998), and better able to predict their ultimate chances of success (Galanter 1974). We therefore include group-specific indicators of educational attainment in models predicting total, race, and sex complaints.

***Demographic Structure.*** Finally, historical changes in labor force participation by racial minorities and women affect the size and composition of the workforce and the absolute number of discrimination complaints. Studies based on raw numbers of complaints may erroneously attribute changes in labor force composition to changes in discrimination or legal consciousness. The standardized complaint rate, or number of complaints per thousand workers, provides a more accurate indicator of overall and group-specific legal mobilization.

In sum, our model predicts that complaint rates will vary directly with legal opportunities, unemployment rates, benefit compensation, and educational attainment, and inversely with Republican strength and income equality. Table 1 shows descriptive statistics and coding procedures for each variable in the multivariate analysis. Our dependent variables include the total complaints per thousand workers, race complaints per thousand non-White workers, and sex complaints per thousand female workers.

### ***Analytic Strategy***

We test our conceptual model by predicting the complaint patterns shown in the figures with the macro-social determinants noted above. Our analysis is limited by the small number of years observed; multicollinearity among the legal, political, and socioeconomic variables; autocorrelation among the residual error terms in the time series; and potential spuriousness due to omitted variables.

**Table 1**  
Descriptive Statistics

Variable	Coding	Mean	Standard Deviation
<b>Dependent variables</b>			
Total complaints to EEOC	Per 1,000 workers	1.19	.59
Race complaints to EEOC	Per 1,000 non-White workers	4.10	2.23
Sex complaints to EEOC	Per 1,000 female workers	.72	.39
<b>Independent variables</b>			
<i>Legal periodization</i>			
1972 Amendment	Coded 1 for years 1972–1994		
Age and Equal Pay Act	Coded 1 for years 1979–1994		
Disability Act	Coded 1 for years 1992–1994		
<i>Political climate</i>			
Republican strength composite <sub>t-1</sub>	Coded 1 when EEOC chair is Republican-appointee times the mean of the percentage of Republican governors, percentage of Republicans in the House and Senate, and percentage identifying themselves as Republican in national Gallup surveys	26.12	18.56

<i>Economic opportunities</i>			
Total unemployment rate <sub>t-1</sub>	Percentage	6.37	1.58
African-American unemployment <sub>t-1</sub>	Percentage	12.39	3.29
Female unemployment <sub>t-1</sub>	Percentage	6.86	1.32
<i>Compensation structure</i>			
Non-wage benefits <sub>t-1</sub>	Percentage	15.45	2.94
<i>Income inequality</i>			
Af.-Am. to White income ratio <sub>t-1</sub>	Ratio of household income	.59	.01
Female to male income ratio <sub>t-1</sub>	Ratio of individual income (age 25+)	.63	.06
<i>Educational attainment</i>			
Total median education <sub>t-1</sub>	Years	12.46	.23
Af.-Am. median education <sub>t-1</sub>	Years	11.48	1.11
Female median education <sub>t-1</sub>	Years	12.42	.20

We address the first two concerns by presenting bivariate results and parsimonious models with a small set of regressors. We address the third issue by adjusting estimates for first-order autocorrelation. Finally, we address spuriousness, the possibility that effects are due to *unmeasured* variables, by including lagged dependent (or endogenous) variables in each equation. This helps isolate the effects of our independent variables on changes in the rate of complaints, controlling for the initial complaint rate.

We estimate the following model:

$$CR_t = \alpha + \beta X_{t-1} + \gamma CR_{t-1} + \varepsilon_t$$

$$\varepsilon_t = \rho \varepsilon_{t-1} + \mu_t$$

where CR is the complaint rate per 1,000 workers,  $\alpha$  is a constant,  $X$  represents the values of the independent variables,  $\beta$  is the estimated effect of these variables,  $CR_{t-1}$  is the previous year's complaint rate, and  $\gamma$  is the complaint rate "stability effect" (Finkel 1995, p. 7). The error term at time  $t$  (indicated by  $\varepsilon_t$ ) is determined by the prior year's error term, a regression coefficient ( $\rho$ ) and a random variable ( $\mu$ ), following a first-order autoregressive process.

Ordinary least-squares estimates are inconsistent in models with both autocorrelation and lagged dependent variables because the lagged term is correlated with the current disturbance. We therefore use a two-step instrumental variable method proposed by Hatanaka (1974) and Greene (1997). The first step obtains consistent estimates of the regressors and the residuals, using the fitted values from a regression of the complaint rate on the independent variables and their lagged values as the instrument. The second step adjusts for autocorrelation, calculating  $\rho$  from the consistent estimates of the residuals. Since the lagged value of the lagged complaint rate ( $CR_{t-2}$ ) is used in this step (Greene 1997, pp. 605–7; Ostrom 1990, pp. 65–72), data are missing on the first two years of the time series. All models are estimated in LIMDEP (Greene 1998). In general, the net effect of these procedures is to inflate standard errors, resulting in smaller estimated  $t$ -statistics and more conservative tests of hypotheses relative to ordinary least-squares (OLS) regression.<sup>4</sup>

## Time Series Results

### *Changes in Complaint Rates*

**Total Complaint Rate.** Table 2 shows estimates of the determinants of total complaints per thousand workers after adjustment for first-order autocorrelation and the lagged dependent variable. Because of the small number of cases and intercorrelation among independent variables, we introduce each set of predictors separately in Models 1–5 to allow results from our full models to be compared against simpler models. As expected, the prior year's complaint rate is

**Table 2**  
Adjusted Determinants of Total Complaints Per Thousand Workers

	1	2	3	4	5	Full	Trimmed
<i>Legal periodization</i>							
1972 Amendment <sub>t</sub>	.424** (.239)					.598*** (.247)	.331* (.214)
Age and Equal Pay <sub>t</sub>	.008 (.131)					1.038** (.532)	-.013 (.116)
Disability Act <sub>t</sub>	.021 (.187)					.811** (.444)	-.090 (.170)
<i>Political climate</i>							
Republican strength <sub>t-1</sub>		.0004 (.003)				.001 (.004)	
<i>Economic opportunity</i>							
Total unemployment <sub>t-1</sub>			.127*** (.042)			.086* (.055)	.118*** (.042)
<i>Compensation structure</i>							
Non-wage benefits <sub>t-1</sub>				.012 (.030)		-.264 (.217)	
<i>Income equality</i>							
Af.-Am. to White					-7.468 (5.134)	1.314 (6.596)	
Median income ratio <sub>t-1</sub>							

**Table 2**  
(continued)

	1	2	3	4	5	Full	Trimmed
<i>Educational attainment</i>							
Total education <sub>t-1</sub>						-1.014 (1.444)	
<i>Lagged dependent</i>							
Total complaint rate <sub>t-1</sub>	.621*** (.154)	.798*** (.103)	.564*** (.116)	.756*** (.150)	.721*** (.144)	1.283*** (.475)	.430*** (.152)
Constant	.130 (.152)	.285** (.160)	-.243 (.210)	.168 (.359)	5.662 (5.455)	13.862 (17.840)	-.308* (.207)
<i>Durbin-Watson</i>	1.657	1.604	1.541	1.566	1.725	3.013	1.591
<i>Durbin h</i>	1.410	1.184	1.450	1.720**	1.031	X	1.650**
<i>Rho</i>	.171	.198	.230	.217	.138	-.506	.204
<i>R</i> <sup>2</sup>	.750	.708	.789	.711	.733	.807	.806
<i>Df</i>	21	23	23	23	22	16	20

Notes: Standard errors in parentheses.

X indicates that *Durbin h* cannot be calculated for this equation.

Estimates from Hatanaka's (1974) two-stage least-squares model for autocorrelation with lagged endogenous variable.

\* $p < .10$

\*\* $p < .05$

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

a strong predictor. Among the legal indicators in Model 1, only the 1972 Civil Rights Amendment has a significant effect on the total complaint rate. Although the other legal indicators are also positive in sign, their effects are not statistically significant. In Model 2, Republican political strength appears unrelated to overall complaint rates. Consistent with our hypotheses, the unemployment rate has a significant positive effect on the rate of total EEOC complaints. Net of the prior year's rate of complaints, a 1 percent increase in the unemployment rate corresponds to about one additional complaint per thousand workers in Model 3 of Table 2. Models 4 and 5 show little effect of benefit compensation or educational attainment, although the negative sign of the income equality effect in Model 5 is consistent with our hypotheses.

When all of the variables are included in a full model, we explain a sizable proportion of the variation in the total complaint rate. Only the legal periodization, the unemployment rate, and the lagged dependent variable, however, are even marginally statistically significant in the full equation. Moreover, the inflated standard errors and changes in sign on some estimates signal multicollinearity problems with this specification. We therefore estimated a trimmed equation that included only the legal periodization, the lagged dependent variable, and unemployment. The trimmed model appears more reasonable and explains a comparable proportion of variation in the complaint rate.<sup>5</sup> Again, both unemployment and the 1972 amendments increase the complaint rate in our final trimmed equation.

***Race Complaint Rate.*** Table 3 shows determinants of race complaints per thousand non-White workers. Consistent with our expectations, Model 1 shows that the rate of race complaints increased by about 2.2 complaints per thousand in the years following the 1972 Amendment, net of the prior year's complaint rate and other legal changes. Neither the ADEA nor the ADA were directed to racial discrimination and the Age and Equal Pay period is a marginally significant negative predictor. Contrary to expectations, Republican political strength fails to reduce the race complaint rate in Model 2. The rate of African-American unemployment is nonsignificant in Model 3, though it is a strong positive predictor in models that exclude the lagged dependent variable (not shown). The effects of benefit compensation and income equality are also nonsignificant in Models 4 and 5. The negative effect of income inequality is consistent with our model, though the negative sign of the education effect is not. We had anticipated that higher education levels would increase the complaint rate, yet African-American educational attainment has a nonsignificant negative effect on race complaints. We fit both full and trimmed models, with the trimmed model again providing the most reasonable fit to the data. African-American unemployment emerges as a significant predictor of race complaints in equations

**Table 3**  
Adjusted Determinants of Race Complaints Per Thousand Workers

	1	2	3	4	5	Full	Trimmed
<i>Legal periodization</i>							
1972 Amendment <sub>t</sub>	2.200** (1.045)					2.932*** (1.150)	2.220*** (.939)
Age and Equal Pay <sub>t</sub>	-.885** (.531)					.681 (1.741)	-2.136*** (.639)
Disability Act <sub>t</sub>	-.885 (.804)					.157 (1.307)	-1.288** (.735)
<i>Political climate</i>							
Republican strength <sub>t-1</sub>		.007 (.014)				.002 (.013)	
<i>Economic opportunity</i>							
Af.-Am. unemployment <sub>t-1</sub>			.082 (.095)			.325*** (.123)	.350*** (.119)
<i>Compensation structure</i>							
Non-wage benefits <sub>t-1</sub>				-.112 (.093)		-.548 (1.076)	

<i>Income equality</i>									
Af.-Am. to White									
Median income ratio <sub>t-1</sub>									
<i>Educational attainment</i>									
Af.-Am. education <sub>t-1</sub>									
<i>Lagged dependent</i>									
Race complaint rate <sub>t-1</sub>	.538*** (.157)	.785*** (.118)	.700*** (.146)	.834*** (.124)	.800*** (.123)	.544*** (.286)	10.301 (18.845)		.198 (.183)
<i>Constant</i>	.750 (.658)	.805 (.716)	.317 (.977)	2.532*** (1.363)	15.609 (14.103)	-.335 (23.270)			-1.397* (.940)
<i>Durbin-Watson</i>	1.775	1.650	1.455	1.811	1.820	2.047			1.117
<i>Durbin h</i>	.956	1.117	2.085**	.622	.589	X			1.973**
<i>Rho</i>	.112	.175	.273	.095	.090	-.023			.141
<i>R<sup>2</sup></i>	.707	.648	.656	.663	.670	.812			.763
<i>Df</i>	21	23	23	23	22	16			20

*Notes:* Standard errors in parentheses.

X indicates that *Durbin h* cannot be calculated for this equation.

Estimates from Hatanaka's (1974) two-stage least-squares model for autocorrelation with lagged endogenous variable.

\**p* < .10

\*\**p* < .05

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

that also include the legal periodization. In the trimmed model, the negative estimates for the ADA and the ADEA suggest that these legal changes may have actually *suppressed* the rate of race complaints, net of the 1972 Amendment, the African-American unemployment rate, and the lagged term.

***Sex Complaint Rate.*** Table 4 shows that results for the sex complaint rate parallel those for race complaints. Again, the 1972 Amendment significantly raises the sex complaint rate in all models. The group-specific unemployment rate is also a strong positive predictor, with a 1 percent increase in female unemployment increasing sex complaints by about one complaint per thousand. The trimmed model shows that the effect of female unemployment holds net of the legal periodization and the initial rate of sex complaints reflected in the lagged dependent variable. Overall, the time series analysis presents a similar picture for the rate of total, race, and sex complaints. In each case, the 1972 legal changes and adverse economic conditions increased the standardized complaint rate.

Though we cannot incorporate more recent complaint data in our time series analysis because of changes in the EEOC's reporting procedures after 1994, Figure 3 shows more recent trends in EEOC charges. Because complainants may file claims with the EEOC under more than one basis or statute, percentages in the table sum to more than 100 percent. As the figure illustrates, the patterns detailed above continue today. Race charges continue to decline, representing 36 percent of all charges by 2001. Sex charges continue to make up about 31 percent of all charges to the EEOC. Though age and disability claims leveled off after 1994, they still comprise almost 40 percent of all discrimination claims filed with the EEOC. Age complaints against private sector employers continue to rise (Chen 2002) and this trend will likely continue as members of the baby boom generation reach retirement age and develop work disabilities associated with aging.

### ***Discussion: The Transformation of Discrimination as a Social Problem***

Our analysis of trends in discrimination complaints to the EEOC reveals a major shift. Race discrimination complaints have fallen in absolute numbers, standardized rates, and as a proportion of all complaints in the past 25 years. Among the political and socioeconomic factors we considered, unemployment is clearly the strongest predictor of all types of claims: people file more discrimination complaints under adverse economic conditions. In light of the short time series and potential multicollinearity problems, we are reluctant to make strong causal claims for these findings. Nevertheless, this pattern of results provides a number of insights for refining our conceptual model and raises additional questions for further research.

**Table 4**  
Adjusted Determinants of Sex Complaints Per Thousand Workers

	1	2	3	4	5	Full	Trimmed
<i>Legal periodization</i>							
1972 Amendment <sub>t</sub>	.370*** (.163)					.393*** (.152)	.300** (.187)
Age and Equal Pay <sub>t</sub>	-.038 (.083)					.416** (.251)	.003 (.078)
Disability Act <sub>t</sub>	-.047 (.120)					.251 (.203)	-.047 (.110)
<i>Political climate</i>							
Republican strength <sub>t-1</sub>		.001 (.002)				.003 (.003)	
<i>Economic opportunity</i>							
Female unemployment <sub>t-1</sub>			.088*** (.033)			.079*** (.033)	.079*** (.033)
<i>Compensation structure</i>							
Non-wage benefits <sub>t-1</sub>				.0009 (.019)		-.120 (.110)	
<i>Income equality</i>							
Female to male					-.756 (1.873)	-1.095 (1.745)	
Median income ratio <sub>t-1</sub>							

**Table 4**  
(continued)

	1	2	3	4	5	Full	Trimmed
<i>Educational attainment</i>							
Female education <sub>t-1</sub>					.126 (.596)	.266 (.968)	
<i>Lagged Dependent</i>							
Sex complaint rate <sub>t-1</sub>	.545*** (.149)	.766*** (.108)	.568*** (.124)	.775*** (.147)	.792*** (.134)	.790*** (.304)	.387*** (.151)
Constant	.068 (.102)	.163* (.105)	-.261* (.191)	.208 (.237)	-.910 (6.328)	-1.802 (10.738)	-.326** (.187)
<i>Durbin-Watson</i>	1.772	1.647	1.533	1.644	1.686	2.600	1.657
<i>Durbin h</i>	.891	1.079	1.533	1.371	1.098	X	1.364
<i>Rho</i>	.114	.176	.233	.178	.157	-.300	.171
<i>R</i> <sup>2</sup>	.728	.680	.743	.675	.678	.823	.773
<i>Df</i>	21	23	23	23	22	16	20

Notes: Standard errors in parentheses.

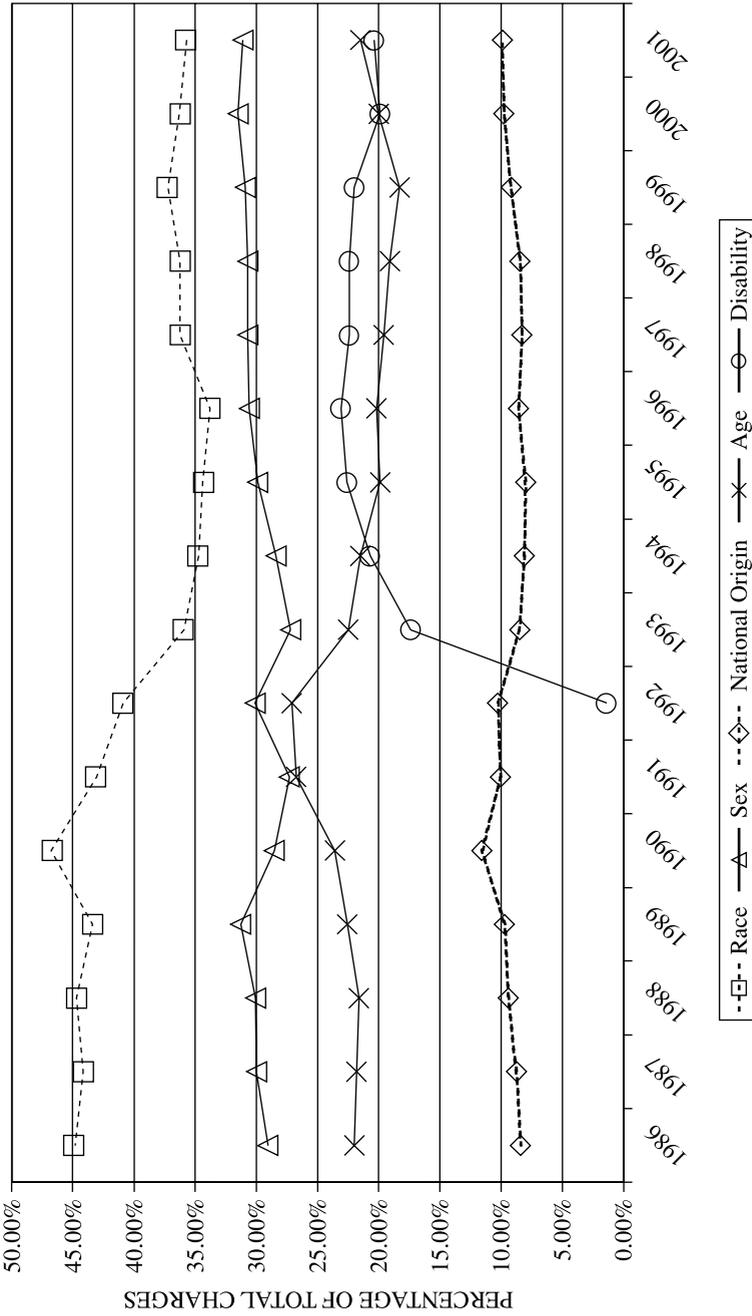
X indicates that *Durbin h* cannot be calculated for this equation.

Estimates from Hatanaka's (1974) two-stage least-squares model for autocorrelation with lagged endogenous variable.

\**p* < .10

\*\**p* < .05

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



**Figure 3**  
EEOC Charges by Base Category, 1986–2001

First, we find strong evidence that the external labor market influences discrimination claims, even after statistically controlling for legal changes and other factors. Unemployment rates affect workers' decisions to voice their complaints rather than exit to other work (Hirschman 1970) or to seek recourse through internal company procedures (Edelman 1990; Edelman and Petterson 1999). Workers thus file more formal complaints or lawsuits (Donohue and Siegelman 1991) when they cannot easily obtain comparable employment. The relationship between discrimination claims and unemployment is instructive in light of research showing that African-American workers are especially vulnerable to labor market recessions (Freeman 1997).<sup>6</sup> Moreover, this vulnerability is not equally distributed among African-American workers; Black women and less skilled Black men are most likely to experience layoffs during recessions (Neckerman and Kirschenman 1991). The rate of discrimination may also increase during economic downturns, as employers have greater freedom to exercise discriminatory tastes through selective layoffs or hiring (Becker 1957; England 1992).

Just as workers vary in their exposure to discrimination, some workers are better equipped than others to initiate discrimination claims. The so-called ghetto poor or "underclass," for example, is most likely to experience hiring discrimination and least equipped to file a complaint with the EEOC (Galanter 1974; Ewick and Silbey 1998; Neckerman and Kirschenman 1991; Wilson 1996). Conversely, older middle-class Whites may experience less discrimination but are better positioned to file a claim and engage the legal system. In light of this, EEOC reliance on individual complainants is problematic because it places the greatest burden on those with the fewest resources to file formal complaints.

While instructive, these data cannot address variations in the class background of EEOC discrimination complainants. Research examining how shifts in the class structure of complainants over time affect the form and level of EEOC complaints is a promising area for further investigation. Additionally, studies disaggregating discrimination complaints by industry or sector would shed considerable light on the conceptual model outlined here.

With regard to the political climate, partisan strength appears to have little effect on complaint rates. We find a sharp decline in the race complaint rate under the Ford and Carter administrations, rather than during the Reagan-Bush regime as anticipated. It appears that standard measures of Republican strength may not fully capture political influences on discrimination claims. Despite the null effects in our time series analysis, there are several reasons to believe that political as well as economic shifts affect the diffusion of complaints beyond race issues. For example, the late 1970s were marked by major changes in the economic and political position of African Americans. Economic shifts during this period may have slowed the momentum of the civil rights era, as the decade closed with

widening class division (Dawson 1995; Wilson 1987), rising economic inequality (Freeman 1997), and restructured employment within African-American communities (e.g., Kasarda 1989). The period was also marked by declining African-American political activism, with priorities shifting away from improving the job prospects of the working-class and toward the needs and concerns of middle-class homeowners—specifically, community development and capital accumulation (Dawson 1995; Gregory 1995; Oliver and Shapiro 1995).

EEO policy returned to public prominence in the 1980s with President Reagan articulating a civil rights policy that declared hiring discrimination resolved, portrayed earlier federal policy as promoting racism against White men, and, more generally, viewed race-based political mobilization as a threat to the individualized nature of American democracy (Omi and Winant 1986). Ironically, this stance may have inflated complaints by increasing just the sort of activism that President Reagan opposed—community-level political mobilization based on membership in a racial or ethnic group, designed to achieve gains for *classes* of workers rather than individual targets of discrimination. Shortly thereafter, the EEOC was swamped by sexual harassment claims after the Clarence Thomas confirmation hearings in 1991 (Goldweber 2002), when many politicians were signaling that sexual harassment claims would not be taken seriously.

Perhaps complainants are more responsive to local political organization than Republican strength at the national level. If this is the case, our measure of national partisan strength would fail to capture such localized effects. A regional analysis comparing discrimination complaints across states might be more useful in identifying the connections between local political climate, dissent organized in response to national civil rights policy, and the form and level of discrimination complaints filed with federal agencies. Also, political effects may be more salient after complaints are filed, affecting outcomes or resolutions at the EEOC rather than complaint levels per se (Hindera 1993; Wood 1990).

Finally, it is clear that changes in civil rights law have affected complainants by expanding the legal bases of discrimination. In particular, the 1972 Civil Rights Amendment increased the rate and number of all types of complaints. The Amendment expanded the legitimacy of discrimination claims from racial minorities to other groups of workers, coinciding with greater EEOC outreach efforts to increase public awareness. The 1972 Amendment helped raise complaint rates to a 1976 peak and contributed to an EEOC backlog of 94,700 unresolved charges by 1977 (Goldweber 2002). After the initial increase, most forms of discrimination complaints declined by as much as 50 percent and stabilized at higher levels. The ADEA, the Equal Pay Act, and the ADA further expanded civil rights law to previously unprotected groups and further legitimized government intervention in private employment practices. These legal changes contributed to the diffusion of discrimination claims to new constituent groups and reduced the

*proportion* of race and sex complaints as well as the *rate* of more established claims on the basis of race. We cannot address the origins of these legal changes with these data, though we expect the relationship between worker expectations and legal change to be bidirectional or reciprocal (Edelman et al. 1999).

Legal changes also contributed to a diffusion of *jurisdiction* over discrimination claims from the EEOC to various private organizations. As a response to legal ambiguity in early legislation and enforcement, private firms developed in-house EEO offices to monitor legal compliance and handle complaints internally (Edelman 1992; Dobbin, Sutton, Meyer, and Richard 1993; Kelly and Dobbin 1998). Complaint levels stabilized as the legal framework evolved and employers become more aware of their responsibilities, perhaps eliminating the most egregious discriminatory practices (Edelman et al. 1999; Goldweber 2002).

Outside the federal government and private firms, unions continue to function as alternative grievance forums. Unionization expanded due process rights to nonunion labor by increasing general expectations of workplace fairness (Edelman 1992). Though the percentage of unionized workers declined from 28 percent in 1970 to 15 percent in 2000 (US Bureau of the Census 2001, p. 411), unions remain a forum for discrimination grievances. It remains unclear whether union representation draws complaints away from the EEOC or whether they help mobilize complaints by raising awareness about civil rights protections.

Since passage of the 1964 Civil Rights Act, the number of private organizations developed to respond wholly or in part to labor market discrimination increased as well. Political advocacy organizations such as the ACLU, NOW, NAACP, AARP, and Rainbow Coalition offer attractive alternative grievance forums for minority, female, and older workers. Because Hill's (1990) depiction of the EEOC as a "claims adjuster" rather than a law enforcement agency remains largely valid, employees may feel they are better represented by private political organizations that can draw public attention to discrimination in particular firms. Because the EEOC is directed by political appointees and the enforcement prerogatives of the president, victims of some forms of discrimination (for example, race complainants under President Reagan) may prefer to use groups such as the NAACP as public relations experts and advocates. Although we are unable to resolve these issues with these data, the impact of political advocacy organizations in the organization of discrimination claim processing remains an important area for further research.

This discussion underscores the point that the EEOC is but one of a number of alternatives for workers perceiving discrimination. We have not yet identified why a worker who decides to "grieve" chooses the EEOC, an office at her firm, or the NAACP as the site of grievance, though we suspect that EEOC complainants may be better educated and have more experience with the legal system than those who elect not to complain or seek recourse elsewhere (Ewick and Silbey 1998; Galanter 1974). In addition, the State's ability to create

substantive equity in the labor market and to offer protections to workers remains limited. It is unlikely that the EEOC reduces discrimination primarily through its enforcement efforts, especially given the recent declines in class-action suits and reductions in its enforcement budget. Nevertheless, the agency plays an important symbolic role in equalizing outcomes by serving as the public representative of government on civil rights issues.

### Conclusion

Sociologists continue to document disparities in pay, promotion, termination, and work expectations based on the race and gender of workers (England 1992; Pierce 1995; Williams 1995; Wilson 1996; Zwerling and Silver 1992). The racial wage gap, for example, “stagnated” in the 1980s, despite significant legal and social measures (Smith 1993, p. 79). Moreover, women consistently earn less than men and have access to fewer job opportunities (Burstein 1994; England 1992; Marini and Fan 1997; Milkman 1987). Such disparities on the basis of ascribed characteristics persist despite civil rights legislation, normative shifts in attitudes about discrimination (Schuman, Steeh, Bobo, and Krysan 1997), and extensive demographic changes in the American workforce. While employment discrimination persists, however, its form has evolved with changing legal, political, and socioeconomic conditions.

Although civil rights complaints are generally studied, discussed, and understood in terms of race (and, increasingly, sex) discrimination, we have shown a general diffusion of civil rights law to new groups of claimants. By 1994, most civil rights complaints to the EEOC were based on neither race *nor* sex discrimination. The growing share of complaints based on age and disability status signals shifts in employment discrimination and workers’ perceptions of their rights on the job, perhaps as part of a larger movement to bring procedural justice to the American workplace. The spotty availability of alternative forums for exercising these emerging rights affects the rate and social distribution of complaints to the EEOC.

We have detailed trends in the nature and distribution of complaints filed with the federal Equal Employment Opportunity Commission since 1967, most notably the shift from racial discrimination to other bases of discrimination. Our descriptive figures showed that the EEOC’s mission has been transformed from ensuring job access for racial minorities to processing diverse grievances from a much broader class of incumbent workers. We then specified a conceptual model to explain these patterns, based on changes in law, politics, economic conditions, compensation structure, education, and inequality. Although a confluence of forces helped diffuse civil rights law to new claimants and causes of action, our analysis suggests that economic opportunities and legal changes are the principal causal motors driving complaint rates. The strong effects of the unemployment rate on complaints appear to be consistent with economist Richard

Freeman's contention that "the market is more powerful than any Government program" in reducing employment discrimination (Nasar and Mitchell 1999). Our analysis suggests that government programs and the market may well work in concert, as both shape the responses of workers to discrimination.

#### ENDNOTES

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<sup>1</sup>Blankenship (1993) argues that African-American women, concentrated in industries originally exempted from some federal antidiscrimination efforts, were viewed as women first and African Americans second within EEO public policy and legislation.

<sup>2</sup>Our time series analysis of complaints is limited to 1967-1994 to maintain reporting consistency, though we also show descriptive data on EEOC charges through 2001.

<sup>3</sup>A figure showing unstandardized complaints shows roughly similar trends (not shown, but available from authors), with somewhat greater temporal instability.

<sup>4</sup>We examined the sensitivity of our estimates to alternative specifications such as OLS regression and OLS with Prais-Winsten (1954) autocorrelation corrections. All statistically significant findings were also significant in these models, although several factors that were statistically significant in OLS models were reduced to nonsignificance by the inclusion of the lagged dependent variable in our final models.

<sup>5</sup>Nevertheless, autocorrelation remains a threat even in this specification. We compute Durbin's  $h$  (a variant of the Durbin-Watson statistic for lagged dependent variable models) to test for autocorrelation:

$$h = \rho \sqrt{\frac{t}{1 - t \text{var}(b^*)}}$$

where  $t$  is the number of years observed and  $\text{var}(b^*)$  is the sampling variance of the lagged term. Since  $h$  is tested as a standard normal variable, the hypothesis of zero autocorrelation is rejected at the .05 level when  $h > 1.64$  (Ostrum 1990, p. 66). We cannot calculate  $h$  for our full model because the inflated variance of the lagged term necessitates taking the square root of a negative.

<sup>6</sup>The vast majority of EEOC race charges are filed by African Americans (Parker 1991).

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