

Are equal
employment laws
necessary?



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The Question

What is the best course for our society to take to continue moving towards the elimination of discrimination in our society and are anti-discrimination laws regarding employment still necessary for private companies in today's society?

A History of Legal Discrimination

Before we answer these questions we first need to examine the following question; can our legal or political systems make mistakes? I see some of you chuckling in the audience, but it is a valid and important question to consider. Let's take a look at our history to address this question. Looking back to 1849, the Massachusetts Supreme Court deemed separate facilities for educational purposes to be constitutional (Ficker, 1999). In 1872, the Nevada Supreme Court made a similar ruling stating that there was no constitutional mandate to integrate public schools.

Regarding employment practices, in 1894 Theodore Roosevelt removed two-thirds of the African American employees from the War Department (Ricucci & Naff, 2017). President William Taft segregated the United States Census by restricting the census staff to only survey people of the same race (Ricucci & Naff, 2017). There were efforts such as the Executive Order 8802 in 1941 by President Franklin Roosevelt to end discriminatory employment practices by the federal government; however, they had little power or long-term effects (Ricucci & Naff, 2017).

For more than 100 years the Massachusetts precedent cemented these policies as constitutional before *Brown vs the Board of Education of Topeka* in 1954 reversed the Separate but Equal Doctrine (Cornell University School of Law, n. d.). The United States Supreme Court decided that the Separate but Equal Doctrine violated the Equal Protections clause of the Fourteenth Amendment. However, the overturning of this doctrine was not concretely overturned until the Civil Rights Act was passed by Congress in 1964; this legislation created protections for citizens and “ prohibited discrimination on the basis of race, color, religion, sex, or national origin, required equal access to public places and employment, and enforced desegregation of schools and the right to vote” (National Parks Service, n. d.). The Civil Right Act made a unique distinction from earlier efforts. In addition to the public sector to which most previous attempts focused, the Civil Rights Act applied to the private sector as well.

Path of Least Resistance.

Fast forward to today. It seems like we finally have our act together. Our society has been progressing towards a more inclusive society. Affirmative action and Equal Opportunity have been successful strategies regarding this goal. Why would I question if the current system is the best course going forward for our society? To address this, we need to look at how we as individuals, and as a society make decisions.

##Pause briefly.

If I asked you to explain to me the effects of social media on the United States population, but only after you researched the topic, how would you go

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about it? Some of you might plug in *effects of social media and the United States* into a google search. Others may go to Wikipedia to see what is available on our modern take of the Encyclopedia Britannica. But how many of you would think, “ I’m going to see what the research has to say about this” and visit a site such as google scholar? Now I understand in this room the third option may receive a higher percentage due to the self-selection bias associated with this talk, but overall one of the first two options would most likely dominate public preference.

Why would I have this view of the general public? Because a study from the University College London in 2017 in which researchers examined the decisions of participants related to movements of sensory dots on a screen (Hagura, Haggard, & Diedrichsen, 2017). In this study participants were asked to decide which way sensory dots were moving and for them to move their left or right handle to correspond with that movement. It is also important to note that the handles had a slight resistance which was not known by the participants. The researchers found that the participants unknowingly choose the handle of least resistance. What does this tell us? According to the researchers, we choose the path of least resistance as our subconscious default preference.

You might be wondering what this has to do with Equal Employment Laws. My fear is that because these laws are in place, some private companies use them as a crutch rather than develop their own corporate policy. Their subconscious thought process could be if we already have these laws, what more needs to be accomplished, which in turn may hinder progress. If this is

occurring, what external factor may help mitigate these possible effects? For this we look toward social media and the role it is playing in political change.

Social Media Change

On election night in 2016, Teresa Shook was worried about the state of gender equality under the new incoming administration. She decided to create a Facebook event page and sent invites to 40 of her Facebook friends (Lavietes, 2017). The next day when Teresa checked the event page she noticed there were 10, 000 RSVPs with thousands more interested (Lavietes, 2017). This example shows the exponential effect of our relationships on social media. In this case one person was able to leverage her 40 friends to reach over half a million people (Lavietes, 2017). While Teresa Shook's movement primarily raised awareness and facilitated the building of coalitions, there are also cases of policy changes based on social media advocacy.

One of the most notable political events where social media and new media had a substantial impact on public policy was the case of North Carolina's Bathroom bill. This bill required state employees to only use bathrooms that matched the gender that was written on their birth certificate. Advocates against this bill informed the public using social and new media about their opposition. Building support through these channels, large private companies put pressure on the state to reverse its actions regarding this bill. One of the most notable companies was the NBA; in protest of the new law, they moved the NBA All-Star game from Charlotte to New Orleans (Park & McLaughlin, 2017). The NCAA also moved several of its tournament events to

other states to put pressure on the North Carolina General Assembly (Park & McLaughlin, 2017).

Another great and very notable social media campaign is the Twitter hashtag #BlackLivesMatter which first originated in 2014. This hashtag created by Alicia Garza, Patrisse Cullors, and Opal Tometi was in response to the murders of Michael Brown and Eric Garner (Tassie, & Givens, 2015). Through the expansive network of social media, they were able to reach and gain the support of a prominent NFL quarterback. In 2016, Colin Kaepernick decided to show support for the Black Lives Matter movement by kneeling during the national anthem before each NFL game. When asked about why he was taking this action his response was “ At what point do we take a stand and, as a people, say this isn’t right?” (Allen, 2016). With powerful tools like Twitter and Facebook, hundreds of millions are given a voice and the power to make a change. And how does this relate to the role of government and a possible shift in that role?

Complete Information

One thing I learned from my graduate economics class is that government has a responsibility to provide the public with full and complete information, so we are able to make informed decisions. This role of government has been diminished with the ever-developing information age in which we are currently living. Almost everything is online these days. From stock information, to the Bureau of Labor Statistics data, to the nutritional information of a Big Mac, the level of access to information we have is unprecedented.

Through the participation of social mediums such Twitter and Facebook, we can share information and build coalitions. And with the sharing of information at the rate we do, it is impossible to hide discriminatory practices; this is in contrast to the past where most of these events would have never been known to the public. The public is watching, and private companies are aware. Private companies have a duty to avoid controversies which will damage their brand.

A very high-profile case of where the public outcry influenced a private company's management decision was Fox News. There were a series of sexual harassment claims against high-level members of that organization. In 2016 Roger Ailes, CEO and chairman of the board for Fox News resigned amid allegations of sexual harassment towards employees. To show the public that these alleged events were not representative of the organization James and Lachlan Murdoch tweeted "...We continue our commitment to maintaining a work environment based on trust and respect" (Helsel, 2016).

Less than a year later, Bill O'Reilly was ousted from the same network because of his alleged sexual harassment of coworkers. This was an individual who consistently topped the ratings for cable news for more than 20 years. And 21st Century Fox and Fox News parted ways with Bill O'Reilly to show the public that these actions were not part of a healthy work environment which they strived to build. It is important to note that some believe that the removal of Ailes and O'Reilly had more to do with the financial hit to Fox News rather than their desire to foster a healthy work environment. The Guardian noted that in response to the O'Reilly allegations

there was a boycott of more than 50 companies who advertise with Fox News; the list of companies ranged from BMW to All State (Rushe, 2017).

Private Companies Take the Lead

While the previous examples show the effects that social media have had on our society and our unwillingness to tolerate bad actors, it's important to understand how social media and the instant exchange of information has impacted private companies in a proactive manner. When considering the human resource component of Equal Employment Opportunity Laws and diversity in the workforce we see that with private industries there has been a shift towards promoting a more diverse workforce. Where private companies previously followed the path of federal human resource compliance, there is now a celebration and promotion of a diverse workforce. This can be seen in both the leadership of private companies and their corporate policy. In 2016, Marriot President and CEO Arne Sorensen published an open letter urging Donald Trump to promote diversity in the workplace (Bush & Peters, 2016). On their website Marriot champions their inclusive and diverse workforce as a "strategic business priority" (Marriott International, Inc., n. d). This active representation by Marriot promotes diversity in the workplace that is described in Riccucci & Naff (2017).

Another big company taking the lead regarding inclusion and diversity is Blue Cross Blue Shield Tennessee. They believe that "responsible companies are intentionally diverse and include people from all walks of life" (Blue Cross Blue Shield Tennessee, n. d.). They also highlight that in addition to focusing on racial and gender diversity, they take pride in promoting their practice of

partnering with SEARCH to match those with intellectual disabilities with career opportunities.

Visa highlights their Talking Cranes program which is aimed to help women excel in positions of leadership. This program is a hybrid of online resources and in-person workshops designed to develop female professionals into effective leaders (Visa, n. d.). Visa also partnered with Berkeley's Haas School of Business to develop an executive leadership program (Visa, n. d.).

These three examples are just a few of the countless initiatives private companies are employing to create the new standard of a diverse and inclusive workforce. These initiatives are not only beneficial from the diversity standpoint, but also from the career development aspect as they help develop their current workforce. An additional benefit to having these programs is you increase the pool of interested talent who desire a culture of continued career development.

Conclusion

What should we take away from all of this? A relevant concept to remember is the phrase politics is downstream from culture. What we embrace through social mediums will have an impact on public and private policies. We are increasingly becoming a tolerant and accepting people. We refuse to tolerate injustice and ill treatment of members of our community. The public will continue to leverage Twitter and Facebook as tools of social change. We can expect there will continue to be debates on whether private companies are really concerned with fostering an inclusive work environment, or if they are trying to avoid financial ruin from patrons and advertisers. To be fair I do

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think that is a reasonable criticism, but I hope the first motivation is correct; that being said we need to consider what we believe to be more important, the outcome or the motive? And with that in mind, I would encourage you to not be passive. Do not take the path of least resistance. Be active on social media. Be proactive in creating the society you want to live in.

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