Achieving Value and Stability: 
The Institutionalization of the 
U.S. Equal Employment Opportunity Commission

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THESIS
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Dedication

This work is dedicated to my parent, Judith Ramos and Luis Gerardo Ramos, in thanks for their sacrifices and unflinching love and support.
ACKNOWLEDGMENTS

It would have been impossible to complete this project without the ongoing support of UIC’s Political Science Department, the Graduate College, and the LARES Program. Without a doubt, their ongoing encouragements served to provide me with the motivation to see this project to its conclusion. I am also deeply thankful for the guidance and never-ending support provided by my dissertation chair, Dr. Lyn Ragsdale. In addition to helping me find my niche as a scholar, her mentorship has provided me with the confidence to excel in the academic arena. My dissertation committee members – Dr. Andrew McFarland, Dr. Evan McKenzie, Dr. Dick Simpson and Dr. Barry Rundquist – were also instrumental in the completion of this project. I am deeply appreciative of their insight and continuous encouragements. Lastly, I am thankful to my family – Judith, Gerardo, Randy and Tracy – for their unflinching support and faith in my abilities. Had it not been for such a tight knit family, I might not be where I am at today.
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<td>ADCAA</td>
<td>Age Discrimination Claims Assistance Amendments of 1988</td>
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<td>Age Discrimination Claims Assistance Amendments of 1990</td>
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<tr>
<td>ADA</td>
<td>American with Disabilities Act of 1990</td>
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<td>ADAAA A</td>
<td>American with Disabilities Act Amendments Act of 2008</td>
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<tr>
<td>ADEA</td>
<td>Age Discrimination in Employment Act of 1967</td>
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<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<td>CRA</td>
<td>Civil Rights Act</td>
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<td>EO</td>
<td>Executive Orders</td>
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<td>EEO</td>
<td>Equal Employment Opportunity</td>
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<td>EEOC</td>
<td>United States Equal Employment Opportunity Commission</td>
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<td>ENDA</td>
<td>Employment Non-Discrimination Act</td>
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<td>EPA</td>
<td>Equal Pay Act of 1963</td>
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<td>E-RACE</td>
<td>Eradiating Racism and Colorism from Employment</td>
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<td>FEA</td>
<td>Fair Employment Agency</td>
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<td>Fair Employment Practices</td>
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<td>FEPA</td>
<td>Fair Employment Practice Agency</td>
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<td>GAO</td>
<td>Government Accounting Office</td>
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<td>GINA</td>
<td>Genetic Information Non-Discrimination Act of 2009</td>
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<td>IFMS</td>
<td>Integrated Financial Management System</td>
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<td>IMS</td>
<td>Integrated Mission System</td>
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<td>LEAD</td>
<td>Leadership for the Employment of Americans with Disabilities</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>Office of Management &amp; Budget</td>
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<td>Program Assessment Rating Tools</td>
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<td>Technical Assistance Program</td>
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<td>Technical Assistance Program Seminars</td>
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<td>TERO</td>
<td>Tribal Employment Rights Offices</td>
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SUMMARY

To determine whether federal bureaucracies have the potential to emerge as institutions, this dissertation provides a longitudinal study of the emergence and evolution of the U.S. Equal Employment Opportunity Commission. Through an examination of multiple variables spanning from 1965 to 2010, the institutionalization of the EEOC is examined along five dimensions: adaptability, complexity, professionalization, autonomy, and coherence. Findings reveal that, to emerge as institutions, federal bureaucracies have to demonstrate an ability to deal with environmental challenges and age, to develop complex hierarchical and functional structures, to groom a professionalized staff, to articulate interest distinguishable from external forces, and to foster consensus around their functional boundaries and the procedures used to address disputes that arise within their jurisdictions.
CHAPTER I:
INTRODUCTION

Whether one is pursuing the academic literature, devouring the plethora of information produced by the mass media, or even delving into grass roots activism, a clear pattern begins to emerge – in America, the term institution is oftentimes used incorrectly. Many either do not understand its meaning, or use the term interchangeably with such terms as agency, organization, bureau, commission, or bureaucracy. In so doing, many have overlooked the significance of what the term institution means. In addition to having a natural dimension, institutions also manifest an ability to interact and adapt to external forces. Institutions are organizations that adjust to the demands of political and social forces, while simultaneously preserving their own interests and goals. They gain influence by setting boundaries around what they do and what they do not do. Thus, an institution is “a natural product of social needs and pressures – a responsive, adaptive organism” (Selznick, 1957, p. 5). This views institutions from the perspective of organizational theory, which emerges out of early sociological studies. There are other conceptualizations of institutions; economists most frequently use the rules of the game (Hodgson, 1988; Matthews, 1986).

One can make the argument that undergoing the process of institutionalization tends to be somewhat easier if the institution is the result of constitutional mandate. To illustrate, Article I of the U.S. Constitution created the legislative branch of government composed of the U.S. Congress; Article II created the executive branch composed of the U.S. President and other executive officers (a reference to the President’s Cabinet); and, Article III created the judicial branch composed of the U.S. Supreme Court and
congressionally created lower courts. Because Congress, the presidency, and the federal courts are rooted in constitutional mandates, it becomes virtually impossible to eliminate these institutions. As a direct result of their more permanent standings, institutionalization becomes a natural progression. The numerous institutionalization studies focused on these branches of government and their enforcement mechanisms thus comes as no surprise (Cromwell, Jr., 1960; Seligman, 1965; Polsby, 1968; Cannon, 1989; Ragsdale & Theis, 1997). But how do institutions emerge? Specifically, what is the process by which organizations become institutions with lives of their own?

When it comes to federal bureaucracies, scholars and American government textbooks often refer to these units as the fourth branch of government. Under the jurisdiction of executive branch, bureaucracies are charged with implementing, administering, and regulating federal programs. These units, not mentioned in the Constitution, have emerged as a result of congressional mandates or presidential directive. Bureaucracies emerge to address specific goals, tasks, or issues, but often they grow quickly, increase their scope, and become permanent parts of the government.

With the growth and importance of federal bureaucracies, it becomes important to examine their emergence as institutions. This particular line of inquiry is significant in that it provides one with an opportunity to examine several fundamental questions regarding the institutionalization of federal bureaucracies; including: Why do some federal bureaucracies achieve longevity, whereas others are eliminated? How do federal bureaucracies preserve their interests while simultaneously adapting to external pressures and constraints? How do federal bureaucracies obtain deference from state entities when federalism allows states to create likeminded bureaucracies to carryout similar tasks?
How do federal bureaucracies obtain authority and primacy when competing with other federal bureaucracies seeming to share jurisdictional boundaries? If institutionalization entails the creation of stability and order, how does change occur? It is through this inquiry that one is better able to gauge the meaning of value and stability within federal bureaucracies.

To determine whether federal bureaucracies have the potential to emerge as institutions, this dissertation provides a longitudinal study of the emergence and evolution of the U.S. Equal Employment Opportunity Commission. To lay the groundwork for the institutionalization of the EEOC, Chapter 2 begins with an introduction to the Commission’s creation in addition to an examination of academic literature addressing various aspects of the EEOC. In light of the fact that no scholarly work has examined the institutionalization of the EEOC as a whole – or any American federal bureaucracy for that matter – Chapter 3 works to provide an overview of the institutionalization literature in order to create a model for such an investigation. Building on the work of Samuel Huntington and Peverill Squire, Chapter 4 introduces the model and measures used to investigate the institutionalization of the EEOC.

To pave the way for an examination of the institutionalization of the EEOC, Chapter 5 begins by drawing attention to precursors that fostered the creation of the Commission. Building on this foundation, an in-depth analysis of five specific dimensions of the institutionalization of the EEOC – adaptability, complexity, professionalization, autonomy, and coherence – is examined in Chapters 6 through 10. To examine the adaptability of the Commission, Chapter 6 draws attention to the
institutionalization of bureaucratic procedures, evolution in leadership, and changes in key institutional functions. The underlying objective of this exploration is to determine the EEOC’s ability to adapt to change.

Chapter 7 focuses on the complexity exhibited by the EEOC through its hierarchical and functional growth, expansions in organizational subunits, and divisions of labor with clear performance expectations. This exploration proves to be significant in that it brings to light the entrenchment, ingenuity, adaptability, and leadership required to achieve agency deference.

Chapter 8 delves into the professionalization exhibited by the Commission in its internal institutional attributes. In light of functional growth and increasing demands, it becomes essential to examine how the bureaucratic workforce provides clientele service and what the composition, tenure, experience, education, pay, and workload of this workforce looks like. Through this examination, one is able to determine whether the Commission possesses a professional staff able to meet growing demands.

Chapter 9 focuses on the autonomy exhibited by the EEOC in its ability to advance interests distinguishable from those of other social, political, and legal actors. By considering the EEOC’s role in shaping, implementing, and enforcing EEO policies related to age, race, gender, and disability, in addition to innovations in the Commission’s use of enforcement mechanisms, it becomes easier to discern whether the Commission has goals and objectives distinct from those of external actors.

Chapter 10 rounds out the analysis with a discussion of coherence within the EEOC. Its boundaries and procedures have a great deal to say about how and whether employment discrimination cases will be filed. As such, the EEOC has not only adopted
procedures to address its growing caseload and backlog of charges, but also key
structures to handle internal communication between its main office in Washington, D.C.
and its many regional offices. The key objective of this endeavor is to examine how
disputes are handled and resolved by the Commission and whether there is consensus
over the functional boundaries and procedures used to handle these claims.

The ultimate goal of this dissertation is to determine whether the EEOC has
emerged as an institution and to assess how this reflects on the nature of the
institutionalization of federal bureaucracies more broadly. Chapter 11 summarizes the
results of these efforts.
CHAPTER II:
STUDY OF THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

With an initial budget of $2.25\textsuperscript{1} million and approximately 100 employees located at its central headquarters in Washington D.C., the U.S. Equal Employment Opportunity Commission (EEOC) opened its doors in May of 1965 to oversee the implementation of Title VII of the 1964 Civil Rights Act. The Commission was charged with overseeing the eradication of discrimination in the workplace. Although it was anticipated that the number of claims would be modest, the primary estimate that set the budget was that only 2,000 discrimination charges would be filed during the first year of operation. Much to everyone surprise, the EEOC was inundated with over 8,800 discrimination charges in its first year. “The dramatic response to the new law reflected the confidence of civil rights organizations and minority persons in this new avenue of relief from discrimination” (EEOC, 1966, p. 5). Nonetheless, though individuals seemed confident in the EEOC’s ability to address employment discrimination, the Commission was ill equipped to handle these charges. The staff was swamped with work, hundreds of uncompensated overtime hours were clocked, and more than two thousand discrimination cases were carried over to the following year. Thus began the backlogging of discrimination charges (EEOC, 1968, p. 4).

While the EEOC began understaffed and lacking adequate financial resources to carry out its objectives, it managed to survive its earlier years and flourish through the decades to come. The weak and ill-equipped Commission emerged to become a hub of equal employment opportunity policy. In fact, by 2011, the Commission’s budget had

\textsuperscript{1} With inflation, $2.25 million in 1965 grew to $15.38 million in 2010 (using 2010 as the base year).
grown to $385.3 million. Not only did the EEOC experience budgetary increases, it also had 2,577 employees, 53 field offices located throughout the country, and work-share agreements with 64 Tribal Employment Rights Organizations and 94 Fair Employment Practice Agencies nationwide. In addition to budgetary, personnel, and organizational growth, the EEOC experienced increases in its workload. In 2010 alone, the EEOC received 99,922 new employment discrimination charges; of these and existing claims, 104,999 were addressed by the Commission.\(^2\)

As the bureaucratic structure of the EEOC began to take shape, EEO policy also underwent significant expansion. This, in turn, served to further strengthen the role of the EEOC as the major enforcer of EEO policy. Originally, the EEOC was created to oversee the enforcement of Title VII of the 1964 Civil Rights Act. Through Title VII, the Commission was given the charge of overseeing equal employment opportunity policy designed to end workforce discrimination based on race, sex, color, and national origin. However, in time, EEO policy began to expand to include areas unaddressed by Title VII. Today, the scope of EEO policy has grown to include federal laws addressing discrimination against individuals over the age of 40 (1967 Age Discrimination in Employment Act), discrimination on the basis of gender in compensation (1963 Equal Pay Act), discrimination on the basis of disability (1990 Americans with Disabilities Act, 1973 Rehabilitation Act) and, most recently, discrimination on the basis of genetic information (2009 Genetic Information Non-Discrimination Act). The EEOC is also charged with enforcing the 1991 Civil Rights Act, which has facilitated EEO compliance by granting monetary remedies in cases of intentional discrimination. In addition to

\(^2\) Resolution rates may exceed charges filed because they include a combination of pending, new, and FEPA transferred charges.
overseeing the implementation of EEO-related legislative mandates, the EEOC is charged with coordinating all federal equal employment opportunity regulations, practices, and policies, interpreting employment discrimination laws and monitoring the federal sector employment discrimination program, providing funding and support to state and local Fair Employment Practices Agencies, and sponsoring outreach and technical assistance programs (EEOC, 2005).

While there is some existing research on the EEOC, it is focused on specific areas of its operation, growth, and the nature of employment discrimination. As a whole, the literature has neglected to study the institutionalization of the EEOC and has failed to broaden our understanding of how bureaucracies transform from organizations that handle specific tasks for clients into institutions with size, stability, rules, and value beyond the tasks at hand.

The scholarly work on the EEOC focuses on three primary topics. First, a great deal of literature addresses the legal activities of the Commission and the precedents it has set. Numerous studies examine the handling of discrimination charges by the EEOC (Duke Law Journal, 1971; Stegman, 1999; Szkodzinski, 2001), the roadblocks placed by the Commission on those seeking access to private employee data for legal purposes (Harter, 1979), the inability of the Commission to achieve successful conciliations (Michigan Law Review, 1982), and the Commission’s litigation outcomes (Becker, 1979; Horowitz, 1980; Lettes, 1986). The underlying objective of these studies is to evaluate the EEOC’s ability to end discrimination through legal action.

Second, the literature addresses how the Commission has adapted to an ever-changing political environment. This line of literature includes work that examines
changes in the EEOC’s enforcement of Title VII (Yamachika, 1982), the impact of political stimuli on the EEOC (Wood, 1990), management styles at the EEOC (Lyden, 1972; Kemp, Funk & Eadia, 1993), and legal challenges faced by the Commission (Casellas, 1998). While the underlying objective of these studies is to evaluate the EEOC’s ability to lead the cause against job discrimination, the authors have produced scholarly work that scrutinizes the ability of the EEOC to oversee the implementation of EEO policy.

Finally, a broad literature addresses EEO policy. This literature examines the establishment of diversity and organizational inclusion in the workforce (Konrad & Pfeffer, 1991; Evans & Oh, 1996; Sisneros, 1996; Bond & Pyle, 1998; Giscombe & Sims, 1998; Joinson, 2000; Mor Barak, 2000; Williams, 2001), the impact of representative bureaucracy on workforce diversification (Stein, 1986; Mladenka, 1989; Kerr & Mladenka, 1994; Naff, 1995; Coleman, Brudney & Kellough, 1998; Lawton, 2000), the economics of workforce diversity (Landes, 1968; Johnson, 1995; Cohn, 1996), the proper implementation of equal employment opportunity laws (Burstein & MacLeod, 1980; Bryner, 1981; Wheeler, 1999), and the impact of social movements on EEO policy (Burstein, 1991).

Although there is no examination of the institutionalization of the EEOC in the literature, numerous scholars refer to the EEOC as an institution in their studies. In fact, in their examination of the EEOC as a representative bureaucracy, Hindera & Young (1998) boldly declare that “government bureaucracies are political institutions” (p. 655). Thus, there is an ongoing assumption about what the EEOC is in the literature without an actual examination of why and how it actually became an institution.
Beyond the literature that directly examines the EEOC, there is also broad literature in the field of public administration that devotes considerable attention to bureaucracies. While certain aspects of institutionalization can be teased out of the literature, this is clearly not the main focus. Scholars examine the relationship between management and the implementation of public policy (Dresang, 2002), the dynamic between public personnel management and administration (Sylvia, 1994; Ban & Riccucci, 1997), innovations within human resource management (Kettner, 2002), distinct leadership styles (Baliga & Hunt, 1988; Adler, 1996; Barling, Weber & Kelloway, 1996; Bass, 1996; Yukl, 2006), bureaucratic decision-making studies (Bragg & Andrews, 1973), bureaucratic and social interactions (Berger, Cohen & Zelditch, 1972) organizational behavior (Hamner & Organ, 1978; Hammer & Turk, 1987) and public administration and the construction of racial classifications (Alexander, 1997). By focusing on such areas as bureaucratic leadership and environmental changes, many of these scholars are touching on elements of institutions and institutionalizations without recognizing it as such. Though a formal model of institutionalization is void in the literature, evidence of institutional variables emerged in these studies.

John David Skrentny’s (1994) study stands apart from the other works in directly addressing institutionalization and the EEOC. Skrentny considers EEO policy in institutional terms. This, however, is distinct from the approach taken here regarding institutions. In examining the institutionalization of EEO policy, Skrentny (turning to the work of Meyer et al., 1987) defines institutionalization as:

‘the process by which a given set of units and a pattern of activities come to be normatively and cognitively held in place, and practically taken for granted as lawful (whether as a matter of formal law, custom, or knowledge)’. … In this perspective, policies and laws represent political
possibilities, the institutionally defined ways of approaching problems and addressing them (p. 345).

While I consider the organizational development of the EEOC, Skrentny (1994) outlines a different theoretical perspective on how definitions and policies serve as institutional rules.

According to Skrentny, “…studies from the institutional perspective have concentrated on the effects of EEO legislation on organizations, and have not examined the origins of government and legal pressures on organizations, and for the most part have not been sensitive to the controversies over race-conscious justice” (345). In order to expand the literature, Skrentny built upon previous empirical work and designed an institutional model that permitted an examination of cultural rules as institutions. “In this perspective, policies and laws represent political possibilities, the institutionally defined ways of approaching problems and addressing them” (Skrentny, p. 345).

Within his analysis, Skrentny teased out an interesting paradox embedded within EEO policy. In conceptualizing the meaning of discrimination and establishing methods for correcting employment inequalities, the EEOC needed to create a method for tracking workforce demographics. In order to expedite nondiscrimination in employment, a race-conscious system for tracking the workforce was institutionalized (p. 345). This institutionalization led to the formation of contradictory mandates. On the one hand, EEO laws were created with the purpose of preventing racial discrimination in the workforce; on the other hand, by keeping the workforce racially classified in order to track employment patterns, EEO policy was no longer promoting a colorblind work environment. Employers were left at a crossroad; while they were prohibited from discriminating against individuals based on their protected classes (the colorblind goal of
the policy), they were required to classify their workforce based on their protected class status for recordkeeping purposes (the reinforcement of race, ethnicity, and gender differences within the workforce).

In the end, Skrentny found “that the rules of the ‘classical liberal’ (Bell, 1976) model of discrimination in EEO law, focusing on abstract individuals rather than group differences, shaped and constrained the design of an EEOC enforcement mechanism widely perceived as ineffective and inefficient” (p. 344). While many scholars argued that the EEOC underwent an ideological takeover and capture when it opted to employ race-based statistics to track the workforce, Skrentny contends that this was not the Commission’s intention. Instead, the logic behind employing race-based statistics was quite practical; rather than separate the races into superior-inferior categories, the idea behind this race-based classification system was purely recordkeeping. To measure the effectiveness of EEO policy, one needs to be able to assess the progress of protected class in the workforce; descriptive representation was key to this examination. Without data on the labor compositions and make-ups, there would be little way of determining whether or not EEO policy was actually making a difference in the eradication of workforce discrimination.

The overall object of Skrentny’s work was to outline how EEO policy was interpreted and, subsequently, conceptualized. His discussion on the institutionalization of EEO policy is useful for this dissertation’s analysis of the institutionalization of the Commission charged with its enforcement. Certainly, the processes by which the EEOC became institutionalized are directly linked to the policies it developed.
Overall, with the exception of the contributions made by Skrentny, researchers have overlooked the institutionalization of the EEOC. More significantly, though some have touched on institutionalization characteristics within their studies, scholars have failed to enrich our understanding of how bureaucracies transform from organizations that handle specific tasks to institutions with size, stability, rules, and value beyond these tasks at hand. In light of the void in the literature, this project offers the first attempt at addressing the transformation of the EEOC from the 1965 legislative-created organization to the fully entrenched institution seen today. This project builds upon previous empirical work in developing an institutionalization model designed to examine bureaucratic transformations. To understand the EEOC’s transformation from the weakly infantile bureaucracy that opened its doors in 1965 to the mature and fully embedded institution that has emerged over time, this study turns to the institutionalization literature.
CHAPTER III:  
THE DEVELOPMENT OF AN INSTITUTIONALIZATION FRAMEWORK

In order to develop a model of institutionalization with which to examine federal bureaucracies, this chapter turns to the academic literature on institutions, institutionalization, and institutionalism. Without question, scholarly approaches to institutionalism are numerous and distinct from equally numerous studies on institutionalization as a process.

A. Approaches to Institutionalism

The study of institutions and institutionalism is found in sociology, economics, and political science. The breadth of the literature has led to a variety of theoretical frameworks, conceptualizations, and measures.

The earliest theoretical perspective on institutions began in the 1880s. Under these first perspectives, institutions were viewed as interlocking rules, rights and procedures. In addition to emphasizing legal frameworks and administrative arrangements, attention was placed on the origins of political systems. “Many practitioners of the old formalism, for example, John W. Burgess, W. W. Willoughby, and Edward Corwin, were specialists in public law, and their work elucidated the immutable principles of American constitutionalism that guided the polity’s evolution” (Orren & Skowronek, 1995, p. 298).

This old formalism, sometimes referenced as classic institutionalism, was supplanted by behavioral models of organizations beginning in the 1950s. Behavioralists shifted the focus from the rules, regulations and procedures to the people, their behaviors, and the consequences of their actions (Truman, 1951; Dahl, 1956). Behavioralists held
that “individuals constituted the fundamental building blocks and political results were simply the aggregation of individual action” (Shepsle, 1989, p. 133). Though the behavior of organizational actors may affect institutions, institutionalization extends beyond an individual’s behavior. “Behavioralism, it appeared, could answer only so much. In particular, it could not account very well for political change, especially as evidence mounted of the crucial role of the historical context in shaping political outcomes” (Cook, 1998, p. 65).

By the 1980s, a new approach to Institutionalism (which came to be known as new institutionalism or Neoinstitutionalism) emerged to intertwine classic institutionalism and behaviorism ideals. According to the new Institutionalists, people do not act on their own accord; instead, they act within the context of an institution. Thus, institutions affect individuals’ behaviors as much if not more than they can directly influence the growth and development of institutions. There are three distinct strands of new institutionalism – one that emerges from Economics, another from organizational theory, and a third from Sociology.

As emphasized by the new institutionalism in economics, institutions are the rules of the game – efficient ways to solve problems and reduce the transactional costs of protecting individual interests. As underscored by Douglass North (1990), “institutions are the rules of the game in a society, or more formally, are the humanly devised constraints that shape human interactions” (p. 3). More specifically, institutions are “the determinants of economic performance and relative price change the source of institutional change” (North, p. 7). Thus, in this strand of new institutionalism, economic interests are integral components of the institutionalization process.
As developed in organizational theory, new institutionalism takes a very different approach and focuses on organizations. Organizational theorists believe that organizations and institutions are steeped in the culture of society; they are organic, visible, historic, and temporal (moving in time and space and evolving). As explained by James March and Johan Olsen (1984), “the institutionalism we have considered is neither a theory nor a coherent critique of one. It is simply an argument that the organization of political life makes a difference” (p. 747). Because organizations are political actors, organizational theorists believe it is essential to examine how these organizations modify and affect their environments.

In Sociology, the new institutionalism emphasizes abstract cultural concepts as the basis for institutions. According to this theory, certain practices and customs are written into the way people behave. Therefore, cultural concepts (such as a handshake) and organizational fields (such as museums, universities, orchestras, and the media) can be institutionalized. As underscored by Paul DiMaggio and Walter Powell (1991), institutionalism “emphasizes the way in which action is structured and order made possible by shared systems of rules that both constrain the inclination and capacity of actors to optimize as well as privilege some groups whose interests are secured by prevailing rewards and sanctions” (p. 11).

These approaches have been adopted in the study of American political institutions. In examining the mass media as a political institution, Timothy Cook (1998) invokes organizational and sociological theory, defining institutions as “social patterns of behavior identifiable across the organizations that are generally seen within a society to preside over a particular social sphere” (p. 70). Through this framework, institutions are
viewed as formal structures that constrain individual choices and behaviors, in addition to informal procedures, routines, and assumptions on the way society should act in social and political settings. They extend space, endure time, and preside over specific societal or political domains.

In examining congressional legislative processes, Kenneth Shepsle (1989) adopts an economics approach to new institutionalism developing the concept of structure-induced equilibrium. “Structure-induced equilibrium is based on the idea that an institutional process, described by its rules, can be graphed as an extensive form game” (Shepsle, p. 137). Within this structure, attention is placed on institutional rules and procedures, key players and their preferences, and the outcomes of these interactions. “Equilibrium, if it exists, is affected not only by the distribution and revelation of agent preferences, but also by the way the collectivity goes about its business” (Shepsle, p. 137).

To underscore the importance of history within political science studies, Karen Orren and Stephen Skowronek (1995) combined economics and sociological theory to “cultivate analytic ground between the seamless flow of events and period synthesis, and between time-bound descriptive minutiae purportedly timeless covering laws” (p. 306). Through their work, Orren and Skowronek note that “institutions are characterized by conflicts and intersections of rules that are frequently rooted in history” (p. 309). Therefore, it is essential to recognize that institutions are historic (they were created in the past); institutions control the behavior of individuals and other institutions; and, institutions are purposive (rules are connected to specific goals) and intentional (specific ambitions and motives).
Regardless of which theoretical approach one examines, the process of institutionalization within federal bureaucracies and its connection to the nature of bureaucracies as institutions remains unexplored. Though theoretical frameworks have emerged in various disciplines to draw the attention to the rules of the game, individual behaviors, culture and symbols, history, and even political actors, few distinctions have been made regarding key differences between organizations and institutions. This is of significance when one considers the continuous use of “organizations” and “institutions” as interchangeable terms, despite their clear differences. As explained by Ragsdale and Theis:

Selznick (1957, 17) states that ‘to institutionalize’ is to infuse with value beyond the technical requirements of the tasks at hand.’ As an organization achieves stability and value, it becomes an institution. Stability denotes that the organization is no longer a mechanistic entity, easily altered or eliminated. Instead, as an organization institutionalizes, it survives various internal and environmental challenges and achieves self-maintenance – it exists in the future because it has existed in the past. Value denotes ‘the prizing of the [organization] for its own sake’ (Selznick 1957, 17). As an organization institutionalizes, it acquires a distinctive identity, a way of acting, and tasks it acts upon, which are all deemed to be important in and of themselves. For political organization, value is also a matter of power, exhibited when individuals in the organization have authoritative control over policy outcomes, acceded to by those in other organizations (Stinchcombe 1968) (p. 1282).

There is evidently a difference between organizations and institutions; while institutions grow, evolve, and become more powerful as value is acquired, organizations remain static, rigid, and fail to evolve. While much attention is dedicated to conceptualizing and understanding institutionalism, the process that leads to the emergence of institutions has remained unexplored.

To develop a model designed to examine institutionalization within federal bureaucracies, it becomes essential to also examine theoretical works that have sought to
delineate clear differences between organizations and institutions, in addition to subsequent academic literature testing these institutionalization approaches.

B. **Institutionalization Frameworks**

In 1957, sociologist Philip Selznick began to unravel the distinctions between administrative management and institutional leadership. In doing so, Selznick determined that there was a clear difference between organizations and institutions. As explained by Selznick, the term ‘organization’ referred to an *expendable tool*; in other words, organizations are “rational instrument[s] engineered to do a job” (p. 5). Based on this perspective, organizations serve a single purpose – to coordinate. Whether they are overseeing the workforce, managing communications, or distributing tasks, organizations reflect certain bareness; in other words, they are engineered to perform a task and little else. Unlike the straightforwardness of an organization, institutions are much more complex.

As noted by Selznick, the term ‘institution’ refers to “a natural product of social needs and pressures – a responsive, adaptive organism” (p. 5). Hence, institutionalization studies enrich the academic literature because their focus is on history and how internal and external environmental factors shape and transform organizations. To study the institutionalization process, one needs to examine change in patterns and practices resulting from unexpected situations; personal and group interactions over time; the attachment of individuals to the organization; in addition to self-maintenance and the development of a unique identity. “Institutions, whether conceived as groups or practices, may be partly engineered, but they have also a ‘natural’ dimension. They are products of interactions and adaptation; they become the receptacles of group idealism;
they are less readily expendable” (Selznick, p. 22). Unlike the bareness and rigidity of organizations, institutions flow and adapt to environmental pressures.

Building upon Selznick’s work, in 1965 Samuel P. Huntington made the first effort to bring institutionalization theories into political science. In his investigation of political developments throughout southern Asia, the Middle East, Africa, and Latin America, Huntington recognized that the standard modernization explanations were too arbitrary and, consequently, ill-equipped to fully explain the political changes taking place in developing countries throughout the world. As explained by Huntington, “the definitions are many and multiple; but, with a few exceptions, the characteristics which they identify with political development are all aspects of the processes of modernization” (p. 239).

Huntington’s biggest apprehension with the use of modernization theories to explain political development stemmed from the fact that these theories failed to incorporate a consideration for time and space. In order to address weaknesses in the use of modernization theories to explain political development, Huntington drew upon Selznick to develop an institutionalization model designed to encapsulate both political development and political decay. As explained by Huntington, “theories of instability, corruption, authoritarianism, domestic violence, institutional decline, and political disintegration may tell us more about the ‘developing’ areas than their more hopefully defined opposites” (p. 245). According to Huntington, institutionalization models are beneficial because, like institutions, nations have the potential to decay and dissolve or grow and mature over time. If political development is to be studied, both extremes need to be considered.
Drawing from the institutionalization literature also proved to be valuable for Huntington because this body of work focused not only on modernization characteristics, but also took into consideration time and space dimensions. This pairing proved to be beneficial because it drew “attention on the reciprocal interaction between the on-going-social processes of modernization, on the one hand, and the strength, stability, or weakness of political structures, traditional, transitional, or modern, on the other” (Huntington, p. 245). By measuring political systems from an institutional perspective, Huntington demonstrates that one can examine the level of institutionalization within different political systems, in addition to drawing comparisons among the different nations.

In his study of political development, Huntington defined institutionalization as “the process by which organizations and procedures acquire value and stability” (p. 246). When values are acquired and stability is achieved, institutionalization is said to have taken place. Huntington suggested that this process can be measured by examining four dimensions, which are each conceived as a continuum: from adaptability to rigidity, complexity to simplicity, autonomy to subordination, and coherence to disunity.

According to Huntington, the first measure of institutionalization is adaptability. Adaptability is an acquired organizational characteristic that is a function of environmental challenge and age. If an organization and its procedures are able to survive environmental changes that surface over time, the organization and procedures are said to be adaptable. If organizations and procedures have the flexibility to adapt themselves in order to overcome one challenge, they will be ready and able to handle subsequent environmental changes. In the end, “the more adaptable an organization or
procedure is, the more highly institutionalized it is; the less adaptable and more rigid it is, the lower its level of institutionalization” (Huntington, p. 246). Adaptability can be measured by three factors: chronology, generation age, and institution functions.

Chronology refers to procedural longevity; in other words, “the longer an organization or procedure has been in existence, the higher the level of institutionalization” (Huntington, p. 247). The idea here is that if an organization or procedure has already survived a hundred years, then the odds are greater that it will most likely survive a hundred more. By the same token, if an organization or procedure has only existed for a year, the odds that it will last an addition year decrease. By examining chronology, one is able to assess gradual changes over time.

Generation age is a function of chronological age and represents a second measure of adaptability. Generation age refers to the peaceful succession and replacement of leaders; in other words, “so long as an organization still has its first set of leaders, so long as the procedure is still performed by those who first performed it, its adaptability is still in doubt” (Huntington, p. 248). In order to assess the adaptability of generation age, there must be clear leadership changes. Though the replacement of one leader with another is a sign of generation age adaptability, the real objective is recruiting new leaders who bring with them different experiences, ideas, and visions. What is clearly needed is generational leadership change. As explained by Huntington, “the shift from Lenin to Stalin was an intra-generation succession; the shift from Stalin to Khrushchev was an inter-generational succession” (p. 248). If an organization is able to withstand drastic leadership changes, it is said to be adaptable. 
The final measure of adaptability revolves around institutional functions. Normally, organizations are created to perform a particular function. When this function is no longer needed, the organization must find a new purpose or slowly perish; “an organization which has adapted itself to changes in its environment and has survived one or more changes in its principal functions is more highly institutionalized than one which has not” (Huntington, p. 248). The key then is to recognize the impact of functional changes on an organization rather than merely examining the specific function.

While adaptability focuses on how organizations or procedures withstand environmental challenges overtime, the second measure of institutionalization, complexity, draws attention to the actual structure of the organization. In specific, complexity involves “multiplication of organizational subunits, hierarchically and functionally, and differentiations of separate types of organizational subunits” (Huntington, p. 249). As argued by Huntington, the more simplistic an organization or procedure, the more likely that it will not be long lasting. In examining political systems, Huntington observed that primitive and simplistic political systems tended to be destroyed by the modernization process; whereas complex traditional systems were better able to adapt to environmental challenges (p. 249). Organizations with complex structures are viewed as being more stable and are considered better able to overcome obstacles. In the end, the greater the complexity, the more institutionalized the organization or procedure is said to become.

The third measure of institutionalization is the autonomy of an organization. Autonomy assesses the relationship between social forces (groupings of individuals – families, clans, work groups, churches, ethnic and linguistic groups – working for social
and economic activities) and the political organization. Through an examination of this relationship, one can determine the extent to which the organization is either independent of or subordinate to the interests and values of external social forces. If organizations or procedures lead to competition among different social forces, then the organizations or procedures can be considered autonomous. As explained by Huntington, political parties that target a single group (i.e. labor, business, and farmers) are less autonomous than ones that address the needs and concerns of several groups. In this case, the latter is more autonomous than the former because its purpose extends beyond the goals of a single social force (p. 251). Autonomy can also be measured in relation to procedures. “A highly developed political system has procedures to minimize, if not to eliminate, the role of violence in the system and to restrict to explicitly defined channels the influence of wealth in the system” (Huntington, p. 251). In the absence of autonomy, or a natural competition between organizational insiders and outsiders, said organizations or procedures are considered to be corrupted.

The final measure of institutionalization focuses on coherence – the level of unity and consistency within an organization. Coherence increases as consensus emerges about an organization’s functional boundaries (the tasks it should and should not do) and the appropriateness of its procedures for resolving disputes. According to Huntington, the greater the unity in an organization, the greater its level of institutionalization; the greater the disunity in an organization, the less likely it is to be considered an institution (p. 252). In other words, if an organization rapidly or substantially expands its membership base or its participants, the system’s coherence tends to weaken. “The Ottoman Ruling Institution, for instance, retained its vitality and coherence as long as admission was
restricted and recruits were put through an elaborate education, with selections and specializations at every stage. The institution perished when everybody pressed in to share its privilege … numbers were increased; discipline and efficiency declined” (Huntington, p. 253). As long as an organization assists in the incorporation of new members and participants, coherence remains intact; however, the minute anyone can enter without undergoing an acculturation or emersion process, the coherence of the organization weakens.

Coherence is closely linked to autonomy. Although it is possible for organizations to be autonomous without being coherent, or vice versa, it is important to recognize that autonomy enhances coherence. Autonomy enables “the organization to develop an esprit and style which becomes distinctive marks of its behavior” (Huntington, p. 252). If a healthy relationship is established between those inside and outside an organization, it becomes easier for the organizations to obtain consensus over its boundaries and procedures in the long run.

Though some may argue that institutionalization is difficult to measure because subjects tend to vary, Huntington underlines the point that it is not impossible to examine the institutionalization process. In fact, no sooner had Huntington published his study on political development and institutionalization when other scholars began transposing his model into diverse political arenas. Just as Huntington embraced Selznick’s institutionalization study, other political scientists followed as they drew from Huntington’s work.

Nelson W. Polsby (1968) embraced the versatility of this institutionalization framework. Using Huntington’s study as a backdrop, Polsby developed a model that
outlined three major characteristics of institutionalization applicable to the U.S. House of Representatives. According to Polsby, for institutionalization to be evident in the House, it must first be “well-bounded, that is to say, differentiated from its environment” (p. 145); in other words, the House must be independent and distinctive from outside forces. Complexity must also be evident if institutionalization is said to have taken place. In particular, there must be an internal distribution of labor, in addition to commonly held expectations regarding job performances. Polsby’s final measure of institutionalization drew attention to the internal workings of the House. In specific, Polsby sought to determine if the organization tended “to use universalistic rather than particularistic criteria, and automatic rather than discretionary methods for conducting its internal business” (p. 145). The idea was to examine whether favoritism, nepotism, and personal preferences permeated administrative decision-making.

Through this framework, Polsby concluded that the House of Representatives had indeed undergone the institutionalization process. Overtime, it had become bounded, complex, and had universalistic and automatic decision-making. Although he was unable to articulate exactly when institutionalization took place, Polsby did hypothesize that the House emerged as an institution because of increases in the responsibilities of the national government and corresponding expansions in the national economy. “As the responsibilities of the national government grew, as a larger proportion of the national economy was affected by decisions taken at the center, the agencies of the national government institutionalized” (Polsby, p. 164).

David T. Cannon (1989) used Polsby’s framework to examine the evolution of Congress as a whole. Working from Polsby’s study, Cannon developed an
institutionalization model to assess leadership within the U.S. Congress. In specific, Cannon examined “the durability, boundedness, internal complexity, and universal norms and rules of the leadership” (p. 415). Although Cannon employed Polsby’s institutionalization framework, he noted that Polsby provided an excellent tool for explaining how institutions take shape, but he was unable to effectively explain why these changes occur – a weakness articulated by Polsby himself. To address this theoretical limitation, Cannon offered a theory of change based on “the stability in the partisan control of the chamber, external conditions, member goals, and the skills of individual leaders, primarily their ability to utilize existing institutions” (p. 436). Although this theory of change was limited to legislative studies, Cannon outlined the importance of not merely explaining the institutionalization process, but also understanding why this transformation takes place.

In addition to its application to the legislative branch, institutionalization studies have been employed to examine different aspects of the executive branch. Lester G. Seligman (1965) was the first to utilize institutionalization theories to examine the executive. As a result of the 1946 Full Employment Act, the executive branch grew to include the Bureau of the Budget, the National Security Council, and the Office of Defense Mobilization. “Each of the aforementioned agencies in the Executive Office of the President has been created by law, and now constitutes an institutionalized part of the President’s apparatus” (Seligman, p. 410). The goal behind the creation of these bureaucracies was to provide the President with the resources needed to perform his job. These agencies were designed to alleviate pressure on the President’s inner circle of advisors and aides (also known as the kitchen cabinet, tennis cabinet or inner circles).
Seligman focused on the institutionalization of the President’s inner circle itself because, in addition to counseling the President on policy decisions, they absorbed and buffered pressures targeting the President, expedited political action, served as presidential liaisons, and filled in as “needlers” to expedite presidential requests when opposition was evident. In other words, these individuals were key players in the President’s executive arsenal. Through his examination of the institutionalization of the President’s inner circle, Seligman found that while the individual members were dispensable, the group itself was essential to the President.

While Seligman focused on the institutionalization of presidential leadership, Margaret Jane Wyszomirski (1982) shifted gears and examined the deinstitutionalization of presidential staff agencies. As noted by Wyszomirski, the goal of all agencies is to survive; they want to survive in order to continue to provide services to the public and meet presidential needs. However, not all agencies endure the test of time. To determine whether deinstitutionalization had taken place within four agencies of the Executive Office of the President, Wyszomirski employed a model of the administrative life cycle. Within this model, presidential staff agencies were grouped into one of four categories: agencies that failed to acquire new functions but continued to perform contested functions were considered to be surviving; those that remained in equilibrium and continued to perform the same functions were said to be coping; those which developed and acquired new functions, greater budgets, and stronger political and bureaucratic support were considered developing; and those that had been incorporated into the stable routine operations of a larger government were classified as institutionalized.
(Wyszomirski, p. 456). By focusing her model exclusively on personnel\(^3\), the pulse of an agency, Wyszomirski found that even though presidential staff agencies have endured the test of time (and institutionalized as illustrated by Seligman), some were beginning to show signs of deinstitutionalization (p. 448). This notion of deinstitutionalization is not a first in the literature. In fact, Polsby warned that institutionalization is clearly an ongoing process; if anything hinders said progress, the risk of institutional decay is great (p. 168). Wyszomirski’s work expanded on this point.

In addition to studies focused on the institutionalization and deinstitutionalization of presidential staff, special attention has also been placed on the President’s relationship with the press. Elmer E. Cornwell Jr. (1960) focused on the institutionalization of presidential press conferences. As observed by Cornwell, “the presidential press conference, like other aspects of the presidency, has rapidly developed in the last two decades from a highly informal, semi-private encounter between the Chief Executive and the working press into a formalized public institution” (p. 389). In the past, Presidents spoke to the public through a mediator – the press. In other words, the President would communicate to the press who, in turn, would pass the message on to the public. However, President Franklin D. Roosevelt transformed this method of communication by employing the media to speak directly to the public. As the media began embracing this new role, the institutionalization of the presidential press conferences began to take shape.

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\(^3\) Wyszomirski selected to examine changes in personnel because “the size, tenure, qualifications, classifications, accreditations, visibility, and related features of agency personnel indicate other conditions regarding functions, budgets, activities, organization, and ultimately influence and power. Variations among personnel characteristics can be detected, as can change between characteristics and conditions. Patterns of survival, of coping, and of development are apparent. Systematic status, or the measure of institutionalization, may also be seen. Certain associations are direct and inevitable; but others are complex, contingent, and conjunctive” (p. 455).
Though Seligman, Wyszomirski, and Cornwell sought to examine various aspects of the institutionalization of the executive branch, they all shared one common weakness – they failed to provide a theoretical framework for examining the institutionalization process. While it seemed evident that these scholars understood that changes were taking place within the executive, that stability and value were beginning to take shape in various areas, they did not fully develop an analytical framework for which to examine this phenomenon. Canon advances beyond these studies by developing a comprehensive theoretical framework for institutionalization.

A theoretical framework is also offered by Lyn Ragsdale and John J. Theis (1997). Their work is significant for two reasons. First, rather than focus on the institutionalization of various aspects of the executive branch, they drew their attention to the institutionalization of the office itself – the institutionalization of the presidency. In addition, instead of merely discussing incremental changes within the presidency, they incorporated a comprehensive theoretical framework into their analyses. As explained by Ragsdale and Theis:

The term ‘institution’ has become something of a buzzword in the social sciences. Recent research is replete with comments on the new institutionalism, how organization features are institutional or institutionalized, and how institutions affect political outcomes (c.f., March and Olsen 1989; Shepsle and Weingast 1987; Skocpol and Finegold 1982). Many writers assume they know what the meaning of these terms, even when they do not define them. Yet, the meaning of the word institutionalization, to institutionalize, institution, and institutionalism are murky (p. 1282).

Rather than further ambiguous institutionalization studies, Ragsdale and Theis understood the importance of conceptualizing their terminology and grounding their work in theoretic principles.
To provide a more analytical study of the institutionalization process, Ragsdale and Theis examined the institutionalization of the presidency through an overview of the relationship between internal and external forces; in other words, grounding their work on Huntington’s institutionalization framework. Employing Huntington’s measures, Ragsdale and Theis defined adaptability as the independence of the presidency from other units; complexity as the longevity of units within the presidency; autonomy as differentiations among subunits and staff; and, coherence as the manageability of work within the presidency (p. 1280). Through this theoretical framework, Ragsdale and Theis concluded that the presidency emerged as an institution in the 1970s as a result of governmental, congressional, and presidential efforts. In specific, they found that “institutionalization [resulted] from an interplay between individual interests within the organizations and aspects of the environment” (Ragsdale & Theis, p. 1280). These findings reinforce the importance of analyzing the institutionalization process as a byproduct of distinctive internal and external interactions.

When it comes to bureaucracies in specific, Max Weber (1946) paved the way for bureaucratic institutionalization studies. Weber held the notion that bureaucracies evolved to maximize efficiency. In identifying institutionalized bureaucracies, Weber turned the attention to bureaucratic hierarchical structures, divisions of labor, and formal rules and procedures. Although Weber noted that bureaucratic efficiency stemmed from institutionalized rules and regulations, his examination of the actual institutionalization process omitted important dimensions; its focus was entirely on internal dimensions. In fact, in addition to failing to take into account a bureaucracy’s potential to exercise power...
beyond its functional boundaries, Weber overlooked the relationship between a bureaucracy and external actors vying for influence.

While the American institutionalization literature tends to focus on different facets of the legislative and executive branches of government, the international and comparative literature extends this theory to additional political arenas. Similar to American legislative studies, scholars have examined the institutionalization of European Parliament (Gehrlich, 1973), Italian Parliament (Leonardi, Nanetti & Pasquino, 1978), and the British House of Commons (Hibbing, 1988). Beyond these parliamentary studies, institutionalization models have also been employed to examine the development of political parties. In fact, particular attention has been paid to the institutionalization of political parties in Cuba and Bolivia (Domínguez & Mitchell, 1977), legislative parties in Poland (Kistner, 2004), and political parties in Third World country (Randall & Svåsand, 2002).

While the American literature tends to neglect institutionalization studies targeting bureaucracies, this is not the case when one examines international studies. Huntington’s model was quickly adapted to examine the institutionalization process of international organizations. Robert O. Keohane (1969) turned his attention on the institutionalization of the United Nation’s General Assembly. As argued by Keohane, institutionalization is extremely important to the field of international organizations not only because it allows one to examine the relationship between organizational characteristics and the organization’s environment, but because it can be conceptualized and operationalized (pp. 860-861).
In his analysis of the United Nations, Keohane found that while institutionalization is of great importance to understanding the development of international organizations, there are also key differences across environmental pressures and internal demands. As explained by Keohane:

The institutionalization of an international organization depends on the nature of the environment (which can promote either institutional development or decay) as well as on internal characteristics of the organization. Internal characteristics such as complexity and coherence should therefore be regarded as subsidiary variables related to the chief concept linking organization and environment. Complexity and coherence may contribute to durability and autonomy and may serve as partial indicators for those concepts. They are not, capabilities relative to the environment but merely international organizational characteristics that may have effects on such capabilities. They should not, therefore, be placed at the same level of analysis as autonomy and durability (p. 863).

By considering adaptability, complexity, autonomy, and coherence as equal measures, Huntington was unable to distinguish differences in organizational characteristics and environmental demands. Although Keohane was the first scholar to critique this theoretical weakness, he was not the only one; in fact, several authors who have employed Huntington’s institutional framework have noted and corrected this weakness in subsequent studies (see: Polsby, 1968; Hill, 1974; Dominguez & Mitchell, 1977; Hibbing, 1988; Cannon, 1989; Ragsdale & Theis, 1997; Randall & Svåsand, 2002; Kistner, 2004).

In his analysis of the New Zealand’s Ombudsman, Larry B. Hill (1974) echoed Keohane’s views regarding the reciprocal relationship of Huntington’s institutionalization measures. In specific, Hill argued that while it is true that organizations must defend themselves against environmental pressures (Huntington’s adaptability and autonomy), they must also have internal offensive capabilities that will allow them to carry out their
mission. In other words, Hill argued that “institutionalization is a process that occurs over time in which the organization creates authority relationships vis-à-vis the environmental actors” (p. 1076). For institutionalization to be evident, organizations need to have an internal structure which will allow them to carry out their mission, they must be able to “cope with depredations from the environment”, and they must be able to use their power and influence to establish themselves as authoritative figures (Hill, p. 1076). Thus, many of these institutionalization studies critique Huntington for the equal importance he places on his institutionalization measures and for his inability to distinguish between internal and external forces.

Alexander J. Groth (1979) articulated several more weaknesses in Huntington’s institutionalization framework. He argued that the problems with Huntington’s thesis revolve around:

(1) the definition linking organizations and institutions; (2) moral inferences from the characteristics of organizations; (3) the dichotomy of politics between developed, moral nation-states and underdeveloped, immoral ones; (4) the misunderstanding of organizations and stability in Communist states; and finally (5) general conclusions about institutionalization, power and order (p. 204).

Groth critiqued the use of organizational characteristics in defining institutionalization, the assumption that conflicts of interests do not exist within organizations, the overemphasis on the importance of development and modernization, and the lack of understanding regarding stability and power in political contexts. Groth’s points, while intriguing, are weakened by the fact that he does not provide an alternatives to the conceptualization he attacks. The strength of Huntington’s model is evidenced by the fact that so many scholars have chosen to build upon his work.
While many have employed Huntington’s institutionalization model in their academic studies without any major alterations, Peverill Squire (1992) adds to the literature by incorporating professionalization as another dimension of institutionalization. In his examination of the institutionalization of the California Assembly, Squire was interested in determining the relationship between professionalization and Polsby’s notion of institutionalization. According to Squire, professionalization includes member remuneration levels, staff support and facilities, and service time demands (p. 1028). Through professionalization, one is able to examine how legislative staff provides services for their clients, in addition to measuring changes in institutional attributes associated with clientele services.

Although professionalization and institutionalization are sometimes used interchangeably, these concepts clearly differ. Professionalization focuses on the delivery of clientele services (the organization’s customer service) and is dependent on a long-term commitment to organizational units and processes. As Squire states, a professionalized body is one in which “members look on their service as being their career; after all, service is full-time and the pay offered reflects that fact. Legislators who adopt this long-term or professional perspective mold the organization to meet their needs; that is, to institutionalize it” (p. 1028). By contrast, institutionalization focuses on how the organization structures itself to provide services (the organization’s internal complexity). This is centered on its “well-defined boundaries, the growth of internal complexity, and the adoption of universalistic criteria and automatic methods for internal decision making” (Squire, p. 1028). In the end, Squire argues that professionalization is a key aspect of institutionalization. In fact, “the dynamic element leading to the
development of an institutionalized legislature is closely related to the results of professionalization” (Squire, p. 1028). By examining California’s Assembly, Squire successfully illustrated how institutionalization discussions can be extended to include the concept of professionalization. This addition is significant because it provides a critical tool for examining the institutionalization of bureaucracies that are charged with providing clientele services.

Over fifty years and hundreds of articles later, the concept of institutionalization has spread throughout diverse academic arenas. As illustrated by an overview of the academic literature, Samuel Huntington was especially influential in bringing institutionalization frameworks into the political science sphere. In time, political science institutionalization studies have branched out to the various concentrations and have examined everything from the U.S. House of Representatives, to political parties, to international organizations. Nonetheless, even though institutionalization studies are prevalent within the study of American politics, no study has systematically examined the institutionalization process of bureaucracies. Addressing this weakness in the literature is one of the main goals of this particular study.

C. Establishing a Bureaucratic Institutionalization Framework

Despite the fact that federal bureaucracies are commonly referred to as political institutions throughout the academic literature, have bureaucracies truly acquired the value and stability needed to achieve such a status. Have they undergone the institutionalization process? When one considers the life span of federal bureaucracies, it is clear that not all survive the test of time. In fact, there is ample evidence of bureaucracies that have been dismantled because they are unable to meet organizational
objectives, encounter changing political perspectives, are overtaken by more established bureaucracies, or have successfully achieved their goals.

There are numerous illustrations of federal bureaucracies dismantled before reaching their organizational goals. To illustrate, the U.S. Public Works Administration (PWA) emerged during the Great Depression in 1933 as a result of the National Industrial Recovery Act. This New Deal agency was allocated a budget of $3.3 billion in order to reduce unemployment and increase purchasing powers through the construction of highways and public buildings. However, when President Franklin D. Roosevelt shifted priorities from industry to war production, PWA became obsolete and was abolished in 1941. An inability to achieve its organizational objectives also led to the demise of the U.S. Metric Board (USMB). The USMB was created in 1975 under the administration of President Gerald R. Ford to coordinate voluntary conversions to the metric system. However, due to its inability to make any progress in metric conversions, the Metric Board was dismantled by President Ronald Reagan in 1982.

While some federal bureaucracies are dismantled because they have become obsolete or have been unable to achieve their organizational objectives, others are subsumed by larger bureaucracies. To illustrate, the U.S. Office of Economic Opportunity (OEO) was created in 1964 under President Lyndon B. Johnson’s Great Society legislative agenda to oversee War on Poverty programs, including VISTA, Job Corps, Community Action Program, and Head Start. However, the bureau came under attack by right- and left-wing critics. Unable to withstand the assaults, the OEO was dismantled by President Richard M. Nixon in 1973; its duties and responsibilities were transferred to the Department of Health and Human Services.
Ironically enough, there are also illustrations of federal bureaucracies that have seen their demise as a result of mission completion. As a case in point, the U.S. Works Progress Administration (WPA) – the most comprehensive New Deal agency – was established in 1935 through President Franklin D. Roosevelt’s Executive Order 7034. WPA was charged with providing jobs and financial assistance to those who were unemployed during the Great Depression. During its 8 years of operation, it provided blue-collar workers employment in construction projects throughout the nation, in addition to providing white-collar workers and artisans with employment in its smaller scale projects. The WPA was dismantled in 1943 by President Roosevelt as a result of decreases in unemployment rates stemming from the employment boom during World War II.

When one considers the fact that not all federal bureaucracies are able to endure the test of time, it becomes erroneous to refer to them as political institutions. Because the transformation of federal bureaucracies from legislatively created ideas to fully entrenched institutions has yet to be explored, it is even more problematic to assume that all bureaucracies are indeed political institutions. As demonstrated by the previous discussion, illustrations of bureaucracies as expendable tools are plentiful. In fact, the PWA, USMB, OEO, and WPA were created to perform a specific task – to coordinate. Drawing from organization theory, these bureaucracies functioned as organizations; they oversaw a staff, managed communications, distributed tasks, and were ultimately expendable tools.

Not all bureaucracies are expendable tools; some are able to achieve value and stability. These political institutions have learned to respond and adapt to social
pressures in their quest to achieve deference and dominance. For a federal bureaucracy to be deemed a political institution, it must be able to adapt to environmental challenge and age. While it must contend with transitions in leadership and functional growth, it must also achieve procedural longevity. In other words, in addition to adjusting to internal changes, bureaucracies must be able to establish stabilizing procedures able to withstand these transitions and the politics of the moment. Institutionalization within a federal bureaucracy also entails the existence of complexity. In addition to developing subunits with specified objectives to facilitate the implementation of agency objectives, a bureaucracy must be able to demonstrate evidence of hierarchical and functional growth. At its core, complexity entails the coordination of internal and external resources to ensure successful policy oversight and dominance. If a bureaucracy is to become a stable institution able to withstand challenges and obstacles, it must have an organizational structure adept at handling these demands. Because bureaucracies are in the business of providing customer service, it becomes essential to also examine institutional attributes associated with clientele services. Professionalization has been incorporated to this institutionalization framework because former models of institutionalization have focused their attentions on how organizations structure themselves to deliver customer service, while overlooking the actual delivery of services. To emerge as an institution, a bureaucracy must channel its resources to ensure efficient clientele services.

Institutionalization also entails autonomy. For a federal bureaucracy to manifest autonomy, it must be able to establish an agenda free from external demands. While social forces are permitted and encouraged to compete for access, the bureaucracy must have the final say when it comes to determining which demands will be addressed and
which will be ignored. An autonomous institution will be one that is able to preserve its interests regardless of external demands. A final measure of institutionalization revolves around coherence. If a bureaucracy is to become an institution, it must foster unity and consensus regarding its functional boundaries and the procedures used to address disputes within its jurisdiction. Because it is in the business of client or customer service, a bureaucracy must gain trust and deference from its stakeholders. Without this consensus, it becomes virtually impossible to establish dominance over policy domains. In the end, to emerge as political institutions, bureaucracies must work to establish value and stability.

In light of the considerable role and importance of federal bureaucracies in American government, it is essential to understand how and why they emerge as institutions. This bureaucratic institutionalization framework proves to be beneficial in that it allow one to examine why some bureaucracies achieve longevity, whereas others meet preemptive dismantling; how bureaucracies are able to preserve their interest while simultaneously adapting to external pressures and constraints; how bureaucracies are able to obtain deference and authority over likeminded bureaucracies overseeing similar objectives; and, how bureaucracies evolve despite efforts to preserve stability and order.
CHAPTER IV:
BUREAUCRATIC INSTITUTIONALIZATION MEASURES

While it is evident that a great deal of literature examines the institutionalization process, it is important to recognize that the original intent of Philip Selznick’s work was to examine the transformation of organization into institutions. While his principles have found their way into the political science literature, no scholarly work has actually employed Selznick institutionalization frameworks to examine the transformation of bureaucracies into institutions. When one considers the fact that scholars have neglected to fully examine the institutionalization of American federal bureaucracies, it is of no surprise that the academic literature has also failed to examine the institutionalization of the U.S. Equal Employment Opportunity Commission.

Although there is a plethora of institutionalization literature spanning all levels of American government, none examines the bureaucratic institutionalization process. Bureaucracies are unique actors in American government and, as such, require a model equipped to assess interactions between multiple internal and external dimensions. While much can be borrowed from previous works, an institutionalization model encompassing all bureaucratic dimensions has yet to be put forth. This study draws upon Samuel Huntington’s adaptability, complexity, autonomy, and coherence institutionalization framework and Peverill Squire’s professionalization model to not only assess the institutionalization of the EEOC, but to provide a model for further work on bureaucratic institutionalization.

Huntington’s framework was selected not merely because it provides an ideal guide for examining the institutionalization process, but because it provides a theoretical
backdrop for examining the transition between organizations and institutions. Even with refinements, the strength of his model continues to thrive. Squire’s professionalization measure was incorporated into the institutionalization framework because this study examines a bureaucracy, which among other tasks, provides clientele services. While Huntington’s model examines internal and external dimensions, the professionalization variable is geared towards examining the individuals who provide the services. To truly capture the institutionalization of a bureaucracy, special consideration must be focused on its client service characteristics.

A. **Design Type**

In order to illustrate the transformation of an organization into an institution, this work presents a longitudinal study of the U.S. Equal Employment Opportunity Commission. Through an examination of multiple variables spanning from 1965 to 2010, an institutionalization model is built upon the work of Samuel Huntington and Peverill Squire. The analytical framework employed examines the institutionalization of the EEOC along five dimensions: adaptability, complexity, professionalization, autonomy, and coherence. Similar to the work of Polsby, the goal here is to draw together disparate strands in and out of the literature to illustrate the institutionalization of the EEOC.

B. **Data Sources**

To examine the institutionalization of the EEOC through the adaptability, complexity, professionalization, autonomy, and coherence dimensions, both qualitative and quantitative data spanning 1964 to 2009 were obtained from the U.S. Equal Employment Opportunity Commission, the U.S. Commission on Civil Rights, the U.S.
Department of Labor, the U.S. Office of Management and Budget, the U.S. Office of Personnel Management, and the National Archives and Records Administration. Further information on the data employed and its application is outlined in the following section.

C. Measures

The first measure of the institutionalization of the EEOC employed is adaptability. Adaptability refers to an acquired organizational characteristic that is a function of environmental challenge and age. In order to determine the level of adaptability achieved by the EEOC, three measures are examined: chronology, generation age, and institutional functions. For the purposes of this study, chronology is examined in terms of procedural longevity. In other words, the longer an organization or procedure is in place, the higher the institutionalization level. In the case of the EEOC, chronology is viewed through the evolution of Title VII’s mandated recordkeeping systems. Specific attention is paid to the evolution and expansion of the Form EEO-1 Private Sector Annual Report. Form EEO-1 is an ideal measure of procedure longevity for two reasons. Not only has this report existed since 1966 and continues to be required, but the success of Form EEO-1 Report has led to the creation of numerous similar reports geared to examining the racial, ethnic, and gender compositions within apprenticeship programs and unions, state and local governments, and educational institutions.

As long as an organization has its first set of leaders and procedures are still performed by these individuals, organizational adaptability is in doubt (Huntington, pp. 247-248). Therefore, generational age, the second measure of adaptability, is examined through leadership changes in the EEOC’s five-member bi-partisan Commission. The
EEOC’s Commission has been selected as the core leadership because they are responsible for seeing that the EEOC’s mission is carried out, and thus, attempting to ensure the elimination of unlawful employment discrimination. They serve as the face of the EEOC when the Commission comes under fire and when it is praised. While a short overview will be presented of the former and current EEOC Commissioners, the main focus of this chapter is on leadership innovations. If an organization is able to withstand leadership changes, it can then be said to be adaptable; yet another indicator of institutionalization.

The final measure of adaptability addresses *institutional functions*; meaning that an organization that has adapted to changes in its environment and has survived one or more changes in its principal functions is more highly institutionalized than one which has not. In this case, functional specificity is not the true measure of adaptability; instead, functional adaptability is the more accurate measure of a highly developed organization (Huntington, p. 248). For the purposes of this study, institutional functions are examined in terms of legislative expansions aimed at strengthening the EEOC’s powers and oversight. Expansions in EEO policy are an ideal measure of functional adaptability because they serve to increase the functions of the Commission by expanding the scope of EEOC policy and enhancing its jurisdiction. Through this overview, one can determine how the EEOC adapted to its growing functions.

These measures are significant because each examines the influence of different political actors. For instance, chronology measures bureaucratic decisions themselves, generational age targets presidential appointments, and institutional functions are influenced by Congress. Since external players are key contributors to the level of
adaptability an organization can obtain, this permits an assessment of as many environmental dynamics as possible.

The second measure employed to assess the institutionalization of the EEOC is complexity. For complexity to exist, there must be a division of labor where “roles are specified and there are widely shared expectations about the performance of roles” (Polsby, p. 145). A complex bureaucracy can exhibit several dimensions including hierarchical and functional growth, decentralization, and federalism. The greater the complexity of an organization, the more institutionalized it is said to become; the less complex the organization, the less likely it will emerge as an institution.

In order to determine the level of complexity exhibited by the EEOC, several measures are examined. Organizational charts are employed to not only visualize the growing complexity of the EEOC, but also to assess structural changes in the Commission’s hierarchy and functions since its inception. While the evolution of jurisdictional maps continue to bring to light the EEOC’s functional growth, the transformation and distribution of responsibilities to EEOC field offices serve to underscore the decentralization of administrative tasks. The establishing and development of partnerships between the EEOC and state and local Fair Employment Practice Agencies (FEPA’s), Tribal Employment Rights Offices (TERO’s), and federal agencies are also examined to shed light on the Commission’s ability to extend its functions and distribute its workload to include external actors. This discussion is particularly significant because it underscores the challenges federalism creates. While an obvious goal for a national entity is to attempt to avoid duplication of efforts, many national units,
including the EEOC, have field offices in the states and a series of partnerships with state, Native American, and other entities at various levels of government.

Professionalization is an important component of an organization’s ability to deliver services in the face of change. Peverill Squire’s conceptualization of professionalization is especially helpful because it explicitly recognizes that an institution will be able to conduct certain tasks more readily and better carry out clientele services if it has a professional staff, procedures, and norms in place. Professionalization measures the internal characteristics of a bureaucracy as they relate to organizational outputs.

In operationalizing professionalization within the EEOC, this chapter considers several measures related to the Commission’s personnel and workload. An assessment of how professionalization developed across the EEOC’s history begins at the most basic level – with its full-time employee base. As bureaucracies undergo administrative changes, functional expansions, and increasing demands, they need an adequate supply of full-time personnel to meet these challenges. The more full-time employees an agency possesses, the greater its ability to maintain attention to its programs and tasks. By contrast, when a large number of part-time or temporary employees are brought in to conduct specific tasks, the agency is less able to maintain full control over the progress of its efforts. Results are likely to be more sporadic and episodic rather than consistent and stable.

In addition to the size of its full-time workforce, the length of time these individuals have remained at the EEOC is also important. It is not enough to exhibit personnel growth; bureaucracies must also manifest staff longevity. The longer
personnel remain with the bureaucracy, the greater their ability to adjust to leadership changes, functional growth, and increasing demands. In addition to nurturing the professionalization of the workforce, tenure underscores commitment to the agency. A failure to retain personnel hampers enforcement efforts in that staff turnovers will ultimately produce a workforce of inexperienced staffers unable to withstand bureaucratic challenges.

Competitive salaries are yet another measure of professionalized bureaucracies. To retain a professional workforce, pay scales must take into account an employee’s length of service. When bureaucracies fail to reward personnel for their tenure and commitment to the agency, they risk fostering an atmosphere of resentment and lackluster performance.

Educational attainments and the level of experience in the workforce provide yet another indicator of professionalization. While a tenured full-time workforce is important, bureaucracies need to ensure that these individuals include experienced and well-educated people who often have the skills to address increasing demands on the agency. Although longitudinal data on the number of employees with advanced degrees is unavailable, the civil service General Schedule (GS) and Senior Executive Service (SES) rankings can be used as a substitute to gauge the educational attainment and level of expertise within a bureaucracy’s workforce.

GS rankings are beneficial because they correlate with an individual’s educational attainment and workforce experience; typically, lower ranking reflect lower education and experience, while higher rankings reflect greater education and experience. To demonstrate, when experience and degrees are related to the work being performed, GS-2
grades are typically given to those with high school diplomas, GS-5 to those considered interns undergoing on-the-job training, GS-7 to those with specialized experience, GS-8 and 9 grades to those with master’s degrees, GS-11 to those with doctorate degrees, and GS 12 to 15 to those in top-level positions including front-line or mid-level supervisors and high-level technical specialists (USA Jobs, 2010). SES rankings are also worth examining because they provide insight into a bureaucracy’s executive workforce. In possessing exceptional managerial, supervisory, and policy expertise, SES personnel embody leaders with stellar executive skills (OPM, 2011). Although the emphasis is not on education, SES personnel represent the top executives in the nation.

To nurture a professionalized workforce capable of adapting to administrative changes, functional growth, and increasing demands, bureaucracies must possess highly experienced and educated personnel; the greater the number of professionals within the bureaucratic workforce, the greater the level of professional personnel. If a bureaucracy is composed of ill-equipped and ill-prepared personnel, policy implementation efforts will be hampered. While a high level of education within the full-time workforce is critical to a bureaucracy’s success, it is also essential that these staff remains with the agency and view the work to the agency as a career. To establish a professionalized workforce, bureaucracies must, therefore, be able to retain their experienced and educated personnel through competitive salaries, grade increases, and other incentives. The longer these individuals remain with the bureaucracy, the greater the experience and commitment among this professional workforce. In the absence of highly experienced and educated personnel, bureaucracies will find it increasingly difficult to rely on the ability of their novice personnel to follow through with agency objectives.
The fourth measure employed to assess the level of institutionalization achieved by the EEOC is autonomy. At the basic level, autonomy involves the relationship between social forces and political organizations. Relevant social forces for the EEOC include ethnic, racial, and linguistic groups, work groups, churches, and various economic entities; the autonomy of political institutions involves the extent to which they have their own interests and values distinguishable from those of other social forces (Huntington, pp. 250-251). As indicated by Robert O. Keohane, autonomy is designed to examine how an organization’s norms and patterns of behavior significantly affect the outcomes of its political process (p. 862). By focusing on the conduct of the organization itself, one is better able to understand the rationale behind the actions of the social forces. This analysis is of particular importance because it allows one to assess the degree of independence within an organization.

Autonomy for international organizations means the development of political organizations and procedures that are not simply expressions of the interests of particular states or other international actors. An autonomous international organization has some degree of independence in making its own decisions without dictation from outside actors; the outputs of the system do not merely reflect inputs from the environment but also bear the mark of the system’s values. Thus autonomy is enhanced by the process whereby the organization becomes ‘valued for itself, not as a tool but as an institutional fulfillment of group integrity and aspiration’ (Keohane, p. 862).

In the end, autonomy assesses three distinct dimensions of an organization. The first dimension involves how the organization responds to external actors. The second dimension examines how the actions of the political organization affect the decisions of external players. The final dimension of autonomy examines the degree of independence evident throughout the organization, indeed the ability of the organization to dictate its own course of action roughly free of external preferences.
In order to best assess autonomy, the study examines the very first EEO expansion to extend protected status to the elderly and its leadership in the evolution of race, gender, and disability federal EEO laws. The study further examines the adoption of EEO-related implementation mechanisms including agency issued regulations, guidelines, policy statements, and enforcement edicts. Overall, the analysis provides an opportunity to examine how the Commission adjusts to legislative expansions, internalizes judicial interpretations, but, most importantly, independently devises policy.

The final measure of institutionalization is **coherence**. If an organization is unified and coherent, it is considered to be institutionalized; if it lacks unity and is disorganized, its level of institutionalization comes into question (Huntington, p. 252). In other words, Huntington argues that to be coherent,

> An effective organization requires, at a minimum, substantial consensus on the functional boundaries of the group and on the procedures for resolving disputes on issues which come up within those boundaries. The consensus must extend to those active in the system. Non-participant or those only sporadically and marginally participant in the system do not have to share consensus and usually, in fact, do not share it to their same extent as the participants (p. 252).

Based on Huntington’s conceptualization of coherence, it is clear that the emphasis is placed on the procedures employed by an organization to manage its workload. If an organization is indeed coherent, then the procedures put into place for handling and resolving disputes that arise within its jurisdiction are accepted by everyone involved with the organization.

To assess the presence of coherence within the EEOC, several dimensions are explored. In examining the EEOC’s ability to manage its workload, attention is placed on the procedures put forth by the agency to facilitate compliance. Particular emphasis is
not only placed on the initial development of internal procedures to address the handling of new and existing charges, but also on the development of pre-determination settlements stemming from EEO policy expansions; rapid, backlog, and systemic charge processing procedures stemming from executive mandate; and priority charge handling and alternative dispute resolution stemming from agency procedural reforms.

To make a case for the institutionalization of federal bureaucracies, it is imperative to examine longitudinal interaction between multiple internal and external indicators. As illustrated in Table 4.1, to explore the acquisition of value and stability, a bureaucratic institutional framework was developed using dimensions developed by Samuel Huntington and Peverill Squire. Through this framework, one is provided with a venue to examine the development of procedural longevity in the face of environmental challenges and age (adaptability); hierarchical growth and divisions of labor with specified performance expectations (complexity); institutional attributes related to workforce compositions, compensations, and service time demands (professionalization); organizational interests distinguishable from social, economic, and political forces (autonomy); and, procedures to foster efficiency in the internal management of charges (coherence).
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<td>Professionalization</td>
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<td>Autonomy</td>
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CHAPTER V:
THE CREATION OF EQUAL EMPLOYMENT OPPORTUNITY POLICY

Before the Equal Employment Opportunity Commission existed, there were a variety of executive efforts to curtail employment discrimination. Although these efforts lacked the procedural regularity that the Commission was able to develop, they were nevertheless important as the earliest foundations for the EEOC. This is significant because it underscores that institutionalization did not begin the day the Commission was formally created through Title VII of the 1964 Civil Rights Act. It also clarifies how much historical progression takes place in the development of a bureaucratic agency.

While the EEOC opened its doors for operation on July 2, 1965, it was not the first attempt to create a group designed to oversee equal employment opportunity in the workforce. In fact, if one looks at the history of presidential executive orders (EO), it is clear that, in addition to advocating the formation of EEO policy, the executive branch was advancing the creation of a mechanism to oversee the diversification of the workforce decades prior to the inception of the EEOC. However, as will be demonstrated in the preceding discussion, whether it was a Commission or a Committee that the president created to address some facet of equal employment opportunity, attempts to establish a central hub to oversee the diversification of America’s workforce were weakly structured, narrowly tailored, and short-termed. While these EOs proved to be unsuccessful in diversifying the workforce, they did help shape Title VII of the 1964 Civil Rights Act and the creation of the EEOC.

The earliest attempt to create a federal unit to ensure the enforcement of equal employment opportunity began in the 1940s. On June 25, 1941, President Franklin D.
Roosevelt signed EO 8802. Through EO 8802, the first Fair Employment Practice Commission was established to prohibit discrimination based on race, creed, color, or national origin\(^4\) by any federal government and defense program. Since evidence continued to show patterns of employment discrimination, President Roosevelt reaffirmed his commitment to equal employment opportunity ideals by issuing EO 9346 on May 27, 1943. Through EO 9346, FDR created the Committee on Fair Employment Practices “to promote the fullest utilization of all available manpower, and to eliminate discrimination in employment practices” not only in war industries, but also in federal departments, agencies, and labor organizations with federal contracts (Donnelly Collection of Presidential Executive Orders, 2005).

The Truman and Eisenhower administrations continued the Roosevelt practice of creating various fair employment practice committees through executive orders. On July 26, 1948, President Truman focused his attention on equal opportunity in the military by issuing EO 9981. This established the Committee on Equality of Treatment and Opportunity in the Armed Forces to oversee the application of equal employment opportunity and the treatment of all persons in the armed services, regardless of race, color, religion, or national origin. Although the Committee had good intentions, it lacked enforcement power; as a result, the armed forces were not integrated until the beginning of the Korean War in 1952 (EEOC, 2000k). In addition to seeking to diversify the armed forces, Truman issued EO 10308 in 1951 to improve “the means for obtaining

\[^4\] Sex was later added as a protected classification in 1964. “The conventional view is that a southern opponent of civil rights legislation introduced the ‘sex amendments’ in hopes of derailing passage of the Civil Rights Act” (EEOC, 2005b).
compliance with nondiscrimination provisions of federal contracts” (Center for American Politics and Public Policy, 2005).

Through EO 10479 in 1953, President Eisenhower also focused on government contracts by creating the Government Contract Committee to ensure that government contractors complied with nondiscrimination provisions in employment. The following year, Eisenhower issued EO 10557 to reinforce Truman’s EO 10308. The Eisenhower order provided for revisions within employment contract provisions addressing nondiscrimination. In 1955, Eisenhower issues EO 10590 establishing the Committee on Government Employment Policy to oversee the elimination of employment discrimination from the federal workforce and businesses receiving federal contracts (Center for American Politics and Public Policy, 2005). Unlike his predecessors who devoted attention to diversifying the military and defense sector, President Eisenhower emphasized employment discrimination throughout the entire federal sector.

Despite presidential efforts to create various enforcement mechanisms for EEO mandates, little progress was made with the actual integration of the workforce. Although EEO policy was applied to the armed forces, federal agencies, and businesses with federal contracts, the mechanisms created to oversee the implementation of EEO proved to be ineffective because they were short-termed, lacked enforcement powers, and compliance was voluntary (EEOC, 2005b).

In light of these weaknesses, President John F. Kennedy took corrective measures through a series of expansive executive orders. On March 6, 1961, Kennedy signed EO 10925 creating the Committee on Equal Employment Opportunity to immediately

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5 In 1964, President Lyndon B Johnson issued EO 11162, which added the Postmaster General to the membership of the President’s Committee on Equal Employment Opportunity.
“scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government” (EEOC, 2001). This order was particularly significant because it was the first to employ “affirmative action” programs and measures to correct inequality in the workforce.

The following year, President Kennedy issued two additional orders providing the Committee on Equal Employment Opportunity with enforcement mechanisms and spelling out consequences for a lack of EEO compliance. Through EO 10988, President Kennedy sought to ensure federal agency compliance with nondiscrimination provisions by charging federal agency heads with the issuance of:

… a clear statement of the rights of its employees under the order, policies and procedures with respect to recognition of employee organizations; procedures for determining appropriate employee units; policies and practices regarding consultation with representatives of employee organizations, other organizations and individual employees; and policies with respect to the use of agency facilities by employee organization (The American Presidency Project, 2011a).

To foster compliance and help in the creation of formal enforcement mechanisms, Kennedy issued EO 11114. This order provided extensions and clarifications to the authority of the Committee on Equal Employment Opportunity by focusing specific attention on public and private sector groups seeking federal financial assistance (i.e. grants, contracts, loans, or insurance) for construction contracts. As demonstrated by Section 103(b) of EO 11114:

In the event that an applicant fails and refuses to comply with his undertakings, the administering department or agency may, upon the recommendation of the Committee, take any or all of the following actions: (1) cancel, terminate, or suspend in whole or in part the agreement
or contract with such application with respect to which the failure and refusal occurred; (2) refrain from extending any further assistance under any of its programs subject to this order until satisfactory assurance of future compliance has been received from such applicant; and (3) refer the case to the Department of Justice for appropriate legal proceedings (The American Presidency Project, 2011b).

Although many criticized President Kennedy for his lack of progress in offering comprehensive civil rights legislation, it is important to recognize that he laid the groundwork for the eventual creation of the U.S. Equal Employment Opportunity Commission – the enforcement mechanism for EEO policy. Nonetheless, while the executive branch paved the way for a diversified federal workforce, the private sector continued to be plagued by inequality. In addition, decades of racial tension in America had hit its climax. The demand for comprehensive civil rights legislation could no longer be ignored.

In response to mounting social unrest, President Kennedy addressed the nation on June 11, 1963 and advocated on behalf of comprehensive civil rights legislation. As proclaimed by Kennedy:

We are confronted primarily with a moral issue. It is as old as the scriptures and it is as clear as the American Constitution. The heart of the question is whether all Americans are afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated…

One hundred years of delay have passed since President Lincoln freed the slaves, yet their heirs, their grandsons, are not fully free. They are not yet free from the bonds of injustice. And this nation, for all its hopes and all its boasts, will not be fully free until all of its citizens are free… Now the time has come for this nation to fulfill its promise. The events of Birmingham and elsewhere have so increased the cries for equality that no city or state or legislative body can prudently ignore them.

We face, therefore, a moral crisis as a country and as a people. It cannot be met with repressive police action. It cannot be left to increased demonstrations on the streets. It cannot be quieted by token moves or talk.
It is a time to act in Congress, in your state and local legislative body and, above all, in all of our daily lives.

Next week I shall ask the Congress of the United States to act, to make a commitment it has not fully made in this century to the proposition that race has no place in American life or law (EEOC, 2005, 35th Anniversary, Pre 1965: Events Leading to the Creation of the EEOC).

On June 19, 1963, eight days after his national address, President Kennedy proposed a wide-ranging civil rights legislation. However, the “proposed legislation simply continued the long-standing practice of attempting to eradicate discrimination by those doing business with the federal government through voluntary compliance, without any enforcement mechanisms” (EEOC, 2005, 40th Anniversary Panel: First Principles). Due to overall weaknesses in the anti-discrimination measures proposed by President Kennedy and escalating social unrest, the 1964 Civil Rights Act (introduced by U.S. Representative Emanuel Celler on June 20, 1963) underwent significant revisions in the months after its introduction.

Immediately after Dr. Martin Luther Jr.’s August 28, 1963 “I Have a Dream” speech, “President Kennedy met with civil rights leaders to discourage them from trying to strengthen Title VII and other portions of the bill because he feared that doing so would kill necessary Republican support” (EEOC, 2005, 40th Anniversary Panel). While President Kennedy worked to negotiate the passage of this legislation, eight African American children were killed in a Birmingham, Alabama church bombing two weeks later. “Supporters of Civil Rights Bills responded by strengthening key provisions, especially the employment measures. The amendments applied Title VII to all employers with more than 25 employees, and created the EEOC” (EEOC, 2005, 40th Anniversary Panel).
While these racially charged murders served to strengthen the language of the 1964 Civil Rights Act, the assassination of President Kennedy on November 22, 1963 expedited its eventual passage. As a case in point,

Five days after the assassination, President Johnson addressed a joint session of Congress to say: ‘We have talked long enough in this country about civil rights. It is time to write the next chapter and to book it in the books of law … No eulogy could more eloquently honor President Kennedy’s memory than the earliest possible passage of the civil rights bill for which he fought so long.’ Passage of the bill became a priority for Congress and was backed by public opinion (EEOC, 2005, 40th Anniversary Panel).

After extensive lobbying efforts by civil rights groups and the White House, 534 hours of congressional debate, and over 500 amendments, strong bipartisan majorities in both houses voted in favor of the 1964 Civil Rights Act on July 2, 1964. Within hours, President Lyndon B. Johnson signed this historic landmark legislation into law.

As articulates in its text, the 1964 Civil Rights Act represented comprehensive legislation created

…to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States of America to provide relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes (EEOC, 1972, p. 55).

While the various subsections of the 1964 Civil Rights Act prohibited racial discrimination in voting requirements, public accommodations, education, and federal assistance programs, Title VII specifically targeted employment discrimination in the workforce.
Title VII of the 1964 Civil Rights Act was significant because it established Equal Employment Opportunity (EEO) policy. As articulated under Section 703(a) of Title VII, it shall be an unlawful employment practice for an employer (1) 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; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin (EEOC, 1972, p. 57).

In addition to prohibiting employment discrimination based on race, color, religion, sex, and national origin, Title VII established the U.S. Equal Employment Opportunity Commission to oversee the implementation of EEO policy.

As outlined under Section 705(g), to facilitate the enforcement of EEO policy, the EEOC was granted power to:

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals; (2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States; (3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder; (4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectuation by conciliation or such other remedial action as is provided by this title; (5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public (EEOC, 1972, p. 61)

Though the EEOC was not provided with litigation authority, it was granted enforcement mechanisms including the ability to cooperate with a wide range of external actors, take
part in private EEO lawsuits, offer conciliation, and institute technical assistance programs.

Thus, from the 1940s through the 1960s, equal employment opportunity policy evolved. The initial policies devised in executive orders lacked permanency and enforcement mechanisms and served, as much as anything, as symbolic statements of presidential opposition to workplace discrimination. Indeed, the key problem was that – in early policymaking – there was no agency in place to work toward ending workplace discrimination. The Civil Rights Act of 1964 changed the direction of equal employment policy by expressly creating the U.S. Equal Employment Opportunity Commission. Unlike the committees that Truman and Eisenhower had devised, this was a new federal agency armed with enforcement language, a proposed budget, and a staff. One of the central questions left unanswered as Johnson signed the Civil Rights Act into law was whether this Commission would emerge as an institution that could rigorously enforce equal employment policy or whether it would remain a small expendable organization, like the committees from the decades before. In order to consider whether and how the Commission emerged as an institution, the study now focuses on specific elements of institutionalization.
A bureaucracy cannot achieve institutionalization if it is unable to adapt to environmental challenges and age. To truly emerge as an institution, a bureaucracy needs to establish internal mechanisms that will allow it to adjust to unforeseen environmental changes that occur over time. Based on the work of Huntington, three measures are provided to help one assess adaptability; these measures include chronology, generation age, and institutional functions. The following sections will discuss each of the measures in greater detail, in addition to examining each measure in relation to the Equal Employment Opportunity Commission.

A. Chronology

Chronology is the first measure of adaptability and it refers to procedural longevity. If bureaucratic procedures are able to withstand the test of time and continue to remain salient, then the procedures help the organization become institutionalized; in other words, they have become accepted parts of the structure of an organization. When one examines the EEOC, not only is it apparent that procedural longevity is indeed evident, but it also become evident that the Commission itself has solidified the importance of these procedures.

• Forms as Institutional Power

One of the strongest indicators of the institutionalization of procedures is seen in the recordkeeping system used to track minorities and women in the workforce. In fact, the creation and subsequent success of Employment Information Report EEO-1 (also
known as Form EEO-1), in addition to the adoption of five additional recordkeeping forms modeled after Form EEO-1, help to illustrate the longevity of EEOC procedures.

During its first year of operation, the EEOC established the Office of Research and Reports to target problematic areas in the workforce and compile data that the Commission could then use to establish program priorities. By working with the EEOC’s Technical Studies Division and the Reports Division, the Office of Research and Reports was charged with spearheading the course of the Commission’s priorities. Although the Office of Research and Reporting was responsible for identifying problematic areas that needed to be tackled by the Commission, it faced two major obstacles – an absence of a comprehensive recordkeeping system to track workforce demographics and a lack of a national clearinghouse for equal employment opportunity research. Despite the fact that Section 709(c) of Title VII empowered the Commission to collect data from employers, unions, and employment agencies in order to analyze the scope of job discrimination, the EEOC lacked formal procedures to gather such information.

In 1965, EEO mandates applied to two types of employers. Under Title VII of the 1964 Civil Rights Act, equal employment opportunity provisions covered employers with 100 or more employees; under Executive Order 11246, equal employment opportunity provisions covered contractors and sub-contractors of the federal government with at least 50 employees. To track the integration of minorities and women in these specific sectors, the Commission needed to establish a method of measuring and recording employment patterns over time.

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6 During its first year of operation, Title VII applied to employers with 100 employees or more. The coverage under the law drops to 75 employees or more on July 2, 1966, 50 employees or more on July 2, 1967, and 25 employees or more on July 2, 1968. With the passage of the Equal Employment Opportunity Act of 1972, the minimum level of employees for Title VII coverage decreases a final time to 15 employees.
In order to begin tracking the composition of America’s workforce, the EEOC created Form EEO-1; a standard form that private sector employers and federal contractors and subcontractors could use to track and report their workforce composition. As indicated by the EEOC (1966), this “was a major undertaking which resulted in a collection of the most comprehensive body of data in existence on the minority employment patterns in American business and industry” (p. 26). Although Form EEO-1 set the stage for tracking America’s workforce, it became important to provide legitimacy to this new reporting mandate and to lay the groundwork for compliance. After all, this was the first time in history that employers were required to annually track their workforce and report the composition of its employees to a federal agency.

The Commission hosted a two-day White House Conference on Equal Employment Opportunity and ran a series of smaller meetings in order to address the interests of employers who fell under the jurisdiction of the EEOC, field concerns regarding this new recordkeeping system, and develop a system which balanced the recordkeeping needs of the EEOC with the interests of the employers charged with the acquisition of this data. Based on these efforts, minimum recordkeeping guidelines were established that required employers to provide statistical information about their workforce categorized by occupation, sex, and ethnic groups. Employers were also required to submit data on apprentices and on-the-job trainees, in addition to disclosing whether or not the facilities operated on a racially separate basis.

It is important to recognize that when Form EEO-1 was implemented, one of two things could have taken place. On the one hand, despite all the cooperation in drafting Form EEO-1, employers could have resisted requests to submit racial and ethnic
information regarding their workforce on the grounds that this data could potentially be used against them. Since Form EEO-1 was implemented two years after the passage of the 1964 Civil Rights Act and a mere year after the opening of the EEOC, it was certainly possible that employers would ignore the form. They could argue that there had been insufficient time to diversify their workforce; hence, adoption of Form EEO-1 was premature. In addition, the EEOC provided no sanctions to induce employers to comply with these new recordkeeping mandates; thus, increasing the possibility that these companies might refuse to comply with the law. On the other hand, the Commission understood that getting employers to legitimize its work required ingenuity. As explained by the EEOC (1996), to convince employers and unions to embrace this additional paperwork, it would need to harmonize “the interests of these groups with its reporting and record keeping needs” (EEOC, 1966, p. 26). By inviting these external actors to take part in the creation of Form EEO-1 Reports and by allowing access to the development of this new recordkeeping system, employers became more willing to legitimize the work of the newly established EEOC and to strive for the goals of EEO policy.

Through Form EEO-1, the Commission received 140,000 reports from 40,000 employers during Fiscal Year 1966. This was also the first time since the 1960 U.S. Census of the Population that minority employment patterns became available. A major advantage of this data collection was that it provided the EEOC with a tool to address individual discrimination charges. In fact, as illustrated by the Commission:

Commission Headquarters, field investigators and conciliators began using EEO-1 data routinely when dealing with companies in the compliance process. The data is indispensable in analyzing employment patterns of a company, its competitors, and its neighbors to determine the results of
companies’ policies and practices in absolute and relative terms for the employment of minorities and women in various job categories. Furnished by the company itself, the data cannot be refuted. Confronted with it, respondents can see how his employment statistics compare to aggregate figures from his community and industry (EEOC, 1967, p. 21).

Not only were the outputs of Form EEO-1 reports beneficial when addressing individual charges of discrimination, but they also became extremely useful in revealing employment practices and patterns of inequality within particular areas, industries, and occupational categories. In fact, by the end of 1966, the Commission was employing EEO-1 data to address inequality in white-collar employment in New York City, discrimination in the textile industries in North and South Carolina and growth industries of Chicago, and the under-utilization of Mexican American workers in 21 major cities in the Southwest (EEOC, 1966, p. 27). Not only did the EEOC begin to use EEO-1 data to address individual charges of discrimination, but it also began using this data to promote “equal job opportunity on a wholesale, affirmative action basis” (EEOC, 1967, p. 21.)

One key to the early implementation of EEO policy was that the EEOC allowed external actors to play a role in the construction of this recordkeeping tool. By allowing employers to take part in the construction of Form EEO-1, the Commission was able to generate the support needed from those who would eventually be charged with the implementation of this recordkeeping task. This acceptance proved to be quite important because it not only legitimized the importance of the policy Form EEO-1 sought to protect, but it also solidified the authority of the EEOC when it came to its role in diversifying the workforce. Following on the acceptance and success of Form EEO-1, the EEOC took little time in adopting three additional Forms to track the integration of women and minorities in workforces not covered by Form EEO-1.
Institutional Expansions Through Additional Forms

As a result of the much needed data generated by Form EEO-1, the EEOC’s Office of Research (previously known as the Office of Research and Reporting) began to lay the groundwork for the creation of similar reports in sectors not covered by EEO-1 mandates. In 1967, the EEOC adapted Form EEO-1 and created the Apprentice Information Report EEO-2 (also known as Form EEO-2) and the Local Union Equal Employment Opportunity Report EEO-3 (also known as Form EEO-3); thus signaling the first evolution of Form EEO-1 Reports. As dictated by EEOC regulations, joint labor-management apprenticeship committees (with at least five apprentices and sponsored by an employer with at least 50 employees) and union sponsors (with a hiring hall of 50 or more members) were now required to complete an annual EEO-2 Report.7 This form, jointly sponsored by the EEOC and the Department of Labor’s Bureau of Apprenticeships and Training, required apprenticeship programs to submit separate reports based on their trade and craft that broke down apprentices by gender and select minority groups.8 Apprenticeship programs were also required to provide detailed information regarding their standards, selection procedures, and methods of circulating information about apprenticeship openings.

Form EEO-3 was a two-part report required for local unions with 100 or more members. The first part of this report was to be filed by the “referral union” (those operating hiring halls or equivalent services). Within this first section, referral unions were charged with providing a breakdown of its total members by general and minority group, in addition to providing this information for individuals who applied for

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7 Employee and union membership totals were decreased from 50 to 25 in 1969.
8 Negro, Spanish-Surnamed American, American Indian, and Oriental.
membership, were referred to jobs, or applied for referrals. The second part of this report was to be filed by “non-referral” unions. The objective here was to determine if any collective bargaining agreements called for separate classification of jobs or seniority lines based on race, color, or gender (EEOC, 1967, p. 36).

Like Form EEO-1, the recordkeeping requirements for Form EEO-2 and Form EEO-3 superseded all state and local laws that prohibited such inquiries or tracking (EEOC, 1967, p. 36). In addition to being mandatory requirements, Form EEO-2 and Form EEO-3 data produced useful information that could then be used to deter discriminatory employment practices. For instance, based on Form EEO-2 outputs, the Commission was able to identify inequalities in apprenticeship opportunities (EEOC, 1970, p. 51). Form EEO-3 outputs were also extremely meaningful. As noted by 1968’s EEOC Chair William H. Brown III, Form EEO-3 provided “a unique survey. It represents, for the first time, hard statistics on minority membership in labor unions” (EEOC 1968, p. 21). In fact, through this labor union data, the Commission was able to identify inequalities between pay and skill levels and minority group employments. In specific, they uncovered that unions with the highest pay levels showed the lowest levels of minority-group participation.

The EEOC also stepped in to end state and local efforts to block the gathering of workforce data. At the time the EEOC was mandating the collection of workforce data, many state and local governments had laws prohibiting inquiries regarding the workforce and the tracking of employees. Nonetheless, this did not signal the end of the EEOC’s recordkeeping; instead, the Department of Justice stepped in and declared that the use of recordkeeping requirement superseded all state and local laws prohibiting such practices.
Not only did this action provide further legitimacy to Form EEO-1, but it also lent further approval to the expansion of this form to secure workforce data from sectors of the labor market previously neglected. The legitimacy and primacy placed on Form EEO-1 is significant in that it underscores evidence of procedural longevity and the Commission’s ability to overcome challenges to the salience of its forms.

- **Forms for Expanded Jurisdiction**

  The Equal Employment Opportunity Act of 1972 expanded the jurisdiction of the Commission by applying EEO mandates to state and local governments and educational institutions (EEOC, 1973, p. 29). This policy expansion led to a growth in the scope and reach of the EEOC. As the EEOC adjusted to increases in the number of individuals covered under EEO policy, additional recordkeeping systems needed to be created to target these new areas. In order to accomplish this, in 1973, the Commission developed two new forms – the **State and Local Government Report EEO-4** (also known as Form EEO-4) and the **Elementary and Secondary Education Report EEO-5** (also known as Form EEO-5). An additional form, the **Higher Education Report EEO-6** (also known as Form EEO-6) was introduced in 1975. Procedural longevity was therefore solidified with the creation and acceptance of these new forms, signaling the second evolution of Form EEO-1 Reports.

  Form EEO-4 required all political jurisdictions with 15 or more employees to track and maintain records of their workforce. In addition, state and local governments with 100 or more non-educational employees (excluding elected and appointed officials)
and a sample\(^9\) of political jurisdictions with 15-99 employees were also required to submit biennial reports (conducted in odd-numbered years) tracking their workforce by occupation, race and ethnicity, gender, and pay rate.

As applied to schools, Form EEO-5 was a joint requirement of the EEOC, the U.S. Department of Education’s Office for Civil Rights, and the U.S. Department of Labor’s National Center for Education Statistics. Form EEO-5 required every public elementary and secondary school system or district to track and maintain records of their workforce. This included individual and separated administered districts within a system with 15 or more employees, in addition to every individual school regardless of size. Data from Form EEO-5 is collected on a biennial basis during even-numbered years and track the educational workforce by assignment classification, race and ethnic identification, gender, full-time and part-time status, and new hires.

Form EEO-6 was a joint requirement of the EEOC and the U.S. Department of Education’s National Center for Educational Statistics. Form EEO-6 required postsecondary institutions with 15 or more full-time employees to track and maintain records of their workforce. These institutions were required to submit biennial reports (conducted in odd-numbered years) tracking faculty and other employee categories by full-time and part-time status, race and ethnicity, and gender; full-time faculty by rank and tenure; and, new hires by full-time and part-time status, race and ethnicity, and gender. The National Center for Educational Statistics received sole responsibility for collecting higher education data in 1993 and it now serves as a national clearinghouse for all higher education data. This database includes information on the enrollment

\(^9\) The EEOC selects the smaller jurisdictions that will be required to submit Form EEO-4. Sampled jurisdiction will be informed when they are selected and they will not be selected for consecutive survey years.
undergraduate, first-time freshmen, graduate, and first-professional students by race, ethnicity, and gender; institutional revenue and expenditure by source of income and type of expense; full-time instructional faculty salary by rank and tenure status; degrees granted by program, level of award, race and ethnicity, and gender; characteristics of postsecondary institution (i.e. tuition, room and board fees, calendar system, etc.); and status of postsecondary vocational educational programs (Tennessee Higher Education Commission, 2004).

Just like the results produced by previous EEO forms, Forms EEO-4, EEO-5, and EEO-6 proved quite beneficial to the institutional development of the EEOC. In just six years’ time, the Commission had expanded its reach horizontally to cover more employment sectors and vertically to cover federal, state, and local employment. This is key evidence of the degree of adaptability of the Commission. With a number of early precedents, the Commission solidified its hold on the issue of workplace discrimination by gathering data to identify the depth of the problem and by setting standards against abuse. The information gathered was crucial for the early adaptability. It defined the importance of the EEOC by gathering data that did not previously exist and that no one else was gathering; thus creating an immediate pivotal role for the Commission.

Form EEO-4 was significant because this was the first time an EEO survey requested data on newly hired employees. In fact, data from the first two years of EEO-4 reports illustrated that minorities and women were being hired at higher rates and that they were being placed in the better paying job categories. It was also important because it began to illustrate that, despite the fact that minorities and women were making gains in state and local employment, they were still concentrated in lower-paying occupations.
In fact, minorities were paid only 69 per cent as much as whites in 1974. “The median annual salary for women, however, continued to be only 73 per cent of that for men” (EEOC, 1975, p. 15).

Form EEO-5 data also proved to be quite informative. Based on data collected during its first year of implementation, it was clear that employment inequalities continued to hinder the incorporation of minorities and women in educational institutions. In fact, when examining the occupational status of minorities and whites, striking differences were evident. For example, based on EEO-5 data, it became clear that, when compared to whites, minorities were less likely to be secondary school teachers and more likely to be teachers aids and service workers. When comparing men to women, women were less likely to be in leadership positions and more likely to be elementary school teachers and clerical workers (EEOC, 1975, p. 15).

Although the EEOC no longer gathers workforce data from institutions of higher education (Form EEO-6), it was able to tease out some interesting trends during the period it did collect data (1975 to 1993). For instance, during its first four years of collection, minorities made very few gains in their participation rates in college and university workforces. Minority staff rates increased slightly from 16.7% in 1975 to 17.8% in 1979. Women did somewhat better in the higher education job sector, showing increases from 46.0% in 1975 to 48.1% in 1979 (EEOC, 1983, p. 40). Nonetheless, although minorities and women made some gains, their progress lagged.

Thus, procedural longevity for the EEOC emerged as the more tailored forms were developed. While Title VII of the Civil Rights Act of 1964 covered employers with 25 or more employees, apprentice programs, and local unions, Form EEO-1 did not target
all these workforces. So, Form EEO-2 and EEO-3 were created and maintained to target policy areas overlooked by Form EEO-1. Forms EEO-4, -5, and -6 similarly entrenched the record keeping and database processes at EEOC by incorporating legislative expansions. At the same time, Form EEO-1 itself created considerable procedural longevity for the EEOC. The form is still required today, nearly half a century later. New versions of this tool continue to be adapted and a very well developed record-keeping system and employer database exists – key elements of procedural longevity.

By implementing additional recordkeeping tools modeled after Form EEO-1 to track the newly acquired jurisdictions, the EEOC’s was able to solidify the procedural longevity of its data collection systems. In the end, as external forces broadened the scope of EEO policy and the power of the Commission, the EEOC was not only able to continue to adjust its recordkeeping tools to meet these new changes, but it was also able to garnish support from the very individuals charged with the implementation of EEO mandates.

Although considerable procedural longevity surrounds EEOC recordkeeping tools, it is important to fully take into account the end of Form EEO-6. Joint in its origin, the data gathering for higher education was given solely to the National Center for Educational Statistics in the Department of Education in 1993 when a national clearinghouse for all higher education data was created. This transfer was the direct result of President Bill Clinton’s initiative to streamline government. While EEOC lost the ability to track the implementation of EEO policy within institutions of higher education, this loss did not detract from the procedural longevity evident within the evolution of Form EEO-1 reports in general.
While some may argue that the loss of Form EEO-6 indicates a weakening in the procedural longevity of the EEOC’s recordkeeping tools, the fact that the Commission had control over Form EEO-6 for almost twenty years reinforced the longevity of its procedures. One can even argue that this transfer illustrates a fine-tuning in the implementation of EEO policy. Because the National Center for Educational Statistics was already collecting data on the various facets of higher education, it seemed both redundant and inefficient to have the EEOC track the higher education workforce. By transferring the collection and tracking of Form EEO-6 Reports to the Department of Education, the EEOC was provided with an opportunity to channel its energies and resources to other areas. In addition, it is important to note that even though Form EEO-6 was transferred to the Department of Education, institutions of higher education are still required to collect data related to their workforce. Although Form EEO-6 no longer exists in its exact form, the data continue to be tracked and shared with the EEOC.

The EEOC’s procedural longevity, as one dimension of adaptability, shows signs of institutionalization. The durability shown in EEOC procedures has been due, in part, to the ability of the Commission to effectively interact with its environment – working with external actors and adapting to environmental changes. As explained by Keohane, “durability [a tendency to persist over time] depends on the organization’s capability for simple adaptability to changes in its environment” (p. 863). Whether it has been its ability to garner support from Congress and the president, to work with external groups (both clients and opponents), or to readjust internal standard operating procedures, the EEOC has been able to adapt to environmental changes in order to solidify the legitimacy of its recordkeeping mandates. In addition to taking precedence over any state or local
law dictating otherwise, the Commission’s recordkeeping mandates continue to expand through time to match the evolution of EEO policy and the ever-growing reach of the EEOC. As this expansion and entrenchment progresses, the EEOC becomes institutionalized.

B. **Generational Age**

Generational age is the second measure of adaptability and refers to changes in leadership. In order for an organization to be able to adapt to changes over time, smooth and regular transition in leadership must occur. If the original leadership remains in place over an extended period of time, the unit is less likely to be able to adapt to environmental changes. New leaders bring with them individual ideas, objectives, and insights. If an organization is able to carry out its mission despite changes in its leadership, then it illustrates another dimension of adaptability.

Since its inception in 1965, the Commission has been run by Commissioners who span diverse races and ethnicities, genders, and political ideologies. As indicated in Section 705(a) of Title VII of the 1964 Civil Rights Act, the work of the EEOC is spearheaded by a five-member bipartisan Commission appointed by the President of the United States and confirmed by the U.S. Senate. The Commissioners are appointed to five-year staggered terms\(^\text{10}\) and no more than three Commissioners can be of the same political party. This ensures some degree of leadership change by definition. From these five individuals, the President selects the EEOC Chairman and Vice Chairman; the EEOC chair is responsible for the administration of the Commission and serves as its

\(^{10}\) Any individual chosen to fill a vacancy serves the unexpired term of the member they are replacing. Vacancies in the Commission will not hinder the remaining Commissioners from carrying out their work; quorum is set at three Commissioners. Commissioners can be reappointed.
Chief Executive Officer. The five-member Commission is charged with making EEO policy, approving litigation undertaken by the Commission, and eliminating unlawful employment discrimination (EEOC, 1983, p. ix). Based on the structure of the EEOC’s bi-partisan Commission, it is clear that U.S. Presidents play a major role in guiding the direction of the leadership within the EEOC. In fact, because the EEOC chair is appointed by the President, the election of a new President often leads to the appointment of a new EEOC chair.

As illustrated by Table 6.1, fourteen different Chairs have been appointed to head the EEOC since its inception in 1965.

### TABLE 6.1 EEOC CHAIRS & APPOINTING PRESIDENTS: 1965 TO 2011

<table>
<thead>
<tr>
<th>Term</th>
<th>EEOC Chair</th>
<th>Appointing President</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-1966</td>
<td>Franklin D. Roosevelt Jr.</td>
<td>Lyndon B. Johnson (D)</td>
</tr>
<tr>
<td>1966-1967</td>
<td>Stephen N. Shulman</td>
<td></td>
</tr>
<tr>
<td>1973-1974</td>
<td>John H. Powell</td>
<td></td>
</tr>
<tr>
<td>1975-1976</td>
<td>Lowell W. Perry</td>
<td>Gerald R. Ford (D)</td>
</tr>
<tr>
<td>1982-1990</td>
<td>Clarence Thomas</td>
<td>Ronald Reagan (R)</td>
</tr>
<tr>
<td>1990-1993</td>
<td>Evan J. Kemp Jr.</td>
<td>George Bush (R)</td>
</tr>
<tr>
<td>1994-1997</td>
<td>Gilbert F. Casellas</td>
<td>William J. Clinton (D)</td>
</tr>
<tr>
<td>1998-2000</td>
<td>Ida L. Castro</td>
<td></td>
</tr>
<tr>
<td>2000-2005</td>
<td>Cari M. Dominguez</td>
<td>George W. Bush (R)</td>
</tr>
<tr>
<td>2006-2010</td>
<td>Noemi C. Earp</td>
<td></td>
</tr>
<tr>
<td>2010-2014</td>
<td>Jacqueline A. Berrien</td>
<td>Barack Obama (D)</td>
</tr>
</tbody>
</table>


Not only have these individuals reflected the diverse racial, ethnic, and gender makeup of America’s population, but they also have had a range of ideological views. In addition to
reflecting the protected classes they were charged with representing, these individuals also brought with them their own distinct leadership styles and agendas. As illustrated in the following discussion, while some chairs proved to be more successful than others, each helped shape the evolution of the EEOC.

- **The Early Chairs & the Setting of Precedents**

To solidify the legitimacy of the Commission, President Lyndon B. Johnson appointed Franklin D. Roosevelt Jr. to serve as the EEOC’s first chair in 1965. This appointment helped the Commission attract widespread public support. “In fact, much of the mail that arrived in the first few months at the basement offices the Commission had borrowed temporarily from the U.S. Department of Commerce was simply addressed to ‘F.D.R., Jr., Washington, DC’” (EEOC, 2000f).

Although his term as chair was short (lasting only a year), Roosevelt worked to change employment practices and attitudes in the South, tackle job discrimination against African Americans in Alabama shipyards and Texas oil fields, and improve the racial climate in Bogalusa, Louisiana (a Klan-ridden community which housed the nation’s largest paper company) (EEOC, 1966, p. 10). Roosevelt was able to accomplish two significant objectives during his term; not only was he able to demonstrate to employers that EEO non-compliance would not be tolerated, but he was also able to establish the EEOC as the main entity charged with overseeing the implementation of EEO policy. While his efforts established a solid foundation from which his successors could build upon, they also brought to light weaknesses in EEO policy stemming from the ambiguous nature of the term “discrimination.”
As Franklin D. Roosevelt Jr. moved on to run for the governorship of New York, President Lyndon B. Johnson appointed **Stephen N. Shulman** to serve as the EEOC’s second chair in 1966. As the new chair took the reins, Shulman found himself at a crossroads – he could continue the work of his predecessor, tackle the murkiness associated with the meaning of discrimination, or focus his time and energy on spearheading new initiatives or ideas for the Commission. Of the three options, Chair Shulman chose to focus his attention on developing a definition for discrimination – a problematic area brought to light by the work of his predecessor. Without clarifying the meaning of discrimination, implementing EEO policy mandates became increasingly difficult. To effectively eradicate discriminatory practices in the workforce, it became essential to develop consensus surrounding what exactly constituted discrimination.

Through active leadership, Chair Shulman was able to not only establish a definition of employment discrimination, but he was also able to create a much-needed consensus over its conceptualization. In developing a meaningful definition of discrimination, Shulman sought to bring an end to the debate over the use of education and experience employment requirements as discriminatory obstacles. Under his leadership, the EEOC defined disparate impact discrimination as requirements that disproportionately affected a protected population absence of a clear justification. This conceptualization would go on to obtain legal deference in *Griggs v. Duke Power Co.* 401 U.S. 424 (1971)\(^{11}\) (EEOC, 2000l).

Having worked to define what the EEOC sought to deter, the remainder of his term was spent fine-tuning the EEOC’s standard operating procedures. As the EEOC’s

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\(^{11}\) In a unanimous decision, the Supreme Court ruled that Title VII protected against the use of standardized testing requirements that disproportionately prevented select protected classes from obtaining employment, promotions, or raises.
second chair, Shulman laid the foundation for adaptability through leadership. While his predecessor set the precedent for strong leadership by targeting prevalent employment discrimination practices, Shulman shifted the Commission’s agenda towards defining employment discrimination and addressing internal procedural inefficiencies; endeavors that allowed his successors to focus their energies on new arenas and foster change in the direction of the Commission.

Clifford L. Alexander tackled procedural inefficiency within the EEOC by bringing attention to the Commission’s lack of enforcement power. Alexander was appointed by President Lyndon B. Johnson to serve as the Commission’s first African American chair in 1967. As explained by Johnson, no one is “better qualified to eliminate job discrimination than Mr. Alexander. He knows what prejudice is. He has endured it himself, and he has fought it with every resources at his command” (New York Times, 1967, p. 10). Although Alexander failed to garner enforcement powers during his term as chair, the Commission was able to use public pressure and persuasion as its chief weapon to move against employment discrimination. In fact, Alexander sponsored two widely attended public hearings addressing discrimination against women and minorities in the workforce in order to bring attention to the importance of implementing EEO policy (Reed, p. 68).

Alexander also focused on the timely completion of discrimination charges and on developing alternative ways of supplementing the lack of enforcement power faced by the EEOC. Through his leadership, the Commission assisted almost 70,000 individuals (compared to 5,000 under Shulman), worked with television networks to promote more
positive portrayals of minorities, and – as a result of the public hearings sponsored by the Commission – convinced a television network to hire the first minority national reporter.

Although Alexander brought attention to the inequality of minorities in the workforce, Illinois Senator Everett Dirksen accused Alexander of harassment of businessmen in the Commission’s efforts to end racial discrimination in the workforce (Rome News-Tribune, 1969, p. 18; Hunter, 1969a, p. 22). According to Dirksen, “the commission ‘has no authority to exercise bad manners, no authority to exhibit discourtesies all over this country’ … the commission and its ‘overzealous staff people’ have inspired fear within the business community” (Hunter, 1969b, p. 1). He especially had issues with individuals who disrupted industry by trying to correct hundreds of years of injustices overnight. Although other senators, including Edward Kennedy of Massachusetts, came to the defense of EEOC, Dirksen kept up the pressure.

Following his threats to have Alexander removed from office, the White House announced that Alexander would be replaced as chair. Rather than be removed from office, Alexander resigned. Despite the fact that Alexander was unable to garner litigation powers for the EEOC, he certainly stood out as a new type of leader for the Commission. He was willing to be aggressive and confrontational. In spite of his drastic and controversial administrative transition, the EEOC adapted to its environment; it was manifesting an ability to adjust to distinct leadership agendas and responded to the specific priorities and political challenges of its leaders.

Like Alexander, **William H. Brown III** also came under scrutiny for his strict enforcement views. Brown was the EEOC’s second African- American chair upon his appointment by President Richard M. Nixon in 1969. Dirksen accused Brown of being
too militant and initially blocked his confirmation. However, the senator withdrew his objections after a 45-minute conference with Brown. As explained by Dirksen, despite the fact that he would be keeping a sharp eye on Brown, he found Brown to be a very reasonable person. In fact, “Mr. Brown does not seem to look like an overzealous, militant type to me. I thought he comported himself like a gentleman. Frankly, I think Mr. Brown satisfied me pretty well” (Hunter, 1969b, p. 20).

Despite attacks made against his predecessor, Brown build upon Alexander’s work as chair and continued efforts to secure enforcement power for the EEOC. This was of vital importance because it not only corrected a major weakness in Title VII, but it also recognized the ineffectiveness of relying on voluntary methods of negotiation, persuasion, and conciliation to address employment discrimination complaints. As argued by the EEOC (1972), “viable procedures which would ensure, and not merely encourage, compliance with Title VII would have to be developed in order to assure effective enforcement of prohibitions against employment discrimination” (p. 4). In the end, it was clear that the EEOC’s power of persuasion was insufficient to tackle discrimination in the workforce.

Finally, after years of lobbying and considerable effort by Brown, Congress passed the 1972 Equal Employment Opportunity Act. Through its passage, the EEOC obtained the much sought after and much debated enforcement authority.¹²

¹² Much of the debate surrounding the EEOC’s lack of enforcement powers stemmed from the opinions of Senator Dirksen. In fact, Dirksen emerged as a major roadblock in the quest of the EEOC to obtain enforcement power. Dirksen opposed President Nixon’s move to give the EEOC’s greater power. Though both men agreed with the need to give the EEOC greater enforcement power, they disagreed with how to actually carry this out. While Nixon supported giving the Commission quasi-judicial power, Dirksen believed that this would weaken the Commissions cease and desist powers. Dirksen argued that the administration’s move would pattern the EEOC’s enforcement after that of the National Labor Relations Board; thus making the EEOC rulings effective only after they have been approved by the U.S Court of Appeals (Rome News-Tribune, p. 18).
provisions, the 1972 EEO Act empowered “the EEOC, as party plaintiff, to bring civil action directly into Federal courts in order to enforce the provisions of Title VII and to remedy instances of their violations” (EEOC, 1972, p. 3).

The 1972 Equal Employment Opportunity Act was a significant feat because it provided the EEOC with a powerful enforcement mechanism to combat employment discrimination. Prior to this legislation, employers could choose to ignore opinions and determinations made by the EEOC in hopes that the individual employee would opt not to pursue the issue in federal court (EEOC, 1972, p. 4). However, as a result of the 1972 Act, the Commission was granted the authority to intervene on behalf of private parties and to initiate lawsuits on behalf of employees. “Through the use of court enforcement powers, the EEOC instituted many lawsuits that pushed Title VII enforcement beyond what most envisioned. The ability to go into court with our own attorneys clearly speeded up the change in attitude by major corporations and secured appropriate relief for tens of thousands of people” (EEOC, 2000d).

Following this expansion in powers, the number of EEOC lawyers jumped from 40 to 250 and five regional EEOC litigation centers were opened to handle national, regional, and individual discrimination charges. While some criticized the 1972 Act for not going far enough, it did give the EEOC a new and essential tool to remedy employment discrimination. The unique role Brown’s leadership played in obtaining this new enforcement mechanism reveals one aspect of generational age as a part of institutional adaptability. Of equal importance, it is clear that without the new concrete enforcement mechanisms, the institutionalization of the EEOC would not have occurred.
The tool of “moral suasion” was insufficient for the organization to command and modify its environment.

While there is no doubt that this enhancement in the EEOC’s enforcement mechanisms provided it with a powerful tool to combat employment discrimination, exercising its newly acquired litigation authority proved to be a challenge for Brown’s successor. In 1973, President Nixon appointed John H. Powell as the EEOC’s third African American chair. Powell shifted gears away from the now-secured litigation authority to new arenas. Powell’s primary goals were to bring efficiency, effectiveness, and fairness to the Commission. Powell challenged the EEOC’s General Counsel to target dozens of major American industries that were failing to integrate their workforce; however, the General Counsel fought back by pushing for voluntary action and mediation. Despite his best effort, internal strife over the actual success of Commission efforts, the ever-increasing number of backlogged charges\textsuperscript{13} (totaling 126,000 in 1975), personality and leadership clashes between Powell and the other Commissioners, and controversies over the exact authority of the Commission led to the resignation of Powell in 1975. As explained by Powell, “I do this not because I agree with the intense criticism leveled against this Office and this agency. Rather my resignation as chair is offered in the hope that the current controversy will cease. Attention now must be focused on the important job that remains before all of us” (Woolley & Peters, 1975).

\textsuperscript{13} During its first year of operation, the EEOC was unable to address all the charges received. With each passing year, this pattern of unresolved cases continued. While the backlogging of charges was fueled by the Commission inability to address all claims received, data exclusively showcasing these increases is unavailable for several reasons. (1) Backlogged charges are carried over yearly, thus merging into the total charges overseen by the Commission in a given year. (2) In some cases, a single backlogged charge can take years to resolve. These charges are combined with new backlogged charges and then merged into the total number of charges received by the Commission in a given year. (3) Although the Commission indicates the number of new charges received in a given year, it is unwise to subtract the total of new charges from the total of charges received as the output may not necessarily reflect the actual number of backlogged charges. The data is simply unavailable.
Although Brown had succeeded in obtaining key enforcement mechanisms, Powell – mired in internal strife – was unable to develop this new tool before his resignation. Yet again, the Commission encountered a controversial leader, with a distinct agenda, who resigned before his tenure expired. While internal strife resulting from controversial chairs had an impact on the EEOC’s ability to successfully enforce EEO mandates, these disruptions did not deter the Commission from its responsibility to eradicate employment discrimination. Not only were there contentious chairs who left quickly, but, more generally, none of the early chairs had long stays. During an eight-year period, there had been five different chairs. Although faced with rapid and drastic leadership transitions and the subsequent internal chaos these changes produced, the Commission adapted to ensure the implementation of EEO policy.

When Lowell W. Perry was appointed as the EEOC’s fourth African American chair by President Gerald R. Ford in 1975, he faced an agency in crisis. As explained by Perry, “immediately prior to my arrival, the EEOC was a troubled agency with much publicized feuding between the Chair and the General Counsel. I realized early on in my tenure that this situation had caused a serious image problem for the agency” (EEOC, 2000b). In order to help mend the image of the Commission, Perry worked to confront employment discrimination in large industries through voluntary compliance and litigation. He also sought to address increases in the number of backlogged discrimination charges by bringing in computer experts to computerize the Commission’s activities. Perry even worked to recruit statisticians to help identify systematic discrimination patterns in the data being generated by the Commission.
Despite the fact that Perry sought to address many of the problems encountered by the EEOC, he was unable to complete any of his objectives after becoming entangled in scandal. Upon taking office, Perry commissioned a series of internal audits to identify problems within the Commission and determine ways of correcting these issues. When the audits turned up numerous instances of employee misconduct, fraudulent use of government funds, and incompetence among managers in field offices, Perry failed to disclose these findings to Congress and instead sought to address these issues internally. Although he had the EEOC’s reputation in mind when making this ill-conceived decision, this deception led to his resignation after mismanagement inquiries by the Federal Bureau of Investigation, two congressional committees, and the General Accounting Office. While Perry was not personally implicated in the alleged charges, he submitted his resignation letter as EEOC Chair shortly after the audit reports were submitted to congressional committees (Holsendolph, 1976, p. 26). While the scandal significantly disrupted the Commission’s path toward greater adaptability, it was sufficiently entrenched as a federal agency to withstand the criticism and concerns in the scandals wake.

**New Leadership on Sexual Discrimination**

The appointment of Eleanor Holmes Norton in 1997 by President Jimmy Carter signaled a significant break in the direction of the EEOC’s leadership. As the first African American female chair, Norton inherited “a troubled agency, dispirited by years of unfocused activity because of its revolving door leadership, management ineffectiveness, and a steady stream of criticism from nearly everyone with an interest in its work” (Holsendolph, 1977, p. 56). During this time period, the EEOC was also
undergoing internal struggles over job testing standards for employers and civil rights enforcement activities. Despite these challenges, Norton focused her efforts on attacking the continuous problem of backlogged charges. Norton “instituted several new systems aimed at reducing the agency’s backlog of older cases, streamlining procedures for processing new cases, and effectively processing Commission initiated charges against employers who showed patterns of discrimination against minorities and women” (EEOC, 2000e).

During her tenure as chair, Norton also issued the first regulations outlining what constituted sexual harassment; thus solidifying sexual harassment as a violation of federal civil rights laws (Pear, 1980, p. 1). Although the 1964 Civil Rights Act prohibited sexual harassment, sexually aggressive behavior which befell women entering the workplace persisted long after the passage of this Act. In fact, up until the late 1970s, sexual harassment charges were rarely brought to light. Even when complaints alleging sexual harassment surfaced, the courts tended to dismiss them on the grounds that they did not fall under the coverage of Title VII. In order to address misinterpretations in Title VII mandates, Norton used her authority as chair to issue the first regulations regarding sexual harassment. As a result of her efforts, not only was sexual harassment accepted as a form of gender-based discrimination by the courts, but employers, schools, and other organizations throughout the country began focusing efforts on eradicating these practices from the workplace.

Despite Norton’s efforts to address the downfalls of the EEOC, her leadership was met with mixed reviews. While some agreed with her common sense tactics to screening out cases that did not warrant Commission action and the quicker handling of
discrimination charges, others argued that streamlining the handling of cases and reorganizing the Commission hurt EEOC constituents (Sheppard Jr., 1979, p. 8). Complicating matters was a 1982 GAO audit of the EEOC which found that the Commission had allowed its finances to become chaotic, it had failed to maintain proper recordkeeping, and it continued to have a rising number of backlog charges (King, 1982, p. A10).14

In the end, regardless of attacks made by her critics, Norton brought a new stability and rigor to the EEOC. As an African American female, she represented two EEO protected classes – the gender-based protected class and the race-based protected class. As evidence by her work as chair, it is clear that Norton brought attention to the plight of both of these protected classes. Not only did she reduce the Commission’s backlogged discrimination charges and streamline the intake process (which served to benefit all protected classes), but she also brought attention to a concern which was particularly prevalent among women – that of sexual harassment.

• **A New Definition of Discrimination**

Appointed by President Ronald Reagan, Clarence Thomas became the EEOC’s eighth chair in 1982. As the Commission’s longest serving chair, Thomas also emerged as its most criticized chair. From the beginning, Thomas was attacked as being the “wrong man” to head the EEOC. As noted by Williams (1982), opposition to Thomas stemmed from claims that he “doesn’t see a racist behind every bush. He doesn’t blame racism for every conceivable problem blacks have. Thomas is a man who, if you asked, ‘Why are 55 percent of black babies born in wedlock each year?’ he would say it

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14 The GAO audit came as the tail end of Chair Norton’s tenure at the EEOC.
represents a breakdown in individual accountability and moral values… [not] society and racism” (p. 4). These attacks set the tone for his term in office.

Clarence Thomas advocated a strong stance against affirmative action programs. He went as far as to publicly argue that these programs hurt minorities by placing them in programs beyond their abilities. These comments came under heavy criticism by former EEOC Chair Norton and former Interim Chair J. Clay Smith in 1982. As noted by Norton, Thomas’ view on affirmative action sent the wrong message. According to Norton, affirmative action is not about hiring unqualified minorities or forcing employers to fill quotas; instead, “employers are asked to hire employees where there is a pool of qualified and available people; if you cannot demonstrate that there is a qualified pool, then the employers does not have to hire – and that is the bedrock of Title 7” (Holsendolph, 1982, p. 5). Nonetheless, these attacks did not deter Thomas’ views.

In addition to opposing affirmative action, Thomas disliked the use of racial quotas as a tool for integrating the workforce. Thomas viewpoint became EEOC policy. In the case of *Larry Williams et al. v. the City of New Orleans* No. 82-3435 (1982), the courts ordered New Orleans’ Police Department to implement a race-conscious promotion quota system. Since this ruling was at odds with the Reagan Administration’s anti-affirmative action stance, the Justice Department asked an appellate court to overturn the decision. Although the EEOC had originally decided to submit an amicus curiae challenging the position of the Reagan Administration, it backed down after a visit from Edwin Meese III (counselor to President Reagan) and Attorney General William French Smith (The New York Times, 1983b, p. D15). Thomas justified his decision by arguing that the EEOC needed to develop new ways of ending discrimination. “We simply
cannot move ahead if we are constantly looking behind us. We must look forward; engage in constructive discussions and reasoned analysis of the important issues we face; strengthening the protection of crucial basic rights while we explore new and improved ways to reaching to goal of true equal employment opportunity” (Thomas, 1983, p. 4).

As a result of the messages coming from the Reagan Administration, Clarence Thomas, and the EEOC, many employers began to believe that they no longer needed to follow civil rights mandates. In fact, many companies assumed that since Reagan opposed affirmative action in employment and was against busing to desegregate schools, he was also opposed to civil rights laws. In addressing these misperceptions, Thomas indicated that even though he did not agree with affirmative action programs, he was hired to uphold the law. As a result, employers should not be surprised if they face penalties for employment discrimination (The New York Times, 1983a, p. B9).

The duration of Thomas’ tenure as EEOC chair continued to be turbulent. When Hispanic employment discrimination charges declined, it was discovered that this was not due to greater integration in the workforce, but rather the EEOC’s failure to provide outreach to the Hispanic community regarding the law and their rights (Unger, 1983, p. LF1). Many African American Republican congressmen who supported Reagan also voiced sharp concerns regarding the position of the Administration on civil rights policies (Pear, 1984, p. A10). Congresswomen Cardiss Collins (R-IL) even charged three federal agencies (Department of Justice, Federal Trade Commission, and National Endowment for the Humanities) for refusing to obey EEOC directives requiring them to set goals and timetables for the hiring of women and minorities (The New York Times, 1984, p.

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15 Grammatical error original to text.
Although Thomas was criticized for the lack of progress made by Hispanics, African Americans, and women in the workforce, he was nominated and confirmed to a second term as chair.

During Thomas’ second term, he shifted the EEOC focus towards increased enforcement. As touted by Thomas, “this EEOC is enforcing civil right laws vigorously, and our record-breaking litigation figures prove it” (Tucker, 1986, p. 1). Even with Thomas as a strong and visible Reagan supporter, the agency was hampered in these efforts with a shrinking of its workforce. As one benchmark, personnel decreased from 3,166 in 1982 to 3,091 in 1985. Thomas himself complained that “there is a point … where you can no longer get more for less, and we have arrived there” (Atlantic Daily World, 1990, p. 2).

Appointed by a conservative president, Thomas embraced the Reagan Administration’s anti-affirmative stance. His conservative views regarding employment practices translated into his work as chair. Not only did he attempt to keep the Commission out of lawsuits aimed at protecting the use of racial quotas in hiring practices, but he also did little to provide outreach to protected classes regarding their rights as employees. This, in turn, led to decreases in the number of employment discrimination cases filed. In the end, Chair Thomas’ anti-affirmative action stance convinced many employers that they no longer needed to implement Title VII mandates.

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16 The use of goals and timetables in hiring was quietly abandoned by the Commission in 1986. This was done without a public announcement. During his confirmation hearings for his nomination to a second term as Chairman, Thomas said the EEOC would resume efforts to enforce the use of hiring goals and timetables to remedy past discrimination (Williams, 1986, p. A19).

17 In 1991, Clarence Thomas was nominated to the U.S. Supreme Court by President George Bush. During his confirmation hearings, charges of sexual harassment surfaced against Thomas. For a brief background of these allegations, please go to Appendix A, Clarence Thomas and Anita Hill: Sexual Harassment at the EEOC?
Thomas’ appointment and tenure were especially significant in the adaptability of the EEOC because they marked a clear departure from his predecessors. Not only were his views regarding the diversification of the workforce different from those of his predecessor, he was successful in injecting the work of the EEOC with his anti-affirmative action philosophy throughout his two terms as chair. While observers can debate whether Thomas was effective or ineffective as chair, in the end, this is not especially relevant to his impact on the EEOC as an institution. Generational age is assesses whether clear leadership changes have taken place. Thomas represented a different type of leader at the EEOC. More importantly, the Commission itself was able to adapt to drastic changes in leadership from the administration of Norton to Thomas.

- **Disability Rights & Institutional Leadership**

This transition in generational age continued to evolve during the tenure of Evan J. Kemp Jr. Upon the completion of Thomas’s controversial term as chair in 1990, President George Bush nominated **Evan J. Kemp Jr.** to serve as the ninth EEOC chair. Kemp’s nomination proved to be significant because he brought attention to yet another group of individuals discriminated in the workforce – the disabled. Having lived with neuromuscular disease for over thirty-five years and confined to a wheelchair, Kemp emerged as one of the nation’s leading advocates for the disabled. As the Executive Director of the Disability Rights Center, he not only fought for the civil rights of individuals with disabilities, but he also worked to build coalitions with groups representing racial and ethnic minorities, women, and older persons with similar goals of equality.
Like his predecessors, Kemp also faced several major obstacles as chair. Kemp explained, “[Although] I was fortunate to take the reins of a stable, well-run agency, thanks to the skillful management of the previous Chair Clarence Thomas, it soon became clear that the biggest challenge I would face was how to operate in a climate in which the Democratic Congress was not sympathetic to the problems of a federal agency run by a Republican administration” (EEOC, 2000a). One of the first hurdles Kemp faced was funding. As Kemp noted, “despite my efforts and cooperation with OMB, Congress never appropriated the money necessary to fulfill its law enforcement responsibilities. In fact, Congress failed 10 out of 11 years to give the EEOC the funding requested by the administration!” (EEOC, 2000a). Kemp downsized headquarter personnel by 15% in 1990 and directed all available resources to field offices so that investigators could continue processing charges. He also depoliticized the EEOC by selecting career staff rather than political appointees to head operational offices. But most fundamental, Kemp worked with Congress in drafting of the 1990 Americans with Disabilities Act (ADA).

During his first two and a half years, then Commissioner Kemp played a major role in promoting credible and effective enforcement of the rights of all individuals under the equal employment laws EEOC enforces. As a member of the Bush Administration, Chairman Kemp worked closely with the White House in its consideration and ultimate endorsement of the Americans with Disabilities Act (EEOC, 2011d).

Nonetheless, as with other Commission feats, this legislation came under attack. In fact, some criticized the legislation for not going far enough in requiring reasonable

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18 When one examines EEOC budget request, in relation to the amount of funding the Commission was actually authorized, there has only been one year when Congress provided the EEOC with the amount of funding requested. From 1966 to 2007, this matching of requests and authorization only took place in 1992.
accommodations for individuals with disabilities and for failing to require businesses to hire personal attendants for the disabled (Holmes, 1991, p. A10).

Like Norton and Thomas, Kemp was able to inject the Commission with his personal vision regarding the diversification of the workforce, particularly in drafting the 1990 Americans with Disabilities Act. This proved to be especially significant because it not only extended the authority of the Commission, but it also expanded EEO policy to include the disabled as a protected class. The transitions from Norton to Thomas to Kemp were also of great importance because they highlighted the ability of the EEOC to adapt. Regardless of the fact that each chair brought different agendas, opinions on the integration of the workforce, affirmative action views\(^\text{19}\), and notions regarding the future work of the EEOC, the Commission survived these competing visions.

- **Internal Procedures as Leadership**

  **Gilbert F. Casellas** became the first Latino to serve as EEOC chair when President Bill Clinton nominated him in 1993. Similar to his predecessors, Casellas was handed a Commission in need of help. Not only was the agency choking on backlog cases, but the expansion of protected classes to include the disabled also led to even more discrimination charges being filed. Complicating matters was the fact that only one in seven charges were resolved in favor of employees and many charges went uninvestigated. Often, workers either gave up, witnesses disappeared, or employers went out of business leaving no one to sue (Kilborn, 1994, p. 1).

  Through a bipartisan approach, Casellas improved the Commission’s effectiveness by adopting mediation-based alternative dispute resolutions as part of the

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\(^{19}\) Norton and Kemp were staunch supporters of the importance of affirmative action plans in the integration of women and the disabled in the workforce; Thomas opposed affirmative action programs.
charge processing system. In just one year, Casellas’ leadership led to a decrease in backlogged discrimination charges from 111,000 to 80,000. Mediation proved important because it offered employees another, sometimes quicker and less expensive, venue to air their employment discrimination disputes. FEPA partnerships, which continued to be forged under Casellas, were also beneficial because they provided the Commission with an opportunity to distribute their workload with external actors. Casellas also proved to be an effective leader because he was able to transform the morale of the employees. After years of overwhelming and mounting backlogged charges, EEOC personnel were finally beginning to see the fruits of their labor. “Chairman Casellas’ personal intervention in successfully resolving the agency’s historically acrimonious labor-management disputes and in transforming the agency into a model of labor-management partnerships resulted in a much-needed boost in employee morale and in receipt of a ‘Hammer of Reinvention’ from Vice President Al Gore” (EEOC, 2000g).

Thus, Casellas brought attention back to the internal workings of the EEOC. Not only had the EEOC undergone an expansion in scope, but EEO policy itself had been expanded to cover new areas under the leadership of previous chairs. By the time Casellas took over as chair, the internal workings of the Commission were in need of attention. The mounting number of backlogged discrimination charges served to illustrate the disarray within the Commission. Drawing from his management and litigation experience, Casellas shifted Commission priorities in order to bring efficiency and effectiveness back into the EEOC. The fact that the EEOC was able to survive yet

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20 Casellas was a partner in the Philadelphia law firm of Montgomery, McCracken, Walker and Rhoad before serving as EEOC Chair. In addition to having experience as a litigator, he also served as served on numerous profit and non-for-profit boards and commissions.
another drastic leadership change, illustrates its continued ability to adapt to changes in generation age.

President William J. Clinton nominated **Ida L. Castro** to serve as the EEOC’s first Latina chair in 1998. As chair, Castro worked to increase fairness, quality, effectiveness, and efficiency in the operations of the Commission and to ensure its salience as the nation’s premier civil rights enforcement agency. In addition, during her first year as chair, Castro continued the work of Casellas by “cutting the backlog of private sector charges by 23% to a 15-year low, reducing the average charge processing time, implementing a successful national mediation program, reforming the federal sector EEO compliant process, and issuing several comprehensive guidance documents on key legal and employment issues” (EEOC, 2000).

Castro broke new ground by defending the rights of immigrants in the workforce. She spearheaded two internal task forces designed to address emerging concerns in the workforce – the National Origin Task Force and the Low Wage Earner Task Force. The National Origin Task Force was comprised of eight EEOC district offices with jurisdictions that included high populations of immigrants and refugees. These communities were selected because they often avoided seeking remedies for fear of retaliation, distrust of government officials, and a lack of awareness of their legal rights. The Task Force’s goal was to address national origin bias through effective education and outreach at the grassroots level, collaboration with community groups, and extensive research. The Low Wage Earner Task Force, spanning three EEOC districts\(^\text{21}\), focused on outreach to immigrants, border workers, and farm laborers. The Task Force worked

\(^{21}\) These districts were focused along the US/Mexican border and covered states with a large number of agricultural migrant workers.
with federal, state, and local governments in addressing issues of wage inequality, English Only rules in the workplace, job segregation, and immigration-related national original discrimination (EEOC, 2001a, pp. 24-25).

The efforts of these Task Forces uncovered one of the worst sexual harassment cases ever litigated by the EEOC. After four women filed complaints about being sexual harassed by managers at W.R. Grace & Company (a Maryland food processing plant) in April of 1996, investigators quickly discovered that the problem was far more widespread and brought a class action lawsuit against the company. The EEOC charged plant managers with the egregious sexual harassment of 22 Central American female employees. Charges included non-supervisors exposing themselves, demanding oral sex, and fondling workers’ breasts, buttocks, and genitalia. Many women were given menial work and difficult assignments after rejecting these sexual advances. Two pregnant women were fired for failing to succumb to these advances; and, after the plant bus stopped running in the evening, managers would give female workers rides home only to expose themselves and demand sex. The company settled the case out of court in order to protect the interests of the employees and stakeholders. As noted by Castro, “This case sends a clear message that wholesale violations of the civil rights of the most vulnerable work force – immigrant women in low wage jobs – will not be tolerated” (Greenhouse, 2000, p. A12).

The EEOC’s ability to adapt to leadership changes continued under the Castro administration. Though Castro continued Casellas’ efforts to decrease the number of backlogged discrimination charges, she injected Casellas’ reforms with some of her own innovations. In fact, by reforming the intake process, Castro was able to cut backlogged
cases down to a new low. Castro also spearheaded a series of outreach, education, and technical assistance programs to educate the public and employers on EEO laws. It was Castro’s belief that education on the law would inevitably serve as a deterrent to employment discrimination in the workforce.

In 2001, President George W. Bush nominated Cari M. Dominguez to serve as the EEOC’s second Latina chair. Dominguez, who spearheaded the Department of Labor’s 1991 Glass Ceiling Report assessing the inability of women and minorities to move up the corporate ladder and documenting discrimination within the nation’s largest companies, became the second longest sitting chair since Clarence Thomas. Due to the leadership of Casellas and Castro, Dominguez inherited an organization that was much more efficient than that which emerged after the reign of Thomas in the 1980s (Abelson, 2001, p. BU1). As reiterated by Nancy Kreiter (Director of Research at Women Employed), “the agency is a viable enforcement agency… it was not eight years ago” (Abelson, p. 12).

During her first year as chair, Dominguez worked with fellow commissioners to establish three major strategic goals for the EEOC. The first goal was the enforcement of federal civil rights employment laws by continuing to oversee private and federal sector discrimination charges. The second goal promoted outreach, education, technical assistance, and voluntary compliance. The third goal involved improved processes and operations (including financial audits by independent auditors). As explained by Dominguez:

The Commission is the keeper of laws reflecting the will of a people who envisioned a country defined by freedoms – freedom of expression, freedom of religion, and freedom of economic opportunity – regardless of personal characteristics or circumstances of birth. In order to make full
use of our nation’s human capital, we must promote workplace practices that allow all workers to achieve their full potential and to make their full contributions (EEOC, 2002b, p. 1).

Dominguez’s efforts proved to be fruitful as the Commission ran at its most efficient level in EEOC history, resolved charges more effectively than ever during the Castro years and ended FY 2002 with the lowest charge inventory in 31 years. Dominguez also institute a Five-Point Plan to provide the Commission with a foundation for its vision and a framework for its operation, including proactive preventions (the use of technical assistance, training seminars, outreach and education campaigns, and media campaigns to prevent employment discrimination from occurring), proficient resolutions (meaningful and timely resolutions to employment discrimination charges, improved private sector charge processes, and greater coordination with federal agencies), promotion and expansion of mediation and alternative dispute resolutions, strategic enforcement and litigation, and the establishment of the EEOC as a model workplace.

The terrorist attacks on September 11, 2001 created a major challenge for Dominguez. Not only was the New York District Office (located in the World Trade Center) destroyed, but the Commission received one of the highest number of religion-based discrimination charges since its inception. In fact, in the seven months following the terrorist attacks, the commission received 427 complaints from Muslims alleging religious discrimination in the workplace (up from 171 the previous year) and nine complaints from Sikhs who said they experienced discrimination after being mistaken for Arabs or Muslims. As explained by Dominguez, “We’ve never had anything like it since

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22 The Government Performance and Results Act of 1993 required federal agencies to prepare a Strategic Plan covering at least six years – with review and revisions every three years. EEOC issued its first Strategic Plan in 2006 (this plan covered FY 2004-2009). This plan was revised during FY 1996 and changes were implemented FY 1997 (EEOC, 2006, p. 4).
the creation of the commission. Charges by Muslims nearly tripled, and while the rate is slowing, we’re still getting new complaints” (Sachs, 2002, p. A16). In order to combat these and other forms of employment discrimination, the EEOC directed attention from race, sex, and age-based discrimination charges to religion.

Following the term of Dominguez, President George W. Bush nominated Noemi C. Earp to serve as the Commission’s second African-American female chair in 2006. As noted by Earp, the job of the EEOC has dramatically changed over the last 40 years.

In the years before and immediately after Title VII was passed, discrimination was blatant and pervasive. Newspapers published sex-segregated job ads, and employers implemented or continued policies of segregating employment facilities by race, paying female employees less than male employees, restricting employment and promotion opportunities for women and minorities, and enforcing mandatory retirement policies to force older workers out.

Today, discrimination has become more subtle and thus more difficult to prove. As a result, it has become increasingly difficult to overcome summary judgment motions and achieve favorable rulings from courts in employment discrimination cases. Furthermore, a victory in trial court does not guarantee success on appeals. In addition to procedural and legal difficulties presented by discrimination cases, current demographic changes, such as the graying of the workforce and the increased gender and ethnic diversity of the workforce, also present new challenges and opportunities for employees, employers, and the Commission. To effectively address these existing and new emerging issues, we must all work together in sharing resource and expertise (EEOC, 2006, p. 1).

During her first year as chair, Earp implemented a field-repositioning plan, which expanded the presence of the EEOC, reduced expenses, and flattened the management structure of the Commission. The repositioning was designed to reorganize staff to frontline positions, fill additional posts, and ensure that each staffer had a manageable workload.
During her second year as chair, Earp coordinated the logistical move of the EEOC Washington D.C. headquarters. Due to rising costs and the reduction of the headquarter workforce, the Commission needed to find a location which was smaller and more affordable. Earp’s decision to move the EEOC headquarters in 2007 “from fine offices in downtown to a developing – but not quite arrived – area” stirred hostility among the headquarters 500 employees (Kamen, 2007, p. A21). As part of the move, the EEOC underwent a major field repositioning to save money, streamline middle management, and expand the presence of the Commission throughout the country.

During Earp’s tenure, the Commission provided technical advice and assistance to employers on the implementation of the 2009 Genetic Information Non-Discrimination Act (GINA) and the 2008 Amendments to Title I of the American with Disabilities Act. Earp also worked to eliminate recent trends in employee intimidation (Fears, 2007) and to address barriers in the hiring and promotion of Latino workers in the government (Barr, 2008). Chairwoman Noemi C. Earp proved to be yet another illustration of how the EEOC continued to adapt to changes in its leadership.

President Barack Obama appointed Jacqueline A. Berrien as the third African American female Chair of the EEOC on April 7, 2010. Within a short time as chair, Barrien reinvigorated the EEOC. New leadership, yet again, produced changes in the direction of the Commission. On the administrative end, budgetary increases allowed Barrien to strengthen the EEOC’s workforce by increasing training opportunities, updating technology, and hiring new investigators, attorneys, and front line staff. To foster consistent and rigorous agency-wide implementation efforts and to address increases in the number of backlogged charges, Barrien instituted priority charge
handling procedural reforms. Although decreases in the backlogged charges were evident after the implementation of these procedural reforms, an external audit – that eventually validated the EEOC’s findings – was conducted to assess the impact of these reforms (EEOC, 2011e). Without question, Barrien recognized the importance of adjusting and strengthening the Commission’s charge handling procedures. With adequate budgetary allocations and increases in the EEOC’s workforce, Barrien shifted the energy of the EEOC towards the institution of priority charge handling procedural reforms aimed at eliminating its growing backlogged charges.

On the enforcement end, Barrien continued to strengthen the Systemic Initiative by allocating greater funding and personnel towards the identification of employment discrimination charges with the potential of impacting a broader section of the workforce. In addition to channeling limited EEOC resources towards the identification of systemic charges, Barrien elevated equal pay discrimination on the Commission’s agenda. With the passage of the 2009 Lilly Ledbetter Fair Pay Act, the 180-day statute of limitation for filing equal pay violations was reset with each new discriminatory paycheck. In addition to training its workforce and educated the public on changes in the Equal Pay Act, Barrien established a task force with federal agencies to facilitate equal pay coordinative efforts. On a final note, Barrien reinforced enforcement efforts by working directly with employers. Not only did she launch a new small business initiative to continue to strengthen agency outreach efforts in areas of the workforce often overlooked, but Barrien also spearheaded efforts to bring together competing labor interests. In fact, through her leadership, an agreement was negotiated to foster greater labor relations and facilitate collaborative efforts in the delivery of services between managers and
employers (EEOC, 2011e). Although new leadership has continued to produce modifications in EEOC’s priorities and procedures, the Commission has manifested an ongoing ability to adapt to the changes.

According to institutionalization theory, if an organization is able to carry out its mission despite changes in its leadership, then generational age as a component of institutionalization is said to have taken place. However, a change in generation age is not the mere replacement of one leader with the next; rather, transitions in generation age involve the ability of an organization to weather differences in the experiences, ideas, and visions of its incoming leaders.

When one examines the generation age of the EEOC, it is evident that some leadership changes were more fundamental than others. Certain chairs stand out for providing a definition for discrimination, expanding the charge and enforcement mechanisms of the agency, and providing significant shifts in the internal efficiency of the Commission. Other chairs were less pivotal to generational age, becoming mired in internal politics, personal scandal, and maintaining business as usual. Nonetheless, even though these chairs were not as crucial to the organization growth and development of the agency, their troubled years in office were still critically reflective of generational age. The agency withstood these problematic times when a single commission chair could have provided sufficient political incentive to shut down or severely curtail the agency.

**Leadership & the Commission as a Whole**

Not only is adaptability evident in the Commission’s ability to transition smoothly from one chair to the next, it is also present in its ability to withstand continuous adjustments in the make-up of the EEOC commissioners. As noted by Section 705(a) of
Title VII of the 1964 CRA, the EEOC is composed of a five-member bipartisan Commission. Though the chair is responsible for the administration of the Commission and serves as its Chief Executive Officer, the remaining four commissioners do not have the authority to foster changes on their own; instead, they must work in conjunction with the other commissioners to carry out changes.

As illustrated by Table 6.2, thirty different Commissioners have been appointed to run the EEOC since its inception in 1965. Of these commissioners, six have served as acting chairs (Holcomb, Smith, Shattuk, Gallegos, Kemp and Igasaki), and two have moved on to become EEOC chairs (Kemp and Earp). Like prior EEOC chairs, these individuals also reflect the racial, ethnic, gender, and ideological makeup of America’s population. In addition, because these individuals serve as the leadership and voice of the EEOC, many of these commissioners have also been subject to the same scrutiny – be it internal or external – faced by EEOC’s chairs.

Commissioner Vicente Ximenez provides an excellent illustration of a commissioner who faced a great deal of scrutiny from external actors – specifically among those considered to be “radical” Mexican American leaders. Appointed in 1967 by President Johnson, Ximenez was heralded by many as a leader in the Mexican American Civil Rights movement, an advocate of bilingual education and affirmative action programs, and a staunch supporter of the GI Bill for Latino veterans. In October of 1967, shortly after being appointed commissioner, Ximenez organized a series of cabinet-level meetings in El Paso, Texas to help mobilize the nation’s Hispanic leadership. However, the fact that these conferences were not held in the White House

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23 The GI Bill (formally known as the Servicemen's Readjustment Act of 1944) provided college education, a year of unemployment compensations, and home and business loans to World War II veterans.
angered numerous Mexican American leaders who viewed this as proof that the Johnson Administration did not consider this a serious problem (Ramos, 1998).

### TABLE 6.2 EEOC COMMISSIONERS & APPOINTING PRESIDENTS: 1966 TO 2011

<table>
<thead>
<tr>
<th>Term</th>
<th>Commissioner</th>
<th>Appointing President</th>
</tr>
</thead>
<tbody>
<tr>
<td>1965-1968</td>
<td>Samuel C. Jackson</td>
<td>Lyndon B. Johnson (D)</td>
</tr>
<tr>
<td>1965-1974</td>
<td>Luther Holcomb</td>
<td></td>
</tr>
<tr>
<td>1965-1966</td>
<td>Richard Graham</td>
<td></td>
</tr>
<tr>
<td>1965-1966</td>
<td>Aileen Hernandez</td>
<td></td>
</tr>
<tr>
<td>1967-1971</td>
<td>Vincente T. Ximenes</td>
<td></td>
</tr>
<tr>
<td>1968-1970</td>
<td>Elizabeth Kuck</td>
<td></td>
</tr>
<tr>
<td>1970-1977</td>
<td>Colston A. Lewis</td>
<td>Richard M. Nixon (R)</td>
</tr>
<tr>
<td>1971-1980</td>
<td>Ethel B. Walsh</td>
<td></td>
</tr>
<tr>
<td>1971-1976</td>
<td>Raymond L. Telles</td>
<td></td>
</tr>
<tr>
<td>1976-1981</td>
<td>Daniel Leach</td>
<td>Gerald R. Ford (D)</td>
</tr>
<tr>
<td>1978-1983</td>
<td>Armando Rodriguez</td>
<td></td>
</tr>
<tr>
<td>1981-1983</td>
<td>Cathie Shattuck</td>
<td></td>
</tr>
<tr>
<td>1982-1993</td>
<td>Tony E. Gallegos</td>
<td></td>
</tr>
<tr>
<td>1982-1986</td>
<td>William Webb</td>
<td>Ronald Reagan (R)</td>
</tr>
<tr>
<td>1984-1987</td>
<td>Fred Alvarez</td>
<td></td>
</tr>
<tr>
<td>1984-1995</td>
<td>R. Gaull Silberman</td>
<td></td>
</tr>
<tr>
<td>1987-1993</td>
<td>Evan J. Kemp, Jr.</td>
<td></td>
</tr>
<tr>
<td>1987-1993</td>
<td>Joy Cherian</td>
<td></td>
</tr>
<tr>
<td>1990-1996</td>
<td>Joyce E. Tucker</td>
<td>George Bush (R)</td>
</tr>
<tr>
<td>1994-2003</td>
<td>Paul Igasaki</td>
<td></td>
</tr>
<tr>
<td>1994-2004</td>
<td>Paul Steven Miller</td>
<td>William J. Clinton (D)</td>
</tr>
<tr>
<td>1996-2000</td>
<td>Reginald E. Jones</td>
<td></td>
</tr>
<tr>
<td>2002-2008</td>
<td>Leslie E. Silverman</td>
<td></td>
</tr>
<tr>
<td>2003-2005</td>
<td>Noemi C. Earp</td>
<td></td>
</tr>
<tr>
<td>2003-2012</td>
<td>Stuart J. Ishimaruv</td>
<td>George W. Bush (R)</td>
</tr>
<tr>
<td>2006-2009</td>
<td>Christine M. Griffin</td>
<td></td>
</tr>
<tr>
<td>2008-2011</td>
<td>Constance S. Barker</td>
<td></td>
</tr>
<tr>
<td>2010-2013</td>
<td>Chai Feldblum</td>
<td>Barak Obama (D)</td>
</tr>
<tr>
<td>2010-2015</td>
<td>Victoria A. Lipnic</td>
<td></td>
</tr>
</tbody>
</table>

Ximenez’s exclusion of “radical” Mexican American leaders (including notables like Cesar Chavez and Corky Gonzales) from the conferences sparked further opposition. In fact, a split emerged within the Mexican American community over Ximenez’s attempts to mobilize their leadership. While some took part in his conference and supported his efforts, others organized La Raza Unida (The United Race) to protest the snubbing of key Latino leaders and the lack of progress in the integration of Mexican Americans (Garcia Bedolla, 2009). Despite his efforts to organize Mexican American leadership, conference logistic and political games led to a lack of faith from those he sought to protect.

In the end, not only has the EEOC been able to adapt to the different leadership styles and priorities of its Chairs, but it has also learned to cope with changes in generation age within its bipartisan Commission. The lesson to be learned is that to emerge as an institution, an organization must be able to adapt to changes in its leadership. Whether a chair is passive or aggressive, a conformist or an innovator, or appointed by a conservative or liberal president, the EEOC has been able to survive changes in its leadership. In addition, even though the scope of EEO policy and the reach of the EEOC have undergone an expansion since the inception of the Commission, the core emphasis has remained focused on ensuring employment equality.

C. **Institutional Functions**

The final measure of adaptability involves institutional functions. If an organization can withstand changes to its principle tasks and if it is able to survive changes in its mission and purpose, this is yet another sign of its ability to adapt over
time. When one examines the EEOC, it is clear that while it was created to oversee the implementation of Title VII, the scope and reach of the Commission began to grow and expand and then shift and contract in the 1980s, only to expand again. In fact, Congress has played a significant role in broadening EEO policy and the powers granted to the EEOC.

**Title VII of the 1964 Civil Rights Act** (also known as Equal Employment Opportunity) was significant for several reasons. While Section 703 of Title VII prohibited employment discrimination based on race, color, religion, sex, and national origin; Section 705 provided oversight to the newly created EEOC; and, Section 706 left the legal interpretation of prohibited practices to the Commission. Recognizing the importance of this regulatory power, the EEOC took the lead in constructing Title VII employment discrimination safeguards for each protected class. As demonstrated by **Table 6.3**, with Race/Color discrimination, the EEOC interpreted Title VII to safeguard against discriminatory recruitment, hiring, and promotion practices, hostile work environments, pay inequality, segregated employee classifications, and retaliation. Similar safeguards where outlined for religion, sex, and national origin Title VII protected classes.
TABLE 6.3  EEOC TITLE VII EMPLOYMENT DISCRIMINATION SAFEGUARDS FOR PROTECTED CLASSES

<table>
<thead>
<tr>
<th>Protected Class</th>
<th>EEOC Title VII Employment Discrimination Safeguards</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Race/Color</strong></td>
<td>Prohibits discriminatory practices in the recruitment, hiring, and advancement of minorities; harassment in the workforce or hostile work environments; inequality in compensation and other employment terms, conditions, and privileges; segregation in employee classifications; and, retaliation against those who file discrimination charges (EEOC, 2009g).</td>
</tr>
<tr>
<td><strong>Religion</strong></td>
<td>Prohibits employers from denying an individual employment based on their religion; forcing employees to participate in religious activities as conditions of employment; refusing reasonable accommodations so that employees can take part in religious practices and beliefs; denying employees the right to express their religious beliefs; allowing the religious harassment of employees; and, retaliating against individuals who file religious discrimination charges (EEOC, 2009h).</td>
</tr>
<tr>
<td><strong>Sex-Based Discrimination</strong></td>
<td>Prohibits employers from discriminating against an individual because of his/her gender when it comes to hiring practices, terminations, promotions, compensation, job training, and other terms, conditions, and privileges of employment. Employers are also prohibited from condoning sexual harassment in the workforce; be it men against women, women against men, or same sex harassment (EEOC, 2009i).</td>
</tr>
<tr>
<td><strong>National Origin</strong></td>
<td>Prohibits employers from basing employment decision (recruitment, hiring, firing, and layoffs) on an individual’s national origin; permitting offensive conduct and hostile work environments targeting an employee’s ethnic background; allowing discrimination against employees because of their accent or English fluency; and, implementing English Only rules for discriminatory purposes (EEOC, 2009d).</td>
</tr>
</tbody>
</table>


As demonstrated in Table 6.4, Title VII also provided the EEOC with an opportunity to articulate agency-formulated theories of employment discrimination. As explained by the EEOC (1975), “Section 703(a), (b), (c), and (d) of Title VII provide the foundation for the four major theories of discrimination under the Act” (p. 1); these theories included conventional discrimination (targeting employee simply because of their race/color, religion, sex, and national origin), discrimination based on Title VII status (targeting employees specifically because of their Title VII status or creating
neutral-based policies which adversely target certain individuals), impact discrimination (policies or practices that disproportionately target protected classes), and perpetuation of past discrimination (policies or practices that continue to fuel discriminatory practices).

With these guidelines, the EEOC gave itself tools to make administrative decisions regarding many different types of employment discrimination. The fact that these legal interpretations and theories “have been given great deference by the Federal courts” underscores the impact of these efforts (EEOC, p. 1)

<table>
<thead>
<tr>
<th>Theory</th>
<th>Conceptualization</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Conventional Discrimination / Intentional Discrimination</strong></td>
<td>Refers to individuals receiving adverse treatment because of their race, color, religion, sex, or national origin. Example: denying an individual employment based solely on their Title VII status.</td>
</tr>
<tr>
<td><strong>Discrimination Based on Title VII Status</strong></td>
<td>Refers to employers making employment decisions based on a person’s Title VII status, treating employees adversely as a result of their Title VII standing, or maintaining policies that are intentionally hostile against employees protected under Title VII. Example: denying employment to individuals who participate in civil rights protests. Refers to employers creating policies which appear neutral, but are really intended to target certain individuals. Example: prohibiting employees from wearing political buttons, but only persecuting African Americans who wear NAACP insignias.</td>
</tr>
<tr>
<td><strong>Impact Discrimination</strong></td>
<td>Refers to employers creating a policy or practice which impacts protected classes disproportionately. Example: creating policies which single out females employees.</td>
</tr>
<tr>
<td><strong>Perpetual Discrimination</strong></td>
<td>Refers to employers creating policies and practices which continue to fuel past discrimination. Example: practicing departmental seniority; in other words, causing employees to lose their seniority if they transfer from one department to another in order to prevent them from advancing in the workforce.</td>
</tr>
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• **Expanded Functions**

The EEOC’s control over EEO policy grew significantly as a result of new congressional legislation – the **1972 Equal Employment Opportunity Act**. This legislation was significant for several reasons. First, Section 706 (f)(1) increased the power of the Commission by granting it authority to “bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge” (EEOC, 1972, p. 63). Although the newly acquired litigation authority did not extend to governmental actors, the ability to bring civil action in federal court was something the EEOC had been fighting for since its inception.

Second, charging parties were given a longer period of time to file their employment discrimination charges. Prior to this legislation, victims of employment discrimination either had 90 days to file their complaints with the EEOC or 60 to 120 days (varied by state) to file their complaints with EEOC-sanctioned state and local Fair Employment Practice Agencies (FEPAs). Through the 1972 EEO Act, victims were granted 180 days to file their claims with the EEOC or 300 days to file their claims with state and local FEPAs. Charging parties also retained their right to file a suit in federal court if they were unsatisfied with the EEOC’s ruling, if their case was not handled within 180 days, and if their case was dismissed (EEOC, 1972, pp. 3-6).

Third, the 1972 Equal Employment Opportunity Act increased the reach of Title VII mandates by expanding the number of individuals covered under EEO policy to include employees working at educational institutions (elementary, secondary, and post-secondary) and throughout various levels of government (federal, state, and local).
Fourth, in addition to this jurisdictional growth, the number of employers covered under Title VII continued to grow. In fact, prior to the 1972 Act, EEO policy only applied to employers, unions, and apprenticeship programs with 25 employees or more; however, to further expand the reach of EEO policy, the minimum employee requirement dipped from 25 to 15. As a result of these various expansions, the number of individuals covered under Title VII mandates increased drastically. “With the new coverage of Title VII, virtually the entire Nation’s labor force has now been placed under the protection of Title VII. This means that almost every business administrator in the country now has responsibility to insure that his or her company’s personnel practices do not violate the principles of Title VII” (EEOC, 1972, p. 5).

- **New Protected Classes**

  EEOC functions expanded further through Section 501 and Section 505 of the Rehabilitation Act of 1973. Here, Congress expanded for the first time the coverage of EEO policy to qualified individuals with disabilities within the federal sector. This inclusion of disabled workers was improved with the 1978 Amendments to the Rehabilitation Act. These amendments provided disabled federal employees the ability to seek remedies identical to those under Title VII and the right to reasonable accommodations.

  Expanded coverage continued through the 1978 Pregnancy Discrimination Act, which extended Title VII’s gender-based discrimination coverage to discrimination based on pregnancy, childbirth, or related medical conditions. As outlined by the act, public and private sectors employees were prohibited from refusing to hire a pregnant woman because of her pregnancy or pregnancy-related health conditions. It protected against co-
worker or client prejudices. It also prohibited refusing to grant pregnancy and maternity leave and health insurance for pregnancy-related medical conditions or fringe benefits to pregnant women (EEOC, 2009e). In addition to extending the gender-based classification, this legislation was particularly significant because it reversed the Supreme Court’s ruling in *General Electric Co. V. Gilbert*, 429 U.S. 125 (1976). In this case, the Supreme Court had ruled that pregnancy discrimination in health insurance plans did not constitute Title VII sex discrimination.

- **Federal Reorganization & Functional Additions**

  In addition to expanding jurisdiction through legislation, the EEOC broadened its functions through bureaucratic reorganization. The first of these occurred through the **Civil Service Reform Act of 1978**. This legislation abolished the U.S. Civil Service Commission and transferred its primary functions to three agencies – the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. Thus, the Commission assumed responsibility over the enforcement of anti-discrimination laws applicable to the civilian federal workforce.

  The bureaucratic reorganization continued in 1977 with President Jimmy Carter’s Civil Rights Reorganization Task Force. The Task Force discovered that 17 federal agencies and departments were responsible for overseeing 40 different non-discrimination statutes and Executive Orders (EEOC, 1978, p. 3). To eliminate duplication of efforts and jurisdictional battles, President Carter signed the **Reorganization Plan No. 1 of 1978**. Through this reorganization, only three federal agencies were left with significant EEO responsibilities – the Department of Justice, the
Department of Labor’s Federal Contract Compliance Program, and the Equal Employment Opportunity Commission. As a direct result of this restructuring, the EEOC gained responsibility over the coordination of all federal EEO programs.

- **Equal Pay, the Elderly & the Disabled: New EEOC Functions**

  Further, as a result of the Reorganization Plan No. 1 of 1978, the implementation of the 1963 Equal Pay Act\(^\text{24}\) (EPA) and the 1978 Age Discrimination in Employment Act (ADEA) were transferred to the EEOC (EEOC, 2000i). This incorporation was significant because, in addition to expanding EEO policy to include pay inequality and age discrimination, it expanded the reach of the EEOC beyond the implementation of Title VII.

  Adapting to the implementation of the **1963 Equal Pay Act** proved to be a natural transition for the EEOC because, from the perspective of an institutional function, this legislation had principles similar to those found within Title VII’s EEO policy. The objective of the EPA was to mandate the equal pay for men and women performing substantially equal work and performing under similar working conditions within the same establishment. Not only did EPA target gender-based compensation inequality, but it also prohibited compensation discrimination based on an individual’s disability (ADA), age (ADEA), or race, color, religion, sex, or national origin (Title VII). As further specified under the EPA, the only time when pay differentials are acceptable is when they are based on seniority, merit, or quantity and quality of production (EEOC, 2009c).

  Thus, pay inequality was now extended to all the EEO policies overseen by the Commission.

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\(^{24}\) The EPA was previously under the jurisdiction of the Department of Labor.
The Reorganization Plan No. 1 of 1978 also expanded the EEOC’s jurisdiction to address employment discrimination against the elderly. Although attempts to include age discrimination in Title VII’s protection classes were unsuccessful in 1964, age discrimination was eventually viewed as a form of employment discrimination with the passage of the 1967 Age Discrimination in Employment Act. The goal of ADEA was to protect individuals between the ages of 40 and 65 from employment discrimination. Employers were expressly prohibited from making employment decisions (hiring, firing, pay, promotions, layoffs, compensation, benefits, job assignments, and training) based on age. Employers were also prohibited from creating apprentice programs that discriminated against individuals based on age and from posting job notices and advertisements that included age preferences. Although the ADEA did not prohibit employers from asking for an applicant’s age or date of birth, these requests were to be monitored to ensure they were made for lawful purposes (EEOC, 2009a). Age discrimination provisions were further expanded in the 1984 Deficit Reduction Act, which amended ADEA to ensure that employee spouses between the ages of 65 and 69 received the same treatment under group health plans as employees with spouses younger than 65 years of age.

The next change to ADEA came as a result of the 1986 Age Discrimination in Employment Act. Under the 1967 ADEA, age discrimination coverage applied to those between 40 to 65 years of age; the 1986 ADEA extended coverage to those 40 years and beyond. Two specific exceptions were outlined in the 1986 law. The first exemption allowed universities to retire professors over the age of 70 if they had unlimited tenure; however, this was later amended through the 1998 Higher Education Amendments
which prohibited mandatory retirement practices but allowed universities to offer age-based retirement incentives for tenured faculty. The second exemption allowed state and local governments to use age as a basis for the hiring and retiring of firefighters and law enforcement officers. This provision was made permanent in the 1996 Age Discrimination in Employment Amendments.

Further ADEA changes occurred as a result of the 1988 Age Discrimination Claims Assistance Amendments (ADCAA) and the 1990 Age Discrimination Claims Assistance Amendments (ADCAA II). Through ADCAA, Congress reinstated the right of ADEA charging parties to file private lawsuits eighteen months beyond the two to three year statute of limitation; ADCAA II gave the EEOC permission to complete the administrative processing of backlogged ADEA charges, while preserving the right of the charging party to bring their own lawsuit at a later date. Lastly, ADEA was amended with the 1990 Older Workers Benefit Protection Act (OWBPA). Through OWBPA, employers were prohibited from denying benefits to older workers. This legislation was significant in that it reversed the Supreme Court’s ruling in Public Employees Retirement System of Ohio v. Betts, 492 U.S. 158 (1989) in which the Court had ruled that ADEA did not forbid age discrimination in employment benefits.

In addition to adapting to changes in its core institutional functions that emerged as a result of all the aforementioned legislations, the EEOC continued to acquire further responsibilities. In order to expand the rights of the disabled beyond those granted to federal sector employees under the Section 501 and 505 of the Rehabilitation Act of 1973, Congress passed the 1990 American with Disabilities Act (ADA). As noted by the EEOC, ADA was the “world’s first comprehensive civil rights law for people with
disabilities… the Emancipation Proclamation for the disability community” (EEOC, 2000k). In specific, Title I and Title V of the ADA prohibited private employers, state and local governments, employment agencies, and labor unions from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancements, compensation, job training, and other terms, conditions, and privileges of employment.

Not only did ADA outline what constituted employment discrimination, it also defined a disabled person as someone who has, is recorded as having, or is regarded as having a physical or mental impairment which limits one or more major life activities. In addition to articulating the meaning of discrimination and defining a disabled individual, ADA mandated that employers provide reasonable accommodations to disabled individuals. In specific, it required that employers make facilities accessible to persons with disabilities and that they acquire or modify equipment or devices. It also called for the restructuring of jobs, and the modification of work schedules, exams, and training material to help disabled employees. The American with Disabilities Act Amendments of 2008 further clarified and broadened the definition of disability, in addition to expanding the eligibility for protection (EEOC, 2009b).

- **Congressional Clarifications & Enforcement Powers**

  While EEOC jurisdiction expanded to a broader group of people and a larger number of employment sectors, the Commission’s enforcement powers were overlooked for almost two decades. This was especially the case regarding monetary damages in cases of employment discrimination. In fact, up until the late 1980s, the U.S. Supreme Court had passed several rulings making it difficult for individuals to prevail in
employment discrimination lawsuits and even more difficult to recover fees and costs if their lawsuits were successful.

In the **1991 Civil Rights Act (CRA)**, Congress overrode many Supreme Court rulings by granting monetary damages (compensatory and punitive) in cases of intentional discrimination, allowing parties to request trial by jury, clarifying provisions regarding disparate impact action, and eliminating the two and three year statute of limitations for filing private ADEA lawsuits. In addition, the 1991 CRA amended procedural and substantive Title VII, ADEA, and ADA provisions, in addition to extending Title VII to include Congressional and high-level political appointees.

Although the goal of the 1991 Civil Rights Act was to strengthen the enforcement of EEO policy by allowing employees to demand monetary damages in cases of blatant discrimination, it also proved beneficial in that it further extended the litigation powers of the EEOC.

After decades of congressional legislations that reshaped the institutional functions of the EEOC, the 2000s have proven to be quite languid. In fact, with the exception of the 2008 American with Disability Amendments, the only other noteworthy legislation to extend employment discrimination laws was through the **2008 Genetic Information Nondiscrimination Act (GINA)**. The act prohibited insurers and employers from discriminating based on genetic information; protected genetic information includes information about the results of an individual or their family member’s genetic results or information about an individual’s family medical history (EEOC, 2009f). In the legislation, EEOC was charged with monitoring and enforcing the anti-discrimination efforts. As noted by President George W. Bush, GINA “protects our
citizens from having genetic information misused, and this bill does so without undermining the basic premise of insurance of the insurance industry” (White House, Office of the Press Secretary, 2008). This legislation also served to extend Executive Order 13145, which was issued in 2000 by President William J. Clinton, to protect federal employees from discrimination based on genetic information.

D. Conclusion

Although the EEOC emerged in 1965 to oversee the implementation of Title VII of the 1964 Civil Rights Act, this task soon expanded. The 1970s proved to be a time of significant change for the EEOC. Not only was the Commission able to strengthen its enforcement powers as a result of newly acquired litigation authority, but it also underwent expansions in its jurisdiction, oversight, and responsibilities. Besides undergoing organizational growth and restructuring, EEO policy also underwent expansions as its coverage was extended to address inequality in compensation, in addition to employment discrimination against disabled federal employees, pregnant women, and the elderly. While the peak of institutional function change occurred during the 1970s, the fine-tuning of the EEOC and EEO policy continued well into the 1980s and 1990s. In fact, much of the employment-focused congressional legislation that emerged during these two latter decades had roots traced back to legislation passed in the 1970s.

During the 1980s and 1990s, age discrimination legislation was expanded the most, and with it, the role of the EEOC as spouses of elderly employees were now a new protected group and age caps were removed from various job sectors. In addition to adjustments in the coverage of age discrimination, EEO policy, and thus EEOC reach,
was extended to cover all disabled employees in the workforce – not just federal disabled employees as was the case under the Section 501 and 505 of the Rehabilitation Act of 1973. To further strengthen the enforcement of EEO policy, Congress also provided the EEOC with a final enforcement measure through monetary restitution in cases of blatant discrimination.

As this study delves further into the institutionalization of the EEOC, it will become evident that – with each legislative expansion to its oversight and jurisdiction – the Commission took an immediate hold over its enforcement responsibilities. Although it did not receive litigation authority until 1972, it took advantage of its regulatory oversight by issuing Commission decisions, rulings, regulations, policy statements, and policy guidance, in addition to instituting technical assistance, education, and training programs to address the ever-growing scope of EEO policy. While there is no doubt that litigation authority served to strengthened its arsenal of enforcement mechanisms, the EEOC has consistently demonstrated strong enforcement leadership. In addition to employing enforcement mechanisms to ensure compliance, the Commission worked to refine its change handling procedures to foster new solutions and instituted alternative dispute resolution programs to foster greater customer service. Despite increases to its workload and overall responsibilities, the EEOC has striven to fulfill its enforcement duties.

The adaptability of the EEOC is evident in three key aspects of its development. First, it set a series of procedures for employers and employees to follow by the nature of the forms it initially established. Although forms might be thought of as the essence of bureaucratic practices, these forms were instead substantive. These forms were
extremely meaningful because they underscored the Commission’s institutional power, they allowed for institutional expansions, and they extended the EEOC’s jurisdiction. These forms enabled the EEOC to effectively shape its environment.

Second, the EEOC’s ability to adapt to its environment was further advanced by the role of its chairs. As earlier chairs focused their attention on enforcement and the conceptualization of employment discrimination, they set the precedent for strong EEOC leadership. In addition to providing leadership in the area of sexual discrimination and disability rights, EEOC chairs worked to enhance the overall inner-workings of the Commission. Though perhaps this cannot be said of all chairs, the majority did a stellar job in putting their stamp on the operation of the office and on the substance of its work. It is also worth recognizing that leadership changes led to new agency priorities. However, regardless of these ongoing shifts, the agency and its employees manifested an undeniable ability to adapt to new directions and new procedures.

Finally, the adaptability of the EEOC is most evident in the fact that Congress repeatedly added new authority and functions to the EEOC. To demonstrate, color/race, religion, gender, and national origin EEO protected classes (1964 CRA: Title VII) soon grew to include the age (1967 ADEA), disability (1990 ADA), pregnancy (1978 PDA), and genetic information (2008 GINA). As EEO protected classes underwent expansions, this also led to an inevitable expansion in the breadth of EEO policy and scope of the Commission. The EEOC’s functions continued to grow as a result of federal reorganizations and congressional clarifications designed to provide the EEOC with greater enforcement powers. Without a doubt, Congress played a key role in enhancing the EEOC’s authority and functions.
At each turn, the EEOC established its leadership through the successful adaption of new forms; it successfully adjusted to leadership changes and shifts in the agency’s priorities; and, it embraced congressional expansions to EEO policy and to its overall jurisdiction. In the end, it is these three aspects of the unit together – forms, leadership, and jurisdiction – that have shaped the adaptability of the EEOC.
CHAPTER VII: INSTITUTIONALIZATION THROUGH COMPLEXITY

While adaptability as a measure of institutionalization focuses attention on the ability of an organization to withstand environmental challenges and age, complexity draws attention to the internal structure of an organization; specifically, its hierarchical and functional growth, differences across organizational subunits, and divisions of labor with specified goals and performance expectations. For institutionalization to be evident, organizations need to exhibit complex inner structures that – as argued by Huntington – illustrate the stability of an organization and its ability to handle its workload and overcome obstacles.

To determine whether complexity is evident within the Equal Employment Opportunity Commission, three distinct areas are examined. EEOC organizational charts are presented in order to visually track hierarchical and functional changes since the Commission’s inception. Jurisdictional maps are then employed to not only gauge functional growth, but to also assess the decentralization of administrative tasks through the strategic use of EEOC field offices. Increases in the number of partnerships between the EEOC and state and local Fair Employment Practice Agencies (FEPAs), Tribal Employment Rights Office (TERO’s), and federal agencies are also examined to gauge how federalism is employed to extend complexity to external actors.

A. EEOC Organizational Charts

Organizational charts establish a snapshot of the EEOC’S growing complexity and assess hierarchical and functional changes. EEOC organizational charts prove to be
beneficial because they graphically illustrate hierarchical authority, roles, and responsibilities, functions, and relationships within the Commission.

- **Hierarchical Complexity & Functional Growth**

  While no initial EEOC organization chart was available, the Commission’s first Annual Report illustrated the existence of a hierarchical structure and divisions of labor. The report suggests that the Commission employed at least nine different units in 1966 to carry out its organizational mission. At the top of the hierarchy were the EEOC Commissioners (composed of the Chairman, Vice Chairman, and three Commissioners). These individuals were charged with advancing the work of the Commission, approving Commission policies, authorizing lawsuits, participating in public meetings, and spearheading initiatives to investigate discrimination in the workforce. The rest of the organizational structure was composed of the:

  - **Executive Director:** charged with serving as Commission’s Chief Operating Officer
  - **General Counsel:** responsible for reviewing and analyzing cases where conciliation was unsuccessful, investigating instances where EEO policy implementation was being resisted, and recommending cases for referral to the Attorney General
  - **Office of Compliance:** responsible for receiving discrimination charges, conducting investigations, and overseeing conciliations
  - **Office of Technical Assistance:** charged with educating, promoting, and offering technical assistance to achieve full Title VII implementation
  - **Office of Liaisons:** responsible for serving as the clearing house between the EEOC and 30 states, the District of Columbia and Puerto Rico, and two cities with Fair Employment Practice laws
  - **Office of Research and Reports:** charged with conducting research, targeting area for action, and establishing program priorities; responsible for overseeing the work of the *Technical Studies Division* (responsible for collecting all EEO-related material) and *Reports Division* (responsible for producing Commission reports)
Although this organizational structure underwent numerous alterations, there was a hierarchy and clear division of labor at the Commission from the very beginning. At the top of the EEOC hierarchy, the EEOC commissioners and chair guide the work of the Commission and represent its public face. While the Executive Director was charged with overseeing the Commission’s day-to-day activities and the General Counsel with examining cases for referrals to the Attorney General, a series of offices and subdivisions were also created to oversee agency operations ranging from the handling of charges (Office of Compliance) to the collection of data (Technical Studies Division). To guide the efforts of this infant bureaucracy in enforcing Title VII of the 1964 Civil Rights Act, the EEOC began its operation with a hierarchical structure and clear division of labor.

While the EEOC emerged with the sole task of overseeing the implementation of Title VII, by 1979, it had undergone significant functional expansions. Through the 1972 Equal Employment Opportunity Act, EEO policy was extended from public sector employers with 25 or more employees to state and local government employees and those working in institutions of higher learning. In addition to expanding the coverage of EEO policy to include more individuals in the workforce, this Act gave the EEOC a powerful enforcement tool – litigation authority. As the EEOC worked to address increases in the reach of EEO policy and its enforcement mechanisms, protected classes continued to expand to include federal employees with disabilities (1973 Section 501 and 505 of the Rehabilitation Act of 1973 and 1978 Rehabilitation Act) and pregnant women (1978 Pregnancy Discrimination Act).

In 1978, President Jimmy Carter reinforced legislative efforts to expand EEO policy and strengthen the powers of the EEOC by significantly increasing its jurisdiction.
In addition to abolishing the US Civil Service Commission and distributing its functions between the Office of Personnel Management, the Merit Systems Protection Board, and the EEOC, President Carter issued Reorganization Plan No 1 of 1978 to grant the EEOC sole jurisdiction over all federal EEO programs and oversight over the implementation of the 1963 Equal Pay Act and the 1967 Age Discrimination in Employment Act (previously under the jurisdiction of the Department of Labor).

As the scope of EEO policy and the jurisdiction and functions of the EEOC underwent expansion, so did the number of employment discrimination charges received by the Commission. In fact, between 1966 and 1979, the number of new EEO charges received by the EEOC increased from 8,854 to 69,900. As demands on the Commission escalated, its staff size and budget increased; in fact, between 1966 and 1979, EEOC personnel grew from 314 to 3,627 and its budget expanded from $3.2 million to $106.7 million.

By the late 1970s, the EEOC was a transformed bureaucracy; its leadership in the enforcement of Title VII had resulted in significant expansions in its breadth and scope. As illustrated in Figure 7.1, by 1979, the EEOC’s hierarchical structure had also undergone a significant transformation. In order to streamline its operations and reflect growing organizational demands, the Commission eliminated the Office of Compliance, Office of Technical Assistance, Office of Research and Reports (including Technical Studies Division and Reports Division), and Office of Liaisons.
To replace units no longer deemed necessary, the EEOC added new departments with specified functions and an intricate layering to its hierarchical structure. Among the new departments created where the:

- **Office of Internal Audit**: charged with conducting independent examinations related to the accounting, resource management, and associated actives of the Commission’s operation and performance
- **Office of Equal Employment Opportunity**: responsible for overseeing internal Title VII compliant processing, affirmative action, and the Hispanic Employment Program and the Federal Women’s Program
- **Office of Congressional Affairs**: charged with serving as the liaison between the Commissions and Congress
- **Office of Policy Implementation**: charged with providing Commissioners with a formal structure for initiating and developing policy through regulations, guidelines, precedent decision, interpretations of the law, and public hearings
- **Office of Special Projects and Programs**: charged with undertaking program development in new or developing areas
Office of Administration: responsible for personnel, labor relations, housekeeping, supplies and services, and employee development
Office of Systemic Programs: charged with providing technical assistance and quality control to district offices in the preparation and processing of Commission-initiated discrimination charges
Office of Program Planning and Evaluation: charged with implementing the management accountability system designed to coordinate the allocation of funds and personnel, maintain comprehensive information and data systems, and undertake research on the EEOC’s enforcement programs
Office of Public Affairs: responsible for serving as the primary communication link between the Commission and the public
Office of Field Services: charged with overseeing charge processing and field operations, in addition to providing guidance to FEPAs, Model District Offices and Regional Offices

In order to address overwhelming expansions in EEO policy, the Commission created two distinct offices within its hierarchical structure; while one served as its congressional liaison (Office of Congressional Affairs) the other focus exclusively on policy implementation (Office of Policy Implementation). Offices were also created to facilitate communication between the EEOC and the public (Office of Public Affairs) and to oversee the handling of employment discrimination charges by EEOC field offices (Office of Field Services). These changes did not end in 1979.

Upon his appointment as chair, Clarence Thomas established the Organizational Studies Group to evaluate and strengthen the Commission’s organizational structure. Based on findings underscoring the fragmentation resulting from numerous headquarter offices, the Commission unanimously endorsed the group’s recommended headquarter restructuring. On August 17, 1982, the EEOC “announced a headquarter reorganization plan designed to enhance the policymaking role of the commissioners and place major operational responsibilities under a small team of office heads reporting directly to the chairman” (EEOC, 1982, p. xv); this plan took effect in 1983. This reform consolidated related functions under single offices and established clear functional responsibilities.
As a result of Thomas’ reorganization, the hierarchical structure of the EEOC underwent a significant expansion. In fact, as illustrated by Figure 7.2, not only did the number of hierarchical units increase from 22 in 1979 to 27 in 1982, but the 6-tiered hierarchal structure also underwent an expansion to 9-tiers.

Figure 7.2 EEOC Organizational Chart: 1982 Post-Reorganization

What was most significant about this reorganization was a new consolidation of functions and the elimination, consolidated, and addition of new units. Not only were budgetary functions combined with personnel matters, but enforcement efforts were also strengthened. In fact, in addition to retaining the Deputy General Counsel, the General

Counsel was provided with two specialized units to facilitate EEO litigation efforts – the Trail Services and Appellate Services.

Nevertheless, division of labor was imperfect as there was some overlap of jurisdictions within the organization. To illustrate, while the General Counsel was charged with overseeing EEO litigation efforts, in-house legal services and guidance were provided by the Office of Legal Counsel. In addition to this overlap, compliance matters were also fragmented. While the Office of Program Research was charged with investigating possible employment biases and offering policy recommendations, the Office of Program Operations was responsible for overseeing compliance matters including the coordination of public and private sector compliance activities and the activities of EEOC field offices. There was no direct communication between these units.

Although intended to foster the implementation of EEO policy and promote greater accountability among EEOC personnel, Thomas’ headquarter reorganization was viewed as a “complicated series of abolishing, creatings, and retellings” (Washington Post, 1982, p. A17). In addition to fashioning a cumbersome hierarchical structure, many charged that the plan was designed to give political appointees greater say in policy matters and cases to pursue in court (Youngstown Vindicator, 1982, p. 6). Although Chair Thomas handpicked EEOC career bureaucrats to head many of the new offices created as a result of his headquarter restructuring, critics argued that he filled the rank and file of the EEOC with those who backed his administrative agenda.

Not only was Chair Thomas criticized for his headquarter reorganization, EEOC General Counsel Michael J. Connolly actions also served to reinforce the notion that the
Commission was cleaning house. Following Thomas’ headquarter reorganization, Connolly alerted attorneys that the policy priorities and litigation efforts of the EEOC needed to narrow the scope of actionable sexual harassment charges, discourage age discrimination suits, deemphasize class action lawsuits, and end equal pay investigations (Washington Post, 1982, p. A21). After an onslaught of criticism, Connolly clarified that his comments reflected personal views and not a shift in the EEOC’s priorities. However, two months after delivering these remarks, Connolly provided 2-days’ notice to nine senior attorneys about their cross-country transfers from the headquarter office. Thus, shifting structures and changes in actionable matters were indeed serving to clean house (Babcock, 1982, p. A23).

The effects of the 1982 reorganization did not last long. The year after the headquarter reorganization, the EEOC unanimously approved a reorganization plan for its field offices to streamline administrative and compliance functions and to improve staff training, agency coverage to underserved areas, and technical assistance to employers (EEOC, 1983, p. 5). In addition to repositioning its field offices, in 1984, Chair Thomas addressed criticism regarding the Commission’s lack of EEO enforcement efforts by instituting three policy initiatives to establish litigation priorities, provide fuller investigations, and institute enforcement initiatives. In addition, in1985, the Office of the General Counsel underwent a significant transformation to realign “systematic case processing functions” and eradicate “costly and time-consuming duplication of functions” (EEOC, 1985, p. 3). In addition to eliminating the Deputy General Counsel, systemic program functions associated with litigation were transferred from the Office of Program Operations to the Office of the General Counsel; the Systemic Litigations
Services unit was created under the jurisdiction of the General Counsel to focus on the litigation of systemic employment discrimination practices. The Office of Program Operations retained systemic investigation functions. In fact, the Systemic Programs unit was transformed into the Systemic Investigation and Individual Compliance Program to not only identify systemic practices, but to also investigate large-scale systemic cases of employment discrimination pattern and practices. According to the EEOC, this realignment placed systemic investigations and litigations in “the two offices best equipped to conduct these specialized functions” (EEOC, 1985, p. 3).

The 1985 Gramm-Rudman-Hollings Balanced Budget Act also placed a great deal of strain on the EEOC. In the curtailing of spending by the federal government, the EEOC began to feel the pressure of its limited resources and overwhelming workloads. To illustrate, in 1985, the president requested a budget of $164.0 million for the EEOC, but it only received $163.6; in 1986, $158.8 million was requested, but only $157.9 was received; and, in 1987, $167.7 was requested, but only $165.0 was received. While the difference in the funding requested and that received may seem trivial, full funding was essential to the handling of EEO charges. After decades of working underfunded and overworked, ongoing budgetary reductions continued to strain EEOC resources. In fact, the lack of adequate funding paralleled decreases in the number of full-time EEOC employees from 3,097 in 1985, to 3,017 in 1986, to 2,941 in 1987 (EEOC, 1986-1988, p. 4). “Despite the limited staff and budgetary resources to meet private sector demands, increasing federal appeals and an increased litigation workload, the Commission made major strides in reshaping the agency’s management and organizational structure,
implementing policies and refocusing personnel on the agency’s primary function of law enforcement” (EEOC, 1986-1988, p. 4).

As illustrated by Figure 7.3, the EEOC’s shrinking budget and personnel led to a streamlining in its hierarchical structure. By the time Thomas ended his term at the EEOC in 1989, the EEOC’s hierarchy had undergone a significant transformation.

Figure 7.3 EEOC Organizational Chart: 1989

Between 1986 and 1988, the Office of Audit had been eliminated and its functions had been transferred to the newly created Inspector General. In addition conducting and supervising audit, the Inspector General was charged with investigating EEOC programs and operation, recommending policies that fostered the administration of its programs and operations, preventing and detecting fraud and abuse in its programs and operations, and serving as a liaison between the chair and Congress when it came to the overall status of the Commission. The Office of Program Research and Office of Communication were also eliminated and their functions were consolidated into the newly created Program Support Services Staff. The Program Support Service Staff was charged with conducting special studies, developing and delivering EEO-related training, and providing assistance to field offices. In addition to numerous consolidations to its hierarchical units, the EEOC establish greater oversight in the administration of its field offices. To adjust to the changes stemming from its 1983 field reorganization, EEOC field offices were also consolidated from three regions to two zones.

While the 1980s proved to be a period of significant hierarchical and functional growth for the EEOC, its functions continued to evolve throughout the 1990s. On July 26, 1990, President George Bush signed the American with Disabilities Act (ADA). In addition to representing “the world’s first comprehensive civil rights law for people with disabilities”, Title I provisions expanded the functions of the EEOC by prohibiting employment discrimination against qualified individuals with disabilities (EEOC, 1990, p. 1).

The EEOC also underwent substantive and procedural changes as a result of the 1991 Civil Rights Act (CRA). “Enacted in part to overturn a number of Supreme Court
decisions that limited the rights of persons protected by these laws, the Act also provided additional protections for these persons, new financial penalties for acts of intentional discrimination, and mandated certain expanded activities by the Commission” (EEOC, 1991-1991, p. 14). In addition to enhancing the rights of EEO protected classes and granting monetary restitution in cases of blatant discrimination, the 1991 CRA mandated that the EEOC “provide leadership in making the federal government a model equal opportunity employer” (EEOC, 1991-1992, p. 7). In response to this request, the Commission created the Office of Federal Operations to provide policy guidelines for federal agencies' affirmative employment programs, guidance and oversight in federal discrimination complaint hearings and appeals, and federal sector EEO training.

Although the EEOC underwent significant functional expansion as a result of 1990 ADA and 1991 CRA, it did not receive a budget or staff to accommodate its growing demands. By 1995, the EEOC was facing a projected $5 million deficit, prolonged labor-management disputes, drastic increases in the number of charges awaiting resolution, and delays in the implementation of the Alternative Dispute Resolution (ADR) program (a program designed to resolve charges quicker through mediation-based settlements). Complicating matters was the fact that, “the agency was struggling unsuccessfully under the weight of its outdated enforcement policies and procedures” (EEOC, 1995, p. 15).

Upon his appointment as EEOC chair on October 3, 1994, Gilbert F. Casellas instituted the Reinventing Business Operations initiative to eliminate key enforcement, administrative, and litigation policies implemented under Thomas’ term. In eliminating full investigations, full remedies, and litigation consideration for all cause cases where
conciliation failed, Gilbert sought to “strengthen and streamline the Commission’s private sector operation-charge processing policies and procedures, the Commission’s relationship with Fair Employment Practice Agencies (FEPAs), and the use of alternative dispute resolution (ADR)” (EEOC, 1995, p. 16).

The EEOC continued to undergo operational reinforcements under the administration of Ida L. Castro. The year after her appointed, Castro launched the National Mediation Program to facilitate early voluntary resolution of complaints and the 1999 Comprehensive Enforcement Program (CEP) to “strategically coordinate and integrate resources to effect increased staff collaborations on all agency functions in the private and federal sectors, from outreach to resolution of cases, to deliver the best services possible to the public” (EEOC, 2000, p. 1). In addition to strengthening the Commission’s enforcement mechanisms, Castro instituted the 2000 Strategic Plan to begin to channel the Commission’s energies towards three long-term strategic goals – comprehensive EEO enforcement, employment discrimination prevention, and greater public service and support.

To streamline the innovative yet overlapping initiatives put forth by her predecessors, Chair Cari M. Dominguez instituted the 2001 5-Point Plan to focus the Commission’s energy on proactive prevention, proficient resolutions, strategic enforcement and litigation, mediation-based ADR, and establishing the EEOC as model workplace. While the EEOC’s hierarchical units underwent functional modifications as a result of shifts in the Commission’s priorities, the 2001 President’s Management Agenda led to substantive changes in its hierarchy. As explained by the EEOC (2001), President George W. Bush’s Management Agenda:
Required agencies to develop and implement a 5-year Restructuring Plan. The Restructuring Plan will provide the core strategy to undertake a critical review of EEOC’s organizational structure. ...the plan will help [the Commission] become more customer-oriented, with as little distance as possible between customers and decision-makers. The Plan will explore ways to reduce decision-making layers; increase the span of control at different organizational levels; ensure that the largest numbers of EEOC employees are in direct service-delivery positions; and, retain and redeploy employees as an integral part of restructuring efforts (p. 3).

As a direct result of the President’s Management Agenda mandated organizational restructuring, by 2002 there were only a few remnants of past organization charts.

Despite a significant streamlining, complexity within the Commission’s hierarchy continued to evolve as the EEOC integrated agency initiatives and priorities into the construction of its updated hierarchical structure. As illustrated by Figure 7.4, to improve processes and operations, the EEOC created the Office of Field Program. In addition to overseeing the enforcement of federal statutes prohibiting employment discrimination in the public and private sectors, the Office of Field Programs was charged with overseeing the work of EEOC’s Field Offices (charged with investigating discrimination charges) and the Field Offices Legal Divisions (charged with conducting litigation). In working towards proactive prevention, during its first year of operation, the Office of Field Operations “facilitated a record 4,326 outreach, education and technical activities, reaching 360,836 people nationwide… These activities served EEOC’s broad stakeholders and fostered ongoing relationships with individuals and organizations who shared the common goal of ensuring equal employment opportunity in the workforce” (EEOC, 2002, p. 10). The Office of Chief Financial Officer and Administrative Services (OCFOAS) was also established to oversee the administration of federal funds appropriated for Commission operations, commercial activities (contracts and
procurements), and management support and informational distribution programs. During its first year of operation, the OCFOAS worked to improve the Commission’s financial performance, develop competitive sourcing, and enhance budget and performance integrations.

**Figure 7.4 EEOC Organizational Chart: 2002 to 2009**


To further integrate essential elements of its 5-Point Plan, the EEOC also created the Office of Human Resources to provide “leadership in the recruitment, development, and retention of a high quality and diverse workforce supportive of the Commission’s mission”, the Office of Research, Information, and Planning to research, collect, and
analyze enforcement data, and the Office of Information Technology to focus on “planning, developing, and implementing Commission information technology programs, policies, and procedures” (EEOC, 2002, p. 23). While the EEOC’s hierarchical structure underwent a significant restructuring, what is most significant is that – with the exception of Chair Jacqueline A. Berrien’s 2010 Office of Field Programs oversight transfer from the Chair to the Executive Secretariat – this hierarchical structure has undergone no substantive changes since 2002.

This overview of the evolution of the EEOC’s organizational chart illustrates that – from the minute the Commission opened its doors for operation in 1966 – a hierarchy had been put into place to help the EEOC carry out its mission. Nonetheless, though the Commission started with a hierarchy that included layering, distinct units, and clear division of labor, this structure underwent significant transformations as the EEOC adjusted to meet its ever-changing needs and expanding functions, transitions in leadership and subsequent shifts in agency priorities, and inadequate resources coupled with growing demands. While the EEOC’s current organizational structure represents a streamlined hierarchy with clear distributions in labor, there were times when this hierarchy grew to include excessive layering and overwhelming departments that served to produce redundancy and overlapping oversight. Through trial and error and ongoing adjustments, the EEOC’s hierarchy evolved to better address organizational demands. In addition to working to establish a complex structure that integrated agency priorities, the EEOC incorporated organizational units designed to monitor external interactions. The fine-tuning of these units not only illustrates the EEOC’s desire to create an efficient and effective organizational structure with which to foster the implementation of EEO policy,
but it also serves to underscore the fluid nature of hierarchical structures as they respond to functional growth, inadequate resources, and mounting demands.

B. **EEOC Jurisdictional Maps**

While complexity is evident in the evolution of the EEOC’s organizational charts, complexity is not solely confined to an organization’s hierarchical structure. An examination of changes in the EEOC jurisdiction and use of field offices further underscores the intricacy needed to coordinate the implementation of EEO policy. Jurisdictional maps are especially beneficial because they underscore the decentralization of EEOC field offices and the entrenchments of the Commission beyond its Washington DC headquarter office.

- **Jurisdictional Complexity**

  When the EEOC opened its doors for operation in 1965, it was ill prepared to address the flood of discrimination charges that came its way. To better distribute its workload and meet growing demands, the EEOC began opening strategically located field office throughout the country. As demonstrated by Figure 7.5, EEOC field offices underwent a significant increase from 4 in 1966 to 53 in 2009. While these figures underscore the growing presence and entrenchment of the EEOC throughout the country, what is most compelling is the gradual development of a complex field organization structure with clear functional distributions.
When the EEOC opened its doors for operation in 1965, it had a single local – its central headquarters in Washington DC. However, as seen in Figure 7.6, due to the high number of discrimination charges submitted during its first year of operation, in 1966 it opened four regional offices in Atlanta, Georgia; Austin, Texas; Chicago, Illinois; and, Cleveland, Ohio. As explained by the EEOC (1966), “each regional office was planned as a microcosm to bring the Commission’s functions closer to those it served” (p. 30).

Moving into the field with investigations, conciliations, and technical assistance proved to be a successful strategy. By 1967, 7 additional regional offices had been added in Albuquerque, New Mexico; Los Angeles, California; New Orleans, Louisiana; New York, New York; San Francisco, California; Kansas City, Kansas; and, Washington DC.
The number of EEOC field offices continued to grow to 12 in 1968 (with the addition of a regional office in Birmingham, Alabama) and 13 in 1969 (with the addition of a regional office in Memphis, Tennessee).

Figure 7.6  EEOC Field Offices & States Covered: 1966 to 1969


The EEOC’s regional model was tested in 1970 when President Richard Nixon issued a presidential directive to establish uniform regional boundaries for federal programs in order to improve the management of federal agencies and services. To conform to this directive, the EEOC divided states and territories into ten regions; each region housed a regional office and smaller district offices. While regional offices were
charged with overseeing administrative matters, coordinating legal activities, and serving as liaison with other federal agencies, district offices were responsible for overseeing compliance activities.

As illustrated by Figure 7.7, although the EEOC proposed the creation of ten regional offices, only seven were operational in 1971 (Atlanta, Chicago, Dallas, Kansas City, San Francisco, New York, and Philadelphia).

Figure 7.7 EEOC Regional & District Offices: 1971


The remaining three EEOC Regional Offices (to be located in Boston, Denver, and Seattle) were scheduled to be opened in 1972, but were never established as inefficiencies emerged. Although initially optimistic about the regional changes, the Commission
found it increasingly difficult to balance the work of district offices with that of regional headquarters. While regional offices were often out of touch with the field offices they were charged with overseeing, district offices – charged with the investigation of discrimination cases – were often located far from litigation centers. In turn, attorneys were often forced to work out of litigation centers without access to the actual cases they were handling.

As demonstrated by Figure 7.8, to correct the dispersal of administrative offices, litigation centers, and investigative offices, the EEOC implemented a new direct headquarter-to-field structure in 1979. To replace the dismantled EEOC Regional Offices (which oversaw the work of district offices) and EEOC Litigation Centers (which worked with the General Counsel), the EEOC reorganized itself into 22 district offices and 27 area offices (14 established in new locations). In selecting the office that would receive new functions and those to be eliminated, the Commission employed a specific selection criteria aimed at establishing offices in diverse sections of the country and in “remote areas, where non-compliance with the law sometimes persisted and the public historically had not had ready access to EEOC” (EEOC, 1989, p. 3). The Commission also created the Office of Field Services at the central headquarters to oversee all field operations. As explained by the EEOC (1978), “the reorganization of headquarter offices of the Commission was necessary to compliment and service the extensive reforms introduced in the field offices – especially new case processing and management systems that are serviced from headquarters – and to eliminate overlapping functions at headquarters” (p. 8). Through this streamlined headquarter-to-field organization, a
structure was put into place to eliminate the confusion and extra costs associated with the previous system.

**Figure 7.8  EEOC Field & District Offices: 1979**

![Map of EEOC Field & District Offices: 1979](image)


By the early 2000s, the EEOC struggled with the right approach to regional service for its clients. In proposing her Field Repositioning Plan in 2005, Chair Dominguez noted that “the EEOC's last significant realignment of the field structure [took place] in 1979, more than a quarter century ago. Our country, our government and the American workplace are immeasurably different now. The current challenge for the EEOC is to transform itself to meet these new realities” (Dominguez, 2005, p. 1). To address functional expansions and growing demands, in addition to refining jurisdictional boundaries and the oversight of field offices, the EEOC underwent a substantive field
repositioning in 2006. In fact, “new geographical boundaries [were] designed to make it easier for charging parties and other stakeholders to contact the nearest EEOC office and … to apportion workload commensurate with enforcement resources (investigators, mediators, trial attorneys and administrative judges)” (Dominguez, 2005, p.2).

As shown in Figure 7.9, by 2006, EEOC field offices had been restructured into a complex structure with 15 District, 9 Field, 15 Areas, and 14 Local EEOC Offices.

Figure 7.9 EEOC Districts: 2006 to 2010

![Map of EEOC Districts]  

Although all EEOC District, Field, Area, and Local Offices accepted employment discrimination charges, they also had their own unique functions. District Offices were responsible for overseeing the work of state and local Fair Employment Practice Agency’s (FEPAs), Tribal Employment Rights Organization’s (TEROs), and Field, Area,
and Local EEOC Offices within their jurisdiction. In addition to this oversight, they were charged with providing a full range of EEOC services including private sector intake, charge processing, mediation, enforcement, litigation, outreach, and federal hearings. Meanwhile, Field, Area, and Local EEOC Offices served as the Commission’s frontline agencies. Although all provided primary intake, charge processing, and enforcement services, some also had staff equipped to perform mediations, outreach, hearings, and litigations. District offices and the Washington field office operated under the supervision of the Program Director, Office of Field Programs and the General Counsel, while field, area and local offices operated under the supervision of the district director.

As explained by the EEOC (2005a), this repositioning was necessary in order to expand the Commission’s presence in society, reduce costs, flatten the overall management structure, and geographically align offices in a more logical manner. Through this restructuring, the EEOC attempted to ensure that each office had the resources needed to manage its workload, while granting them the ability to redeploy staff to front-line positions and fill vacant positions (p. 4).

While this restructuring was meant to streamline operations and better distribute the Commission’s workload, not all agreed with the EEOC field reorganization. Critics argued that the restructuring would lead to a backlog in the handling of discrimination charges (Reed, 2005), that it would take too long to see the financial benefits of this streamlining (Gruber, 2005), and that decreases in district offices would lead to a thinning management (Westcott, 2006). Nonetheless, despite these warnings, it is essential to recognize that – thus far – the Field Reorganization Plan has been a success. In fact, since its 2006 debut, the EEOC’s field organization has remained unchanged. In
addition to taking advantage of this opportunity to strengthen its complex organizational structure, the 2005 Field Reorganization Plan provided the EEOC with yet another occasion to solidify its presence throughout the country through the strategic entrenchment of its field offices.

An overview of the EEOC’s jurisdictional maps shows not only complexity but also administrative stability in the midst of continuous adjustments to the number, location, and roles of its field offices. The EEOC manifested an ability to continuously distribute its workload in a manner that allowed it to better enforce EEO mandates. Nonetheless, while complexity may be evident in the structural and functional growth of the EEOC, these changes did not occur overnight. Instead, the decentralization of administrative tasks stemmed from presidential mandate, inadequate resources, growing demands, shifting priorities, and overall functional growth.

Though complexity is clearly evident in the expanded presence of EEOC field offices throughout the country, the evolution of these offices underscores the point that these structures cannot remain static. Complexity develops when bureaucracies are able to adapt their organizational structures and the roles and responsibilities of these units to meet ongoing demands. Through this decentralization, greater attention can be placed on enforcement issues. In addition, while ongoing adjustments and shifting responsibilities may lead to administrative problems for these units – as demonstrated by the EEOC – these issues can be preemptively addressed with continuous guidance and support. It is ultimately in the bureaucracies best interest to not only utilize all the resources at its disposal, but to also ensure that proper support is provided to its staff.
C. **External Partnerships**

In addition to relying on the work of its internal organizational subunits and field offices, the EEOC added to its complex structure by establishing partnerships with external agencies performing similar tasks. In sharing its workload and enforcement efforts with state and local Fair Employment Practice Agencies (FEPAs), Tribal Employment Rights Office (TERO’s), and federal agencies, the EEOC continued to expand its physical and structural presence throughout the country. In this way, complexity has the potential to extend beyond an agency’s internal structures and jurisdictional boundaries.

When examining state and local FEPAs, it is essential to recognize that they existed long before the passage of the 1964 Civil Rights Act and the subsequent creation of the EEOC in 1965. FEPAs emerged in the 1940s and – by the time the EEOC opened its doors for operation – over half the states already had some form of fair employment practice laws prohibiting discrimination in the workplace based on race, color, or creed within their jurisdictions. However, these state efforts were often lackluster and met with criticism.

Many manufacturers and business owners also lobbied against fair employment practices laws on the grounds that they were un-American. As explained by Edgerton G. Hart, Chicago industrialist and Secretary of the Illinois Manufactures Associations, “the American system is based upon freedom to employ whomever we please” (Janson, 1961, p. 53). To dictate who should be hired was viewed as impeding the freedom of business owners. Other criticism surfaced about the actual success of FEPAs. As argued by Reverend S.S. Morris, President of the National Association for the Advancement of
Colored People (NAACP) Chicago branch, despite laws mandating fair employment practices, job discrimination continued to permeate the city’s workforce. Joseph J. Levin, President of the Bureau of Jewish Employment Problems, explained that after decades of working with religious minorities, discrimination continued to permeate the workforce despite state and local fair employment practices laws. According to Levin, it was common practice for employers to articulate discriminatory preferences in job advertisements including “Nordic a must. This is a gentile firm. We want Christian girls. No Poles or Greeks. We don’t hire any of the forbidden race of the African brotherhood” (Janson, p.53). In the end, even though state and local FEPAs were attempting to bring equality to the workforce, their success was limited due to the rampant acceptance of discriminatory practices by American society. Federal intervention was needed to bring an end to employment discrimination (Janson, p. 53).

- **Complexity Through EEOC & FEPA Partnerships**

  Within Title VII of the 1964 Civil Rights Act, specific attention was paid to the relationship between state and local FEPAs and the EEOC. In order to avoid duplication of effort and help in the distribution of its workload, FEPAs underwent a significant transformation in their intake processes for employment discrimination charges.

  As stated in Title VII’s Section 706(c), all allegations of employment discrimination were first to be filed and reviewed by the EEOC’s Office of Compliance in Washington DC. During this initial review process, the Commission was charged with determining whether it had jurisdiction over the company, union, or employer being charged; whether the allegation concerned race, religion, color, national origin or sex discrimination; and, whether the alleged incident occurred within the time limitations set
forth by Title VII. Upon completing this review, either additional information was required by the charging party, charges were deferred to appropriate state and local FEPAs, or cases were closed due to a lack of jurisdiction (EEOC, 1967, p. 15).

Section 706(c) provisions were particularly significant because they provided the roots for complexity to develop beyond the EEOC’s organizational boundaries. By granting the Commission oversight in the handling of all employment discrimination claims – including those received by state and local FEPAs – these provisions paved the way for the development of EEOC / FEPA partnerships. As illustrated in Figure 7.10, paralleling the growth in EEOC field offices, EEOC and FEPA partnerships also underwent an increase from 31 in 1965 to 94 in 2010. While this drastic rise points to complexity within the EEOC, what is most significant is how the Commission was able to handle its growing size and functions by extending its organizational boundaries to include external actors.

In addition to establishing these EEOC-FEPA partnerships, Title VII provided state and local FEPAs with a clearer mandate to foster equality in the workforce. As reiterated by the EEOC (1970), “Congress made it clear that where states failed to carry out their responsibility, a strong and immediate exercise of Federal power would follow” (EEOC, p. 43). Thus, FEPAs had been provided with an unconventional incentive to reevaluate past administrative practices that may have fallen short.
After three years of working together, the relationship between state and local FEPAs and the EEOC evolved beyond the mere distribution of discrimination charges. As explained by the EEOC (1968), the Commission was given the “authority and the duty to work closely with and through these agencies to accomplish the common goal of eliminating employment discrimination” (EEOC, 1968, p. 20). To make the most of the authority at its disposal, while simultaneously addressing financial issues that were beginning to hamper the progress made by state and local FEPAs, the EEOC began a federal grant pilot program. Through this program, the EEOC sought to use federal funds...
to help FEPAs “change discriminatory employment systems, rather than simply place minorities within the system on an ad hoc basis” (EEOC, 1968, p. 20). The EEOC issued federal funding to select state and local FEPAs that agreed to implement more systematic approaches to ending discrimination in the workforce. FEPAs receiving this funding were categorized as Deferral Agencies. FEPA Deferral Agencies benefited from these grants because they were provided with the funding needed to oversee the diversification of the workforce. Financial incentives proved to be essential to transform state and local FEPAs into extensions of the Commission.

As demonstrated by Figure 7.11, while federal grants increased nearly 150% between 1970 and 2007, there were fluctuations in the funding allocated to FEPAs.

**Figure 7.11 FEPA Federal Grant Distributions: 1970 to 2007**

![Graph showing FEPA Federal Grant Distributions: 1970 to 2007](source)

In fact, as FEPAs achieved grant objectives regarding the synchronization of their processes and functions to that of the Commission, the grant dollars to FEPAs underwent a tapering. The most significant outcome of the introduction of federal grants involved institutional changes to the way FEPAs conducted their business. “For many agencies, this project marked the first time they had affirmatively utilized their power to identify and eliminate discrimination in employment” (EEOC, 1969, p. 24). By providing FEPAs with the funding needed to carry out their responsibilities, the EEOC also benefitted because it no longer needed to handle employment discrimination charges deferred by FEPAs. By reducing the duplication of efforts on the part of the EEOC and FEPA Deferral Agencies, the Commission was also able to provide faster services, reduce the number of repeat investigations due to expired statutory limits, stretch their resources to combat employment discrimination, and focus on broader national strategies and programs aimed at attacking discrimination in the workforce (EEOC, pp. 20-21). The EEOC worked diligently to bring FEPAs under its control.

- **FEPA Changes**

The early 1970s proved to be a period of challenge and change that continued to solidify the relationship between the EEOC and state and local FEPAs. Despite the EEOC’s granting efforts, much of the work of state and local FEPAs continued to flow back to the Commission. In fact, 85% of complaints deferred to FEPAs were returned to the Commission (EEOC, 1970, p. 43). In essence, the EEOC’s efforts to streamline its processes had yet to materialize. To address problems with FEPA charge handing processes and to identify FEPA failures in the identification and elimination of employment discrimination practices, the Commission began an experiment with 13
Deferral Agencies. Based on the results of this experiment, the EEOC continued to improve coordination efforts with FEPAs by encouraging the recruitment of senior-level professionals to overhaul compliance operations, providing training on the compliance process, and working to ensure that FEPA operations matched those of the Commission (EEOC, 1970, p. 43).

In addition to establishing better coordination efforts, the Commission developed a comprehensive nationwide affirmative action enforcement partnership with state and local FEPAs. The Commission believed that FEPAs that merely processed complaints would ultimately fail in effectively dealing with systematic discrimination in the workplace. Rather than passively sit back and wait for the public to file employment discrimination charges, the EEOC proactively forged affirmative action partnerships to “concentrate on developing technical expertise in state and local agencies so that [FEPAs] could better identify and attack entrenched discriminatory employment patterns” (EEOC, 1970, p. 44). Although Deferral Agencies were already required to target systematic discrimination practices, the affirmative partnership extended the mandate to all state and local FEPAs. Complexity continued to develop as the Commission’s oversight of employment discrimination charges handled by state and local FEPA grew. Complexity also took shape in Commission efforts to solidify FEPAs as extension of the EEOC. Specifically, in 1971, the EEOC began requiring all state and local FEPAs to match federal equal employment opportunity standards. To ensure compliance, the EEOC specifically required FEPAs to sign formal Memorandum of Understanding with the Commission confirming their commitment to synchronize their
case processing operations with federal standards (EEOC, 1971, p. 38). In turn, the EEOC provided greater weight to FEPA decisions.

FEPA functions continued to expand through the 1972 Equal Employment Opportunity Amendments which declared in Section 706(c) that the EEOC would no longer receive employment discrimination complaints if the incident arose “in the jurisdiction of a state or local agency which provides enforceable sanctions against the alleged unlawful activity” (EEOC, 1972, p. 25). While the EEOC was willing to accept employment discrimination charges if FEPAs were unable to address them during a 60-day period, the emphasis was on state enforcement of federal equal employment opportunity mandates and equivalent state and local fair employment standards.

To help FEPAs adjust to increases in responsibilities stemming from the 1972 EEO Amendments, the EEOC drew its attention to greater coordinative efforts. By attempting to ensure that FEPA procedures, rules, and regulations conformed to federal standards, the EEOC helped these state and local agencies improve their administrative processes, expedite the processing of employment complaints, and enhance the performance of their personnel (EEOC, 1972, p. 24). In addition to refining and strengthening administrative law enforcement, the Commission helped FEPAs bring their employment discrimination cases to court. In fact, FEPAs were able to bring many more litigations to state courts because of the financial assistance provided by the EEOC. To further aid FEPA litigation efforts, the EEOC also began providing support in the form of amicus curiae briefs. As a result of this ongoing partnership between the EEOC and FEPAs, “many agencies have, for the first time, engaged in planned litigation in order to
define their investigative and remedial powers and the procedural and substantive limits of their laws” (EEOC, 1972, p. 24).

With a large backlog of discrimination cases, the EEOC’s Office of State and Community Affairs instituted a “Zero Growth” program in 1974. To ensure a speedy resolution of individual charges filed, the time FEPAs had to investigate and resolve employment discrimination charges decreased from 26 to 13 months. While FEPAs were pressed to resolve discrimination charges at a quicker pace, the Commission provided them with resources and assistance to ease this transition. As explained by the EEOC (1974), these changes were necessary to eradicate artificial barriers in employment practices and built-in discriminatory employment practices. “The achievement of this goal will help in the hiring and upward mobility of person being discriminated against on the basis of race, color, religion, sex or national origin” (p. 23). In the end, although the number of charges received by FEPAs and the EEOC continued to escalate, resolution rates improved significantly.

Under the leadership of Chair Eleanor Holmes Norton, the EEOC’s structure and processes underwent their first extensive overhaul in 1977. While the main goal of this reorganization was to improve the Commission’s overall performance, this could not be achieved without also addressing problems with the EEOC’s deferral system. As explained by the EEOC (1977), “restructuring the state and local Fair Employment Practice (FEP) program at the same time as the EEOC was reforming its internal processes allowed for the creation of a single, nationwide, cost-efficient system for processing equal employment cases” (p. 10). By instituting a uniform system of joint filing where all Title VII complaints where now filed as federal and state complaints, in
addition to providing continuous guidance and mentorship, the Commission was able to establish work-sharing agreements with FEPAs that served to eliminate duplication of efforts. The use of federal dollars as an incentive to produce quick and high quality case processing served to further entice FEPAs to continue their partnership with the EEOC.

By the 1980s, FEPAs were one of the EEOC’s strongest allies. In fact, after years of administrative and procedural fine-tuning, the Commission was able to eliminate duplication of efforts and delays in the processing of individual charges which hindered the work of FEPAs. In addition, as a result of continuous training and guidance from the Commission, FEPAs had been successfully modeled into extensions and allies of the EEOC. While FEPA efforts and work paralleled that of the EEOC, the backlog of discrimination charges – although dwindling – continued to be a concern. Many of the backlogged cases were based on challenges to the rulings themselves. To give credence to FEPA rulings, the Commission “increased the level of comparability in administrative interpretation and relief secured by both the Federal government and state and local agencies” (EEOC, 1981, p. 5). The EEOC also approved and published regulations that provided certifications to Deferral FEPAs with a four-year history with the Commission and an acceptance rate of 95% or better. While the EEOC allowed respondents and charging parties to request reviews, greater deference was granted to rulings from Certified FEPAs.

As FEPAs continued their efforts to decrease backlogged charges, the EEOC underwent another organizational restructuring in 1983. As explained by the Commission, oversight in the work of FEPAs was designated to the newly created Office of Program Operations. Under the leadership of the Office of Program Operations,
revisions were made to work-sharing agreements between the EEOC and FEPAs aimed at fostering the efficient integration of EEOC employment discrimination processing systems. As a result of these coordinative efforts, EEOC field offices and state and local FEPAs were able to “set record gains in productivity, which increased by 12 percent over the previous year” (EEOC, 1983, p. 9). With the guidance of the Office of Program Operations, FEPAs continued these trends throughout the 1980s (EEOC, 1985, p. 4; EEOC, 1986-1988, p. 7). In addition to providing the Commission with a mechanism to establish greater FEPA oversight, work-share agreements also benefited FEPA by helping to boost their productivity.

With the creation of personal computers, word processing programs, statistical analysis packages, and the advent of the Internet, the 1990s proved to be a period of significant technological innovations. In order to take advantages of the potential benefits derived from these new tools, the EEOC began using technology to reconcile its’ headquarter charge database system with those of FEPAs and EEOC field offices. This, in turn, helped to increase uniformity in the recordkeeping systems of both state and local FEPAs and EEOC field offices. To increase efficiency in the intake process while decreasing costs for employers, the EEOC also began providing private sector employers with magnetic tapes and diskettes to report their employment data to the EEOC. This data was, in turn, provided to state and local FEPAs and EEOC field offices so that they could cross-reference charges filed (p. 4).

As FEPAs began embracing this modernization, the EEOC turned its attention to granting them greater autonomy. Based on recommendations of a FEPA Task Force in 1995, FEPAs were granted operational flexibility, additional enforcement powers, and
greater access to information tracking necessary for case management. By providing
them with greater autonomy, the EEOC strengthened its complex structures by reducing
duplication of efforts in the processing of discrimination charges, unnecessary reporting
and paperwork requirements, and the micromanagement of FEPAs and EEOC District
Offices. The EEOC also increased the collaborative efforts between FEPAs and EEOC
investigators and attorneys in order to accelerate the assessment and investigation of
cases, in addition to fostering better outreach, education, and technical assistance to the
public (EEOC, 1999-2001, p. 6).

By the 2000s, decades of coordinative efforts between FEPAs and the EEOC
yielded a solid partnership. As evidence of this, the EEOC established clear
accountability standards for FEPA in 2007 that expressly tied FEPA’s work to
Commission goals. Through the Program Assessment Rating Tool (PART), the EEOC
directed FEPAs to develop tools to appropriately measure their contributions to the
Commission’s strategic goals and mission (EEOC, 2007, p. 32). In order to identify
potential measures to achieve the eradication of discrimination in the workforce, the
EEOC also created the EEOC-FEPA Work Group. While the recommendations of this
Work Group have undergone review, approval is pending (EEOC, 2010, p. 23; Williams,

Figure 7.12 further clarifies the ways in which the EEOC has shared its workload
over time with state and local FEPAs. To illustrate, in 1966, the EEOC received a total
of 8,854 new employment discrimination charges, while FEPAs received a mere 977; by
2009, the EEOC reported a total of 93,277 new employment discrimination charges,
while FEPAs received a total of 58,035 charges. In establishing and developing
partnerships with state and local FEPAs, the EEOC not only transformed external agencies into microcosms of the Commission, but it also worked to distribute its workload.

**Figure 7.12  Total Charges Received, EEOC vs. FEPAs: 1966 to 2009**

![Total Charges Received, EEOC vs. FEPAs: 1966 to 2009](chart)


In addition to helping the EEOC handle the incoming waves of employment discrimination charges, state and local FEPAs also contributed to the resolution of said charges. As illustrated by **Figure 7.13**, though they too suffered from the backlog of discrimination charges, FEPAs played a major role in easing the work of the
Commission. To illustrate, in 1966, the EEOC was able to resolve a total of 5,084 employment discrimination charges, while FEPAs resolved 1,200; by 2009, the EEOC resolved 85,980 charges in comparison to the 48,417 resolved by FEPAs. While resolutions rates have fluctuated throughout the years, the assistance of FEPAs has been vital to the handling and resolution of discrimination charges. In light of its lack of adequate resources, without the contributions of FEPAs, it would be tremendously difficult for the EEOC to handle the workload on its own.

Figure 7.13  Total Charges Resolved, EEOC vs. FEPAs: 1966 to 2009

Building on this successful partnership, the EEOC extended the power of select FEPAs to oversee employment discrimination violations beyond those pertaining to state and local Fair Employment Practice laws. In fact, as demonstrated by Figure 7.14, the EEOC began establishing work-share agreements with select FEPAs in the late 1980s to address issues of employment discrimination stemming from harassment, sexual harassment, and pregnancy.

Figure 7.14  EEOC/FEPA Discrimination Charges Filed by Type: 1992 to 2009

Through the use of work share agreements, both agencies addressed 15,200 harassment charges, 10,532 sexual harassment charges, and 3,385 pregnancy discrimination charges in 1992; by 2009, joint efforts continued in the tackling of 30,641 harassment charges, 12,696 sexual harassment charges, and 6,196 pregnancy harassment charges.

In addition to working together during the intake process, the EEOC and FEPAs worked side-by-side to resolve these charges. As illustrated by Figure 7.15, in 1992, the EEOC and FEPAs resolved 11,837 harassment charges, 7,484 sexual harassment charges, and 3,045 pregnancy discrimination charges.

**Figure 7.15  EEOC/FEPA Discrimination Charges Resolved by Type: 1992 to 2009**

![Figure 7.15](image)

By 2009, this partnership continued to grow as both forces resolved 28,100 harassment charges, 11,948 sexual harassment charges, and 5,594 pregnancy harassment charges. Regardless of the task they are performing, the EEOC has effectively employed FEPAs to help ease the workload of its staff. Though it took the EEOC several years to recognize the full potential of FEPAs, they eventually grew to become one of the EEOC’s strongest allies in its fights against discrimination in the workplace. The use of FEPAs provides an interesting and important aspect of the EEOC’s complexity because it underscores efforts by the Commission to expand its functional role beyond its organization structure.

It is evident that the partnership between the EEOC and FEPAs has evolved beyond the mere sharing of employment discrimination charges; these units are now allies in the fight against discrimination in the workforce. By guiding the work of state and local FEPAs, providing them with ongoing assistance, and articulating new goals and performance expectations, the EEOC demonstrates signs of functional growth. The fact the Commission continues to share its responsibilities with FEPAs, while simultaneously requiring them to set specific goals to help achieve the overall mission of the EEOC, further underscores the administrative intricacy and dominance evident in the enforcement of EEO policy.

- **Complexity Through EEOC & TERO Partnerships**

  In addition to incorporating its external relations with state and local agencies, the EEOC’s organizational complexity also reflected its external relations with Tribal Employment Rights Organizations (TEROs); the equivalent of FEPAs for Native American tribes. As explained by the EEOC (1989), “protecting the employment rights of Native Americans working for private employers operating on or near an Indian
reservation is another area of EEOC’s Title VII enforcement responsibilities” (p. 9). Although it took longer to develop when compared to state and local FEPAs, the EEOC worked to forge stronger partnerships with TEROs during the late 1980s. In 1989, the EEOC granted TEROs the authority to process Title VII employment discrimination charges and provided financial support, technological assistance, personnel training, administrative guidance, and customer service innovations to do so. Through this outreach on the part of the Commission, EEOC/TERO partnerships increased from 25 in 1979, to 53 in 1989, to 64 in 2011. Like state and local FEPAs, the EEOC’s alliance with TEROs proved to be a successful one. As a case in point, with the assistance provided by the EEOCs, TEROs have been able to successfully obtained millions on behalf of Native American victims of employment discrimination (EEOC, 1989, p. 9). Not only did the EEOC help to empower TEROs, but it also added further layering to its own complexity.

In the end, the EEOC is a unique agency which must deal not only with the complexity of its own organization which spans offices throughout the country, but it must also coordinate efforts with state, local, and tribal agencies that it does not directly control. As the EEOC took the lead in expanding its organizational boundaries and the subsequent responsibilities that came with this growing oversight, it also nurtured the development of a complexity organizational structure.

- **Complexity Through Partnerships with Federal Agencies**

  In addition to establishing field offices throughout the country and partnerships with state and local governments and the Native American community, the EEOC extended its complexity even further by establishing partnerships with other federal agencies. As explained by the EEOC (1966), “equal employment opportunity doesn’t
exist in a vacuum. Other vital issues such as housing, education, public accommodations, voting rights – all interact upon the problems of fair employment” (p. 32). While the Commission’s leadership in reaching out to other federal bureaucracies is important to recognize, what is most significant is how these partnerships unfolded.

Initially, the EEOC handled its interactions with other federal agencies through informal agreements. These agreements were designed to facilitate the exchange of information and ideas with agencies including the Office of Economic Opportunity, the National Labor Relations Board, the Office of Federal Contract Compliance, the Labor Department’s Bureau of Apprenticeship Training, and the Department of Labor, Health, Education and Welfare.

To formalize these arrangements and establish oversight in the enforcement of EEO policy throughout federal agencies, the EEOC began requiring formal Memorandums of Understanding (MOU’s) between these bureaucracies and the Commission in 1970; MOU’s refer to formal agreements between the EEOC and other federal agencies and departments that may share overlapping jurisdiction. As illustrated by TABLE 7.1, the EEOC spent much of the 1970s working to strengthen its relationship with the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) through the use of MOUs. This undertaking proved to be important because – prior to President Carter’s 1978 Reorganization Plan No. 1 – the OFCCP and EEOC had overlapping functions. To eliminate duplication of efforts, the EEOC began to use MOUs with the OFCCP to establish oversight in the handling of discrimination charges and to facilitate the exchange of information. These MOUs expanded to include ones with the Federal Communications Commission in 1978, and the United States Postal
Service, Veterans Administration, Nuclear Regulatory Commission, Department of Transportation, and Department of Health, Education and Welfare in 1979. This is significant because, despite shared oversight, the EEOC began to add to its complexity by positioning itself as lead enforcer.

**TABLE 7.1  1970 TO 1979 EEOC MEMORANDUMS OF UNDERSTANDINGS**

<table>
<thead>
<tr>
<th>Year</th>
<th>EEOC MOU Partner(s)</th>
<th>MOU Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs</td>
<td>Addressed the processing of employment discrimination complaints in addition to the elimination of overlap and duplication in efforts.</td>
</tr>
<tr>
<td>1974</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Addressed the sharing of information and the processing of discrimination charges.</td>
</tr>
<tr>
<td>1978</td>
<td>Federal Communications Commission</td>
<td>Addressed the coordination of discrimination charges filed against radio and television broadcasters or cable system operators licensed by FCC.</td>
</tr>
<tr>
<td>1979</td>
<td>United States Postal Service</td>
<td>Addressed conflicts of interest and inefficiencies related to agencies investigating their own employment discrimination charges.</td>
</tr>
<tr>
<td></td>
<td>Veterans Administration</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Nuclear Regulatory Commission</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Department of Transportation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Department of Health, Education and Welfare</td>
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</tbody>
</table>


Not only did these MOUs enable the EEOC to establish its dominance over the implementation of EEO policy among executive agencies, but they also enhanced the Commission’s complexity by formally holding these bureaucracies accountable for their handling of internal EEO allegations. Through these MOUs, the Commission was effectively working to expand its functions into the federal sector.
The 1980s were spent refining many of these agreements. As illustrated by TABLE 7.2, during the early 1980s, the EEOC set investigation standards with the Department of Labor’s Office of Federal Contract Compliance Programs. It also refined its relationship with the Federal Communications Commission in 1986 to provide a clearer definition of licensed broadcasters and in 1989 to foster administrative innovations.

**TABLE 7.2 1980 TO 1989 EEOC MEMORANDUMS OF UNDERSTANDINGS**

<table>
<thead>
<tr>
<th>Year</th>
<th>EEOC MOU Partner(s)</th>
<th>MOU Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Eliminated duplicate investigations, complaint reviews and requests for data, while improving complaint process and reducing paperwork.</td>
</tr>
<tr>
<td>1981</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Outlined procedures for the coordination of enforcement action, promoted the sharing of data, and assured that both agencies apply similar investigative standards when investigating employment discrimination charges.</td>
</tr>
<tr>
<td>1986</td>
<td>Federal Communications Commission (Revisions)</td>
<td>Extended FCC licensed broadcasters to include cable system operators, in addition to fostering efficiency and the elimination of potential conflicts and duplications.</td>
</tr>
<tr>
<td>1989</td>
<td>Federal Communications Commission (Revisions)</td>
<td>Instituted revisions to the compliance manual and updated reporting forms designed to generate maximum information.</td>
</tr>
<tr>
<td>1989</td>
<td>Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices</td>
<td>Addressed the coordination and processing of charges alleging national origin or citizenship discrimination.</td>
</tr>
</tbody>
</table>


The EEOC ended the decade establishing a new MOU with the Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices.
addressing national origin or citizenship employment discrimination. Whether the Commission was using MOUs as enforcement mechanisms to strengthen preexisting partnerships or to forge new alliances with additional federal bureaucracies, these formal agreements continued to foster complexity beyond the EEOC’s organizational boundaries. The fact that federal bureaucracies continued to grant access to the EEOC in EEO matters serves to underscore the Commission’s growing deference throughout the federal sector.

As illustrated by TABLE 7.3, the 1990s also brought increases in the number of newly forged formal agreements with federal agencies. This decade represented a period of functional growth for the EEOC. In addition to undergoing an expansion in EEO protected classes through the passage of the 1990 American with Disabilities Act, the EEOC gained the ability to obtain monetary benefits in blatant employment discrimination violations through the 1991 Civil Rights Act. As its functions and demand continued to expand, it began implementing a new alternative dispute resolution program to increase resolution rates and provide employees and employers with an opportunity to resolve complaints without legal action. The 1990s was also a period of significant technological innovation with the advent of e-mail, the Internet, and the World Wide Web; innovations quickly integrated by the Commission to facilitate interagency communications and foster greater public relations. As the EEOC adjusted to functional expansions, new enforcement mechanisms, and technological innovations, it continued to strengthen its complexity by establishing MOUs with federal bureaucracies to ensure the integration agency priorities and innovations throughout the federal sector. In doing so, it effectively spread its EEO priorities throughout the federal sector.
### TABLE 7.3 1990 TO 1999 EEOC MEMORANDUMS OF UNDERSTANDINGS

<table>
<thead>
<tr>
<th>Year</th>
<th>EEOC MOU Partner(s)</th>
<th>MOU Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>National Labor Relations Board's General Counsel</td>
<td>Established enforcement procedures and addressed issues arising under the Americans with Disabilities Act and the National Labor Relations Act.</td>
</tr>
<tr>
<td>1996</td>
<td>Federal Mediation and Conciliation Service</td>
<td>Provided mediation services to supplement in-house and pro-bono programs.</td>
</tr>
<tr>
<td>1997</td>
<td>National Association of Attorney Generals</td>
<td>Improved communication and cooperation between state Attorney Generals and the EEOC.</td>
</tr>
<tr>
<td>1998</td>
<td>Department of Justice’s Office of Special Counsel for Immigration Related Unfair Employment Practices (Revisions)</td>
<td>Eliminated overlaps in discrimination charge filings, while promoting efficiency in administration and enforcement.</td>
</tr>
<tr>
<td>1999</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Updated charge-processing procedures in order to increase coordination, efficiency, and minimize duplication of efforts.</td>
</tr>
<tr>
<td>1999</td>
<td>Office of Personnel Management</td>
<td>Instituted computer-based training programs to facilitate the implementation of new federal sector regulations.</td>
</tr>
<tr>
<td>1999</td>
<td>National Finance Center’s Department of Agriculture: Office of the Chief Financial Center</td>
<td>Provided (for a single year) an EEOC Administrative Judge to work full-time processing requests for hearings.</td>
</tr>
<tr>
<td>1999</td>
<td>Department of Labor’s Employment Standards Administration</td>
<td>Provided cross training, referrals, and information sharing associated with compensation discrimination cases.</td>
</tr>
<tr>
<td>1999</td>
<td>Department of Labor’s Employment Standards Administration (Revisions)</td>
<td>Instituted revisions designed to maximize the effectiveness of the laws prohibiting unlawful compensation discrimination.</td>
</tr>
</tbody>
</table>


As seen in Table 7.4, the 2000s represented yet another period of MOU updates. While early revisions served to address the handling of EEO violations throughout the federal sector, modifications in the 2000s reflected agency priorities. In fact, MOU revisions were employed to promote the use of multilingual information, encourage
mediation, enhance communication structures and the sharing of information, promote the use of outreach and education programs, and to establish greater oversight in the handling of federal contract EEO alleged violation.

TABLE 7.4 2000 TO 2009 EEOC MEMORANDUMS OF UNDERSTANDINGS

<table>
<thead>
<tr>
<th>Year</th>
<th>EEOC MOU Partner(s)</th>
<th>MOU Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Department of Justice’s Office of Special Counsel for Immigration Related Unfair Employment Practices (Revisions)</td>
<td>Instituted multilingual information sheet for potential charging parties to foster the elimination of employment discrimination based on an immigrant status or national origin.</td>
</tr>
<tr>
<td>2000</td>
<td>Merit Systems Protection Board National Capital Planning Commission</td>
<td>Implemented Federal Sector Mediation Services pilot programs to test the use of mediation services at the informal stage of the complaint process.</td>
</tr>
<tr>
<td>2000</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Addressed the processing of data and sharing of information.</td>
</tr>
<tr>
<td>2000</td>
<td>Department of Commerce</td>
<td>Implemented communications infrastructure to provide EEOC employees with access to the Census Bureau's EEO system</td>
</tr>
<tr>
<td>2003</td>
<td>Department of Justice’s Office of Special Counsel for Immigration Related Unfair Employment Practices (Revisions)</td>
<td>Instituted referrals for select discrimination charges while providing support for coordinated outreach and education programs.</td>
</tr>
<tr>
<td>2006</td>
<td>Department of Labor’s Office of Federal Contract Compliance Programs (Revisions)</td>
<td>Required individual discrimination charges against government contractors to be submitted to the EEOC for investigation.</td>
</tr>
</tbody>
</table>


By nurturing a relationship with federal bureaucracies through the use of MOUs, the EEOC has successfully extend its complexity to yet another group of external actors.

Though refinements continue to take place to address shifting priorities within the EEOC,
MOUs have emerged as powerful enforcement mechanisms to ensure the proper implementation of EEO policy throughout the federal sector. MOUs – whether new or revised – have served to strengthen the Commission’s functions and reinforce its EEO enforcement dominance throughout the federal sector.

In addition to establishing partnership with agencies overseeing the enforcement of fair employment practice laws, the EEOC continued to fuel its functional growth by reaching out to federal agencies through the use of MOUs outlining specified goals and performance expectations. However, within a very short period of time, the Commission went from accepting voluntary agreements to requiring federal bureaucracies to solidify their commitments to EEO ideals through formal MOU agreements. Through these formal agreements with federal agencies, the EEOC established specific goals and performance expectations that served to not only solidify its authority and oversight over EEO policy, but to also extend its hierarchy beyond its organizational boundaries.

While MOUs rarely remain unrevised, these adjustments do not necessarily imply problems with the partnership between the EEOC and federal agencies. Instead, these ongoing revisions illustrate the ability of the EEOC to target weaknesses within its arrangement with federal agencies, while underscoring the ability of the Commission to evolve with administrative and environmental changes. In fact, as the EEOC worked to streamline its hierarchical structure to address functional growth, shifting priorities, and inadequate resources, it also used enforcement mechanisms – such as MOUs – to extend its oversight in the implementation of EEO policy beyond its jurisdictional boundaries. As federal bureaucracies continue to agree and adhere to the implementation and
enforcement conditions outlined by the EEOC, complexity thrives beyond the Commission’s organizational boundaries.

D. Conclusion

This chapter examined the complexity within the EEOC. For a bureaucracy to be deemed complex, it must demonstrate hierarchical and functional growth, differences within organizational subunits, and divisions of labor with specified goals and performance expectation. Although complexity tends to draw the attention to the development of a bureaucracy’s inner workings, it can also be extended and strengthened through the integration of external actors. As evidenced through multiple dimensions – EEOC organizational hierarchy, its field offices, and its partnerships with other state, local, tribal, and federal agencies – there is no doubt that complexity permeates the inner workings of the EEOC.

From the moment the EEOC began overseeing the implementation of EEO policy, it recognized that – on its own – it would be unable to fulfill the task at hand. While the unexpected flood of discrimination charges that presented themselves at the door of the EEOC took everyone by surprise, they also served to underscore the Commission’s lack of adequate resources to meet these demands. However, instead of shrinking from the challenges associated with its growing demands, the EEOC focused its energy on developing a complex structure capable of addressing its increasing workload and functions.

In fostering a complex structure, the EEOC spent decades transforming its organizational hierarchy to address functional expansions, shifting agency priorities, and inadequate resources. While departments were eliminated, added, or consolidated to
accommodate functional growth and changing demands, a clear chain of command and
distribution of labor continued to permeate these structures. The same can be said about
the EEOC’s use of field offices. Despite ongoing adjustments to the number, location,
and roles and responsibilities of these field offices, the EEOC continued to rely on their
assistance in the enforcement of EEO policy. Even though the EEOC’s jurisdictional
map has undergone a significant transformation, the Commission has continuously used
its field offices to not only distribute its workload, but to extend its presence beyond its
Washington DC headquarter office. By working to foster a hierarchical structure capable
of addressing its functional growth, and by creating a department within its hierarchy to
oversee the work of its field offices, the Commission strove to not only entrench itself
throughout society, but to also extend its functions and presence beyond its national
headquarter office.

Not only did the EEOC transform its inner workings to adapt to growing
organizational demands, it also extended its complexity by establishing partnerships with
state and local governments and Native American agencies overseeing the
implementation of similar EEO policies, and to federal bureaucracies sharing overlapping
jurisdictions. In addition to creating departments within its hierarchical structure to
oversee the work of these external actors, the EEOC was able to effectively distribute its
workload and gain external resources and allies to facilitate enforcement efforts. These
external actors proved to be key in providing the Commission with additional resources
to distribute its growing workload, accommodate functional expansions, and address
inadequate resources. Though they all represent external actors, the Commission has
effectively used its outreach to transform them into extensions of the EEOC. In doing so,
it not only expanded its hierarchical structure beyond internal organizational units, but it also served to expand the functions of the Commission.

Based on the emergence and evolution of complexity within the EEOC, it is evident that – though attainable – complexity does not emerge overnight. As bureaucracies begin to experience functional expansions, increases in budgetary and personnel allocations, and increasing demands from expanding stakeholders, they must also transform their organizational structure to accommodate this growth. In fueling hierarchical growth, differences within organizational units, and divisions of labor with specified goals and performance expectation to facilitate the distribution of its workload, complexity begins to take shape.

In addition to working to establish a hierarchical structure designed to facilitate implementation and enforcement efforts, bureaucracies must also foster functional growth. In fostering complex structures, bureaucracies need to recognize that functional growth can expand beyond jurisdictional boundaries. Through the establishing of partnerships with external actors conducting similar undertakings, complexity can be expanded beyond a bureaucracy’s boundaries. In the end, the overall challenge with complexity is that it entails ongoing maintenance. As bureaucracies grow and evolve, their structures must also be adjusted to mirror these changes.
CHAPTER VIII. INSTITUTIONALIZATION THROUGH PROFESSIONALIZATION

Since its inception, the Equal Employment Opportunity Commission has demonstrated evidence of longevity and complexity. But as these dimensions of the institution develop, a central question arises for the bureaucracy: How does the Commission both withstand and adjust to organizational and administrative changes? In effect, as the life of the agency goes through various leadership changes and becomes increasingly large and complex, it needs to also develop strategies to ease the delivery of services. If, in effect, it cannot keep up with longevity and complexity demands, then questions arise about its level of institutionalization. In order to devise these strategies, EEOC personnel emerge as key players in the institutionalization process.

Peverill Squire’s not only contends that professionalization and institutionalization are distinct concepts linked by their recognition of the importance of a professional workforce, but he also holds that organizations with professional workforces are more likelihood to develop into institutions (Squire, 1992, p. 1028). In light of the importance of professionalization to institutionalization, it is helpful to understand the professionalization process because it explicitly recognizes that an institution will be able to conduct certain tasks more readily if it has a professional staff, procedures, and norms in place.

In examining the professionalization of bureaucratic workforces, professionalization is broken into two areas: workforce compositions and service demands. For a bureaucracy to be deemed professional, it must not only possess a highly experienced and educated tenured workforce adept at meeting ongoing demands, but this
workforce must also be properly compensated. Because professionalization entails the development of a workforce that views their service as a career instead of a job, bureaucracies need to provide incentives to encourage staff longevity. Whether incentives come in the form of personnel classifications and pay grades, or increases in the number of highly trained personnel to help manage the workload, bureaucracies need to work towards the development of a specialized workforce. In operationalizing professionalization within the EEOC, this chapter considers several measures related to the Commission’s personnel and workload.

An assessment of how professionalization developed across the EEOC’s history begins at the most basic level – with its full-time employee base. An optimal level of professionalization in an organization involves five dimensions directly related to the composition of the workforce: full-time employment, tenure on the job, types of positions, salary, and experience and educational background of the workforce. First, there must be a core group of full-time employees who keep the mission of the unit going at all times. If only part-time employees make up the preponderance of staff, it becomes more difficult to respond to environmental pressures and move the agency forward. Second, in order to further the objectives of the agency, these full-time employees must stay on the job for a long period of time. In other words, longevity of employment is a key to the organization’s institutionalization. The more staff come and go, the less likely the agency is going to obtain value and stability of its own. Third, there must be sufficient numbers of well-defined administrative jobs in the agency in order for people to have the agency’s growth and continuation as one of their priorities. Fourth, salary becomes a way in which this kind of workforce can be maintained; therefore, competitive
salaries must be employed to nurture a professionalized workforce. Fifth, as a separate indicator of the types of individuals involved in this professionalization, an agency with a professional workforce typically has high education or experience standards for its employees, especially those in top administrative jobs with high salaries. This chapter examines each of these dimensions in turn.

To solidify professionalization, bureaucracies need to also ensure that the workload is being overseen by a permanent workforce with a great deal of education and experience. In examining the workload of the EEOC’s workforce, attention is turned to a comparison between the number of charges received and resolved by full-time employees. In addition to shedding light on clientele services, this examination explores the true workload of the staff and how much can actually be accomplish. Professionalization emerges when the bulk of the workload is overseen by a highly educated, tenured, and well paid workforce.

A. Personnel as an Element of Professionalization

For bureaucracies to develop a professionalized workforce that is able to adapt to administrative changes, functional expansions, and increasing demands, they must first possess an ample supply of full-time personnel. As illustrated by Figure 8.1, the number of EEOC full-time employees has undergone a dramatic 1155% increase from 190 in 1965 to 2,385 in 2010. What is most significant is the EEOC’s 1972\textsuperscript{25} transformation from a medium-sized independent agency (100 to 999) to a large-sized independent agency (1000 or more). From its inception, the EEOC sought to nurture a professional workforce capable of managing overwhelming workloads. As the enforcement efforts of

\textsuperscript{25} The transformation of the EEOC from a medium-sized to large-sized independent agency occurred as a result of jurisdiction expansion stemming from the 1972 Equal Employment Opportunity Act.
this workforce began to garner congressional approval in the form of increasing budgetary allocations and personnel authorizations, the EEOC propelled its standing as an independent agency.

Figure 8.1 EEOC End of Fiscal Year Full-Time Workforce: 1965 to 2010

• **EEOC Full-Time & Part-Time Employees**

While expansions in the number of full-time EEOC personnel are significant, it is important to consider this in comparative context relative to part-time employees\(^{26}\). As demonstrated by Figure 8.2, between 1998 and 2010, the overwhelming majority of EEOC personnel represented permanent full-time employees.

**Figure 8.2 EEOC Full-Time and Part-Time Workforce: 1998 to 2010**

![EEOC Full-Time and Part-Time Workforce: 1998 to 2010](image)


The fact that 98% of the EEOC’s workforce represents full-time personnel provides a solid foundation for the professionalization of the workforce. In addition, even though

\(^{26}\) Though longitudinal data on the number of full-time and part-time employees was sporadic, the Office of Personnel Management provides over a decade’s worth of rich data on the EEOC’s workforce.
the number of full-time personnel underwent a minor decrease from 2,504 in 1998 to 2,502 in 2010, the number of part-time employees underwent a greater decrease from 67 (2.61% of the 1998 workforce) to 41 (1.61% of the 2010 workforce). In the end, while the number of full-time personnel has remained relatively steady, the part-time workforce has undergone a decrease. To nurture the emergence of professionalization, bureaucracies need to begin with a workforce composed of permanent full-time personnel.

- **EEOC Full-Time Personnel & Tenure**

  While a bureaucracy needs to be staffed by a permanent full-time workforce, it is essential that these individuals remain with the agency. Though budgetary allocations have led to fluctuations in the number of full-time employees, Figure 8.3 underscores the staff longevity evident at the EEOC. In categorizing the workforce by their tenure with the Commission, a professional staff becomes evident in the overwhelming number of employees who opt to remain with the Commission. In fact, while more than 70% of the workforce has been with the EEOC for over 10 years, there is also evidence of a growth in the time these individuals remain with the Commission. To demonstrate, between 1998 and 2001, the largest portion of the EEOC’s workforce had been with the Commission for 10 to 14 years; between 2002 and 2007, the largest portion of the EEOC’s workforce had been with the Commission for 15 to 19 years; and, between 2008 and 2010, the largest portion of the EEOC’s workforce had been with the Commission for 20 to 24 years. Throughout this 12-year period, the Commission has been able to retain an overwhelming number of seasoned employees.
Even more striking is the significant increase in the number of employees who have been with the EEOC for over 30 years. In fact, this portion of the workforce underwent a 341% increase from 44 in 1998 to 194 in 2010. As the EEOC’s workforce ages, it is evident that growing numbers of personnel have built their careers at the EEOC.

When categorizing the EEOC’s workforce by their tenure with the EEOC, there is no doubt that the EEOC personnel exhibit staff longevity. In addition to possessing a workforce with over a decade’s worth of experience, it possesses a workforce that desires to remain with the Commission. While there have been increases in the number of full-time personnel who have been with the EEOC for less than a year, the vast majority of the workforce is composed of highly tenured personnel.
• **EEOC Full-Time Personnel Salaries**

To further the professionalization of the workforce, bureaucracies need to provide competitive salaries that reflect years of service. A failure to compensate personnel for their service and loyalty may lead to disillusionment and defection. Proper compensation becomes crucial to the solidification of staff longevity. As illustrated by Figure 8.4, with the exception of the 2010 salary allocation to those with tenure between 5 and 9 years, salary distributions for the entire workforce have undergone steady increases. To illustrate, between 1998 and 2010, the salaries of employees with 10 to 14 years of service increased from $48,674 to $91,089, while those with tenure over 35 years also underwent an increase from $61,435 to $106,166.

**Figure 8.4 EEOC Full-Time Workforce by Tenure & Salary: 1998 to 2010**

![Graph showing salary distribution by tenure from 1998 to 2010](Diagram)

Despite steady increases in the salaries of EEOC personnel, fluctuations have emerged when comparing annual salary distributions based on tenure. While there are sporadic instances where employees with shorter tenure received larger salaries than those with longer tenure, these differences can be attributed to experience and educational attainment. In the end, regardless of fluctuations in salary distribution, it is clear that the longer the tenure of an EEOC employee, the greater their pay. To illustrate, in 1998, EEOC personnel with a tenure of 5 to 9 years received $49,438, while those with tenure over 35 years received $72,983; by 2010, employees with a tenure of 5 to 9 years received $61,435, while those with tenure over 35 years received $106,166. There is no doubt that the EEOC is using competitive salaries to further staff longevity.

B. **Education & Experience as Elements of Professionalization**

The final identifying elements of a professionalized workforce involve experience and educational attainment. While General Schedule (GS) and Senior Executive Service (SES) rankings are employed to shed light on the level of experience and education throughout the EEOC’s workforce, it is essential to recognize that employees with greater experience and advanced degrees typically command higher salaries and are employed in top-level administrative positions. Because this professional workforce sets the tone for the agency’s direction, it is therefore essential to also examine their tenure with the EEOC and to determine whether the Commission employs competitive salaries to facilitate their retention. To nurture a professionalized staff capable of adapting to administrative changes, functional growth, and increasing demands, bureaucracies must possess experienced and educated personnel.
**EEOC Full-Time Personnel by GS Rankings**

In measuring the experience and educational attainment of the EEOC’s workforce through its civil servant GS and SES rankings, there is ample evidence of professionalization. As illustrated by Figure 8.5, between 1998 and 2010, the highest concentration of EEOC personnel were classified as GS 12-13 and the second largest concentration were classified as GS 14-15. This demonstrates that, between this timeframe, 68% of the workforce held top-level positions.

**Figure 8.5 EEOC Full-Time Workforce by GS Ranking: 1998 to 2010**


In addition to staffing its central headquarters and field offices with high-level technical specialists and front-line and mid-level supervisors, the professionalization of the staff continued to increase when education was taken into consideration. In fact, when taking
into account the number of employees with master’s degrees, doctoral degrees, and advanced law degrees (GS 8 through GS 11) within this 12-year period, the total number of professional personnel increases to 80%. While the number of SES personnel underwent a 40% decrease from 43 in 1998 to 26 in 2010, there is no doubt that the EEOC possesses a highly educated and experienced workforce.

It is important to recognize that EEOC personnel with the highest-level of experience and education are also the ones with considerable longevity at the Commission. Based on an examination of GS rankings by tenure at the EEOC, it is evident that Commission’s professional personnel have opted to extend their tenure. As illustrated by Figure 8.6, the higher the GS ranking, the longer the tenure at the EEOC.

**Figure 8.6 EEOC Full-Time Workforce by GS Ranking & Tenure: 1998 to 2010**

![Figure 8.6](http://www.fedscope.opm.gov/index.asp)

In fact, between 1998 and 2010, the longest tenures were held by those with GS 12-13 (20 years), GS 14-15 (21 years), and SES (29 years) rankings; in other words, those with top-level positions possessed the greatest staff longevity.

When examining the average tenure based on GS ranking for the rest of the workforce, it is clear that experienced personnel are also opting to extend their tenure at the EEOC. In fact, between 1998 and 2010, EEOC personnel with master’s degrees (GS 8 and GS 9) had an average tenure of 18 years, while those with a doctorates or advanced law degrees (GS 10 and GS 11) had an average tenure of 15 years. The ability to recruit and maintain highly educated and experienced full-time employees underscores the professionalization of the EEOC workforce. With a professional workforce in place, bureaucracies will be better equipped to deal with functional growth, administrative changes, and increasing demands.

As demonstrated by Figure 8.7, because GS rankings go hand-in-hand with salary grades, it should come as no surprise that the higher the GS ranking of the EEOC full-time employee, the higher their salary. In fact, between 1998 and 2010, salaries underwent incremental increases to match increasing GS rankings; while GS 4-5 rankings received higher salaries than GS 4-5 rankings, GS 6-7 rankings received higher salaries than GS 4-5 rankings, and so forth. In addition to demonstrated clear evidence of salaries reflecting experience and education, all GS rankings underwent gradual annual increases; while GS 1-3 rankings underwent a 35% increase from $15,785 in 1998 to $24,107 in 2010, GS 14-15 underwent a 37% increase from $85,570 to $136,135. Regardless of the ranking in question, the EEOC employs competitive salaries to recruit and maintain a professional staff.
Whether salary increases resulted from standard of living increases or performance- or tenure-based rewards, a bureaucracy must offer competitive salaries to induce longevity throughout its professional workforce. A failure to provide adequate financial compensation equivalent to that of similar positions has the potential to lead to greater turnover in the workforce.

To nurture the development of a professional workforce, bureaucracies need to recruit, retain, and offer competitive salaries to personnel with strong educational background, administrative experience, or technical expertise. This is essential to the livelihood of a bureaucracy because a professionalized workforce will be better adept to adjust to leadership transitions, policy changes, and hierarchical or jurisdictional growth.
A professional workforce is also important to the livelihood of a bureaucracy because these are the individuals who are charged with overseeing the enforcement of public policies. The longer educated and experienced personnel are retained, the easier it becomes to deliver services and focus agency resources on new priorities.

B. Workload as an Element of Professionalization

How the workforce handles the workload of an agency is another critical component to the degree to which it is professionalized. It is not enough that there are full-time, educated, well-paid, long-standing staff members at an agency. With changing environmental conditions including increasing demands, functional growth, administrative changes, or inadequate resources, this staff must possess the necessary skills to meet bureaucratic demands and to handle escalating workloads.

The key workload metric for the EEOC is the number of new employment discrimination charges received. As illustrated by Figure 8.8, the number of new discrimination charges underwent an astronomical 1029% increase from 8,854 in 1965 to 99,922 in 2010. Although the Commission has worked to address the ever-growing number of new complaints received each year, resolution rates have been sporadic. This means that the EEOC has not only faced backlogs that have in part reflected the extent to which the Commission is viewed as the central player in discrimination cases, but that it has at times reflected some internal structuring problems discussed in Chapter VII. This backlog began in 1966 when the EEOC resolved 6,133 of the 8,854 charges received and continued up until the mid-1970s. As the figure shows, in some years, the backlog was under control. For instance in 2010, EEOC personnel were able to successfully resolve
104,999 of the 99,922 charges received. However, as the figure also shows, in other years, the agency’s workload was more problematic.

Figure 8.8 Total New Employment Discrimination Charges Received & Resolved by the EEOC: 1966 to 2010


To place the growing workload of EEOC personnel into perspective, it is important to recognize the impact of EEO policy expansions. In 1965, the EEOC emerged with the sole responsibility of overseeing the implementation of Title VII of the 1964 Civil Rights Act. Through Title VII, the EEOC was given oversight over the implementation of EEO policy designed to eradicate employment discrimination based
on race, color, religion, sex, and national origin. However, this single task did not last long. Throughout the years, EEO policy grew to include discrimination stemming from pay inequality (1963 Equal Pay Act) and employment discrimination based on pregnancy (1978 Pregnancy Discrimination Act), age (1967 Age Discrimination in Employment Act), disabilities (1990 American with Disabilities Act), and genetic information (2008 Genetic Information Non-Discrimination Act). As the EEOC continued to encounter implementation hurdles stemming from inadequate resources, expansions in EEO policy led to drastic increases in the number of employment discrimination claims received by the Commission.

One key element of the professionalization of the EEOC workforce is its ability to handle the Commission’s ever-increasing and broadening workload. Professionalization comes into play when increasing workloads are handled by a full-time workforce. When temporary or part-time employees are brought in to address growing demands, the existence of a professional workforce comes into question.

- **Case Disputes by Full-Time Workforce**

As demonstrated by Figures 8.9, between 1998 and 2010, the average number of new cases handled by EEOC full-time personnel underwent a 25% increase from 32 to 40 cases respectively. As budgetary constraints led to sporadic fluctuations in number of full-time personnel, employment discrimination charges began accumulating. In addition to handing new charges, personnel resources were increasingly being diverted to the handing of backlogged charges. Without a doubt, the growing numbers of charges –

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27 Though longitudinal data describing the part-time composition of the EEOC’s workforce was sporadic, the Office of Personnel Management’s FedScope database helps to shed light on the EEOC’s workload and its ability to meet growing demands.
whether new or old – were being left all but entirely in the hands of the experienced, educated, and tenured permanent personnel.

**Figure 8.9  Average Charges Received & Resolved by EEOC Full-Time Personnel: 1998 to 2010**

Despite increases in the number of charges handled, the productivity of the full-time staff led to significant increases in the number of backlogged and new charge resolved. In fact, with the exception of 2007, 2008 and 2009, EEOC personnel have been able to bring closure to greater number of charges. The fact that EEOC personnel have

been able to resolve more charges is a direct reflection of their tenure with the Commission, their greater salary levels, and their high levels of experience and education. It is also a result of the EEOC’s activism. As noted by Alyssa Rosenberg (2009) a survey of 200 EEOC employees suggested morale was decreasing as a result of increasing workloads. In petitioning for greater funding and additional personnel to address its growing workload, the EEOC has been able to obtain significant budgetary increases under the administration of President Obama. In addition to undergoing budgetary increases in 2010 and 2011, President Obama’s 2012 budget includes a 9.5% increase from the Commission’s 2010 budget. This budgetary allocation is key to addressing morale issues in that it provides the EEOC with the means to recruit additional professional personnel to lessen the workload.

Possessing an experienced and educated workforce with an extended tenure at the EEOC has been critical in the handling and resolution of EEO charges. When examining the distribution of cases over the last decade, it is clear that staff decreases, budgetary fluctuations, and functional growth have led to increases in the overall workload of the average EEOC full-time employee. Despite these growing demands, with a professionalized staff in place, EEOC personnel have continued to bring closure to employment discrimination claims. For a bureaucracy to flourish as an institution, it must therefore nurture a professional workforce equipped with the necessary tools to meet bureaucratic and environmental demands. While tenured full-time personnel provide a foundation for the professionalization of the workforce, bureaucracies need to also recruit, retain, and compensate staff with experience and education. As bureaucracies undergo the process of institutionalization, they will need a
professionalized workforce to maintain clientele service and provide stability in the face of ongoing change.

C. **Conclusion**

For an organization to emerge as an institution, it must be able to demonstrate procedural longevity in the face of changes in its leadership and evolutions in its institutional functions; measures of adaptability clearly evident within the EEOC. Organizations must also demonstrate hierarchical and functional growth, differences within organizational subunits, and divisions of labor with specified goals and performance expectations; measures of complexity also evident throughout the inner workings of the EEOC. However, it is important to recognize that administrative changes, organizational restructurings, and functional growth do not occur in a vacuum. These changes have a profound effect on the composition of the workforce and its ability to delivery services. It is for this very reason that Squire’s professionalization measure was incorporated to Huntington’s institutionalization model; through professionalization, one is able to examine how bureaucracies carry out their mission in the face of ongoing organizational and administrative change.

Through the incorporation of Squire’s professionalization measure, this chapter reviewed institutional attributes related to the composition of the bureaucratic workforce. In examining member numeration levels, staff longevity, competitive salary grades, experience and education, and service time demands, there is no doubt that the EEOC has fostered the professionalization of its workforce. To lay the foundation for the emergence of a professionalized staff, bureaucracies need to nurture the development of a well-paid, experienced, tenured full-time workforce. While tenured full-time personnel
are better equipped to handle growing demands and adjust to changes over time, in order to solidify the presence of a professionalized workforce, bureaucracies need to ensure that these individuals encompass those with a high level of education and experience. If the overwhelming majority of the tenured full-time personnel represent those with experience and advanced degrees, the professionalization of the bureaucratic workforce is solidified. When a bureaucracy’s workforce represents those with tenure and experience, budgetary fluctuations, shifting personnel allocations, functional growth, and increasing demands will not deter the delivery of customer services. With education and experienced, EEOC personnel have manifested an ability to deliver services despite escalating demands.

As the functions of the EEOC underwent expansions and as EEO policy grew to include areas unaddressed by Title VII of the 1964 Civil Rights Act, so did the number of employment discrimination charges filed with the Commission. Regardless of whether it had the funding or the personnel needed to address increasing demands, the EEOC recognized early on that it had to find a way to address the burden being placed on its workforce. While adaptability and complexity have served to test and extend the capacities of the EEOC, the Commission workforce has proven to be quite resilient. In working to address its lack of resources, the EEOC spent decades enhancing the performance of its personnel, streamlining operations, revamping the charge process, and recruiting an external workforce. Through these and other similar initiatives, the Commission has striven to improve its delivery of services while simultaneously working to ease the workload of its personnel. Professionalization is present throughout EEOC’s workforce.
Autonomy, the fourth measure of institutionalization employed in this study, focuses on the relationship between social forces and the political organization. For the Equal Employment Opportunity Commission, these social forces take the form of various groups, some of whom are protected under law and are, therefore, EEOC clients, but others who seek to be covered by law, and thus seek to push Congress and the EEOC to add to these clients. These groups are arrayed around social, economic, family, religious, and ethnic differences.

The key objective of autonomy is to determine whether an organization has its own interests distinguishable from those of other social forces. To determine the presence of autonomy at the EEOC, this chapter takes a three-pronged approach. First, the expansion of EEO protected classes is considered. EEOC has been a pivotal player in the ever-expanding sweep of population categories covered in EEO legislation. It is not simply that Congress has asked the EEOC to do more, but rather the EEOC has been front-and-center in defining what more it should do. Although the main focus here is on the first EEO expansion to include the elderly, attention is also placed on the role of the EEOC in shaping race, gender, and disability EEO policies. Second, the EEOC’s ability to enhance its own priorities through the use of enforcement mechanisms including Commission decisions, regulations, task forces, and programs and initiatives is also considered. This is an important element of autonomy because it sheds light on the EEOC’s use of enforcement mechanisms to propel agency-specific interests. Lastly, the impact of executive decrees, legislative statutory law, and judicial rulings is also
examined to determine the ability of the EEOC to emerge as an autonomous institution. Through this exploration, it is possible to ascertain the extent to which the EEOC has an agenda distinguishable from that of these external political actors.

A. Autonomy in the Arena of Age Discrimination

Ageism – also known as age discrimination – refers to the beliefs, attitudes, norms, or values used to justify stereotypical and discriminatory notions about individuals based on their age. Prior to the passage of Title VII of the 1964 Civil Rights Act, the American workforce was permeated by employment discrimination stemming not only from gender, religion, race and ethnicity, but also from age. In fact, as early as 1955, the Department of Labor (DOL) began to explore objections and barriers faced by older individuals in the job market. As explained by James P. Mitchell (1960), Secretary of Labor under President Eisenhower, even though careful investigations revealed relatively little difference in the average performance among age groups, “it was significant that a large portion of the older workers exceeded the performance of the younger base group average. Even more significant was the fact that the older workers were shown to be more consistent, especially between the ages of 55 and 64, than the younger workers” (6). Mitchell went on to note that despite the contributions and experience of older individuals, age discrimination in the workforce emerged in the underutilization of older workers. In fact, it became clear that many employers were beginning to believe myths that elderly individuals were slower, had higher absentee rates, and were less adaptive to changes and innovations (Mitchell, p. 6).

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28 While this section examines ageism in the workforce targeting individuals with advanced ages, it is important to recognize that ageism also impacts younger workers.
State Fair Employment Practice Commissions also took the lead in ensuring employment rights for the elderly. During a congressional subcommittee meeting in 1961, John Anson Ford and Edward Howden, Chairman and Executive Officer of the California Fair Employment Practice Commission respectively, argued that age discrimination rivaled racial discrimination as an employment hurdle. To protect older workers, it was essential to have federal fair employment practice legislation that included protections for the elderly (“Age Discrimination Cited,” 1961, p. 53).

- *Initial Age-Discrimination Efforts*

In order to address these concerns and respond to recommendations from the Presidential Council on Aging, President Lyndon B. Johnson issued Executive Order 11141 on February 12, 1964. Through this order, Johnson banned elderly discrimination in employment and promotions throughout the federal sector. He also urged government officials to “hasten the acceptance of [this] principle in all sectors of the economy, private and public” (“Johnson Issues Job Order,” 1964, p. 35). While Executive Order 11141 banned age discrimination in federal employment practices, the elderly remained unprotected in the private sector and in state government. To make matters worse, even though Title VII of the 1964 Civil Rights Act was signed into law to prohibit discrimination in employment on the bases of race, color, sex, national origin, or religion – age had been excluded as a protected class. To begin to tackle age discrimination in employment practices, Section 715 of Title VII directed the Secretary of Labor to study the issue and provide recommendations for legislation aimed at preventing arbitrary employment discrimination stemming from an individual’s advanced age; essentially solidifying the DOL’s jurisdiction over age discrimination in the workforce.
Despite the fact that discrimination against the elderly permeated the workforce, it was a commonly held notion that the discrimination faced by these individuals differed drastically from that encountered by women and racial and ethnic minorities. As explained by Secretary W. Willard Wirtz in a 1965 congressional testimony, the Department of Labor’s examination revealed that:

‘Discrimination’ was almost a misnomer in the age area because ‘there is no antagonism on anyone’s part towards an older person.’ …unlike race, ‘not all discrimination in this area is arbitrary.’ …the most common form of discrimination against older workers ‘involves their rejection because of the assumptions about the effect of age on their ability to do a job when there is in fact no basis for those assumptions. It is this which Congress refers to … as 'arbitrary discrimination’ (Bolick, 1987, p. 1).

Rather than creating a sweeping law akin to the 1964 CRA, Wirtz recommended legislation designed to target discrimination based upon stereotypes – particularly, discrimination stemming from arbitrary age ceilings in hiring.

In response to the general patterns of age discrimination permeating American society, President Johnson issued a message to Congress on January 23, 1967 urging the passage of legislation designed to address income inequality, health care disparities, and the overall lack of social programs available to the elderly. Within his message, Johnson stressed the pressing need for legislation addressing employment discrimination against the elderly and urged Congress to pass a law prohibiting arbitrary and unjust employment discrimination based on a person’s age. Johnson specifically sought legislation that protected individuals between the ages of 45 and 65, allowed for conciliation and cease and desist order enforcement, attempted to strengthening age discrimination educational and research programs, and clarified reasonable occupational qualifications age requirements (“Text of President Johnson’s Special Message,” 1967, p. 16).
Before the year’s end, Congress responded to President Johnson’s message with the passage of the 1967 Age Discrimination in Employment Act (ADEA) prohibiting employment discrimination against individuals between the ages of 40 and 65. The 1967 ADEA prohibited employers with 25 or more employees from age discrimination in hiring, promotions, wages, or employee termination and layoffs; advertisements; and, benefits and retirements. As specified in Section 2 of the ADEA, "the purpose of this Act [is] to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment" (Bolick, p. 1). While the EEOC was specifically created to oversee the eradication of racial, ethnic, religious, and gender discrimination in the workforce, age discrimination in employment remained under the jurisdiction of the DOL. Not only did the Labor Department have experience dealing with age discrimination in the workforce, but Title VII had specifically designated the DOL the task of investigating and recommending solutions to avoid these practices. As the EEOC focused its attention on its designated protected classes, the DOL retained control over ADEA’s enforcement.

In laying the foundation for its autonomy, the EEOC made the decision to focus its energy on strengthening its own policy domain. Whether or not age discrimination was being addressed, the Commission’s attention was solely focused on its Title VII protected classes. As a case in point, following the passage of ADEA, female flight attendants – one of the most outspoken targets of age discrimination in employment – began using the courts to challenge airline regulations which dismissed stewardess after they hit their mid-thirties ("Age Limits," 1968, p. 94). The EEOC did not intervene in
these cases based on age, but rather on gender. The EEOC ruled that dismissing stewardesses when they married or reached their mid-thirties violated federal law regarding sex discrimination (“Air Stewardesses Win,” 1968, p. 27). Had gender not been an issue, the EEOC would not have become involved in this battle.

The same pattern is evident in age discrimination and employment pension plans. To illustrate, the first time the EEOC addressed an issue related to age, it stemmed from pension and retirement plans which required women to retire at 62 years of age while men could retire at 65 (EEOC, 1966, p. 42). Again, in this and other cases, the EEOC entered the debate not because of age discrimination but because of sex discrimination (EEOC, 1969, p. 15; EEOC, 1975, p. 3). In still other age-related cases, the EEOC entered on racial discrimination grounds. When unions began to limit apprenticeship programs membership to those 31 years or younger in an effort to exclude African American and Latino candidates, the Commission stepped in to address Title VII race violations. As stated by the EEOC (1973), “by maintaining this age requirement the respondent effectively eliminates all black and Spanish surnamed Americans over the age limit who had previously been excluded because of their race and national origin” (p. 14).

In spite of the passage of the 1968 ADEA, age discrimination in employment continued. In addition to professionals being denied employment because of preferences for younger workers (“U.S. Agency Hunts,” 1970, p. 55), advertisements continued to include prohibited terminology including “boys”, “girls”, “young men”, or “persons under 40” (“U.S. Will Seek,” 1970, p. 25; “U.S. Judge Enjoins,” 1972, p. 40). While some people were outspoken when they encountered age discrimination in employment, many opted to remain silent.
In 1972, New York City Human Rights Commission Chairwoman Eleanor Holmes Norton\(^{29}\) became alarmed when only 21 age-related complaints were filed during an 18-month period. To respond to this lack of filings, Holmes held hearings instructing Commission officials to investigate the impact of economic disparities on those over 40 and called “victims of job discrimination who are older than 40 [to] help prosecute offending employers if they wish[ed] to save themselves and other older workers from a future of bleak downward mobility” (“Age Bias Victims,” 1972, p. 43). In addition to encouraging greater awareness and advocacy, the Human Rights Commission also surveyed 40 government agencies and 132,316 individuals to pinpoint the contributions of this aging population in the workforce. Many of the findings—including evidence that older employees are more punctual, have a better job performance, and have an absentee rate equal to that of younger workers—underscored work already put forth by the DOL (Adelman, 1972, p. 45). To address ongoing discrimination based on age, Congress responded by extending federal age discrimination laws to the states in 1974.

As the federal government worked to extend EEO coverage to the elderly, the Department of Labor continued to attack ADEA violations through age-based employment discrimination litigations. To illustrate, in 1974, the DOL used litigation to force the Standard Oil Company of California to rehire 120 of 160 employees fired because of their age (all were between the ages of 40 and 65) and to pay more than $2 billion in back wages; this amount represented the largest settlement received under ADEA (Shanahan, 1974, p. 81). The DOL also became instrumental in promoting merit-based evaluations of employees between the ages of 40 and 65 (in lieu of assessments based on age). Through litigation and education, the DOL was able to rejuvenate “its

\(^{29}\) Eleanor Holmes Norton would go on to become EEOC Chairwoman in 1977
efforts to invoke a little-known, and until recently, limply enforced law” (Stessin, 1974, p. 143). Nonetheless, despite these efforts, controversy continued to arise over the implementation of ADEA.

One of the most controversial policies involving age discrimination emerged when New York City Mayor Abraham Beame proposed a radical initiative to save the city from bankruptcy. When Mayor Beame proposed forcing 860 municipal workers between the ages of 63 and 65 into mandatory retirement to prevent having to dismiss an equal number of younger workers, the DOL stepped in and warned that the proposal could potentially violate anti-discrimination laws. Despite this warning, the city went ahead with its plan (Ferretti, 1974b, p. 61). Although Chair Holmes cited mayoral executive orders and city regulations to advocate the legality of Beame’s proposal, Secretary of Labor Peter J. Brennen disagreed. As explained by Brennen, “I wish I could have said to the city you’re 100 percent legal, you have our blessings, go ahead. But I couldn’t. We find that the law [ADEA] does prohibit involuntary retirement because of age” (Ferretti, 1974a, p. 93).

Ultimately, having 18 different agencies enforcing 40 distinct equal employment opportunity mandates – including age discrimination – proved to be quite problematic. Not only were enforcement efforts impaired, but unemployment rates for protected classes also continued to escalate. To address this disparity, President Jimmy Carter ordered the Office of Management and Budget to establish a task force to “create a single-mission, equal employment agency under the EEOC” (“Voice for Equal Employment,” 1978, p. 6). While the Labor Department remained “unreconciled to the concept of a single-mission civil rights agency because they would lose functions,” the
recommendation was supported by African Americans, Latinos, women, and older workers – EEO protected classes under the EEOC’s jurisdiction (p. 6). Support from unions – whose EEO policy implementation efforts were overseen by the Commission – further strengthened this recommendation. Though still in its infancy, this broad support served to underscore the growing deference in the ability of the EEOC to oversee the enforcement of EEO mandates.

On April 12, 1978, the House Government Operations Committee endorsed President Carter’s Reorganization Plan No. 1. Despite controversy over the reorganization, the Senate Governmental Affairs Committee approved the plan once compromises had been reached. Obtaining approval in both houses, this civil rights reorganization significantly expanded the powers of the EEOC. In addition to giving the Commission authority to enforce laws on equal pay and equal opportunity in the private sector and federal government, this reorganization transferred the enforcement of the Age Discrimination in Employment Act of 1967 from the Department of Labor to the EEOC; this took effect July 1, 1979 ("House Panel Backs Plan," 1978, p. 78). At this time, the ADEA also underwent changes which included the expansion of protected class from 40 to 65 years of age to 40 to 70 years of age; the removal of upper age limits for federal employees; expansions in coverage to include employees or applicants in the private sector and federal, state or local government; and, expansions in coverage to include union members and applicants (EEOC, 1978, p. 31).

To eliminate fragmentation in authority, duplication of efforts, and weakened enforcement, the EEOC was granted “sole responsibility for giving direction to the government’s equal employment opportunity efforts by developing uniform standards to
apply throughout the government, including standardized data collection and data sharing procedures, joint training programs and investigation and consistent policies and procedures” (EEOC, 1978, p. 30). The Reorganization Plan No. 1 consolidation of EEO policy under the jurisdiction of the EEOC is quite telling in that it recognizes the progress being made by the Commission in its implementation of EEO policy. In fact, during its first 8 years of operation, the EEOC worked tirelessly to overcome enforcement hurdles while also focusing resources on the rigorous enforcement of Title VII mandates. Despite the fact that the DOL was the first federal agency to address employment discrimination and had 65 years of experience, its ADEA enforcement continuously came into question. Rather than transferring these protected classes to the jurisdiction of the DOL, Congress opted to yield to executive recommendations and add age discrimination to the EEOC’s protected classes. Although the EEOC did not solicit ADEA enforcement, it immediately embraced this additional responsibility because it expanded the Commission’s grasp over EEO policy. While congressional mandate may have dictated this expansion, additional responsibilities came with greater policy powers; without question, the EEOC’s influence was growing.

Not surprisingly, the sudden growth in the scope and reach of the EEOC was met with immediate controversy. The day following the transfer of ADEA from the DOL to the EEOC, employment watchdog groups were on the attack. Upset with the loss of the DOL’s jurisdiction, many argued that the EEOC did not have the tools or expertise needed to ensure an end to age discrimination in the workforce. Considering the EEOC’s struggle with the implementation of Title VII, critics believed that there was no way it would be able to handle age discrimination charges. They also claimed that the EEOC
was unfamiliar with age matters and that the DOL should have been given time to work through the 1978 ADEA amendments. They went on to note that it took the DOL over 10 years to develop an enforcement plan encompassing investigations and litigation. Therefore, it would inevitably take the EEOC time to develop its own enforcement plan. In addition, even though 130 investigators would be transferred from DOL to the EEOC from the DOL, only 8 attorneys would be making the move from the Labor Department, making enforcement of ADEA precarious. Lastly, opponents indicated that the DOL had many more field offices where ADEA complaints could be filed (90 area offices and 300 field stations) as oppose to the limited number evident in the EEOC (22 district field office and 37 area offices).

Edward Howard, General Counsel to the National Council on the Aging and Formal Counsel on the House Select Committee on the Aging, stepped into defend the EEOC. As underscored by Howard, “there’s a new leadership over there at EEOC and we should wait and see how seriously they absorb their new responsibilities under the age program” (Carmichael, p. D9). Despite outcries over the transfer of ADEA to the EEOC, the Commission began to immediately employ its enforcement mechanisms to reign in its newest policy domain.

As the DOL faltered on its implementation of age discrimination, the EEOC continued to impress political actors with its ability to overcome implementation hurdles while simultaneously fostering the implementation of EEO policy. In placing its emphasis on refining its enforcement of EEO policy and gaining an ally in President Carter, the EEOC not only received control over the implementation of ADEA, but it eliminated virtually all of its jurisdictional competitors.
• **The EEOC Gains Jurisdiction Over Aging**

When an agency adds a broad new jurisdiction to its portfolio, it has important implications for institutional autonomy. Initially, any agency that receives a new charge must establish processes articulating how to address the new mandate. It must also expend energy to train existing staff and perhaps add staff to handle the new workload. While this is, by definition, new territory for the agency, it is territory that the agency fully controls. It alone sets the processes, precedents, procedures, and rulings. Its staff is the only group trained to correctly follow through with agency demands and expectations. Therefore, even if the initial development of the procedures and rulings may create some difficulties for the agency, this has considerable advantages for autonomy.

While the EEOC encountered its fair share of implementation hurdles as it adjusted to functional expansions resulting from President Carter’s 1978 Reorganization Plan, it did not hesitate to embrace its newest protected class. Although addressing employment discrimination against the elderly was not a priority for the EEOC prior to this reorganization, upon gaining enforcement over ADEA, the Commission elevated age discrimination in employment as a top agency priority. In addition to relying on its professionalized staff to facilitate the transfer of ADEA charges, it also began to mirror ADEA enforcement mechanisms to those employed under Title VII. As an autonomous agency, it continued to reign in its growing policy domain.

When examining the number of ADEA charges filed with the EEOC, it is clear that the jurisdictional transfer of age discrimination did not deter the number of complaints filed. In fact, during its first three months of ADEA enforcement, the EEOC
received 1,500 charges; 20% more charges than expected (EEOC, 1979, p. 9). While the Commission was unable to identify the reasons for these increases with “certainty and specificity”, it did take “a number of steps to address the increased charge load. These included a reassignment of staff and an examination of potential use of the services of state and local jurisdictions, which [had] laws banning age discrimination, to assist in the resolution of the federal workload” (EEOC, 1979, p. 9).

As the EEOC worked to facilitate the implementation of ADEA policy, the number of age discrimination claims presented to the Commission underwent a steady increase. In fact, as demonstrated in Figure 9.1, the number of ADEA charges increased 159% from 8,779 in 1980 to 22,778 in 2009. Though the EEOC was overwhelmed with decades of backlogged Title VII charges, it focused its energy on resolving ADEA claims. In fact, the EEOC was able to successfully resolve 6,488 charges in 1980 (74% of the charges filed) and 20,529 charges in 2009 (90% of the charges filed). As the public legitimized the EEOC’s new authority through increases in the number of ADEA charges filings, the Commission worked to fine-tune its operations to ensure the effective implementation of ADEA. In short, it continued to build its autonomy over ADEA’s enforcement.

During its first year of ADEA enforcement, the EEOC worked side-by-side with the DOL to ensure a smooth transition in enforcement. To streamline the implementation of ADEA, a series of MOUs were forged between the two agencies outlining procedures for the transfer of cases and legal activities. To ensure the continuity of services, select DOL staffers were also transferred to EEOC field offices and central headquarters to continue processing ADEA cases.
The new mandate also drew attention to the EEOC’s workforce. Special units were created to address this newly added policy area (EEOC, 1979, p. 8). Due to the growth and reach of EEO policy, the EEOC recognized the urgent need to retrain its workforce. In addition to providing classroom instruction to over 2,500 investigators, attorneys, and administrators, the Commission began providing basic compliance training to new staffers, its managerial staff, and FEPA staffers (EEOC, p. 24). To address the unanticipated number of ADEA cases, the EEOC even began assessing potential state sources. U.S. Equal Employment Opportunity Commission (2010a/b), Age Discrimination in Employment Act (ADEA) Charges: FY 1992-FY 2009; U.S. Office of Management and Budget, 1996-2009 Budget of the United States: Appendix, Equal Employment Opportunity Commission Federal Funds.
and local jurisdictions (FEPAs) with laws banning age discrimination to share the workload (EEOC, p. 9).

Not all approved of the EEOC’s blooming autonomy in ADEA’s enforcement. Labor Secretary Ray Marshall strongly criticized the EEOC for not continuing to use rules and regulations developed by the Labor Department. Marshall noted that the Labor Department had already written clear rules regarding what was acceptable and unacceptable under ADEA, but the EEOC “has been unable to settle on final rules of its own” (Quinn, 1980, p. C1). In addition to lacking clear-cut ADEA regulations, Marshall went on to criticize the EEOC for proposing rules that expanded the rights of older workers at the risk of exceeding the Commission’s legal authority. While the EEOC recognized that the DOL regulations eased the transfer of ADEA oversight, the Commission found weaknesses with these regulations and sought “procedural reforms to enhance enforcement of ADEA” (EEOC, 1980, p. 4). Recognizing the problematic nature of some of the DOL regulations, the EEOC withstood criticism and exercised its authority to make the changes deemed necessary. In so doing, it enhanced its autonomy.

The EEOC saw clear political advantages in the age discrimination mandate. As explained by EEOC Chairwoman Eleanor Holmes Norton, the EEOC focused a great deal of time and energy on the implementation of ADEA because it recognized “that age discrimination is not only widespread but is widely accepted by many Americans who have rejected discrimination based on race and sex. Thus, we regard it as a major challenge to use enforcement to educate and raise the consciousness of the public that age discrimination is as wrong as discrimination in any other form” (Lukas, 1980, p. N_E3). Because age discrimination allegations did not produce the same level of political debate
generated by those alleging racial and gender discrimination, discrimination against the elderly had emerged as an accepted practice that needed to be eliminated. Enforcement and education permitted the EEOC to define itself as the pivotal agency handling the issue and thereby increasing it claims to autonomy. Despite some transition problems between the Labor Department and the EEOC, the EEOC was clearly not beholden to the Labor Department about how policies and procedures would be developed.

- **Autonomy Through Litigation**

  Adopting a vigorous litigation strategy immediately defines an agency’s autonomy in a way distinct from the adoption of regulations and procedures. The litigation strategy ultimately involves a set of state and federal courts that may or may not support the agency’s position on age discrimination. If the agency wins, especially at higher court levels, then its autonomy essentially grows because major institutions agree with its regulations, guidelines, and procedures. If the agency loses major cases, then its autonomy can be compromised because it no longer is the dominant player in the policy arena.

  One of the EEOC’s strongest approaches to dealing with discrimination based on race and sex was litigation; it had a team of lawyers, won cases, and set precedents. Therefore, it was natural for the Commission to extend this approach into the aging arena. The EEOC chose to use litigation to begin to address patterns and practices of discrimination related to maximum hiring ages and mandatory retirement age limits for public safety occupations (EEOC, 1983, p. 22; EEOC, 1984, p. 11). The use of litigation to foster ADEA compliance continued through the late 1980s and received considerable media coverage (Tucker, 1986, p. 1; “EEOC Enforcement Activity,” 1986, p. 2; “EEOC

Unfortunately, escalations in ADEA litigations and enforcement on the part of the EEOC led employers to begin to search for enforcement loopholes.

One of the earliest strategies employed by employers to circumvent ADEA mandates involved the use of right to sue waivers. “To minimize the risk of potential litigation, many employers offer departing employees money or benefits in exchange for a release (or waiver) of liability for all claims connected with the employment relationship, including discrimination claims under the civil rights laws enforced by the Equal Employment Opportunity Commission” (EEOC, 2011c). Unaware that these waivers violated ADEA law, many employees signed right to sue waivers in exchange for enhanced retirement benefits; in doing so, they gave up their right to work in order to maintain their economic viability. This exploitation allowed companies to push out older workers and make way for a younger workforce (Jacobs, 1989, p. F12). To combat these tactics, the EEOC responded by issuing additional ADEA regulations outlining specific pre-employment job inquiries and job advertisements.

With an increase in the number of ADEA charges being filed and attempts to weaken ADEA policy by the courts, Congress responded with the 1990 Older Workers Benefit Protection Act (OWBPA). This strengthened ADEA by prohibiting employers from denying retirement and pension benefits to older workers. The law also provided for strict requirements in handling ADEA right to sue waivers (EEOC, 1998, p. 5). To

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30 The passage of the Age Discrimination Claims Assistance Act of 1988 (ADCAA) further fueled the EEOC’s litigation efforts by restoring the rights of individuals to file age discrimination lawsuits that had lapsed due to ADEA statutes of limitation (EEOC, 1989, p. 16).
ensure that these policy expansions were being implemented, the EEOC’s Legal Counsel “spent considerable time analyzing legislation, developing interpretive guidance for Commission staff and public, and assisting the Commission in its efforts to resolve numerous substantive and procedural ADEA issues” (EEOC, 1990, p. 9). The EEOC Legal Counsel also issued several proactive policy statements addressing voluntary dispute resolution mechanisms and cases involving extraterritorial ADEA applications.32

As part of its litigation efforts, the Commission launched its first major age discrimination suit against Kidder, Peabody & Company – a brokerage and securities firm accused of unlawfully dismissing 17 senior executives with $100,000 salaries. As charged by EEOC General Counsel Donald R. Livingston, this dismissal was a part of a movement to replace people in higher echelon positions with younger cheaper executives. This was a practice often found during economic downturns as employers sought to “achieve greater savings sometimes on the backs of older employees” (Raab, 1992, p. A1). Despite its best efforts, the EEOC’s litigation efforts proved unsuccessful because the Commission could not claim monetary benefits in cases where litigants had signed waivers to settle disputes through arbitration (“Kiddler Peabody Suit”, 1997, p. 1). Although unfavorable, this ruling did not deter the EEOC’s attack on American corporations circumventing ADEA mandates.

With the new Clinton administration demanding an end to job discrimination of various types, the EEOC went to court against a series of major American companies. However, gaining litigation victory proved to be a challenge. In 1993, the Commission went after Westinghouse Electric Corporation for using age as a factor when it laid off

32 Extraterritorial ADEA application involved cases where ADEA allegations came from Americans working in US owned or controlled companies abroad.
600 employees; it sued American Airlines for refusing to hire pilots in their 40s and for policies aimed at recruiting pilots in their 20s; and it took the Long Island Lighting Company to court after it forced a 57 year old nuclear engineer to sign early-retirement papers or risk being dismissed (“Retirees Sue Westinghouse,” 1993, p. D11; “Suit Charges Age Bias,” 1993, p. 24; “Jury Rules Lilco,” 1993, p. L50). Despite numerous appeals, many EEOC’s litigation efforts proved unsuccessful due to a lack of age discrimination evidence.

Instead of becoming discouraged by its lack of legal victories, the EEOC strengthened its litigation efforts and continued its attack on companies violating ADEA mandates. This determination paid off when it began obtaining legal victories. One of the EEOC’s first victories took place after it went after Sears, Roebuck & Company for requiring ADEA waivers for all age-discrimination claims (not just those applicable to severance packages) and for violating the 45 day period required by law to consider ADEA waivers (Feder, 1993, p. D5). Building on this victory, the EEOC sued Martin Marietta Astronautics Group for engaging in age discrimination patterns and practices when 2,000 of the 3,000 individuals laid off during a three-year period were over the age of 40. This effort led to a $13 million settlement (“U.S. Agency Finds,” 1993, p. A15). The agency also negotiated its largest settlement to date with Lockheed Martin Corporation after it laid off or forced into retirement 2,000 employees. The settlement called for company-paid retraining courses (up to eight courses for settlement participants), managerial training on ADEA and EEO policies, compliance monitoring by
the EEOC, and the rehiring of laid off workers or – for those not rehired – a share of the $13 million settlement (Associate Press, 1996, p. D 4) 33.

In 1996, the U.S. Supreme Court expanded the scope of ADEA by ruling that older workers could sue under the Act even if their replacement was an individual 40 years of age or older (Barrett, 1996, p. B2). As explained by Justice Antonin Scalia, “The fact that one person in the protected class has lost out to another person in the protected class is thus irrelevant, so long as he has lost out because of his age” (Greenhouse, 1996, p. A1). While the Supreme Court facilitated the collection of larger monetary benefits in cases of age discrimination, it also underscored the point that “companies generally can be sued under the federal law protecting older employees only when a worker’s age is the direct reason he or she was fired” (“Supreme Court Issues”, 1993, p. 2). To prove ADEA violations, employees needed to present clear and direct evidence of employment discrimination stemming from age.

This period, then, reveals an intricate pattern of political sensitivity and institutional autonomy for the agency. The Commission was clearly responsive to its political environment, as the more pro-business Bush administration yielded way to the more pro-worker Clinton administration. Therefore, it is clear that the EEOC recognized the importance of being responsive to new directions from the White House. While some might argue that this would in effect dampen the agency’s autonomy, it did just the opposite. Its vigorous efforts to end age discrimination in the workplace put it front and center in defining the general principles the Clinton administration asserted.

33 This agreement was approved by Denver Federal District Judge Wiley Daniel the following year (Bloomberg News, 1997, p. D20).
The EEOC’s pursuit of litigation, which had the effect of bolstering its autonomy, was not without limits. Obviously, the litigation strategy is only as successful as the courts permit. Although the EEOC was able to obtain many legal victories on behalf of ADEA litigants, toward the end of the 1990s, federal appeals courts began making it increasingly difficult to prove ADEA violations by rejecting or questioning the “idea that plaintiffs can claim age bias merely because an employer’s actions had a harsher effect on older people. Instead, the courts began to insist that plaintiffs show their employers intentionally discriminate against them” as a direct result of their age (McMorris, 1997, p. B1). To illustrate, when the EEOC sued a private school for refusing to hire a 63-year-old drama teacher because he qualified for a salary the school could not afford, the courts did not find evidence of age discrimination. In their ruling, the Chicago Federal Appeals Court noted that “decisions based on criteria which merely tend to affect workers of the age of 40 more adversely than workers under 40 are not prohibited” (McMorris, p. B1).

While narrow pro-employer judicial rulings forced the EEOC to scrutinize its litigation choices, the Commission continued to record significant victories. To illustrate, the EEOC effectively settled two age discrimination lawsuits against Westinghouse Electric Corporation and Northrop Grumman Corporation obtaining $14 million for the 548 employees claiming age discrimination35 (“Westinghouse Electric,” 1997, p. 1). The sweep of ADEA expanded when a federal appeals court panel upheld Commission regulations for Americans working in US-based companies abroad. As reinforced by the

34 Ellen Vargyas, EEOC Legal Counsel, challenged the ruling arguing that employers should not be allowed to solve economic problems with policies that have a disproportionate effect on elderly workers; instead, companies need to begin developing policies that do not single out this portion of the workforce. Though this warning fell on deaf ears, it would not be the last time the Commission would advocate this particular point.
35 This settlement was later approved by Baltimore U.S. District Judge Marvin Garbis.
panel, “U.S. employees are covered by the federal age-discrimination law even if the firm has only a small office in the U.S. [This] marks the first time any court had allowed foreign employees to be counted in determining whether a company was large enough to be sued under the federal age discrimination law” (“Court Rules Laws,” 1998, p. 1). As employers sought way to subvert ADEA regulations, the EEOC continued to press enforcement through litigation. Though not all cases could be brought to court because of the heavy demand for evidence being placed on the plaintiff, the Commission continued to exercise its autonomy by litigating cases that attacked prominent ADEA violations and provided relief to greater numbers of individuals.

Pivotal to maintaining its aggressive position in court, in 1998, the EEOC issued final regulations regarding employee ADEA waivers. As clarified by the EEOC, “an individual may not waive any ADEA rights or claims unless the waiver is knowing and voluntary” (EEOC, p. 19). Despite this categorical ban on such waivers, many companies disregarded these requirements; oftentimes, submitting partial information. In response, the Commission chose to set precedence against such violations by successfully suing Allied Signal in 1999 for failing to disclose the job title of employees laid off and for not providing workers with full disclosure on right to sue waivers (“Workers Can File,” 1999, p. B8). While it was unable to achieve victories in all ADEA cases because of the heavy demand for evidence of age discrimination, the EEOC continued to turn to the courts for enforcement. In spite of its ability to issue ADEA regulations, guidelines,

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36 Many employers had employees unwittingly sign waivers and then use them as a means to lay-off or fire the older employees.
37 Specific minimum statutory requirements were included to determine whether waivers were knowing and voluntary.
and procedures, the Commission recognized the importance of nurturing its autonomy by obtaining deference from the legal system.

- **Federalism, the Courts & EEOC Autonomy**

  While the EEOC continued its advocacy on behalf of older workers, the issue of federalism and the extension of ADEA legislation to the states came into focus in *Kimel v. Florida Board of Regents* 528 U.S. 62 (2000). In deciding whether ADEA infringed upon a state’s 11th Amendment right to sovereign immunity, a deeply divided Supreme Court held that Congress lacked the power to bind state governments to federal laws barring age discrimination in employment (“A Misguided Expansion,” 2000, p. A22). As articulated by Justice Sandra Day O’Connor in writing the opinion for the majority,³⁸

> Our decision today does not signal the end of the line for employees who find themselves subject to age discrimination at the hands of state employers. We hold only that, in the ADEA, Congress did not validly abrogate the states sovereign immunity to suits by private industry. State employees are protected by state age discrimination statutes, and may recover money damages from their state employers, in almost every state of the Union. Those avenues remain available today, just as they were before this decision (“Excerpts from Justices’ Ruling,” 2000, p. A18).

Although state employees were no longer allowed to sue a state for monetary benefits stemming from federal ADEA violations, they were still free to raise charges of age discrimination based on states laws within state courts. Despite the fact that this ruling served to weaken the reach of ADEA policy, it is important to recognize that this was a fundamental debate on federalism in America and not ageism in the workforce. As

³⁸ It is worth noting that former EEOC Chairman – Justice Clarence Thomas – agreed with the majority in eliminating the application of ADEA regulations to states; a decision that served to narrow the scope and reach of ADEA. However, this should come as no surprise as “under Reagan, administrative agencies were staffed with bureaucrats who did not believe in the regulatory intent of the offices they served. For example, Clarence Thomas, who was appointed by Reagan to the EEOC and served as chairman, stalled on resolving class action lawsuits charging racial discrimination in hiring” (Jacobs & Zelizer, 2011, p. 38).
explained by Linda Greenhouse (2000), “the vote was the same as in a series of rebuffs the court has dealt Congress over the past five years on issues ranging from the regulation of gun possession near schools to the right of state employees to sue for overtime and of patent-holder to sue states for patent infringement” (p. A1). As the Supreme Court moved to exert the power of the states, ADEA became a casualty.

Though the Supreme Court ruled that monetary benefits could not be obtained in ADEA cases where a state was the defendant, the Commission continued to exercise its autonomy by going after states that violated ADEA mandates. As explained by EEOC Regional Attorney William R. Tamayo, the Commission had become “the sole entity available to obtain justice” for the victims of age discrimination (Greenhouse, 2003, p. A19). It needed to become involved because it was in the public interest to protect older workers and to ensure that they obtained monetary relief. Though legal channels denied the EEOC an opportunity to obtain monetary benefits in ADEA litigations where a state was the defendant, the Commission turned to mediation to obtain these benefits. In fact, as a direct result of mediation, the EEOC was able to work with California’s Public Employees’ Retirement System in negotiating a $250 million settlement for public safety officers injured in the line of duty – the largest pay out to date. In spite of legal barriers, the Commission succeeded in obtaining monetary restitution through mediation. Thus, in broad measure, the court decisions had only limited effect on circumscribing some of the EEOC’s autonomy as a principal player in protecting against age discrimination. Not only did the EEOC fashion an avenue through which it could

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39 This settlement was approved several days later by Judge Charles R. Breyer, San Francisco Federal District Court.
approach state injustices, but its federal case also load remained high and its victories against major American companies continued.

While the EEOC continued its rigorous ADEA enforcement, between 2000 and 2001 there was an 8.7% increase in age-bias claims against private employers; as explained by the EEOC, these charges represented 22% of employment discrimination claims filed in 2001. Several factors contributed to this increase. As a result of the graying of America, older workers have become the fastest growing segment of the American workforce (Smith, 2010, p. 5B). The resistance of many baby-boomers to retirement has prompted employers to devise strategies – which, at times, have been unlawful – to replace older workers with younger ones. The economic recession that hit the U.S. in the early 2000s also influenced increases in ADEA claims (Chen, 2002, p. B13). As explained by AARP Attorney Laurie McCann, “The knee jerk reaction of employers is often that they need to cut costs, and since older workers are perceived as costing more, they become targets of layoffs” (Puri, 2003, p. G4). A final factor may stem from the EEOC’s own legal victories in the 2000s that have made it easier for employees to litigate age bias charges (Levitz & Shishkin, 2009, p. D1).

In order to deter escalations in the number of ADEA charges, the EEOC continued to reinforce its commitment to preserving the rights of the elderly by persisting in the courts. Through litigation, the EEOC won important legal victories in 2000 including a $28 million settlement against Johnson & Higgins for imposing a mandatory retirement age; a $7 million lawsuit against Thomson Consumer Electronics and the International Brotherhood of Electrical Workers for moving their jobs to Mexico to avoid ADEA regulations; and, a class-action suit against F.W. Woolworth for dismissing 300
employees based solely on their ages. As underscored by EEOC Chairwoman Ida L. Castro, “our level of activity in this area has remained quite high” (Labaton, 2000, p. H7). Thus, the EEOC’s autonomy at the federal level and against major American employers continued to be solidified, despite the court rulings on state laws.

- **Employers’ Disparate Impact on Older Workers**

  While the EEOC continued to find ways to apply ADEA regulations to the states, it also worked towards the adoption of a broader definition of disparate impact. Disparate impact involves an employment rule that appears uniform across all age groups on its face, but has a disparate impact on older workers in practice. While the courts have long accepted disparate impact theories in Title VII cases (codified by Congress in the 1991 Civil Rights Act), its application to age discrimination cases has been largely disputed by the courts. In fact, federal courts have generally been very hostile to its application to age discrimination claims (“Proving Age Discrimination,” 2004, p. A22).

  At the root of the disparate impact debate is whether ADEA prohibits only overt discrimination or “whether it applies more broadly to prohibit policies that appear to be neutral but that fall more harshly on older workers” (Greenhouse, 2001, p. A16). To complicate matters, the courts have fueled this debate with mixed rulings. While some justices have pointed out that ADEA does not cover disparate impact because employers are allowed to consider age when it is essential to the position and when it is consistent with business necessities, the overwhelming majority have argued that the language of ADEA is identical to Title VII and both laws reflect “the recognition that in complex society, not all discrimination is apparent or overt but will often be subtle and concealed lacking overt proof of a discrimination motive” (Greenhouse, 2004, p. A16).
After decades of ambiguity over the application of disparate impact in ADEA cases, the U.S. Supreme Court agreed to address the issue in Smith et al. v. City of Jackson, Mississippi et al. 544 U.S. 228 (2005). In this 2005 case, a group of Jackson police officers and public service employees (all over the age of 40) challenged whether newly-enacted salary scales awarding smaller pay increases to older workers than those going to younger workers violated ADEA mandates. The plaintiffs argued that ADEA “allowed them to bring a disparate impact claim alleging the department’s pay policy discriminated against them as a class” (Anderson, 2004, p. A2). In a unanimous 8-0 decision, the Supreme Court ruled that the employees had failed to demonstrate that anything in the various pay plans specifically harmed them. Despite having lost this case, the EEOC struck a major victory when the court formally acknowledged the importance of disparate impact in backlogged cases. As articulated by Justice Antonin Scalia in his opinion, “the court did not need to examine the statute itself but should accept the views of the Equal Employment Opportunity Commission, which adopted the disparate-impact interpretation of the statute in a formal rule-making proceeding soon after the law’s enactment. This is an absolute classic case for deference to agency interpretation” (Greenhouse, 2005, p. A1). While the court extended disparate impact to ADEA cases, employers were still left with an opportunity to demonstrate that their policies were based on “reasonable factors other than age” (RFOA). To further complicate ADEA litigation efforts, the courts began requiring plaintiffs to provide evidence of the alleged RFOA violations.

In Gross v. FBL Financial Services Inc., 557 U.S. 08-441 (2009), the Supreme Court placed the burden of proof squarely on the employee. In a 5-to-4 decision, the
court held “that employees who sue under a federal law that bans discrimination against those 40 or older must prove that age was the but-for-cause – widely interpreted as meaning the sole cause – of an employer’s actions, rather than one of the motivating factors” (Tergesen, 2009, p. 2). Simply put, in ADEA discrimination claims, employers did not need to prove that they would have taken the same actions, regardless of the employee’s age. Instead, employees carried the burden to show that the preponderance of the evidence indicated that age was the true cause of the action. The decision, written by Justice Thomas, was particularly controversial because it asserted that only cases were age was truly the deciding factor was there direct evidence of ADEA violations.

AARP Senior Attorney Dan Kohrman raised concerns with the rulings on the grounds that it made it difficult to prove age discrimination – even in the strongest of cases. US Senator Tom Harkin (Democrat, Iowa) also disagreed with the Supreme Court’s ruling on the grounds that it made little “sense for an age discrimination plaintiff to be treated differently, and more harshly, than a plaintiff in a race or gender discrimination case. The method of proof and standard of proof has been, and ought to be, the same” (Simon, 2009). His opposition to the ruling was so strong that he introduced the 2009 Protecting Older Workers Against Discrimination Act (H.R. 3721 / S. 1756) “with the simple purpose of reversing the Court’s decision and restoring the law to what it was for decades” (HR Hero, 2009). While hearings were held on the bill in May 2010, the change in the congressional landscape after the 2010 elections means that the bill is all but dead.

Thus, the Supreme Court’s decision in Gross effectively circumscribed the EEOC’s autonomy in that the Commission has consistently maintained that the employer
bears the burden of proof to demonstrate that various employment guidelines do not discriminate based on age. The Supreme Court turns this on its head and assumes that the employee now bears the burden of proof. Still, these rulings have failed to deter ADEA enforcement efforts. As noted by EEOC Chair Jacqueline A. Berrien\(^\text{40}\) at a May 2010 Senate Committee on Health, Education, Labor and Pensions hearings, “As the nation’s chief enforcer of protections against age-based employment discrimination, the EEOC is especially concerned by these development. In response, we have sought to determine how to best use our limited resources to counteract (or at least contain) the damage done by the deteriorating legal landscape for victims of age discrimination” (EEOC, 2010l).

Despite ongoing legal challenges, the EEOC continues to take advantage of all its rulemaking and enforcement mechanisms in its quest to strengthen ADEA enforcement. Underscoring the EEOC’s autonomous standing over its policy domain, Chair Berrien notes that:

The Commission will continue to use all available means at its disposal – including issuing regulations and policy guidance, providing outreach and training, conducting administrative enforcement, and litigating ADEA cases – to safeguard equal employment opportunity for older workers. However, these tools alone may no longer be sufficient to the task. …a legislative response is now needed to overcome recent legal setbacks and to restore the original potency and promise of ADEA (EEOC, 2010l).

Instead of weakening implementation efforts, legal hurdles have served to strengthen ADEA enforcement.

Taking advantage of its substantive rulemaking authority, the EEOC turned to rules and regulations to define the components of reasonable factors other than age. The

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\(^{40}\) Chairwoman Berrien was appointed President Barack Obama on March 27, 2010.
goal of this undertaking was to not only take the lead in defining acceptable RFOAs practices, but to also persuade the courts to grant Commission regulations greater
deferece (Atkins, pp. 1-2). On February 18, 2010, the EEOC proposed formal rules addressing “employer’s reasonable factors other than age defense to an ADEA disparate impact claim” (EEOC, 2010l). The proposed rules\(^{41}\) not only sought to clarify the
conditions under which an employer can adopt a neutral policy that disproportionately harms older workers, but to also outline steps employers needed to take to minimize the potential for age-based stereotyping when managers are granted wide discretion to engage in subjective decision-making. Although RFOA rules have yet to be finalized, formal rules are expected to be announced during the fall of 2011. As an autonomous agency, the EEOC continues to focus its energy on advancing its ADEA policy priorities. When one enforcement mechanism has proven unsuccessful, it has turned to another. Defeat has never been an option for the EEOC.

This examination of the EEOC’s role in protecting employees against age discrimination is a compelling case study of its autonomy in the implementation and enforcement of ADEA policy. While its autonomy is not unchallenged, it is substantial. The EEOC has worked diligently to define age discrimination in the workplace when considerable ambiguity existed under the Department of Labor. While the Supreme Court has actively sided with employers in recent decisions, the EEOC remains

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\(^{41}\) The proposed rules list factors relevant to the reasonableness determination; including: “whether the employment practice and the manner of its implementation are common business practices; the extent to which the factor is related to the employer’s stated business goal; the extent to which the employer took steps to define the factor accurately and to apply the factor fairly and accurately (e.g., training, guidance, instruction of managers); the extent to which the employer took steps to assess the adverse impact of its employment practice on older workers; the severity of the harm to individuals within the protected age group, in terms of both the degree of injury and the numbers of persons adversely affected, and the extent to which the employer took preventive or corrective steps to minimize the severity of the harm, in light of the burden of undertaking such steps; and whether other options were available and the reasons the employer selected the option it did” (EEOC, 2011a).
committed to upholding the rights of employees through its rule-making authority. Whether it is forcing ADEA adherence through legal battles, exerting its ADEA enforcement powers through the creation of regulations and policy guidance, or working in conjunction with political allies to create legislations aimed at solidify its powers and strengthening EEO policy, the Commission has evolved into an autonomous bureaucratic actor. While the case study on the role of the EEOC in age discrimination is an important story in its autonomy as an institution, it is not the only story.

B. Autonomy in the Arenas of Racial & Gender Discrimination

A fundamental principle of autonomy involves the presence of consensus over an organization’s functional boundaries. In considering the agency’s role in dealing with racial and sex discrimination, one indirect indicator of its autonomy is the number of cases filed by employees. The more frequently employees file charges with the EEOC, the more the EEOC can autonomously define what is and what is not racial and sex discrimination.

In examining the total number of Title VII employment discrimination charges received by the EEOC, it is clear that a significant escalation occurred throughout the decades. As illustrated by Figure 9.2, Title VII charges increased from 6,133 in 1966 to 73,058 charges in 2010. While the Commission was only able to resolve 1,659 of the charges presented in 1966 (27% of the total charges received), by 2010, it had successfully resolved 77,644 of the charges filed (94% of the total charges received). While it is clear that, as a whole, Title VII EEO protected classes have accepted the functional boundaries of the EEOC by turning it to for assistance in defending EEO
principles and respecting its rulings, it is also essential to examine how the EEOC responded to this growing demand.

**Figure 9.2 Title VII Charges Filed & Resolved by EEOC: 1966 to 2010**

The EEOC manifested its autonomy when it took the lead in defining the meaning and shaping the enforcement of this policy. One approach was the issuance of agency determinations. As employers began to test the coverage of EEO policy – especially as it related to private hospitals and Americans employed by foreign companies – the EEOC

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42 This graph represents Title VII charges filed and resolved by the EEOC. It includes Title VII charge and those filed concurrently under ADA, ADEA, and/or EPA. Figures represent charges carried over from previous year, new charges, and charges forwarded to FEPAs. Therefore, the sums of receipts for all statutes will exceed total charges received.
used its authority to issue determinations regarding the legality of the employment practice in question. As explained by the EEOC (1975),

Throughout this first decade, the Commission has carried out the congressional mandate to eliminate employment discrimination by enforcing Title VII. One way of doing this has been through the issuance of formal decisions. Commission decisions have served as a significant inducement for voluntary compliance, particularly since the theories and legal interpretations set out within them have been given great deference by the Federal courts. Indeed, on several occasions the courts have specifically relied upon Commission decision in arriving at legal conclusions. …the Commission has served as the cutting edge in the fight against discrimination in employment and its administrative decisions have been an integral part of this effort (p. 1).

Considering the fact that EEOC theories and legal interpretations were beginning to receive deference by the courts, these decisions served as persuasive inducements for voluntary compliance.

In addition to exerting its authority through the issuance of agency determinations addressing EEO policy challenges, the EEOC focused its attention on rule making and the development of clear EEO regulations. In fact, one if its first priority was to translate the legislative language of Title VII of the 1964 CRA into clear and concise regulations articulating the boundaries of EEO policy. While the EEOC took advantage of its ability to issue determinations and regulations in order to take ownership in the construction and conceptualization of EEO policy, it also used agency guidelines to update its interpretations to reflect Commission decisions, legislative mandates, and judicial rulings. In fact, some of its earliest guidelines addressed its interpretation of EEO policy and religious accommodations, recruitment practices, and employee dismissals. When it was not issuing EEO guidelines, the Commission was issuing policy statements to outline its position on emerging employment issues and to strengthen EEO policy enforcement.
Whether it was through determinations and regulations or guidelines and policy statements, the Commission was clearly taking the lead in defining the meaning of EEO policy; it was exerting its autonomy as a regulatory agency.

The EEOC continued to position itself as the face of EEO policy through the use of diverse enforcement mechanisms. Despite initially lacking litigation authority, it established its dominance over the implementation of EEO policy through voluntary compliance agreements with businesses accused of violating the law. These agreements were further reinforced by the addition of progress updates to ensure compliance. To fuel enforcement efforts, the EEOC began to consolidate employment discrimination data; an undertaking which had never been done before and served to grant the Commission ownership over this data collection and maintenance. The Commission even generated compliance reports tracking industry specific progress in the eradication of employment discrimination, in addition to initiating joint research ventures with universities and federal agencies to identify unlawful employment discrimination practices. To strengthen its position as the overseer of EEO policy, the Commission instituted a Consultation Program to offer employer’s implementation training and assistance.

Though in its infancy, the EEOC recognized the importance of establishing itself as the face of EEO policy. In this short time, it began to differentiate between the various enforcement mechanisms that could be used to clarify the meaning of EEO policy and facilitating its implementation and enforcement.

- **Racial & Color Discrimination**

  As a protected class, it is clear that those suffering from race/color employment discrimination have acknowledged the EEOC’s functional boundaries by turning to it for
support. More specifically, as illustrated by Figure 9.3, race/color employment discrimination charges have undergone a dramatic increase from 3,254 in 1966 to 35,890 in 2010. Though these charges have escalated, there was a drastic drop in charges between 1980 and 1990.

Figure 9.3 Title VII Race/Color-Based Charges Received by EEOC: 1966 to 2010


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This graph includes all race/color-based employment discrimination charges received by the EEOC; these totals include charges returned for more information and those dismissed because of a lack of jurisdiction. These figures represent the raw number of cases submitted, not the number of complaints filed (i.e. a single case can include multiple complaints).
While the resolution of decades worth of backlogged charges played a major role in this decrease, the agency sought to ensure that the decline was not due to a lack of awareness in the law. To counteract that possibility, the Commission launched a study to investigate the employment of minorities during the 1990s. Its results underscored ongoing racial employment discrimination.

The 2000s represent a period of enhanced enforcement. In response to ongoing evidence of racial discrimination, the EEOC launched the Eradicating Racism and Colorism in Employment (E-RACE) Program; a national outreach program to foster education and enforcement. While the EEOC has spent a good part of 2000s working to increase EEO awareness as it applies to employment discrimination based on race/color, it has also created the Diversity Task Force (to examine the diversification of the workforce and offer recommendations to address enforcement hurdles) in addition to launching a series of industry-specific investigations targeting diversity in law firms, high end department stores, and new businesses.

When it comes to autonomy in the area of racial discrimination, there is no doubt that the EEOC has striven to safeguard the rights of this protected class. Up until the 1990s, the EEOC worked to ensure the rights of racial minorities by defining and shaping EEO policy. Though the emphasis was not exclusively on race/color employment discrimination, strengthening EEO policy resulted in greater protections for racial minorities. As the EEOC unearthed itself from decades of backlogged charges, race/color employment discrimination charges underwent a drastic decrease. Instead of embracing the lighter workload, the Commission focused its energy on investigating
diversity in the workforce. This move proves to be quite significant because an autonomous institution is one that is able to establish interests distinguishable from that of external forces. As the EEOC began to encounter decreases in the number of charges filed by one of its largest protected classes, it elevated this issue on the agency’s agenda. In addition to dedicating resources to study the diversification of the workforce and to identify non-complaint industries, it also created task forces to recommend strategies to fuel diversification.

- **Sex Discrimination**

Sex discrimination, the second largest Title VII claim, involves treating an applicant or employee unfavorably because of their gender. It also covers treating someone unfavorably because of his or her connection with an individual or group associated with certain gender. As illustrated by Figure 9.4, sex-based employment discrimination charges have undergone a significant increase from 2,053 in 1966 to 20,029 in 2010. The overwhelming number of women who have turned to the EEOC for protection underscored ongoing efforts by employers to circumvent the implementation of EEO policy in the area of gender discrimination.

To begin to clarify ambiguities in the law, the EEOC dedicated the 1970s to issuing agency determinations regarding the rights of unwed mothers and pregnant women and guidelines targeting sex and pregnancy and maternity discrimination. It also instituted the Federal Women’s Program to increase the representation of female employees throughout the federal sector. In the 1980s, EEOC Chair Eleanor Holmes Norton strengthened gender discrimination provisions by extending Title VII coverage in sexual harassment cases. In addition to issuing sexual harassment guidelines and
regulations, the Commission took a leadership role in the Presidential Task Force on Sexual Harassment.

Figure 9.4 Title VII Sex-Based Charges Received by EEOC: 1966 to 2010

Like race/color employment discrimination charges, gender-based claims also underwent a decrease between 1980 and 1990. Yet again, the EEOC did not sit idle by. In addition to allocating resources to examine the status of women in the workforce, the EEOC joined forces with the Department of Justice to coordinate the 1993 Family and

44 This graph includes all gender-based employment discrimination charges received by the EEOC; these totals include charges returned for more information and those dismissed because of a lack of jurisdiction. These figures come from women and men and represent the raw number of cases submitted, not the number of complaints filed (i.e. a single case can include multiple complaints).
Medical Leave Act, which – among other provisions – expanded pregnancy leave to 12 weeks. While the EEOC continued to address gender-based employment discrimination claims, it also began to use the global arena to advocate on behalf of women in the workforce. In fact, in 2002, EEOC Chair Cari M. Dominguez was invited to provide testimony before Canadian Parliament regarding the benefits of female employees to the global marketplace.

For autonomy to take shape, a bureaucracy must place agency needs above all else; at times, this may entail making tough decisions. While racial and gender discrimination represent the top Title VII claims, the EEOC shifted its attention and resources between the two protected classes. Though it would be ideal to eliminate all implementation hurdles in one sitting, bureaucratic resources and growing demands often impede such lofty endeavors. If autonomy is indeed present, a bureaucracy will be able to prioritize shifting demands while ensuring the preservation of its organizational goals and objectives.

C. Autonomy in the Arena of Disability Discrimination

When examining employment discrimination against disabled employees in the public sector, autonomy began to take shape as a result of congressional expansions to the EEOC’s oversight. In fact, as the Commission used its regulatory authority to ensure the proper implementation of EEO policies, its progress in the eradication of employment discrimination garnered congressional attention. In 1973, Congress passed Section 501 and 505 of the Rehabilitation Act to extend EEO coverage to qualified individuals with disabilities in the federal sector; in essence, expanding the functional boundaries of the Commission. The 1978 Amendments to the Rehabilitation Act not only strengthened the
rights of federal sector disabled employees by providing them with the right to reasonable accommodations, but it also extended Title VII remedies to disability cases. Rather than succumbing to external pressures to push for congressional legislation extending protected status to disabled employees throughout the public and private sectors, the EEOC exercised its autonomy by focusing its resources on ensuring the employment rights of disabled workers in the federal sector.

While employment discrimination against the disabled permeated the public and private sectors, the EEOC focused its energy enforcing EEO policy protecting the disabled in the federal sector. In fact, during the 1980s, the Commission focused a great deal of attention on addressing these functional expansions. In addition to issuing regulations addressing disabled federal employees and guidelines prohibiting discrimination against the disabled in the federal sector, the EEOC continued to exert its autonomy by conducting studies on that status of handicapped veterans in the federal sector, taking a leadership role in the Presidential Task Force on Federal Handicap Employees, and initiating a handicap program to foster greater awareness and advocacy.

As the Commission worked to address employment discrimination against the federal sector disabled workforce, changes in the EEOC’s leadership elevated this ongoing problem to the very top of the Commission’s agenda. On March 8, 1990, President George Bush appointed then EEOC Commissioner Evan J. Kemp, Jr. as EEOC Chair. In addition to representing the first disabled chair, Kemp was a leading advocate for the disabled. As underscored by the EEOC (2000j),

During his first two and a half years, then Commissioner Kemp played a major role in promoting credible and effective enforcement of the rights of all individuals under the equal employment laws EEOC enforces. As a member of the Bush Administration, Chairman Kemp worked closely with
the White House in its consideration and ultimate endorsement of the Americans with Disabilities Act (http://www.eeoc.gov/eeoc/history/35th/bios/evankemp.html).

As a result of the EEOC’s handling of employment discrimination against the disabled in the federal section, in addition to the immediate leadership provided by Chair Kemp upon his appointment, Title I of the 1990 Americans with Disabilities Act (ADA) expanded the functions of the Commission by extending EEO protected status to qualified individuals with disabilities throughout the entire workforce (EEOC, 1990, p. 1). Under Title I provisions, it became illegal for private sector and state and local governments to discriminate against a qualified applicant or employee because of their disability. In addition to prohibiting retaliation against employees who raised complaints, filed formal charges, or participated in ADA investigation and lawsuits, ADA required employers to provide reasonable accommodations to qualified applicants and employees (unless such actions resulted in undue hardships which would threaten the employer’s business).

Similar to the precedent set by Title VII and ADEA protected classes, it is evident that the disabled have also embraced the EEOC’s functional boundaries from the moment they received protected status. This consensus over the EEOC’s newly acquired functional boundaries stemmed not only from preexisting clamors for inclusion by the disabled, but as a result of the leadership provided by the Commission in the area of employment discrimination. As underscored by Figure 9.5, throughout the years, employment discrimination charges stemming from disability have increased from 1,048 charges in 1999 to 25,165 charges in 2010. While resolution rates were quite low in 1992 (only 9% of the charges filed were resolved), closure rates quickly escalated. By 2010, the Commission had successful addressed 97% of the charges received. This data
indicates that, as the EEOC worked to ensure the rights of its newest protected class, the disabled validated the EEOC’s functional boundaries by turning to the Commission to rectify violations in the law.

**Figure 9.5 EEOC ADA Discrimination Charges Filed & Resolved: 1992 to 2010**

It is also essential to recognize that the EEOC began enforcing ADA on July 26, 1992; therefore, the 1992 figures are limited to the number of charges submitted during a 5-month period. With the exception of the low number of charges filed in 1992, it is apparent that – despite gradual fluctuations throughout the years – ADA charges have

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45 The ADA charges represented by this figure include those filed under the ADA and those filed concurrently under Title VII, EPA, and ADEA; therefore, the sum of receipts for all statutes will exceed total charges received.
continued to undergo steady increases. It is clear that disabled employees fought for EEO coverage and immediately build a consensus around the EEOC newly acquired functional boundaries. In granting deference to the Commission’s ADA enforcement mechanisms and its ability to handle said charges, autonomy began to take shape in the area of disability discrimination.

As the disabled reinforced the autonomy of the EEOC by turning to it for protection against employment discrimination, the Commission solidified its regulatory authority through the use of enforcement mechanisms. In addition to issuing policy statements and guidance in the 1990s and early 2000s to clarify ambiguities in ADA policy related to psychiatric disabilities and pre-employment inquiries and medical exams, the EEOC initiated studies to examine the status of the disabled in the workforce. Regulations were also issued to respond to clarifications and expansions to the definition of disability resulting from the 2008 American with Disabilities Act Amendments Act (ADAAA) (EEOC, 2009b). As an autonomous institution, the EEOC continues to demonstrate an ability to determine its own agenda.

For a bureaucracy to emerge as an autonomous institution it must be able to determine its own priorities; it must have the freedom to chart its own course. When the EEOC was granted oversight in the enforcement of Section 501 and 505 of the 1973 Rehabilitation Act, it made the decision to focus its attention on embracing this new protected class. As external actors pressured the EEOC to lobby for congressional legislation aimed at extending the protection of disabled employees throughout the public and private sectors, the EEOC focused its energy on addressing its own functional expansions. Based on its experience with Title VII and ADEA, the Commission
recognized that its power came from its initial enforcement efforts. Instead of working to expand EEO policy to protect all disabled employees, the EEOC chose to focus its energy on integrating its newest protected class – disabled federal employees.

D. **Agency Efforts Beyond Litigation**

While the degree to which a federal agency is autonomous is related to its litigation successes and failures, autonomy also fundamentally stems from the initial regulations that the agency promulgates. It is the basis for any of the litigation that follows. As showcased in the previous sections, over the past fifty years, the EEOC has promulgated an array of regulations on race, sex, disability, and age discrimination. When one turns the attention to the activism surrounding EEO policy in general, it is evident that the Commission has continued to rely on enforcement mechanisms and overall ingenuity to not only tighten its jurisdictional grasp, but to also insure that its policy initiatives remain top agency priorities. In fact, in addition to continuing to rely on agency determinations to settle allegations of EEO violations brought forth by its protected classes and agency regulations to provide formal guidance and assistance to help field offices and employers interpret and apply court decisions and legislations surrounding EEO policy, the Commission also turned to task forces and initiatives to identify and further agency priorities. Through the strategic use of enforcement mechanisms, the Commission has continued to demonstrate an ability to preserve its interests and advance its agenda.
**EEOC Determinations**

As employers began testing the boundaries of EEO policy, protected classes flocked to the EEOC for enforcement. In order to bring clarity to policy ambiguities raised in EEO allegations, the Commission turned to the issuance of agency determinations. These determinations proved critical in the fostering of autonomy in that they not only provided the EEOC with a venue for clarifying the intent of EEO policy, but they also provided it with yet another enforcement mechanism to further its policy stances. In fact, up until the 1980s, EEOC determinations were employed to address a wide range of issues including unlawful recruitment and pre-employment practices (educational requirements, test validations, and polygraph tests), employment practices (English Only rules and undocumented immigrants abuses), and Title VII violations (retaliation, reverse discrimination, religious accommodations, and affirmative action). As an autonomous institution, the EEOC did not hesitate in exercising its regulatory authority to issue determinations aimed at clarifying ambiguities in the law. In addition to taking ownership in the enforcement of EEO policy, the EEOC effectively employed determination to strengthen the breadth and scope of EEO policy and gain the trust of its stakeholders.

**EEOC Regulations**

While agency determinations served to settle EEO-related disputes and clarify the intent and overall reach of EEO policy, the EEOC also turned to agency regulations to facilitate and ensure consistent implementation efforts. In fact, during the 1970s and 1980s, the EEOC issued a series of regulations to clarify the application of EEO policy to newspaper advertisements, test validations, employment selections, and arrest records.
While it worked to safeguard the rights of employees during the initial application process, the Commission also fought to deter discrimination against protected classes through regulations designed to target employment discrimination stemming from gender, religion, and national origin. In addition to using regulations to safeguard against employment discrimination practices, these enforcement mechanisms were also employed to dictate the implementation of EEO policy by EEOC field offices, state and local Fair Employment Practice Agencies, Tribal Employment Rights Organizations, and federal agencies. In fact, the EEOC relied on regulations to ensure consistency in recordkeeping practices, the handling of arbitrations and deferrals, the implementation of affirmative action programs, and the handling of charges (both backlogged and current). In exercising its autonomy, the EEOC took full advantage of its ability to issue regulations to not only ensure the proper implementation of the law, but to define the breadth and scope of EEO policy. This proved to have a significant impact on the Commission’s legitimacy as a regulatory agency in that these regulations grew to garner significant deference throughout the legal system.

- **EEOC Task Forces**

While autonomy continued to flourish through the issuance of agency determinations and regulations, the ingenious use of task forces and initiatives served to solidify the EEOC’s sovereignty over its policy domain. After decades of efforts to eliminate the ever-growing backlogging of employment discrimination charges, the EEOC emerged triumphant in the 1990s. Taking advantage of its newly freed resources, the Commission shifted its focus to the introduction of a new enforcement mechanism –
the task force. Through the use of task forces, the EEOC focused its resources on establishing agency priorities and recommendations to further its agenda.

EEOC task forces have proven to be an effective enforcement mechanism in that they have provided the Commission with a venue to begin to address a wide range of agency priorities. In addition to relying on task forces to examine and offer recommendations aimed at addressing ongoing systematic discrimination and equal pay and national origins violations, the EEOC employed task forces to target problematic areas surrounding the processing and handling of priority charges. While task forces were employed as testing grounds to examine the viability of potential initiatives including the mediation-based Alternative Dispute Resolutions (ADRs) program, they were also used to foster administrative accountability. In fact, several task forces were launched to identify EEO best practices as they related to recruitment and hiring, promotion and career advancement, terms and conditions of employment, termination and downsizings, and management commitment and accountability. To further display its reign over the implementation of EEO policy and strengthen overall enforcement efforts, the Commission forged joint task forces with external actors. Not only did it work closely with the Department of Justice to target the exploitation of trafficked workers, but it also worked with state and local FEPAs to facilitate the implementation of federal EEO laws.

Without a doubt, task forces have played a critical role in the nurturing of autonomy in that they have provided the Commission with a venue for exploring and advancing agency initiatives. In addition to being used to address enforcement hurdles, task forces have been employed to test the viability of agency initiatives. What is even
more significant is the impact that these task forces have had on the advancement of
EEOC priorities. The fact that numerous task force recommendations have been realized
in the form of new agency programs and initiatives reinforces the ability of the
Commission to preserve its interests and maintain its focus on internal agency priorities.

- **EEOC Special Programs & Initiatives**

  As a continued demonstration of its sovereignty over the implementation of EEO
  policy, the EEOC utilized its enforcement mechanisms to push its new mission forward.
  In fact, some of the most ingenious EEO programs emerged during the 2000s. As a case
  in point, for the first time ever, the EEOC created the Youth@Work Initiative to inform
  teenagers of their rights and responsibilities as employees. While teenagers have been
  part of the workforce for decades, this was the first time any agency worked to provide
  EEO outreach to this often overlooked segment of the workforce. Through the Freedom
to Compete Initiative and Small Business Initiative, the Commission also strove to forge
partnerships with groups who had never engaged with the agency. Building on these
efforts, the EEOC created the Freedom to Compete Awards to formally acknowledge
small, middle-sized, and Fortune 500 companies for their efforts in eradicating
employment barriers and improving America’s workforce. By forging new partnerships
and rewarding innovative EEO implementation efforts, the EEOC continued to use its
autonomy to sustain its relevance and preserve its priorities. In addition to venturing into
new terrain, the Commission instituted the Leadership for Employment of Americans
with Disabilities (LEAD), Asian American and Pacific Islander Initiative, and the
Eradicating Racism and Colorism in Employment (E-Race) programs to continue to
attend to the needs of its protected classes. While the EEOC recognized the importance
of remaining relevant by targeting emerging issues, it also continued to ensure the proper application of current EEO mandates.

The Commission also took its enforcement efforts global. As the face of EEO laws in America, the EEOC was invited to provide testimony before Canadian Parliament. Building on the growing respect bestowed upon the agency by foreign actors, the Commission turned its attention towards promoting EEO policy on a global scale. In addition to co-sponsoring the “Creating a Level Playing Field for Women Maximizing Human Capital in Global Marketplaces” colloquium, the Commission sponsored the “Justice and Equality” consortium; an event attended by Mexican, Guatemalan, Salvadorian, and Columbian consultants, religious organizations, and the Mexican American Legal Defense and Education Fund (MALDEF). Having solidified itself as the face of EEO enforcement, the Commission continues to nurture its global image through the EEO Technical Assistance to Foreign Governments and Organizations program; an initiative designed to promote global EEO laws through enforcement guidance. In instituting new programs to further its global initiatives, the EEOC thrusts its autonomy beyond America’s border.

While task forces provided the EEOC with a tool to assess agency priorities, the Commission did not stop there. It actually took the recommendations offered by its various task forces and put them into practices through the creation of agency-driven programs and initiatives. As demonstrated by the EEOC, autonomous institutions must manifest an ability to use enforcement mechanism to preserve their interests. Through the use of task forces, the EEOC created a venue to not only identify agency priorities, but to generate viable recommendations that were then translated into agency-driven
programs and initiatives. This combined uses of enforcement mechanisms has enabled the EEOC to identify agency priorities and institute policy agendas.

E. Conclusion

To emerge as autonomous institution, bureaucracies must possess some degree of independence in the decision making process. When bureaucracies are able to employ their enforcement mechanisms to further agency priorities and preserve policy domains, the existence of bureaucratic autonomy cannot be questioned. However, when their rules, regulations, guidelines, and overall enforcement efforts come under fire, autonomy is weakened. If bureaucracies are unable to garner legal and political deference for their enforcement mechanisms, their ability to realize policy initiatives and advance agency agendas lessens. In determining whether the EEOC has emerged as an autonomous institution, this chapter not only examined the Commission’s leadership in the implementation, enforcement, and overall development of EEO policies prohibiting employment discrimination stemming from age (ADEA), race and gender (Title VII), and disability (ADA), but it also assessed the EEOC’s use of enforcement mechanisms in preserving its interests.

While this transformation did not occur overnight, it is clear that the EEOC has emerged as an autonomous institution. Despite some legal hurdles in the overall enforcement of the various EEO mandates, the EEOC has learned to utilize all the enforcement mechanisms at its disposal to not only preserve its policy domain, but to establish its dominance over the implementation of EEO policy. It has continued to address agency priorities through the ingenious use of edicts ranging from Commission decisions and regulations to agency-sponsored task forces and initiatives. It has also
continued to ensure the preservation of its interests by taking the lead in the interpretation of court decisions and legislative mandates and by offering guidance and assistance to help employers and field offices remain compliant with the law. By exerting its authority over the implementation and enforcement of EEO policy, the Commission has ultimately garnered the support of the public, political actors, and social forces. The EEOC has clearly learned how to use a variety of mechanisms to position itself as an autonomous institution. Without question, the EEOC continues to demonstrate an ability to not only identify agency priorities and advance policy initiatives, but to also establish rules, regulations, and procedures that continue to garner legal and political deference.
CHAPTER X.
INSTITUTIONALIZATION THROUGH COHERENCE

Coherence, the final measure of institutionalization, involves a consensus around an organization’s functional boundaries and the procedures used to resolve disputes that arise within its jurisdiction. At its core, coherence defines the presence of unity between an organization’s central headquarters and its regional offices, but also the level of organization demonstrated by its inner-workings in managing its workload. If an organization is able to establish procedures to manage its workload, and if these procedures are successfully incorporated throughout its entire workforce, coherence is strengthened. However, if an organization is unable to manage its workload through its use of internal procedures, or if its procedures fail to garner full enforcement, coherence is weakened.

To assess coherence, this chapter focuses on the emergence and evolution of Equal Employment Opportunity Commission private sector compliance processes. Particular emphasis is placed on the development of internal agency-specific procedures to address the handling of new, existing, and systemic charges, priority charge handling, and alternative dispute resolutions. In addition to examining the procedures instituted by the EEOC to manage its workload, attention is placed on the acceptance and incorporation of these procedures by its central headquarters and field offices. Because complexity draws the attention to a bureaucracy’s hierarchical and functional growth, its emphasis is on the distribution of responsibilities and not on the development and integration of the actually procedures employed to carry out these tasks. An examination of private sector compliance processes is more relevant to coherence because it not only
helps one gauge the level of unity between an organization’s central headquarters and its regional offices, but also the level of organization demonstrated by its inner-workings.

This dimension is particularly significant to understanding coherence because it provides a venue to examine the impact of centralized versus decentralized internal solutions. While decisions are made in its central headquarters, the EEOC has units all over the country to facilitate case management and overall workload. Therefore, if coherence is to be achieved, compliance procedures must not only be created to foster efficient and effective case management, but they must also be successfully incorporated throughout the entire EEOC workforce.

A. Mirroring Bureaucratic Coherence: The Fledgling Years

When the EEOC opened its doors for operation on July 2, 1965, it envisioned itself prepared to address its workload. In addition to being staffed with 100 full-time employees to oversee the predicted 2,000 employee discrimination claims to be received, Title VII legislation had been written in such a way as to facilitate the management of EEO complaints. In fact, instead of granting immediate coverage to all EEO protected classes, 1964 Title VII provisions were exclusively applied to employers with 100 or more employees, labor unions with 100 or more members, and employment agencies dealing with a100 or more applicants during the EEOC’s first full year of operation. While this served to funnel the number of charges received during this critical period, Title VII coverage continued to expand in subsequent years.\(^{46}\)

\(^{46}\) In 1966, Title VII was extended to employers, unions, and employment agencies with 75 employees/applicants and in 1967 this number dropped to 50. It was not until 1968, that the EEOC began to fully implement EEO mandates when the number dropped to 25.
Although Title VII legislation phased in the implementation of EEO mandates to help funnel the incoming workload, the EEOC emerged ill-prepared to address the unprecedented 8,854 charges received during its first four months of operation. Due to the 400% increase in anticipated employment discrimination allegations, 90 additional full-time positions were allocated to the EEOC during this period (EEOC, 1966, p. 14). Recognizing that it would need to chart procedures to address the handling of these charges and acknowledging the difficulty of developing such procedures with an understaffed workforce, the EEOC turned to precedents set forth by other federal agencies.

In mirroring the investigation and settlement techniques developed by fellow regulatory agencies, the EEOC instituted procedures centralizing the compliance process. Under these initial private sector charge handling procedures, a first-come first-serve approach was developed to address the Commission’s case management. While employment discrimination charges were to be filed with the EEOC’s central headquarters, upon the completion of the intake process, central headquarters forwarded charges to field offices with appropriate jurisdiction for further investigation. Upon the completion of field office investigations,

An elaborate investigative report was prepared, reviewed, and approved by the Regional Director and transmitted to headquarters in Washington. The case was assigned to the Director of Decisions and Interpretations. There a decision was drafted stating whether reasonable cause existed to believe the charge of discrimination was true; then the case was sent to the Commissioners for their study and approval (EEOC, 1970, p. 33).

In addition to relying on the charge handling procedures set forth by other federal agencies, the EEOC emulated their conciliation programs to obtain prompt and
appropriate relief in EEO cases and provide an additional venue for the resolution of EEO complaints (EEOC, 1966, p. 17).

To begin to foster the development of coherence in its handling of employment discrimination allegations, the EEOC established the Office of Compliance during its second year of Title VII enforcement. Although it sought to centralize the analysis, investigation, and conciliation of employment discrimination charges, expedite the handling of charges, and obtain appropriate relief for the charging party under its headquarter office, it did not have in-house investigators to deal with this workload. In addition to relying on 111 state and federal agency investigators to inspect EEO claims, “it was not unusual for investigators to be assigned as many as seven cases at once, with an average case taking up to 80 hours working time” (EEOC, 1966, p. 15). Regrettably, mirroring charge handling procedures employed by other federal agencies and relying on external actors to oversee EEO investigations served to impede the ability of the EEOC to lay a foundation for procedural coherence. A new approach was needed to address its growing workload.

After only a year of centralized case management, the EEOC began decentralizing the handling of EEO charges. Instead of requiring that all Title VII charges be reviewed by the EEOC’s Office of Compliance, intake and investigative procedural enforcement was extended to EEOC field offices. EEOC field offices were now extended initial review, which meant they were allowed to request additional information from charging parties, defer charge to appropriate state and local FEPAs with Fair Employment Practice laws, refer case to investigation, or close cases (EEOC, 1967, p. 15). By the end of 1967,
almost all the field offices had trained investigators overseeing the handling of EEO charges.

As the EEOC worked to reposition its workforce and establish an organizational structure to facilitate the enforcement of EEO mandates, it began to experience “an ever-growing backlog of complaints, at various stages of processing, that hindered its ability to give quick attention to the new charges that were being received in increasing numbers every year” (EEOC, 1970, p. 33). After a mere four years of Title VII enforcement, escalating caseloads and increasing backlog charges forced the Commission to examine the procedures being used to address employment discrimination allegations. In fact, a 1969 study was undertaken by the EEOC “to determine how it could be streamlined without sacrificing the quality of compliance processing” (EEOC, 1970, p. 33). The EEOC recognized the importance of establishing agency-specific procedures to address the handling of EEO charges.

B. **The Advent of Agency-Specific Procedures**

In 1970, through the joint efforts between EEOC headquarters’ staff and key field office personnel, charge handling procedures underwent a streamlining. To keep up with expanding demands, Pre-Decision Settlement procedures were instituted to limit the time it took to handle charges, simplify investigation reports, and foster settlements without resorting to formal decisions\(^{47}\) (EEOC, 1970, p. 33). These procedures were significant because they not only allowed new and pending cases to move from investigation to conciliation without the issuance of formal Commission decisions, but they also eliminated the need for formal field offices decisions in cases where settlements had been

\(^{47}\) The EEOC believed that quicker processing times produced greater settlements.
reached. Under these new procedures, proposed settlement agreements were transmitted directly to the EEOC for review and approval. Through these procedural reforms, “cumbersome compliance systems” were replaced with “more workable” agency-specific systems (EEOC, 1970, p. 34). In addition to fueling decreases in the time it took to process EEO claims, Pre-Decision Settlement procedures allowed the EEOC “to make inroads on [its] large caseload without requiring the additional time and effort to process charges to formal Commission decision” (EEOC, 1971, p. 36).

Pre-Determination Settlement procedures underwent further strengthening in 1973. Prior to 1972, EEOC field offices were allowed to issue headquarter-approved pre-determination decisions in order to avoid the delay of waiting for formal headquarter rulings. Following the 1972 EEO Act, field offices directors “were authorized to make and approve these early settlements on all case failing within Commission precedent” (EEOC, 1973, p. 9). However, because of congressional demands for quicker resolution rates and a rapid increase in conciliation rates, the use of pre-determination settlements underwent gradual decline. In its place, attention was focused on the development of more efficient and effective charge handling procedures.

In continuing to decentralize the handling of employment discrimination complaints through Pre-Decision Settlements, the EEOC underscored the importance of decentralization to the development of coherence. At its core, coherence entails an organization’s ability to build a consensus around its functional boundaries and procedures used to resolve disputes. While there is no doubt that the EEOC shifted the handling of charges from its headquarter office to its field offices, these field offices were by no means autonomous; EEOC field offices needed to rely on the procedures put into
place by central headquarters when handling EEO claims. Although the processing of charges was decentralized, central headquarters retained full control over the procedures put into place to address EEO allegations, the approval of final field office decisions, and authority over litigation decisions. While Pre-Determinations Settlements were later replaced by more efficient processes, the EEOC was clearly working to not only address the backlogging of employment discrimination charge, but to also bring efficiency and consistency in the handling of these cases.

C. Congressionally-Mandated Functional Growth & Procedural Reforms

While the 1972 Equal Employment Opportunity Act expanded the EEOC’s enforcement mechanisms by granting it the opportunity to file suit in federal court, it also required that charges be processed more quickly. As amended by this Act, Section 706(b) of the 1964 Civil Rights Act now required the Commission to “make its determinations on reasonable cause as promptly as possible, no later than 120 days from the filing of the charge” (EEOC, 1973, p. 9). To address the demand for quicker resolution rates, the procedures for processing employment discrimination charges underwent significant changes.

Prior to 1972, employment allegations were received and investigated by EEOC field offices. As explained by the EEOC (1973) “when an investigation was complete, a summarized finding of facts was drafted and forwarded to Headquarters. No conclusions of law were reached at the local levels. These were determined by Headquarters and because the incoming work far exceeded the staff capacity, a sizeable backlog of cases awaiting decisions developed” (EEOC, 1973, p. 9). To address the backlogging of charges awaiting final Commission rulings, Decision and Determination procedures were
instituted to replace Finding of Facts procedures; these new procedures decentralized power by granting field offices the authority to issue determination letters. This decentralization proved beneficial in that it freed field office staff to dedicate more energy towards the investigation of EEO violations and led to increases in determination rates.

As a result of the decentralization of authority and the institution of more efficient compliance processes, the role of the central headquarter office and EEOC field offices in managing the Commission’s workload underwent drastic changes. “Headquarters became less directly involved in actual case handling and was able to devote greater resources to such vital staff activities as analysis, program development, training and planning” (EEOC, 1973, p. 10). As the numbers of charges needing investigation and litigation began to lessen, the Commission focused its resources on developing comprehensive manuals of instruction, interpretations, and standards for its field offices; all of which were designed to strengthen its procedural coherence. In addition, while EEOC field offices retained the power to investigate employment discrimination allegations, issue determinations, and oversee conciliation proceedings and compliance reviews, central headquarters retained the power to review headquarter decisions, oversee litigation reviews, and refer cases to the General Counsel for litigation (EEOC, 1973, p. 10).

In decentralizing authority to address increasing demands, a decentralized coherence model becomes evident. While many may argue that decentralizing the charge handling process weakens coherence, the EEOC demonstrates that decentralization is integral to the development of coherence. Recognizing that the headquarter office was
ill-equipped to oversee the handling of charges, the EEOC transformed its field offices into microcosms of the Commission and instituted compliance procedures to bring efficiency and consistency to its case management. In developing a model of strong field offices, the EEOC was able to not only decentralize the charge handling processes, but also free headquarter resources to address the Commission’s expanding powers.

Instead of relying on a hierarchical model in its decentralization efforts, the EEOC turned to a hub-and-spoke model of authority. The regional field offices as the spokes received considerable autonomy to carry out the business of the agency, but they remained tied to the central office as the hub. Specifically, the Commission relied on its field offices to resolve employment discrimination charges, while the headquarter office retained litigation oversight. The Commission’s workload was thus balanced between the hub and spoke and coherence arose in this balance.

D. **Executive Induced Functional Growth & Procedural Reforms**

While the EEOC was making strides in its handling of employment discrimination charges, administrative, organizational, and procedural issues continued to hamper its progress. As explained by the EEOC (1978), “public skepticism about the Commission had derived chiefly from its reputation for administrative delays and a large backlog of unresolved charges. Under the old system for processing discrimination charges, it could take two years before a case was even assigned and investigated, and there was no systematic effort devoted to clearing up old cases” (p. 15). With a sense of urgency to hasten procedural and operational reforms, in 1978, the EEOC introduced the New Charge Processing System, the Backlog Charge Processing System, and the

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48 These reforms were essential in light of the President Carter’s 1978 Reorganization Plan. The EEOC would either gain additional powers or lose its jurisdiction.
Systematic Charge Processing System. These procedural reforms – which sought to ensure the most efficient customer service and facilitate the handling of charges by its field offices – represented the first major overhaul undertaken by the EEOC.

- **New Charge Processing System**

To help distinguish new complaints from backlogged charges, the EEOC instituted the new Rapid Charges Processing System. Through this upgraded compliance system, charge handling procedures incorporated “new techniques designed to speed complaints, cut bureaucratic delays and maximize the possibility for relief in all appropriate cases” (EEOC, 1978, p. 15). Under the new Rapid Charge Processing System, the intake process was completely revised. As the first step in the investigation process, intake processes now relied on pre-counseling to ensure that the EEOC had jurisdiction and to determine whether the allegation stemmed from Title VII violations. If the alleged claim met these thresholds, intake officers conducted an hour-long fact-finding interview; if the alleged claim failed to meet these thresholds, claimants were referred to appropriate agencies or organizations.

After the intake interview, intake investigators were required to send charges meeting Commission standards to a fact-finding unit. Fact-finding units forwarded charges to the respondent and scheduled a fact-finding conference; conferences normally took place within a four-week period. At the fact-finding conference – presided by specially trained fact-finding investigators – both parties are provided with an

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49 Before undergoing radical organizational and procedural changes, the EEOC created 3 model offices in Baltimore, Chicago, and Dallas to test the feasibility and potential for success of these reforms. After 6 months of testing, the success of these reforms enabled the Commission to institute these changes throughout all their field offices.

50 During this phase, perceived class action suits are sent to the continued investigations and conciliations unit.
opportunity “to develop a deeper understanding of each other’s position, which in turn provides a realistic atmosphere conductive to serious settlement discussions” (EEOC, 1978, p. 17). If settlement is obtained, the case is concluded. If settlement is not obtained, the case is forwarded to the continuing investigations and conciliations unit with recommendations for further investigation or closure. As underscored by the EEOC (1978), this system “relies extensively on settlements satisfactory to both parties before a formal finding of discrimination, a procedure that is designed to obtain a fast and fair disposition without resort to time-consuming procedures” (p. 15).

While Rapid Charge Processing procedures streamlined the processing of new charges, they also fueled the professionalization of the workforce (both headquarter and regional). Instead of continuing to entrust the handling of new charges to field office clerks and paraprofessionals, trained professional investigators were called forth to implement this new procedural reform. As explained by the EEOC (1978),

The new intake procedure is considerably more elaborate than the name implies and addresses intake that was commonly used by EEOC offices in the past. It is conducted by a professional investigator rather than a clerk or paraprofessional, as in the past, so that the intake interview becomes the first step of the investigation, saving hours formerly spent in seeking information later in investigations and uncovering problems that could have been revealed in the intake. And, because the new procedures are conducted by professional investigators, the large number of non-jurisdictional charges and charges otherwise inappropriate to Title VII are no longer a part of EEOC inventory (p. 16).

In seeking to ensure that its procedures made significant strides in the handling of its growing caseload, the EEOC nurtured a professionalization of its headquarter and field office workforce. This is important to coherence because procedures do not implement themselves. While an agency may establish ingenious procedures to address organizational and administrative needs, it needs a professional workforce to ensure the
procedures implementation. Rapid Charge Processing procedures not only streamlined the handling of new charges, but they also required that a professional workforce oversee its implementation.

- **Backlog Charge Processing System**

  Prior to the issuance of Backlog Charge Processing procedures, “the agency operated on a first-in, first-out system which guaranteed that all new charges would be aged, drastically reducing their potential for remedy or for efficient and timely resolution of any kind” (EEOC, 1978, p. 19). As a result of the escalations in backlogged charges that emerged from early charge handling processes, the EEOC recognized the importance of separating new charges from backlogged cases. Therefore, it not only established procedures to address the handling of new charges, but it also created procedures to address backlogged cases. A separation in the handling of these charges was critical to preventing escalations in unresolved cases.

  To address backlogged charges\(^{51}\) and foster their elimination within a self-imposed 3-year period, the EEOC turned to its field offices. As explained by the Commission (1979), “the backlog reduction was achieved in field offices by assigning a sizeable staff to older cases and having key supervisory personnel chart the investigation and keep a close check on resolutions of these cases” (p. 6). Within each field office, a management review group was created to oversee the handling of backlogged employment discrimination charges; this group consisted of the district office director, two supervisors from the backlogged field office, and an attorney.

\(^{51}\) Backlogged charges included all charges received before January 29, 1979.
A Special Charging Party Contact procedure was issued by the EEOC to begin to address the handling of these backlogged claims. Under this new procedure, letters were sent to charging parties requesting confirmation of their desire to continue with their employment discrimination claim; individuals were given a 15-day period to respond to the agency’s request\textsuperscript{52}. If the charging party verified the charge and informed the Commission that they desired to proceed, the charge moved on to the settlement phase. If successful settlements were obtained, cases were closed; however, if settlement agreements failed to be reached, the Commission continued to investigate the claims.

During the investigation process, investigators were charged with determining the presence of reasonable cause. Cases with reasonable cause were referred to conciliation/settlement; those that lacked reasonable cause were dismissed and claimants were issued right-to-sue letters to take their employment discrimination claims to court on their own. When conciliation/settlement failed to achieve closure in cases with reasonable cause, legal units reviewed the case for possible legal action. The Commission retained final oversight in determining whether suit would be brought to federal court or right-to-sue letters would be issued.

To ensure the management of its workload, the Commission not only separated backlogged charges from new charges, but it also created procedures that expedited the handling of backlogged cases. Without questions, these procedural reforms resulted in drastic decreases in the number of backlogged charges. As underscored by the EEOC (1978, p. 19), “the results of the new procedures were dramatically apparent in August 1978 when the Dallas model office became the first in EEOC’s history to permanently

\textsuperscript{52} If a response was not received within 15 days, a follow up letter was sent via certified mail. This letter granted claimants 30 days to respond or face charge dismissal.
eliminate its backlog of job discrimination charges – a year ahead of a carefully planned schedule for backlog elimination” (p. 19). This was particularly significant because the Dallas field office was known more for its backlog problem than for its ability to address employment discrimination claims (EEOC, 1978, p. 19).

While this reform sought to address general inefficiencies in the handling of charges, the institution of the Backlog Charge Processing System was also significant because it granted backlogged charges priority status and allocated staffers to exclusively tackle these accumulating complaints. As a direct result of this procedural reform, backlogged discrimination charges began to undergo significant decreases; a first in Commission history. Without question, coherence continued to grow at the EEOC. In working to manage its workload, the Commission finally obtained remedies to its backlog of charges and benefited its clientele.

- **Systemic Charge Processing System**

  Not only did the EEOC create separate procedures for new and backlogged charges, but it also established a “mechanism for [the] precise targeting of large-scale class investigations and enforcement proceedings” (EEOC, 1979, p. 10). Through the Systemic Charge Processing System, the Commission established procedures that essentially separated systemic discrimination charges against entire groups of employees within a company from individual charges of employment discrimination. This was an important distinction to make in that classification of systemic charges facilitated the identification and elimination of more pervasive large-scale discriminatory practices.
Through the Systemic Charge Processing System, systemic units were created in field offices under the jurisdiction of central headquarters’ Office of Systemic Programs. While field office systemic units remained under the direct supervision of the district director, central headquarters continued to dictate the handling of systemic charges. As explained by the EEOC (1979),

The headquarter office provides extensive support and coordination of all field systemic activities, including technical assistance in the selection of targets and conduct of investigations, as well as litigation. Thus, the Commission is able to maximize its investigative and litigative resources, ensuring that they are at all times optimally deployed while administering and coordinating national program which remains responsive to local needs and circumstances (EEOC, 1979, p. 11).

The creation of Systemic Charge Processing procedures continued to strengthen the EEOC’s coherence. Based on agency experience, the Commission recognized that systemic cases needed to be handled differently. Not only were they difficult to identify (they were oftentimes filed as individual claims), but the multiple claimants led to greater demands on agency resources during the investigation process. Ultimately, processing class action claims proved to be more time-consuming than individual cases. A single uniform charge handling procedure was no longer effective in the handling of these cases. By creating a procedure to better identify potential class action suits, the EEOC continued to foster coherence in the management of its internal workloads and also attack ongoing systemic employment discrimination practices.

Whether one is examining New Charge Processing Systems, Backlog Charge Processing Systems, or Systemic Charge Processing Systems, it is clear that the EEOC worked to create distinct charge handling procedures to meet its evolving needs. After

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53 These units were usually staffed with an average of 5 trained investigators
54 The Office of Systemic Programs was established in 1977.
more than a decade of enforcement, the Commission began to recognize the importance of separating charge handling processes and establishing procedures that better addressed the different needs of its investigators. Since the first-come first-serve method of handling charges proved ineffective, it became critical to not only separate new charges from backlogged charges, but to also create procedures that distinguished the needs of individual and systemic cases.

While coherence is evident in the procedures created by the EEOC to improve the handling of employment discrimination complaints, it is solidified in the successful procedural integration which took place throughout the EEOC’s central headquarter and field offices. In fact, in decentralizing its case management, the EEOC was able to not only distribute its workload, but also foster the timely processing and early resolutions of employment discrimination charges.

Without question, in working to preserve internal office efficiency, the EEOC has continued to refine and strengthen its private sector charge handling processes. While services continued to be provided to its clientele, the emphasis of these procedural reforms was the institution of charge handling procedures that were better equipped to deal with the Commission’s growing workload. Though decentralization continued in the management of employment discrimination charges, control over the entire charge handling process remained at the EEOC’s central headquarter office.

E. **Agency-Induced Procedural Reforms: Priority Charge Handling**

Facing an inundation in neglected backlogged charges, a $5 million deficit, increasing demand from expanding enforcement responsibilities, and decreases in public support and morale among its staff, in 1995, the EEOC launched procedural reforms to
improve its private sector compliance processes. These procedural reforms were desperately needed because “the agency was struggling under the weight of outdated enforcements and procedures” (EEOC, 1995, p. 15). To foster greater efficiency, accountability, and transparency in the management of its workload, the EEOC began by rescinding key 1980 enforcement, administrative, and litigation policies. The Commission specifically sought to eliminate the need to fully investigate every employment discrimination charge presented to the agency, to secure full remedies in every case where discrimination was likely to have occurred, and to provide litigation consideration in all cause cases where conciliation efforts had failed (p. 16).

While the New, Backlog, and Systematic Charge Processing Systems facilitated the intake process by allowing field offices to filter charges into three distinct categories, the handling of these charges was clearly another matter. To replace antiquated methods of managing its workload and strengthen compliance processes, the EEOC shifted away from lengthy investigations to focus on more strategic and systematic processes.

Under the new Priority Charge Handling procedures, field offices were provided with a venue to filter the handling of new, backlog, and systemic charges. To better distribute its investigative resources, Priority Charge Handling procedures now classified the handling of charges into three categories. Category A charges represented those that exhibited evidence of discrimination; these charges were given priority investigative and settlement efforts. Category B charges encompassed those that required further investigation to determine the validity of the claim; these charges remained Category B until required evidence was provided within the required period. Category C charges represented charges that did not fall under the EEOC’s jurisdiction or those that failed to
demonstrate evidence of discrimination; these charges were immediately dismissed (EEOC, 2010, p. 22). Settlements were also encouraged throughout all phases of the process. “While appropriate relief is sought for all aggrieved parties, the Commission recognizes that this relief can often be obtained through settlement and remains open to this option at any point in its investigative process” (EEOC, 1995, p. 16).

The basic goal of these procedural reforms was to transform compliance processes to reduce the number of pending cases and provide more efficient and effective procedures to address the handling of employment discrimination charges. Instead of relying on procedures that prevented it “from strategically focusing its limited resources on matters having the greatest potential for significant and more immediate impact curtailing employment discrimination,” the EEOC instituted prioritized charges procedures to streamline the intake process (EEOC, 1995, p. 16). These new procedural reforms not only empowered headquarter and field office personnel to make meaningful decisions, but they also removed excessive layering in the handling of charges. As a result of these reforms, between 1994 and 1995, resolution rates increased 28.2% while pending inventory rates decreased 11.7% (EEOC, 1995, p. 27); this trend continued well into the 2000s (EEOC, 2001, pp. 4-5).

It is also worth noting that, in 2008, Priority Charge Handling procedures were further strengthened with the implementation of a Uniform Intake Checklist. This Checklist was of particular importance because it was designed to eradicate inconsistency that began emerging during the intake process and in the different intake procedure requirements being employed throughout its field offices. Though the Commission has not ceased to rely on Priority Charge Handling procedures to address incoming
employment discrimination charges, it continues to find ways of strengthening its compliance process to better address its case management.

In the EEOC’s attempts to manage its workload, it adopted a series of procedural reforms, some replacing others to handle charges; all of which were immediately embraced and implemented – evidence of coherence. To address budgetary constraints, functional growth, and increases in the number of backlogged charges, the Commission worked to transform its case management processes. By instituting Priority Charge Handling procedures, the Commission was able to eliminate unnecessary layering in the private sector charge handling process, the need for thorough case-by-case management, and antiquated compliance processes no longer equipped to manage the EEOC’s growing workload.

F. Agency-Induced Procedural Initiatives: Alternative Dispute Resolution

After several years of development and testing, the EEOC instituted the Alternative Dispute Resolutions program in 1999 to provide another venue for the handling of charges. This was a particularly groundbreaking initiative in that it offered the Commission an alternative to the traditional investigative and litigation processes by circumventing the need for lengthy investigations or litigations.

The Alternative Dispute Resolutions (ADRs) program provided mediation as a method of facilitating resolutions; ADRs could be used at any phase of the charge handling process. If both the employee and employer agree to mediation, a neutral third-party mediator is called in to assist in negotiating a voluntary resolution to the

55 These mediators are experienced in EEO laws and trained in mediation. Though mediators work directly for the EEOC, they do not decide culpability, but instead facilitate resolutions. A “firewall” has also been instituted to separate ADR from EEOC compliance processes.
employment discrimination charge. During the mediation session, parties are given an opportunity to discuss the allegation, identify underlying interests, find common ground, and negotiate solutions. The role of the mediator is to help both parties agree to a mutually accepted resolution. Strict confidentiality is emphasized at every stage of the process (EEOC, 2001, p. 6).

As a result of its innovative approach to the handling of charges, the Alternative Dispute Resolutions program garnered “the endorsement of a broad range of Agency stakeholders, including business and labor advocates, civil rights groups, and representatives of the employer and plaintiff bars” (EEOC, 2001, p. 6). Not only did this mediation process achieve immediate support from its stakeholders, it also obtained support in the number of individuals turning to ADR for quicker resolutions. In fact, even though the average closure rate increased from 86 days to 100 days between 1999 and 2010, during this period, EEOC mediations increased from 7,397 to 12,755, resolution rates from 4,833 (65.3%) to 9,362 (73.4%) and monetary benefits from $58.6 to $141.9 million (EEOC, 2011b). Without a doubt, mediation has provided a viable option for the resolution of employment discrimination violations. By fostering quicker mediation-based resolutions to traditional investigation and litigation options, Alternative Dispute Resolutions demonstrated that win-win situations could be obtained through quick, amicable, cost-effective mediation options.

In making the conscious decision to completely separate ADR from its overall compliance processes, the EEOC did not need to create new formal procedures. In relying on a neutral third party, mediation was left in the hands of trained EEOC mediators. Despite lacking such new ADR procedures, coherence continues to be evident
in the ability of the EEOC to institute innovations to facilitate the handling of employment discrimination charges. In working to identify and channel charges to mediation, fewer cases required costly investigations and litigations. Although Priority Charge Handling procedures remain the cornerstone of the private sector compliance process, ADRs provide an additional venue to filter these employment discrimination complaints. The fact that mediation-based alternatives have been so successful underscores the importance of establishing viable alternatives to tradition charge handing process.

G. Conclusion

To determine the presence of coherence within the EEOC, this chapter focused on the emergence and evolution of its private sector compliance processes. When the EEOC began receiving charges of employment discrimination, it turned to the precedent set forth by other federal bureaucracies when creating its compliance processes. Although a necessity, as it lacked its own procedural precedents, these procedures failed to properly address the Commission’s overwhelming workload. To begin, these procedures required that central headquarters receive all incoming charges of employment discrimination. Although it had field offices to share in the workload, the EEOC centralized the intake process at its central headquarters. To complicate compliance efforts, intake processes relied on a first-come first-serve method and failed to distinguish between new and pending cases. Centralized case management and inefficient charge processing systems, therefore, led to an immediate backlogging of charges. Although the EEOC failed to immediately recognize the benefits of decentralizing its caseload management, it quickly began turning to its field offices for assistance. Though charge handling procedures
remained unchanged, field offices were beginning to receive greater charge handling responsibilities.

As a result of functional expansions stemming from legislative and executive mandate, the EEOC began demonstrating clear evidence of coherence in its issuance and subsequent embracement of agency-specific procedural reforms. While the Commission began with pre-determination settlements procedures to limit the time it took to handle charges, simplify investigation reports, and foster settlements without resorting to formal decisions, these procedures continued to undergo change. In working to foster more efficient case management, pre-determinations were replaced with rapid, backlog charge, and systemic charge handling procedures; procedures designed to better filter charges during the intake process and allocate agency resources.

As the EEOC worked to establish charge handling procedures that were better equipped to address agency-specific demands, compliance processes continued to evolve. Due to ideological and leadership shifts in the Commission’s leadership, in addition to increasing criticism for its lack of litigation efforts, the EEOC transformed its procedures to emphasize new litigation priorities. While these procedural reforms led to significant litigation activities, they also placed a great deal of demands on central headquarters and field officer personnel in that they significantly extended the investigation and litigation process. Litigation priorities also led greater centralization in the compliance process; though field offices continued to be employed to address the intake and investigation of charges, central headquarters gained greater litigation oversight throughout the entire charge handling process. In the end, the focus on litigation came with increases in the number of backlogged charges. In transforming agency procedures to underscore
litigation efforts and extend investigative processes, unaddressed charges began to escalate.

After years of handling employment discrimination charges, coherence continued to evolve in the EEOC’s recognition that procedural reforms were needed to better manage its workload. To address functional expansions, budgetary constraints, escalating backlogged charges, and antiquated compliance processes, the Commission transformed its charge handling process. In addition to instituting new priority charge handling procedures to streamline the intake and investigative process and grant greater authority to field office rulings, mediation-based alternative dispute resolutions programs were instituted to eliminate the need for costly and lengthy investigations and litigations.

When examining the evolution of EEOC’s private sector compliance processes, there is no doubt that the Commission spent decades refining its charge handling procedures. While each procedural reform came with its share of strengths and weaknesses, coherence grew in the immediate embracement and enforcement by central headquarters and field offices personnel. Whether the Commission was centralizing compliance (which led to inefficient case management) or decentralizing its workload (which led to efficient case management), procedures were implemented to their fullest. Though this is an ongoing process, coherence is evident in both the creation of agency-specific procedures and the immediate implementation by central headquarters and field office personnel.

To emerge as institutions, bureaucracies must demonstrate coherence; there must be consensus over its functional boundaries and the procedures used to resolve disputes, which arise within its jurisdiction. At its core, coherence seeks not only to determine the
presence of unity between an organization’s central headquarters and its regional offices, but also to evaluate the level of organization demonstrated by its inner-workings in its caseload management. To build a foundation for coherence, bureaucracies must possess an ability to develop, refine, and evaluate the compliance procedures used to manage their workload. In addition to instituting procedures to address compliances processes, bureaucracies must work to ensure that said procedures are implemented. Therefore, in nurturing coherence, bureaucracies need to be able to strike a balance between the centralization and decentralization of compliance processes. When the procedures used to address disputes acquire coherence, bureaucracies can then turn to the creation of more informal case management systems.
CHAPTER XI.
THE U.S. EEOC AS AN INSTITUTION: CONCLUDING THOUGHTS

When one examines the academic literature, it is clear that numerous scholars have focused their energies on institutionalization as it occurs in various settings. Nonetheless, although scholars have examined institutionalization within the legislative (Polsby, 1968, U.S. House of Representatives; Cannon, 1989, congressional leadership) and executive (Cornwell Jr., 1960, presidential press conferences; Seligman, 1965, President’s inner circle of advisors and aides; Ragsdale & Theis, 1997, the presidency) branches of government, no study has examined institutionalization within federal bureaucracies. Despite the fact that bureaucracies are commonly referred to as institutions, a basic understanding of how this transformation takes place has yet to be undertaken. Building from the work of Peverill Squire and Samuel P. Huntington, this dissertation sought to determine if a federal bureaucracy could emerge as an institution through a comprehensive longitudinal examination of the EEOC. In assessing the presence of adaptability, complexity, professionalization, autonomy, and coherence within the Commission, there is no doubt that federal bureaucracies have the potential to emerge as institutions.

A. **Adaptability**

In order to emerge as institutions, bureaucracies need to be able to demonstrate an ability to adapt to environmental challenges and age; in other words, they need internal mechanisms designed to adjust to unforeseen environmental changes that occur over time. Based on the longevity of its procedures, changes in its leadership, and successful
transitions to modifications in its principle tasks, mission, and purpose, adaptability is clearly evident throughout the EEOC.

To identify lackluster EEO policy implementation and better channel enforcement efforts, the EEOC adopted Form EEO-1 Reports in 1966 requiring public sector employers to disclose specific workforce data. In addition to emerging as one of the Commission’s oldest and most successful recordkeeping systems, Form EEO-1 Reports paved the way for subsequent recordkeeping tools targeting local unions (Form EEO-2), apprentice programs (Form EEO-3), state and local governments (Form EEO-4), institutions of primary and secondary education (Form EEO-5), and institutions of higher education (Form EEO-6).

Based on the acceptance and evolution of Form EEO-1 Reports, there is little doubt that EEOC recordkeeping tools have acquired procedural longevity. While this is quite a significant feat, what is more revealing is how this unfolded. It is essential to recognize that, up until the EEOC’s creation, there was no systematic tracking of America’s workforce. The data that existed was limited and unconsolidated. While EEOC Form EEO-1 Reports and its subsequent extensions provided the Commission with a key role in the consolidation of public sector employment data, the information acquired by these recordkeeping systems was also to be used to target systematic patterns of discrimination in the workforce. Therefore, getting employers to disclose critical workforce data – which could then be used against them – required creative planning.

In order to ensure procedural longevity, the EEOC invited EEO policy stakeholders to public hearings to participate in the creation of these recordkeeping systems. In inviting labor, business, and union interests to voice their concerns and take
part in the creation of Form EEO-1 Reports, support for this recordkeeping system was solidified. This salience served to facilitate the acceptance of eventual adjustments to Form EEO-1 Reports and expansions in this recordkeeping system to target unaddressed sectors of the workforce. In addition to mandating the collection of employment data during a period in American history saturated with turbulent struggles for racial and gender equality, the EEOC was able to maintain a dialogue with its stakeholders to continue to foster procedural longevity in its recordkeeping systems.

Achieving procedural longevity is not always simple. At times, bureaucracies may be forced to implement controversial procedures to ensure compliance with the law. As illustrated by the EEOC, despite challenges, bureaucracies have the tools to foster this procedural salience if they learn to adapt to their environment. The key is to allow its stakeholders an opportunity to voice their concerns. While bureaucracies may not be able to address their concerns every time, establishing a dialogue with its stakeholders serves to facilitate the acceptance of its enforcement procedures. Salience emerges from a bureaucracy’s ability to adapt to environmental challenges and age.

While a bureaucracy needs to demonstrate procedural longevity, adaptability also entails evidence of leadership changes. Based on an examination of transitions in the EEOC’s five-member bi-partisan Commission, it is indeed evident that the EEOC has been able to adapt to drastic changes in its core leadership. The Commission has been able to withstand a fair share of turbulent administrations. In addition to enduring the controversial resignations of Chairmen John H. Powell and Lowell W. Perry during its formative years, it was able to survive divisive leaders such as Chairman Clarence Thomas. It also endured drastic changes in its enforcement mechanisms as new leaders
stepped in and began tackling implementation shortcomings. With unique visions and distinct agendas aimed at strengthening enforcement, Chair Stephen N. Shulman focused his tenure on conceptualizing the meaning of discrimination; Chair Clifford L. Alexander and William H. Brown III on obtaining litigation authority; Chair Gilbert F. Casellas on revamping the processing of backlogged cases; and, Chair Cari M. Domínguez on outlining strategic goals for the Commission. The EEOC has even been able to thrive under Chairs who pushed the Commission into unchartered terrains. In fact, not only did Chair Franklin D. Roosevelt Jr. bring legitimacy to the work of the EEOC by targeting discrimination against African Americans in the South, during their tenures, Chair Eleanor Holmes Norton worked to expand gender-based discrimination to include sexual harassment, Chair Evan Kemp Jr. focused on expanding the reach of EEO policy to include the disabled, and Chair Ida L. Castro focused on employment discrimination targeting immigrants and low-wage workers.

At its most basic level, adaptability entails a clear transition in leadership; the greater the number of leadership transitions, the more an organization is said to be able to adapt to environmental changes. However, what the EEOC has demonstrates is that adaptability goes beyond changes in the names of bureaucratic leadership; it also entails the ability to adjust to drastic administrative changes. Put simply, whether leadership is viewed as turbulent, problem solving, or innovative, the bureaucracy must learn to adapt to changes in its administration if it is to preserve its core mission. While bureaucratic leaders come and go, the bureaucracy remains in place. Developing an ability to adjust to changes in leadership – whether good or bad – is the true measure of generation age.
In addition to requiring evidence of procedural longevity and leadership changes, adaptability entails an ability to adjust to changes in key institutional functions. As a regulatory bureaucracy, the EEOC is subject to legislative oversight. Though it was created to oversee the enforcement of EEO policy designed to guard against employment discrimination based on race, color, religion, sex, and national origin (Title VII of the 1964 Civil Rights Act), congressional legislations have served to expand the scope of EEO policy and the reach of the Commission. In fact, through the years, EEO policy evolved to not only prohibit pay inequality (1963 Equal Pay Act), but to also ban employment discrimination stemming from pregnancy (1978 Pregnancy Discrimination Act), age (1967 Age Discrimination in Employment Act), and disability (1990 Americans with Disabilities Act). As EEO policy underwent gradual expansions, congressional legislation also served to increase the EEOC’s jurisdiction. In addition to receiving oversight in the enforcement of federal anti-disability discrimination laws (Section 501 & 505 of the 1973 Rehabilitation Act and 1978 Civil Service Reform Act) and the authority to coordinate all federal EEO programs (1978 Reorganization Plan No. 1), the EEOC was granted litigation authority (1972 Equal Employment Opportunity Amendments) and the ability to obtain monetary damages in cases of blatant employment discrimination (1991 Civil Rights Act).

Without a doubt, Congress has played a critical role in expanding the scope of EEO policy and the jurisdiction of the EEOC. However, as demonstrated by the Commission, adaptability goes beyond the ability to adjust to these expansions. While an ability to withstand changes to its core principle tasks, mission, and purpose is essential, this all rests upon the deference obtained by the bureaucracy. As illustrated by the
EEOC, despite lacking adequate resources and drowning in years of backlogged discrimination charges, it worked diligently to ensure the implementation of EEO policy. In taking full ownership over the eradication of employment discrimination, instituting creative solutions to address its enforcement hurdles, and persisting despite ongoing obstacles, the Commission gained the respect of its stakeholders and political actors. In obtaining this deference, Congress continued to reward the Commission with greater EEO oversight; oversight that led to meaningful changes to institutional functions.

While bureaucracies must manifest an ability to adjust to changes in their principle tasks, mission, and goals, it is essential to recognize that – in the case of regulatory agencies – the most significant changes come as a result of congressional mandate. Therefore, if a bureaucracy is unable to use its resources to carry out its most basic tasks, it is unlikely that it will be able to handle changes to its institutional functions. If bureaucracies fail to make an effort to garner the trust of their stakeholders and political actors alike, their institutional functions may face stagnation and decay. In order to obtain the right to foster meaningful changes to their core institutional functions, federal bureaucracies need to prove themselves with the resources they have in hand. Ingenuity, diligence, and a genuine commitment on the part of the bureaucracy are essential to obtaining deference. As bureaucratic efforts are rewarded with greater oversight over policy domains, the real work begins. Put simply, federal bureaucracies need to not only garner the respect of its stakeholders and political actors in order to achieve greater oversight in their policy domains, they must also demonstrate an ability to successfully adjust to changes in key institutional functions which result from these expansions.
Adaptability is clearly an ongoing process. To emerge as adaptable institution, a bureaucracy needs to be able to maintain procedural longevity, while simultaneously withstanding changes in leadership and institutional functions. Therefore, to manifest adaptability, bureaucracies need to learn how to garner the support of their stakeholders. Whether they are inviting stakeholders to the policy making table, providing them with an outlet to voice their concerns, or soliciting their assistance in targeting implementation issues, bureaucracies need to work towards obtaining deference; they need to recruit allies to preserve the success of their missions. In addition to learning how to work with external actors, bureaucracies must learn to adapt to changes over time. Whether they are adjusting to radical leadership changes or alterations in their institutional functions, bureaucracies need to keep their attentions focused on their core mission. While adaptability entails evidence of procedural longevity, leadership transitions, and an ability to adjust to functional changes, the true measure revolves around a bureaucracy’s ability to adapt to environmental challenges and age.

B. Complexity

In addition to possessing an ability to adapt to change, to emerge as institutions, bureaucracies need to display complexity. Complex structures help the agency adjusts to procedural and leadership changes. To be deemed complex, bureaucracies need to demonstrate clear evidence of hierarchical and functional growth, differences within organizational subunits, and divisions of labor with clear performance expectations. In examining alterations to the EEOC’s organizational chart, the emergence and transformation of EEOC field offices, the forging of partnerships with state and local Fair Employment Practice Agencies (FEPAs) and Tribal Employment Rights Office
(TERO’s), and the integration of federal agencies within the folds of the EEOC through Memorandums of Understanding (MOU’s), there is little doubt that complexity permeates the inner workings of the EEOC.

Based on a historic overview of the EEOC’s organizational chart, it is clear that the Commission has developed a complex internal structure. During its formative years, the EEOC’s organizational charts were extremely basic. With a handful of loosely organized departments, the Commission began the charge of overseeing the enforcement of Title VII mandates. However, as it began encountering unexpected obstacles, increases in its enforcement responsibilities, and expansions to its jurisdiction, the EEOC’s organizational chart began evolving. To illustrate, when it began expanding its presence throughout the country through the use of field office, it created a department to oversee field office operations; when it gained litigation authority, it created a department to handle legal activities; and, when it began to recognize the lack of EEO policy awareness, it created a department to oversee education, outreach and technical programs. In essence, in working to address its growing roles, responsibilities, and functions, the Commission began fine-tuning its hierarchical structure. In adapting to environmental changes and learning from trial and error, today’s EEOC’s organizational chart showcases a complex structures with numerous departments and sub-departments; a clear distribution of responsibilities; and, intricate layering and oversight.

While indications of hierarchical and functional growth are evident in the gradual evolution of the EEOC’s organization chart, complexity goes beyond the mere addition of a box to a chart. Bureaucracies need to recognize that complexity entails hierarchical and functional growth with clear divisions of labor and specified performance
expectations. Every new addition, elimination, replacement and consolidation to a bureaucratic organization chart must serve a larger purpose. In other words, in addition to facilitating the distribution of labor and fostering greater accountability, organizational charts must demonstrate a focus on overall bureaucratic advancements.

The evolution of the EEOC’s jurisdictional map and its strategic use of field offices mirror the complexity showcased in its organizational chart. When the Commission opened its doors for operation in 1965, it had a single office – its central headquarters in Washington DC. By 2010, it had 15 district offices, 9 field offices, 15 area offices, and 14 local office strategically located throughout the nation; each with its own enforcement responsibilities and oversight. While a significant feat, this decentralization did not occur overnight. As the EEOC began encountering inadequate resources, administrative challenges, enforcement obstacles, and increasing demands, it opted to distribute its workload through the strategic creation of field offices (microcosms of the Commission). Despite decades of modifications to the number, jurisdiction, and roles and responsibilities of its field offices, the Commission has continued to nurture the creation of a complex structure through its entrenchment throughout the country. While complexity is evident in the transformation of the EEOC’s organizational chart, a clear chain of command, distinct sub-units, and distributions of labor with specified expectations is also evident in its strategic deployment of field offices.

What is most significant in the EEOC’s use of field offices is the entrenchment achieved by the Commission. To foster complexity, federal bureaucracies need to recognize the importance of visibility. In escalating its presence throughout the country, the EEOC not only expanded its hierarchical and functional structure, but it also
solidified its position as EEO enforcer. To thrive as complex institutions, bureaucracies need to value the importance of customer service. If they reach out to their stakeholders, their demands will grow; if their demands grow, they can begin to create complex structure which serve to not only facilitate the delivery of services, but to underscore the authority of the bureaucracy as a whole.

There is no doubt that the EEOC has developed a complex organizational chart and field office structure; however, though significant, these are internal transformation. These changes required no external cooperation and affected only the Commission’s inner workings. FEPAs, TEROs, and MOUs with federal bureaucracies provide a more provocative illustration of the complexity evident within the EEOC in that they highlight efforts by the Commission to expand its complexity beyond its functional boundaries.

To continue to foster the implementation of EEO policy, address its growing workload, and increase its authority and presence throughout the country, the EEOC began forming partnerships with external agencies sharing similar responsibilities. While complexity is evident in the growth of partnerships between the EEOC and state and local FEPAs from 13 in 1965 to 94 in 2010, what is more revealing is how the assignment of specified goals and performance expectations evolved throughout the decades.

When the EEOC began forming partnerships with FEPAs, the focus was on addressing the intake, distribution, and handling of employment discrimination charges. FEPAs were recruited to serve as a supplemental workforce designed to help the Commission handle its growing workload. However, when the EEOC began recognizing the potential benefits derived from sharing its enforcement responsibilities with FEPAs, it began using federal grants to not only induce FEPAs into developing systematic
approaches to ending discrimination in the workforce, but to shape them into microcosms of the Commission by expanding their roles and responsibilities. In using federal funding to transform state and local FEPAs into extensions of the Commission, a more permanent and meaningful partnership emerged. Complexity was reinforced as a result of the EEOC’s strategic use of partnerships with external actors.

Similar ingenuity was used in the forging of partnerships with TEROs. To protect the employment rights of Native Americans working in Indian reservations, the EEOC began providing TEROs with community outreach; educating employees and employers on their rights and responsibilities; and, offering ongoing training, technological assistance, and administrative guidance. Through these efforts, EEOC/TERO partnerships increased from 25 in 1979 to 64 in 2010. By forging partnerships with TEROs and adjusting their roles and responsibilities in the enforcement of EEO policy, the EEOC continued to entrench itself throughout American society and gain allies for their Commission initiatives.

While complexity entails hierarchical and functional growth, divisions of labor, and performance expectations, the EEOC has demonstrated that complexity can be extended beyond bureaucratic walls. In forging partnerships with agencies undertaking similar tasks, providing them with ongoing assistance, and articulating new goals and performance expectations, the Commission was able to distribute its workload while increasing its authority by requiring its partners to set specific goals to help achieve the overall mission of the EEOC. For bureaucracies to thrive as complex institutions, they need to forge meaningful partnerships with external actors performing similar tasks. As demonstrated by the EEOC, complex structures that extend bureaucratic walls serve to
not only ease the workload, but to reinforce the authority of the bureaucracy over its policy domain.

In addition to forging partnership with agencies overseeing the enforcement of fair employment practice laws, the EEOC reached out to federal agencies sharing overlapping jurisdictions. While earlier partnerships could be best described as informal arrangements, this changed in the 1970s when the Commission began requiring federal agencies to enter into formal agreements designed to ensure efficient EEO implementation. Through the use of MOUs, the EEOC took the lead in enforcement by outlining specific goals and performance expectations designed to foster administrative efficiency, increase coordinative efforts, ensure personnel training, eliminate overlap and the duplication of efforts, and eliminate conflicts of interests and inefficiencies in the handling of discrimination charges.

The use of MOUs by the EEOC underscores the importance of building partnerships with external actors. When the Commission began encountering problems associated with overlapping jurisdiction with fellow regulatory agencies, it took the lead in establishing itself as the principal enforcer. While the forging MOUs with fellow bureaucracies have served to underscore the complexity evident throughout the EEOC, what is most impressive is the Commission’s ability to establish its dominance over its policy domain. Instead of bowing to equal actors, it embraced its regulatory authority and forced accountability from other federal agencies overseeing EEO mandates. As bureaucracies work to establish themselves as complex institution, they need to reign in their policy domains. As demonstrated by the EEOC, at times, this entails taking the lead among other’s with jurisdictional oversight.
In examining alterations to the EEOC’s organizational chart, the emergence and transformation of EEOC field offices, the forging of partnerships with state and local FEPAs and TERO’s, and the integration of federal agencies within the folds of the EEOC through MOU’s, there is little doubt that complexity permeates the inner workings of the EEOC. In establishing itself as a complex institution, the EEOC has worked to not only develop a multilayered inner structure, but to also establish a multidimensional structure extending its organizational boundaries. In bringing the Commission closer to the public it served and in fostering partnerships with external actors addressing similar objectives, the EEOC was able to establish complexity while gaining external allies and position itself as the primary EEO enforcer.

Based upon the emergence and evolution of complexity within the EEOC, it is evident that – though attainable – complexity entails a great deal of bureaucratic effort. As bureaucracies work to achieve complexity, they must use all the tools at their disposal to establish their authority; they must take full ownership over their policy domains and be willing to embrace the power within their reach and adapt to change. This is, in fact, what the EEOC did. By expanding its presence throughout the country through and forging partnerships with external actors sharing similar objectives and jurisdictions, the Commission was able to solidify its regulatory authority while simultaneously entrenching itself into every sphere of society. These efforts demonstrate that, to display complexity, organizations must be willing to evolve and accept the powers and responsibilities that come with institutionalization; complexity is the byproduct of bureaucratic efforts and is intricately connected to an agency’s ability to adapt and evolve.
C. Professionalization

In assessing its emergence as an institution, it became necessary to also evaluate professionalization within the EEOC’s inner workings. Because adaptability and complexity demand much of an agency’s workforce, professionalization drew the examination to institutional attributes related to workforce compositions and workload demands in order to explore how bureaucracies carry out their mission in the face of ongoing organizational and administrative change.

While a preliminary overview of the EEOC’s personnel demonstrated the presence of a full-time, seasoned, and adequately compensated workforce, these are merely the building blocks for developing a professionalized workforce. In order properly assess the presence of professionalization, it became imperative to also examine the tenure and the experience and education of this workforce. To solidify the professionalization of the workforce and facilitate overall enforcement efforts, it is critical that this workforce encompass experienced and educated personnel.

When taking into account the educational attainment of the EEOC’s workforce, there was ample evidence of a professionalized staff. As demonstrated by the Commission, in addition to working to recruit a more professional workforce, it worked to ensure that these individuals remained with the agency through proper compensation. It recognized that the longer this educated workforce was retained, the greater their ability to adapt to administrative changes, functional growth, and increasing demands.

While professionalization entails evidence of a bureaucracy’s ability to nurture a properly compensated, educated, and tenured workforce, it is also important to examine what could actually be accomplished by these individuals. When examining the
distribution of employment discrimination cases over the last decade, it is evident that staff decreases, budgetary fluctuations, and functional growth have led to increases in the overall workload of the average EEOC full-time employee. Nonetheless, even though individual workloads have undergone increases, the EEOC’s ability to develop a professionalized workforce has paid off in the ongoing increases to its resolution rates.

While technical experience, advanced degrees, and extended tenures are advantageous to the development of professionalization, it is essential that this professional workforce be able to put this training into practices. Whether a bureaucracy is facing increasing demands, functional growth, administrative change, and inadequate resources, a professionalized workforce is expected to possess the necessary skills to meet these challenges. As bureaucracies undergo the process of institutionalization, they will need a professionalized workforce to maintain clientele service and provide stability in the face of ongoing change.

Having examined the composition of the EEOC’s workforce and its ability to manage its workload, it is quite astonishing that – despite budgetary constraints, implementation hurdles, and functional growth – the Commission has consistently striven to foster customer service. In fact, it has been able to carry out its mission in the face of ongoing organizational and administrative change. In emerging as a professional institution, bureaucracies need to learn to persevere despite enforcement hurdles, shifting agency agendas, and administrative transitions. By nurturing the development of a professional workforce, bureaucracies will be provided with a talented and experienced workforce to help it carry out its responsibilities.
Even though all federal bureaucracies have the potential to emerge as professional institutions, professionalization extends beyond numeric changes in a bureaucracy’s workforce. Regardless of whether bureaucracies have the necessary personnel to maintain control over their policy domains – to emerge as professional institutions – it is critical that they develop a professionalized workforce. If a bureaucracy is able to develop a professional workforce, it will be better equipped to deal with leadership changes, procedural reforms, functional growth, and any other number of enforcement challenges. Professionalization is critical to the institutionalization process.

D. Autonomy

To be considered institutions, bureaucracies need to also demonstrate autonomy; in other words, they need to exhibit sovereignty over their policy domains, while simultaneously obtaining deference and independence. This is a critical component of institutionalization because it focuses the attention on the relationship between an agency and external actors. At its core, autonomy seeks to determine whether bureaucracies have interests distinguishable from those of external actors. In examining the role of the EEOC in shaping age, race, gender, and disability equal employment opportunity policies, in addition to its use of enforcement mechanisms to further its interests, it is clear that autonomy has taken shape.

When it comes to the EEOC’s role in expanding EEO protected classes to include the elderly it is undeniable that the Commission has always placed its organizational needs before all others. Though charged with eradication employment discrimination, the EEOC focused its energy on the enforcement of Title VII mandates. Despite the fact that employment discrimination continued to plague the elderly, because age was not
identified as a Title VII protected class, the Commission did little to address this problem. As a new bureaucracy with limited resources and an overwhelmed workforce, the EEOC made the decision to focus its energy on refining its Title VII handling and enforcement efforts instead of challenging the Department of Labor over ADEA’s enforcement.

In channeling its energy towards preserving its existence, the EEOC demonstrated interests discernable from that of social forces. In making the decision to focus on strengthen Title VII enforcement, the Commission also laid the groundwork for its eventual rise as an autonomous institution; an endeavor solidified through the 1978 Reorganization Plan No. 1. Though drowning in backlogged discrimination charges and plagued with lackluster leadership, the Commission’s overall efforts, activism, and ingenuity had clearly garnered the respect of EEO policy stakeholders and government officials alike. As a result of the Commission’s dominance over its policy domain, it was not only granted oversight in the coordination of all federal EEO programs, but it was also granted authority over the enforcement of EPA and ADEA policies (formerly under the jurisdiction of the Department of Labor). This reorganization served to not only eliminate duplication of efforts and jurisdictional turf wars, but to consolidate all EEO enforcement under the jurisdiction of a single federal bureaucracy – the EEOC.

Upon gaining ADEA oversight, the EEOC exerted its new authority by taking immediate and complete control over its enforcement. In addition to forging MOUs with the DOL to facilitate the transfer of ADEA cases and legal activities, the Commission replaced DOL ADEA guidelines and regulations with those employed under Title VII. To reign in on its newly acquired policy domain, the Commission worked to preserve its interests through the use of enforcement mechanisms including ADEA rules, guidelines,
procedures, training, and technical assistance programs. While the EEOC strove to obtain deference through leadership, activism, and ingenuity, autonomy continued to flourish as a result of opposition.

As employers began challenging ADEA mandates, the EEOC took a proactive role in turning to the courts to ensure compliance. Though it was able to obtain monetary restitution for victims of age discrimination, expand the breadth and scope of ADEA policy, and solidify the legality of many of its enforcement mechanism, changes in the courts composition also led to rulings weakening ADEA enforcement efforts. Instead of becoming disillusioned with unfavorable determinations, the Commission addressed these obstacles head-on by issuing procedural guidelines and regulations designed to protect its interests. When litigation proved fruitless, the EEOC learned to work with Congress to help secure legislations designed to strengthen ADEA policy.

To emerge as autonomous institutions, federal bureaucracies need to manifest an ability to preserve their interests when faced with external demands. Upon examining expansions in EEO protected classes to include the elderly, it is clear that bureaucracies do not need to bow to external demands. Though discrimination persisted against the elderly, as a struggling and newfound bureaucracy, the Commission chose to focus its attention towards strengthening its hold over Title VII’s implementation. Though counterintuitive, by reigning in on its policy domain – instead of seeking to expand its jurisdiction when clearly ill equipped – the Commission was able to establish a clear agenda absent external demands. It is also worth noting that, in working to achieve deference in its Title VII enforcement, the EEOC would eventually gain jurisdiction over ADEA policy. For bureaucracies to thrive as autonomous institutions, they need to place
internal agency needs above all others. Autonomous institutions are faced with tough choices that are not always embraced by social forces seeking to garner attention. While many valid demands may be presented, bureaucracies need to determine whether these requests serve to reinforce their overall agendas or whether they serve to threaten jurisdictional oversights.

To emerge as autonomous institutions, bureaucracies need to also recognize the power derived from proficient policy implementation. In addition to embracing functional growth, bureaucracies must also learn to use enforcement mechanisms to further agency priorities. When external actors seek to circumvent their regulatory oversight, bureaucracies must learn to use the courts and congress to ensure the integrity of their policy domains. It is essential that they recognize the importance of rigorous enforcement and leadership. In addition to legitimizing their work, rigorous enforcement and strong leadership ultimately lead to the fortification of policy domains. If bureaucracies desire autonomy, they must demonstrate proactive leadership in carrying out their mission. In order to articulate clear interests free from external demands, they must learn to use their influence to protect their policy domains.

While sovereignty in the area of age discrimination is an important part of the autonomy story, it is not the only example. Unlike the incorporation of age as an EEO protected class, the agency’s initial charge included protecting people against racial and gender discrimination. Here, autonomy manifested differently. Despite the fact that race and gender represented two distinct Title VII protected classes, the EEOC focused its formative years on using its enforcement mechanisms to strengthen EEO policy in general. In examining the Commission’s activism in the areas of race and gender in
specific, it is evident that different circumstances elevated these protected classes as agency priorities. In the case of racial discrimination, decreases in the number of charges filed in the 1990s led to significant activism on the part of the Commission. In the case of gender discrimination, ambiguities in the law led to greater activism beginning in the 1970s. Regardless of which protected class took precedence, the EEOC exercised its autonomy in making this decision.

While racial and gender discrimination represent the top Title VII charges, the EEOC shifted its attention and resources between the two protected classes. For autonomy to take shape, a bureaucracy must place agency needs above all else; at times, this may entail making tough decisions. Though it would be ideal to eliminate all implementation hurdles in one sitting, bureaucratic resources and growing demands often impede such lofty endeavors. If autonomy is indeed present, a bureaucracy will be able to priorities shifting demands while ensuring the preservation of its organizational goals and objectives.

When examining employment discrimination against disabled employees in the public sector, it is evident that autonomy began to take shape as a result of congressional expansions to the EEOC’s oversight. In 1973, Congress passed Section 501 and 505 of the Rehabilitation Act to extend EEO coverage to qualified individuals with disabilities in the federal sector; thus, expanding the functional boundaries of the Commission. Rather than push for an immediate extension to grant protected status to disabled employees throughout the entire public, private, and federal sectors, the EEOC exercised its autonomy by focusing its resources on the incorporation of its newest protected class. In fact, the Commission focused a great deal of attention addressing this functional
expansion through the issuance of regulations addressing disabled federal employees and guidelines prohibiting discrimination against the disabled in the federal sector.

For a bureaucracy to emerge as an autonomous institution it must be able to determine its own priorities; it must have freedom to chart its own course. When the EEOC was granted oversight in the enforcement of Section 501 and 505 of the 1973 Rehabilitation Act, it made the conscious decision to focus its attention on embracing this new protected class. Rather than respond to clamors for advocacy in the extension of these rights to the disabled public and private sector workforce, the EEOC focused its energy on addressing its own functional expansions. Based on its experience with Title VII and ADEA, the Commission recognized that its autonomy came from its initial enforcement efforts. Before it could address the needs of the disabled in the public and private sector, the EEOC would need to set a precedent through its enforcement of the 1973 Rehabilitation Act.

As the EEOC worked to define disability discrimination and establish enforcement mechanisms to ensure compliance in the federal sector, leadership changes elevated employment discrimination against the disabled in the public and private sector to the very top of the Commission’s agenda. In fact, under the leadership of Chair Evan J. Kemp, the EEOC worked directly with the executive and legislative branches to ensure that the 1990 ADA included provisions extending EEO protected status to all disabled. Though EEOC leadership was critical to the passage of Title I of the 1990 ADA, there is no doubt that a foundation had already been established through the Commission’s handling of the Rehabilitation Act. In exercising its autonomy, the EEOC delayed pushing for extensions in the coverage of disabled employees until it had the procedures

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in place to handle yet another EEO protected classification. Without question, in the area
of disability employment discrimination, the Commission continued to place agency
priorities above external demands.

Whether one is examining the role of the EEOC in the development of age, race,
gender, or disability equality employment discrimination policies, it is clear that
enforcement mechanisms have helped the Commission solidify its autonomy over its
policy domain. Whether the Commission was issuing determinations and regulations, or
instituting agency-specific task forces and initiatives, it is clear that these enforcement
mechanisms were quite effective. Based on a historic overview of the evolution of
EEOC enforcement mechanisms, it is evident that the Commission has learned to shape
these edits to not only ensure the proper implementation of the law, but to also preserve
its interests.

Federal bureaucracies seeking autonomous standings must learn to compensate
for inadequate resources and implementation hurdles through the innovative use of
enforcement mechanisms. Despite ongoing challenges, the EEOC learned to protect its
interests by pushing its enforcement boundaries to the limit. Whether it was issuing
decisions, regulations, and policy statements, or instituting task forces, technical
assistance, education, and training programs, the Commission continuously employed
enforcement edicts to safeguard its policy domain and legitimize its EEO oversight.
These edicts came particularly handy when courts decisions served to weaken EEO
policy. Rather than becoming discouraged by attempts to water down EEO mandates, the
EEOC used its authority to issue edicts to preserve its jurisdictional terrain and take the
lead in the interpretation of court rulings.
Despite a history plagued by a lack of funding, staff shortages, and overwhelming workloads – the EEOC learned how to use enforcement mechanisms to exert its authority and safeguard its interests over the implementation and enforcement of EEO mandates.

To emerge as autonomous institutions, it is essential that bureaucracies take leadership roles in their enforcement oversight; this is key to the preservation of their overall interests. As demonstrated by the EEOC, by turning to innovative enforcement mechanisms to foster compliance, it was able to obtain deference from its stakeholders, social forces, and political actors; deference which serves to underscore its autonomy over its policy domain. There are no excuses for lackluster implementation. Bureaucracies must use ingenuity to preserve their interest and ensure their livelihoods.

Even though autonomy is within the grasp of federal bureaucracies, they need to take the lead in advancing interests that are clearly distinguishable from that of external actors; autonomy cannot emerge within lethargic and complacent bureaucracies.

Whether they are working to reign in on their policy domains, exploiting innovative enforcement mechanisms to ensure compliance, or rejecting external actors seeking to exert their influences, bureaucracies need to continuously place their needs above all others. Autonomy ultimately requires making important decisions designed to preserve a bureaucracy’s interests and fortify its policy domain. If autonomy is to take shape, coherence must also be evident.

E. Coherence

To emerge as institutions, bureaucracies must also demonstrate coherence; in other words, there must be consensus over its functional boundaries and the procedures used to resolve disputes that arise within its jurisdiction. At its core, coherence seeks to
not only determine the presence of unity between an organization’s central headquarters and its regional offices, but to also evaluate the level of organization demonstrated by its inner-workings in its caseload management. If an organization is able to establish procedures to manage its workload, and if said procedures are successfully incorporated throughout its entire workforce, coherence is without question. In examining the development of agency-specific private sector compliance processes to address the handling of new, existing, and systemic charges, litigation priorities, priority charge handling, and alternative dispute resolutions, in addition to the acceptance and incorporation of these procedures by its central headquarters and field offices, it is clear that the EEOC has achieved coherence.

Although the EEOC relied on procedures adapted from fellow regulatory agencies to facilitate the initial handling of charges, these procedures proved ineffective in addressing the Commission’s growing workload. In addition to centralizing the intake process at central headquarters, its first-come first-serve method of handling charges led to an inevitable backlogging of claims. Within a short time of opening its doors for operation, the EEOC recognized the importance of establishing agency-specific procedures to address the handling of EEO charges. In addition to allocating greater intake and investigation powers to its field offices, the EEOC issued Pre-Decision Settlement procedures to limit the time it took to handle charges, simplify investigation reports, and foster settlements without resorting to formal decisions; in essence, it began to streamline compliances processes.

Although the EEOC decentralized the charge handling process, it was actually paving the way for the development of coherence. At its core, coherence involves an
organization’s ability to manage its workload. While the EEOC clearly shifted the handling of charges from its headquarter office to its field offices, these field offices were by no means autonomous; they relied on the procedures put forth by central headquarters when handling these claims. In addition, even though the processing of charges was decentralized, central headquarters retained control over the procedures used to address employment discrimination claims, approval of final field office decisions, and authority to issue litigation determination. To build a foundation for coherence, it becomes clear that bureaucracies must be willing to develop and refine agency-specific procedures to address individual needs. While turning to the precedent set for by other agencies may be beneficial during a bureaucracies fledgling years, as it matures, so too must its processes.

Despite the fact that the EEOC was making strides in its handling of employment discrimination charges, administrative, organizational, and procedural issues continued to hamper its progress. To facilitate the handling of private sector employment discrimination charges by its field offices, the EEOC introduced the New Charge Processing System, the Backlog Charge Processing System, and the Systematic Charge Processing System. Regardless of which initiative one examines, it is clear that the EEOC worked to create distinct charge handling procedures to meet its evolving needs. In working to manage its workload, the Commission recognized the importance of not only separating new and backlogged charge handling processes, but in separating systemic claims. To nurture coherence, bureaucracies must be able to examine trends in their workload to establish more efficient case management processes. As workloads evolve and as the needs of clientele change, it is essential that internal procedures mirror these shifts.
While coherence is present in the procedure created by the EEOC to improve the handling of employment discrimination complaints, it is also present in the successful procedural integration which took place throughout the EEOC’s central headquarter and field offices. In fact, in continuing to decentralize its case management, the EEOC was able to not only distribute its workload, but also foster the timely processing and early resolutions of employment discrimination charges. While services continued to be provided to its clientele, the emphasis of these procedural reforms was the institution of charge handling procedures that were better equipped to deal with the Commission’s growing workload. As coherent bureaucracies, there must be clear evidence of procedural implementation. If the procedures created to address internal workloads are successful incorporated throughout a bureaucracy’s workforce, coherence is strengthened.

Whether it was a result of greater micromanagement on the part of central headquarters, or a genuine belief in the new case management philosophy throughout EEOC field office, shifts continued to take place in the processing of charges. As demonstrated by the EEOC, in nurturing coherence, bureaucracies must learn to strike a balance between centralization and decentralization compliance processes. Though central headquarter offices may not be equipped to deal with agency workloads on their own, there needs to be a balance between the role of the headquarter office and the roles of regional offices in enforcement efforts.

Facing ongoing escalations in backlogged claims, growing budgetary constraints, increasing demand from expanding enforcement responsibilities, and decreasing public support and staff morale, the EEOC continued to exercise its coherence when it launched
procedural reforms to improve its private sector compliances processes. To foster greater efficiency, accountability, and transparency in the management of its workload and to replace antiquated methods of managing its workload and strengthen compliance processes, the EEOC instituted Priority Charge Handling procedures to shift away from lengthy investigations and focus on more strategic and systematic prioritization processes.

Having established more effective compliance processes to manage its workload, the EEOC turned its attention to the development of an alternative dispute process. This was a particularly groundbreaking initiative in that it offered the Commission a mediation-based alternative to the traditional investigative and litigation processes by circumventing the need for lengthy investigations or litigations. In strengthening coherence, bureaucracies must continuously examine the way they manage their workloads; this is particularly important when bureaucracies encounter functional expansions, increasing demands, or budgetary constraints. Bureaucracies can clearly learn from the EEOC ability to institute innovative initiatives to better manage its workload. In working to nurture coherence, bureaucracies must be willing to also develop effective informal venues to address their workload. As demonstrated by the EEOC, sometimes clientele are willing to try more informal venues to achieve resolutions. If the procedures used to address disputes that arise within their jurisdiction have acquired coherence, bureaucracies can then turn their attention to the creation of more informal case management systems.

To foster coherence in the procedures used to address disputes that arise within their jurisdiction, bureaucracies need to create compliance processes that ensure quality,
timely, and cost-effective case management. Though it may take time to develop proper procedures and though ongoing procedural reforms and modifications may be needed, it is essential that bureaucracies continue to monitor their case management. If they are to retain their coherence, they must be willing to institute procedural reforms to adapt to changes in their workload. In addition to working to develop procedures that reflect internal needs, bureaucracies need to ensure that their procedures are actually implemented. Therefore, in exercising coherence, care must be taken in the development of procedures, the allocation of responsibilities, and the oversight being granted to headquarter versus regional offices. A delicate balance needs to be struck to effectively manage a bureaucracy’s workload.

F. Federal Bureaucracies as Institutions

To emerge as institutions, bureaucracies must position themselves as authoritative entities. In addition to learning how to defend against environments demands, they must display offensive skills. “Institutionalization is a process that occurs over time in which the organization creates authority relationships vis-à-vis the environment actors” (Hill, 1974, p. 1076). To create this dominant relationship and foster legitimacy, bureaucracies need to establish internal structures that allow them to perform their functions; they need to be innovative with their resources; and, they need to exercise their regulatory powers and influence.

To emerge as institutions, bureaucracies must balance agency priorities with external demands (be they from political institutions, stakeholders, or external actors). Regardless of whether they have been able to obtain legitimacy and deference, bureaucratic actors cannot become overconfident. “Institutions are continuously subject
to environmental influence and their power to modify and channel that influence is bound to be less than all-encompassing” (Polsby, p. 168). While bureaucracies may be able to exert their authority in one arena, this may not work in the next and it may not last for long. In this authoritative role, bureaucracies can work to address external demands in order to strengthen their policy domains.

On a final note, it is important to recognize that institutionalization is an ongoing process. While the EEOC emerged as an institution in 1978 when it received litigation authority and oversight over all federal EEO policies as a result of its innovative and effective enforcement, the Commission has also demonstrated that institutionalization is an ongoing process. “Once an organization becomes an institution it is not static, nor is it exempt from individual or environmental change” (Ragsdale & Theis, 1997, p. 1283). The ability to acquired value and stability is not enough; for bureaucracies to thrive institutions to thrive, they must work to retain their standings when faced with cultural changes, ideological shifts, leadership transitions, and administrative modification. Environmental changes come in different forms; therefore, institutions must be willing to adapt and respond to these changes if they are to retain their standings.

While federal bureaucracies must contend with demands from external actors and stakeholders, and although they must remain accountable to all branches of government, they have the potential to emerge as institutions and stand as independent actors within the government.
APPENDICES
Clarence Thomas & Anita Hills: Sexual Harassment at the EEOC?

Clarence Thomas was nominated to the U.S. Supreme Court by President George Bush after Justice Thurgood Marshall’s retirement in 1991. From the minute his nomination was announced, controversy ensued. In fact, groups such as the National Association for the Advancement of Colored People, the Urban League, the National Organization for Women, and the National Bar Association opposed Thomas’ nomination. Fear surfaced over Thomas’ views regarding affirmative action, civil rights, and abortion, in addition to his lack of legal experience.

After a 7-to-7 split vote, the Senate Judiciary Committee sent the nomination to the Senate for a vote. During the Senate hearings, charges surfaced against Thomas. Anita Hill, a law professor from the University of Oklahoma, came forward with allegations that Thomas had sexual harassed her during the time she working with him in the Department of Education and the EEOC. According to Hill, Thomas had harassed her with inappropriate sexual discussions after she had rebuffed his invitation to date. In specific, Thomas had graphically described his sexual prowess, referenced pornographic actor Long Dong Silver, in addition to discussing acts he had seen in pornographic films including women having sex with animals, group sex, and rape scenes. In one instance, Thomas was drinking a coke in his office. He got up from the table where he had been working with Hill to retrieve his drink. When he came back with his can, he asked Hill, “Who has put pubic hair on my Coke?” (S. Hrg. 102-1084 / Hearings on the Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States, 1991). In the end, Hills allegations stirred great deal of debate. As explained by Senator Herbert H. Kohl, “Clearly, one is lying and one is telling the truth, but I can’t say who” (Marcus, 1991b, p. A1). This sentiment was shared by many throughout the country.

On the one hand, those who supported Thomas, questioned Anita Hill’s allegations for several reasons. According to Robert Woodson, Director of the National Center for Neighborhood Enterprise, it did not make sense that Hill would continue to work for Thomas when he was appointed chair of the EEOC if he had indeed been sexual harassing her. Thomas Jipping, the Coalition for America’s Legal Affairs Analyst, also argued that political maneuvering was behind Hill’s timing. As explained by Jipping, “I think that the judge’s opponents are taking a parting shot… They know that they can’t defeat this nomination so they are trying to wound him, his credibility and his reputation to diminish his significance on the Supreme Court” (Duke, 1991, p. A9). Senate Judiciary Committee Member Diane Holt, who had worked as a personal secretary to Thomas when he was at the EEOC, also had trouble with Hill’s allegations. As noted by Holt:
When we arrived at the EEOC, because we knew no one there, Professor Hill and I quickly developed a professional relationship, a professional friendship, often having lunch together. At no time did Professor Hill intimate not even in the most subtle ways that Judge Thomas was asking her out or subjecting her to the crude abusive conversations that have been described, nor did I discern any discomfort when Professor Hill was in Judge Thomas’ presence. Additionally, I never heard anyone at any time make any references to any inappropriate conduct in relation to Clarence Thomas (Washington Post, 1991, p. A18).

When Thomas testified in his defense, he was infuriated. He charged that the Senate Judiciary Committee Hearings were a “national disgrace. And from my standpoint, as a black American, as far as I’m concerned, it’s a high-tech lynching for uppity blacks who in any way design to think for themselves, to have ideas… You will be lynched, destroyed, caricatured by a committee of the U.S. Senate rather than hung from a tree” (Marcus, 1991b, p. A1).

On the other hand, while some doubted the validity of Anita Hill’s allegations, many also came forward to support her claims. Angela Wright, who worked as Thomas’ press aide when he was at the EEOC, alleged that Thomas had repeatedly asked her out on dates, asked her about her breast size, and even turned up uninvited at her home. Though her allegations were corroborated in a sworn statement by Rose Jourdain, a former speechwriter for Thomas when he was at the EEOC, Thomas’ supporters – in and out of the Senate – launched a counteroffensive campaign to discredit Wright. In part, they argued that Wright was seeking revenge because Thomas had fired her for consistent incompetent performance. This counteroffensive led to critiques of Senate Judiciary Committee Chairman Joseph R. Biden who was privately accused of rank politics due to Senate Judiciary Committee efforts to discredit Wright’s testimony even before her name had been released to the public (Gugliotta, 1991; Marcus & Devroy, 1991). Though Wright did not testify in person, transcripts of her interview with committee lawyers were released to the Senate. In addition to Wright’s interview, four other women served as witnesses and testified that Hill had informed them years ago that Thomas had been sexually harassing her (Marcus, 1991a). Anita Hill even took a polygraph test to demonstrate her truthfulness and, though she passed, the fact that she took a lie detector test came under great scrutiny. As argued by Senator Orrin G. Hatch, one of Thomas’ staunchest supporters on the Senate Judiciary Committee, this is “exactly what two-bit slick lawyers do. …taking the test, and releasing its results … were both highly offensive and highly political acts” (Isikoff, 1991, p. A1).

In the end, the Senate voted 52-48 confirming Clarence Thomas to the U.S. Supreme Court on October 15, 1991. Nonetheless, even though Thomas won his seat on the bench, the debate over whether or not he had sexually harassed Anita Hill continues to this day. As illustrated by Richard Lacayo, in “Strange Justice: The Selling of Clarence Thomas”, Wall Street Journal reporter’s Jane Mayer and Jill Abramson
concluded that the preponderance of evidence did indeed suggest that Thomas has lied under oath. According to the Mayer and Abramson:

By the time he go to law school at Yale, Thomas was already known not only for the extreme crudity of his sexual banter, but also for avidly watching pornographic films and reading pornographic magazines, which he would describe to his friends in lurid detail. Acquaintances say when they heard testimony that Thomas had asked who put a pubic hair in his Coke can, they recognized his characteristic style. The proprietors of a Washington video store near the EEOC headquarters tell the authors that Thomas was a regular in the X-rated section. A lawyer who knew him then recalls running into Thomas at the register renting The Adventures of a Big Mama Jama. Kaye Savage, a friend who once dropped by the bachelor apartment Thomas took after separating from his first wife, recalls that they walls were covered with Playboy centerfolds (cited by Lacayo, 2001).

In the end, the authors charged Senator Biden for the confirmation of Thomas to the Supreme Court. As cited by Lacayo, the authors concluded that Biden was to blame because he never called the four women who went to Washington to corroborate Hill’s story to testify.

In 2007, Clarence Thomas published “My Grandfather’s Son: A Memoir”. As noted by Thomas, he decided to write his memoir for two reasons. To begin with, he wanted to pay homage to all those who had contributed to his life and success. He also wanted to respond to charges that had been laid at his feet. As noted by Thomas, “Parts of my voyage have already been written about by other people, but some of what they’ve written has been untrue, at times grossly so, and I didn’t want to leave the telling to those with careless hands and malicious hearts” (p. x). In his memoir, Thomas referred to Hill as a touchy woman who was apt to overact and described here work performance as mediocre. Ultimately, he charged her with making vague unsupported allegations against him and for alleging that he had taken part in unspecified sexual misconduct (pp. 242-243).
CITED LITERATURE


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