

Article title : Recruitment discrimination: how organizations use social power to circumvent laws and regulations

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Abstract

This study focuses on the relationships between social power and recruitment discrimination in organizations. We examine how individuals in different hierarchical positions in organizations in France intentionally discriminate in their recruitment practices through

various means of circumventing internal and external anti-discrimination policies. Social power theory is used as a theoretical framework.

28 semi-structured in-depth interviews with individuals involved in recruitment in France were conducted, transcribed and analyzed.

The findings reveal two distinct strategies used to intentionally discriminate in recruitment. One strategy concentrates on outsourcing recruitment actions. In doing so, organizations can effectively divert the responsibility of upholding anti-discrimination rules and regulations to an outside party. In this strategy, the use of unwritten codes and external pressure (or the threat thereof) are employed so that the outside recruitment agency understands that it is to follow the client's wishes over the law, which relates to coercive power. The second strategy focuses on conducting covertly controlled in-house recruitment through the use of differential and legitimate power to overrule decisions, make use of vague and complex laws, or use costs and administrative difficulties as potential business reasons which may permit discrimination. We add to a growing body of research on recruitment discrimination and power.

Keywords: discrimination, recruitment, power, social power, covert discrimination, France, anti-discrimination policies

Article classification: Research paper

Introduction

Discrimination, defined as a differential treatment based on membership to social groups (Fiske, 2000), has a negative impact on individual workers and organizations alike. People can be discriminated against based on a wide range of individual characteristics including gender (Bobbitt-Zeher, 2011), race (Triana, Jayasinghe & Pieper, 2015), age (Bayl-Smith & Griffin, 2014), sexual orientation (Ragins & Cornwell, 2001), disability (Santuzzi & Waltz, 2016), religion (Ghumman & Ryan, 2013) and physical appearance (Vanhove & Gordon, 2014). The antecedents and outcomes of discrimination have been widely studied (Avery, McKay & Wilson, 2008; James & Wooten, 2006; Deitch, Barsky, Butz, Chan, Brief & Bradley, 2003; Sanchez & Brock, 1996; Schmitt et al., 2014; Triana et al., 2015). While there is a great body of knowledge on causes and consequences of discriminatory practices related to recruitment in organizations (Goldman, Gutek, Stein & Lewis, 2006), the processes underlying recruitment discrimination have received less attention (Bagilhole, 1993).

This article focuses on recruitment discrimination. As the labour market is increasingly diverse in many ways such as gender, age, ethnic origin and religious beliefs, it is important that recruitment processes are free from bias for ethical, economic and legal reasons. Discrimination during recruitment clearly undermines diversity, while having a diverse workforce can contribute to create a competitive advantage for organizations (Cox & Blake, 1991; Ely & Thomas, 2001; Kochan et al., 2003). However, individuals working in HR departments who are involved in recruitment may act on personal biases that are imperfectly aligned with firm objectives (Aghion & Tirole, 1997). Such biases can be unconscious, such as is the case of implicit discrimination (Bertrand, Chugh & Mullainathan, 2005) or can be based on negative beliefs individuals hold about certain social groups, which relates to statistical discrimination (Altonji & Pierret, 2001). Taste discrimination, in which individuals have an aversion towards individuals that belong to a certain social group based on one's

ethnicity or gender for example, may lead individuals involved in recruitment to deliberately discriminate.

Recent research examining the usefulness of workforce analytics and job testing on recruitment decisions found that managers who appear to hire against test recommendations end up with worse than average hires (Hoffman, Kahn & Li, 2017). Prior research found that managers often overrule test recommendations because they are biased or mistaken that relying on test scores reduces the influence of human bias (Hoffman et al., 2017; Kuncel, Klieger, Connelly & Ones, 2013). Building on previous studies that found that individuals involved in recruitment may demonstrate biases, the present study looks at the ways in which such individuals express their biases in a recruitment context. This article focuses on *how* individuals with different hierarchical positions involved in recruitment in organizations interact and use legitimate and coercive power to circumvent laws and organizational policies in order to intentionally discriminate. We adopt French and Raven's (1959) framework that distinguishes between different types of social power and how these types of power are being used in a recruitment context. This leads to the following research question:

How are anti-discrimination policies intentionally circumvented during recruitment, using a social power lens?

Discrimination leads to a less-than-optimal use of human resources and therefore hinders the positive outcomes that a diverse workforce is believed to bring, such as attraction of a wider talent pool, a better market position, enhanced problem solving and increased employee creativity (Joshi & Roh, 2009). In addition, not complying with the law is a considerable risk for organizations. Recently, a large European work agency was accused of recruitment discrimination in France and Belgium as they refused to consider workers from an ethnic

minority origin despite requests from their commissioning clients (Reynaers, 2015). Given the negative outcomes related to discrimination, it is important to understand how individuals in organizations come to circumvent policies and laws (openly or covertly) that are meant to prevent discrimination on organizational and societal levels. More insights will help practitioners to combat discrimination and enhance equality and diversity in organizations. The French context was chosen because while recruitment discrimination is prohibited by law, individuals involved in recruitment and selection must sometimes juggle contradictory requirements. These contradictions may influence their recruitment practices and give way to biases and discrimination (Cortéséro, Kerbourc'h, Mélo & Poli, 2013). This is similar to other European countries as employment protection laws are created at the European level and thereafter brought into national law to be implemented in each country.

Drawing on 28 semi-structured in-depth interviews with individuals from different hierarchical positions in several for-profit organizations in France, the present study examines how individuals intentionally discriminate in recruitment practices through various means of circumventing anti-discrimination policies. A social power lens is used, as advocated by previous researchers (Petersen & Dietz, 2008). Our findings reveal two distinct strategies used to intentionally discriminate in the recruitment process. One strategy concentrates on outsourcing recruitment actions. In doing so, organizations can effectively divert the responsibility of upholding anti-discrimination rules and regulations to an outside party. In this strategy, organizations use coercive power in the form of unwritten codes and external pressure (or the threat thereof), such that the implication for the outside recruitment agency is that it should follow the client's wishes over the law. The second strategy uses legitimate power and focuses on exercising covertly controlled in-house recruitment through the use of differential power to overrule decisions, make use of vague and complex laws, or use costs and administrative difficulties which may permit discrimination.

We contribute to the existing body of knowledge in several ways. Firstly, we present a realistic account of how individuals use social power to circumvent anti-discrimination policies and the law, answering a call for more research on the role of social power in discrimination research (Ahonen, Tienari, Merilainen & Pullen, 2014; Petersen & Dietz, 2008). Secondly, while laboratory studies on power use in a recruitment context have provided important insights (Brief, Buttram, Elliott, Reizenstein & McCline, 1995; Brief, Dietz, Cohen, Pugh & Vaslow, 2000; Petersen & Dietz, 2000; Ziegert & Hanges, 2005), we build on this work by studying how this is played out in actual professional settings. The findings show that especially legitimate and coercive power is used to discriminate during recruitment. These types of power are based on one's position within an organization.

Literature review

Theoretical framework: social power

The present study examines how individuals involved in recruitment activities in organizations circumvent laws and organizational policies during the recruitment process by the use of social power. Previous research has shown that social power is important when studying recruitment decisions (Brief et al., 1995; 2000; Petersen & Dietz, 2000; Ziegert & Hanges, 2005). We identify this theoretical lens as pertinent to our discussion and we adopt it in this study.

Power is defined as the ability of an individual to change or control the behaviour, attitudes, opinions, objectives, needs, and values of another individual (Rahim & Buntzman 1989; Rahim, Antonioni and Psenicka, 2001). It has been argued that power relationships need to be taken into consideration when studying discrimination (Dietz & Kleinlogel, 2015; Smith, 2002) as they are fundamentally interactional in nature (Blau, 1964). There are different types of power. French and Raven (1959) developed a framework that includes five

different types of power that can be used by managers to influence their subordinates: reward, expert, reference, legitimate and coercive power. Reward power relates to one's ability to control and give rewards for behaviour; expert power is about knowledge, skills and experience a manager has in a certain domain; reference power refers to admiration and identification of subordinates with their managers and their wish to gain the approval of their manager; legitimate power concerns the belief of a subordinate that a manager has the right to control and direct their behaviour based on his position; and coercive power relates to the ability to control and punish subordinates in order to make them comply with the wishes of the manager. The role of social power has been studied in relation to different aspects of management (Hinkin & Schriesheim 1990; Yukl & Falbe 1991; Brass & Burkhardt 1993; Raven 1993), including the context of discrimination. Drawing on Milgram's (1974) experiment on obedience, the literature on compliance in organizations suggests that individuals tend to comply with their bosses' instructions even if this leads to discrimination (Brief et al., 1995; 2000; Petersen & Dietz, 2008; Ziegert & Hanges, 2005). Subordinates tend to obey authority figures based on one's hierarchical position in an organization, which relates to legitimate power. It has been argued that individuals in subordinate positions do not "see the situation as one of choice, but of role requirements and obligations" (Hamilton & Sanders, 1992, p. 49). In other words, employees in subordinate relationships are likely to focus on fulfilling their job duties rather than the content of what they are doing, regardless of whether what they do is in accordance with their own personal values. In an organizational context, compliance with instructions from a superior is common, as long as the instructions do not go beyond a "zone of acceptance"; that is, when individuals are not asked to do things that are in strong contradiction with their personal interests or are unrelated to the organization (Simon, 1976, p. 131). As such, different types of social power and power differentials between workers in varying hierarchical positions might lead individuals to comply with directives that

are unethical or even illegal (Brief et al., 2000). This implies that discrimination during recruitment and selection can be accomplished through the exercising of power by making others comply with one's wishes (Brief et al., 1995; 2000; Petersen & Dietz, 2000; Ziegert & Hanges, 2005). Moreover, research has found that an unstructured and ambiguous situation allows individuals to abuse power in organizations (Hodson, Roscigno & Lopez, 2006). Therefore, vague rules and regulations surrounding anti-discrimination might exacerbate the likelihood of power abuse by managers.

Recruitment discrimination

Discrimination seems to be an on-going issue in many organizations. This study focuses on discrimination in recruitment, a phenomenon which is difficult to measure (Pager, Bonikowski & Western, 2009). Organizations have to deal with internal and external policies and laws that aim to prevent discrimination. However, such external pressures do not hinder employment discrimination completely and studies have shown that such policies have only moderating effects (Brief et al., 2000; Deros, Ryan & Nguyen, 2012). Organizations can discriminate in overt and covert ways with subtle forms of discrimination being more prevalent as a reaction to anti-discrimination laws and policies (Hebl, Foster, Mannix & Dovidio, 2002). However, it is important to acknowledge that blatant forms of discrimination still exist (Cortina, 2008; Dipboye & Halverson, 2004).

Blommaert, Coenders and Tubergen (2013) found that discrimination of Arabic-named applicants takes place mainly in the very first stage of the recruitment process, that is, when employers decide whether or not to request candidates' full CV. More precisely, their research found that when an employer saw an Arabic name, the hiring company often directly rejected the candidate. This reflects the notion of a "lexicographic search" by employers (Bertrand & Mullainathan 2004).

Discrimination during the recruitment process has major consequences for both organizations and the candidates involved. Perceived discrimination, defined as the subjective perception that one faces discrimination, has negative consequences for individuals through decreased well-being, physical health and self-esteem, as well as heightened depression, stress and anxiety (Deitch et al., 2003; Sanchez & Brock, 1996; Schmitt et al., 2014; Triana et al., 2015). Moreover, perceived discrimination has been found to be negatively related to job attitudes including lower organizational commitment and job performance as well as higher turnover rates (Avery, McKay & Wilson, 2008; James & Wooten, 2006). These types of negative consequences are detrimental to organizations as well. Hiring the most suitable candidate is directly impeded by recruitment discrimination and results in less-than-optimal outcomes for organizations (Lavergne & Mullainathan, 2004).

While organizations are well-aware of the existing laws prohibiting discrimination at work, there are several explanations as to why individuals may continue to discriminate. One form of discrimination is taste-discrimination, in which individuals have an aversion towards other people that belong to a certain social group as based specific aspects, such as one's ethnicity or gender, for example. Drawing on affinity theory, social identity theory (Tajfel & Turner, 1979) and the similarity-attraction model (Byrne & Nelson, 1965), it has been argued that managers in organizations who make recruitment decisions sometimes favor candidates who may seem to belong to the same social group as themselves (Almeida, Fernando, Hannif & Dharmage, 2015). In addition, an individual's intentions sometimes differ from their actual hiring decisions with regards to minority groups such as disabled individuals (Araten-Bergman, 2016).

Secondly, the notion of statistical discrimination suggests that individuals may have negative beliefs about a particular social group as a whole (e.g., all older workers are slower), thereby biasing recruitment decisions when interacting with anyone from the labelled social

group. Stereotypes, defined as generalized beliefs about characteristics that are possessed by people who belong to certain social groups (Hilton & Von Hippel, 1996) can also influence hiring decisions. While it is hoped that a thorough assessment of a job applicant would ideally lead to the best hiring decision, such an assessment often does not happen due to limited time and resources. Rather, individuals involved in recruitment will use aspects of a candidate that are easily observable, such as one's age or race. Stereotypes become mental shortcuts to facilitate decision-making (Kulik, Roberson & Perry, 2007). In line with dual process theories (Fiske, Lin & Neuberg, 1999), this is especially likely to happen when a recruiter has limited information about the individual during recruitment and selection (Derous et al., 2012).

Finally, the notion of implicit discrimination (Bertrand et al., 2005) suggests that individuals unconsciously apply biases, especially when one needs to take a decision quickly often within an ambiguous situation. In such cases, individuals will rely on implicit mental processes and negative attitudes without the person being aware that these negative attitudes have been demonstrated or acted upon (Chugh, 2004).

Internal versus external recruitment

HR activities are becoming increasingly outsourced, especially when those activities may be considered non-strategic and transactional in nature. Disagreement exists on whether recruitment and selection is considered to be a core practice which should be conducted in-house or whether it should be outsourced (Cooke, Shen & McBride, 2005). Outsourcing recruitment processes is often considered a means to save managerial time and serving as a means by which to increase efficiency in the organization (Ordanini & Silvestri, 2008). However, doing so may impact the quality of a firm's human capital (Amit & Belcourt, 1999), potentially opening a means through which discrimination can occur. Responsibility for anti-discrimination practices (Brief et al., 1995; 2000) is shifted from company to supplier.

The external recruitment environment presents several ways which therefore may lead to discrimination. Firstly, dysfunctional organizational cultures tend to have informal means of communication in which certain code words are used to discriminate toward minorities and candidates based on their appearance, looks, or other demographics (Cavico, Mujtaba & Samuel, 2016). For example, some of the code words that the Equal Employment Opportunity Commission (EEOC) asserts are evidence of age discrimination on the part of an organization are descriptions such as “looking for young, fun, cute, and bubbly people” or “looking for someone young and perky” (Workplace, 2015). The EEOC has also identified “euphemisms” as types of code words (EEOC, Press Release, 2012), as found in references such as “like you and me” for preferences of non-minorities as job applicants (EEOC, 2011, *Disparate Treatment in Hiring, Testimony of Boehringer*). Secondly, large organizations hold substantial bargaining power which may allow them to impose their wishes through covert coercive power (Brief et al., 1995; 2000; French & Raven, 1959). This might be found, for example, through the threat of ending a contract with an external recruitment agency should they not comply with the client’s wishes.

Keeping recruitment practices in-house does not prevent discrimination either, as the ambiguous nature of anti-discrimination laws and rules are open to multiple interpretations. Prior research in Australia found that ambiguous situations enhance the likelihood that rules and regulations are not respected, with employers mentioning how they would “find a way around” legislation (Bennington & Wein, 2000, p. 31). In addition, power differentials and legitimate power in organizations allow individuals higher up in a hierarchy to overrule decisions taken at lower levels (Brief et al., 1995; 2000). Stating that higher costs and complicated administrative procedures might be incurred for items such as work permits was also found as a means to justify one’s potentially discriminatory recruitment decision (Fellini, Ferro & Fullin, 2007; Loretto & White, 2006).

Study context

Recruitment discrimination is a growing worldwide problem, despite increasing legislation and policies (ILO, 2011). The International Labour Organization has argued that anti-discrimination laws do not function effectively and therefore employment discrimination, including recruitment discrimination, continues to exist around the world (ILO, 2011). This study was conducted in France. French anti-discrimination laws carry constitutional value and are clearly noted within the preamble of the French Constitution of 1946¹. French law defines discrimination as “a distinct treatment of an employee or job candidate based on a motive other than the necessities of employment or professional qualities of the employee”². An employee is thereby treated less favorably than he/she would have been in a comparable situation. French law includes an extensive list of various types of discrimination: origin, surname, gender, economic status, family status, pregnancy, place of residence, health status, physical appearance, disability, language, sexual orientation, age, religion, political opinions, trade union activities, morals, ethnicity, and nationality³. An employer who does not strictly focus on work-related elements in his decisions towards employees is potentially exposed to legal ramifications and sanctions. Employment discrimination can lead to a fine of 45000 euros as well as 3 years imprisonment. One study found that despite the ethical and legal ramifications, three out of every ten employees in France have reported workplace discrimination and around 30% of all organizations have been accused of discriminatory practices during hiring decisions (DARES/IFOP, 2017). It is important to note, however, that

¹“*The nation ensures equality before the law of all citizens, whatever their ethnic origin, race or religion*”. Article 2, French Constitution.

² French Law of May 27, 2008, amended in 2016 by the Law of Modernization of Justice.

around 40% of individuals who encounter workplace discrimination do not speak up for fear of negative repercussions (DARES/IFOP, 2017).

The French “Défenseur des Droits” is the Equal Opportunities and Anti-Discrimination Commission, serving as the equivalent of the EEOC (Equal Employment Opportunities Commission). It aims at improving employment law, defending workers’ rights and issuing reports and resolutions that serve as statutes to be followed by either courts or the government. In addition, it can file a complaint with the District Attorney when there is a discrimination claim.

Since January 2017, companies with at least 50 employees are required to have their recruitment personnel attend anti-discrimination training every five years. Those companies concerned must therefore include this obligation in their training plan⁴. In addition, any employee who witnesses or reports a discriminatory action (whistleblower) cannot be punished, dismissed or discriminated against. Generally speaking, the burden of proof rests with the employee who may consider himself/herself a victim of discrimination. It is then incumbent on the defendant (employer or alleged perpetrator) to establish that the difference of treatment is justified by objective non-discriminatory elements and proof.

Discrimination is considered a criminal offence punishable by imprisonment and extensive fines that can be levied upon a guilty party. Executive officers as well as the company itself may be subject to prosecution. However, we argue that even with its unique characteristics, our findings may also have broader implications as France shares some legal underpinnings with other European Union (EU) members, such as the European Convention of Human Rights and Fundamental Freedoms and the Equal Treatment Framework Directive. Therefore, the findings might be applicable to other European countries.

³ French Penal Code, Article 225-1 – modified by the French law N°2017-86 of January 27, 2017 relative to equality of citizens

⁴ French Equality and Citizenship Law adopted in December 2016

Methodology

We adopted a constructivist approach, as reality is socially constructed and individuals make sense of their experiences (Bryman & Bell, 2015). As reality is subjective, we chose to conduct semi-structured qualitative interviews in order to capture the personal perceptions and experiences of individuals who are involved in recruitment decisions in organizations.

Sample

32 individuals involved in recruitment in their organizations were approached to participate in a study on workplace discrimination. Those individuals were identified from contacts of the second and third authors through their research relationships. 28 of the 32 individuals agreed to participate, leading to a response rate of 87,5%. A total of 28 semi-structured in-depth interviewees were conducted. All participants worked in for-profit organizations with internal anti-discrimination policies in place and were involved in recruitment and selection within their organization. As we contacted 32 individuals and 28 of them agreed to participate, we acknowledge a self-selection bias as we cannot know in what way the individuals who agreed to participate differed from those who refused the invitation. 18 interviewees (64%) were male. The average age was 39 years, ranging from 26 to 58 years. The interviewees worked in a variety of sectors such as the tourism, distribution, insurance, automobile and maritime. To the authors' knowledge, none of the interviewees were members of social groups that are subject to discrimination. The interviewees had different hierarchical positions and they were often in the "middle", such that they were both responsible for a team but also reported to a more powerful individual within their hierarchy. We sought participants within different functions so to obtain a variety of perspectives with regards to how social power is being used to discriminate in recruitment. Table 1 outlines the demographic information of the sample.

INSERT TABLE 1 ABOUT HERE

Procedures

After ethical approval was obtained, the interviewees were contacted by the researchers and an individual interview was scheduled. Interviews were conducted face-to-face and recorded. The interviews were conducted in French and lasted between 45 minutes to an hour. Throughout the interview, the interviewers checked regularly that their interpretation aligned with the intentions of what was being said by the interviewees. The analysis was conducted in French and the quotes were finally translated into English through a process of back-and-forth translation by two native English-French speakers who were mindful to properly reflect nuances and intentions. We respected anonymity and informed all interviewees that they could stop the interview at any time. The number of interviews was not determined beforehand. However, we stopped looking for more interviewees when a saturation point was reached and more interviews no longer provided new insights and ideas. This took place after having conducted 26 interviews. As we had scheduled 2 more interviews, we conducted those out of courtesy for the interviewees. An interview guide was used, but in line with a semi-structured design the researchers were open to discuss other issues brought up by the interviewees. This also allowed the interview guide to be dynamic and evolve as more interviews were conducted. Questions were asked about the diversity policies and practices in their organization and their selection and recruitment practices (e.g., “How are diversity policies and practices designed at your organization?” and “please explain how you select and recruit individuals in your organization”).

Analysis

The analysis was conducted in three inter-related steps. It is important to mention that the analysis was iterative in nature and that the researchers had to go back and forth between the transcriptions and coding book in order not to lose sight of the context in which things were disclosed.

The analysis, based on the Gioia Method (Gioia, Corley & Hamilton, 2013) evolved from first-order themes to broader categories and dimensions in the third step. During the first step of the analysis, the researchers read the entire transcripts to get a feel for the data. Then, the coding process was started using an initial list of codes based on the literature. Although some codes were expected based on the literature, such as the use of power differentials as a way to overrule recruitment recommendations on a lower level, others emerged organically from the data, such as the threat to black-list recruitment agencies and the use of code words to make them understand which candidate a client was seeking. We were mindful to be open to new themes not previously identified in the literature (Locke, 2001). The codebook was constantly modified by adding new codes, sub-codes or merging others, as the existing codes were tested against each new transcript. The first-order codes are at the left of Figure 1.

In the second step of the analysis and after coding the data, we focused on the connections between the codes and the identification of higher-order conceptual themes. We moved away from the rather descriptive formulation of first-order codes, where the words of the interviewees themselves were used, to a higher level of abstraction where meaningful themes were created based on the first-order themes (Locke, 2001; Strauss & Corbin, 1990). In addition, connections between the different themes and concepts that were conceptually meaningful were explored in order to identify the factors that influence the way in which circumvention of anti-discrimination policies and regulations might occur. These higher-order conceptual codes can be found in the middle in Figure 1.

In the third and final step of the analysis, we created aggregated theoretical dimensions in the form of the overall strategies the interviewees used. These can be found on the right of Figure 1.

INSERT FIGURE 1 HERE

Findings

Drawing on 28 semi-structured in-depth interviews with individuals in different hierarchical positions in France, we construct a conceptual model of how individuals use different types of social power to circumvent laws, rules and regulations related to discrimination in order to intentionally discriminate in a recruitment context. This model is depicted in Figure 2 and explained more fully below.

INSERT FIGURE 2 HERE

Figure 2 shows that all interviewees reported that some members of their organizational hierarchy had (both knowingly or covertly) engaged in strategies to circumvent internal policies regarding anti-discrimination and diversity. Two broad strategies are identified: in-house and outsourcing recruitment practices. Table 2 outlines the main themes identified and provides a short description of each theme. Thereafter, each theme is presented in more detail.

INSERT TABLE 2 HERE

While it is well-known that overt and covert forms of discrimination prevail, governments and organizations alike appear to combat this by implementing rules and regulations. Even if these

rules seek to deter employers from adopting discriminatory practices, the findings suggest that many organizational hierarchies still find means by which to discriminate. Individuals use several strategies to intentionally circumvent the existing anti-discrimination laws and policies regarding recruitment and selection decisions: we identified in-house discriminatory practices through the use of legitimate power and outsourcing discriminatory recruitment practices related to the use of coercive power.

In-house discriminatory practices

Twenty-two interviewees reported an in-house strategy consisting of three different aspects: the use of legitimate power and power differential to overrule earlier recruitment decision(s); the use of vague and complex existing anti-discrimination laws and policies; and the use of costs, possible constraints for coworkers and administrative procedures as excuses. These three techniques are discussed in more detail below.

Firstly, six interviewees reported that employment decisions regarding recruitment and selection were kept in-house and that legitimate power and differential power was used to overrule decisions taken by less powerful members within the organization. This allows a certain « carte blanche » to discriminate and violate rules or policies. The following interviewees are HR directors and therefore directly responsible for recruitment. However, as the two quotes below illustrate, their hiring recommendations were not being respected by the CEO/boards of their organizations. This suggests that it is therefore one's *relative* position in an organization that may influence whether someone else can use one's authority to impose discriminatory practices.

You are involved in your work and projects. You spend your time truly digging deeper to find the best candidates... and when you find a perfect candidate and the only thing that is

wrong is their race, color, or nationality, it's rather frustrating only to have the boss decide on a debate that should not even exist (interviewee 27, male, 29 years, HR director, consulting sector).

We propose candidates and then, systematically, we notice that [the board] rejects them. They find a way to bypass, to finally refuse all the candidates so that what they do cannot necessarily be considered racism (interviewee 24, male, 33 years, HR director, energy sector).

Secondly, eight interviewees explained that the laws and regulations, both on organizational and societal levels, were vague, complex and therefore open to multiple interpretations. This often led to situations of non-respect of laws and policies.

It's very easy to make a wrong step and to go beyond the legal framework. It is very complicated and with community tensions and all the news which circulates at the moment, it is more and more complicated (interviewee 3, male, 57 years, sales manager, textile sector).

In any case, it's up to each company to create its own rules. French law is, after all, rather vast with regards to diversity... it's up to each company to do what they want to do (interviewee 27, male, 29 years, HR director, consulting sector).

The policies regarding diversity are interesting in France. The rules are well-established, but they are not always applied correctly today (interviewee 21, male, 50 years, HR director, distribution sector).

Thirdly, three main reasons emerged from the data as to how discriminatory hiring practices might be justified: the perceived associated costs, the possible constraints for coworkers and finally, the administrative procedures involved when hiring someone from another country or someone with a disability. The following quote shows how implicit discrimination also plays a role as people unconsciously linked a range of negative stereotypes to someone with a disability and how intentions sometimes differ from actual hiring decisions (Araten-Bergman, 2016).

I was confronted with a problem of managing a disabled employee. There are differences between theory and reality in the field. Once we had a position to be filled and I had found a disabled person. Despite everybody agreeing that it would be necessary to make adjustments in the position, it was a very big issue... I was confronted by people who, even if they agreed – in principle – felt it slowed down their work because it created additional costs and more constraints on the organization, because there were certain tasks the person could not do. Ultimately, someone else was given the position (interviewee 11, female, 40 years, HR director, construction sector).

It is complicated enough to find perfect profiles. There are a lot particularly in the Maghreb countries. But candidates from those countries are a source of, well, we're not supposed to say 'conflicts', but disagreements between the senior managers and HR who had found a good profile. In the end it caused too many administrative procedures. It is very heavy administratively. It requires work permits, things like that... it's complicated to manage. As such, we go more towards French and European workers, unfortunately, and

that limits the diversity within the company (interviewee 27, male, 29 years, HR director, consulting sector).

Outsourcing discriminatory hiring practices

While twenty interviewees reported that recruitment was kept in-house, eight managers mentioned that recruitment practices were being outsourced. Four interviewees mentioned that their organizations used both in-house and outsourcing strategies.

The data revealed several techniques individuals used to make the recruitment agencies comply with their demands. Firstly, the findings highlight that by outsourcing recruitment to recruitment agencies, the burden of complying with rules and regulations can be diverted to these agencies rather than dealing with discrimination in-house as the following interviewee explains:

It's all on the recruitment agencies. I have the impression that the most recent laws which were mandated actually block diversity. You coerce the recruitment agency by saying 'oh, and there's a law'... you know that there are governmental inspections and that at some point you will be inspected and they'll look at the last recruitments you had... you know you're inspected, but companies don't care at all (interviewee 20, male, 28 years, manager, media sector).

Secondly, “codes” were used to make recruitment agencies understand what their client was looking for. The organization is aware of their authority relationship with the recruitment agency and uses their power to impose their wishes, especially coercive power. This was mentioned by two interviewees and is illustrated by the following example:

Diversity management is not applied in the company. I have worked with many recruitment agencies. In fact, some people asked for what in French is called a BBR; it's a code to say a "Bleu-Blanc-Rouge" – the colors of our national flag. It was to tell the recruitment agency "I am a racist company but I do not want it to appear as such so I use an external supplier to by-pass the law. And you, the one I'm paying, my provider, it's up to you to manage this, but I want a good white man in my organization (interviewee 24, male, 33 years, HR director, energy sector).

A third outsourcing strategy consisted of putting pressure on an external recruitment agency, using coercive power. This was mentioned by two interviewees. In most cases, interviewees working in such recruitment agencies did not feel as if they had a choice but to obey and accept the (discriminatory) practice of the client organization. In some cases, pressure was put on the recruitment agency by, for example, threatening to "blacklist" their recruitment agency for future work. While they perceived it as the responsibility of the organization who asked for their services, the hiring agency clearly saw it as the responsibility of the recruitment agency.

The rules are made to be applied of course, but we are forced to take into account the wishes of the client. It is completely normal for them, for example, that when we are confronted with two identical profiles, we would look for subjective factors in order to choose the candidate. These factors are not necessarily the same that I would have determined. Between the rules which are established and what you actually have to do, there is often a big divide (interviewee 26, male, 28 years, training manager, education sector).

Regardless of the fact that you have signed the anti-discrimination charter, you sometimes take certain decisions that are not necessarily in line with its principles. But what can you do? (interviewee 4, male, 30 years, manager, insurance sector).

Imagine the CEO of a company on the CAC 40 [Paris Stock Exchange], who tells a recruiter “I want a 35-year-old man”. They’re expecting the recruitment agency to deliver a 35-year-old man. It is impossible to protest because it’s the customer and because it’s the person who has power. If a recruitment agency, at some point, does protest, they are blacklisted – by someone of the CAC 40 – it’s impossible to refuse (interviewee 24, male, 33 years, HR director, energy sector).

However, not all interviewees worked for organizations who tried to circumvent the law. Rather, (and to perhaps conclude with a more positive note), one interviewee argued that rules and regulations were not the only way that would lead to progress, believing that education would be more efficient and would make laws superfluous in the future:

The French government is trying to enforce regulation regarding diversity management. I think it's a mistake. What they should enforce is education towards diversity, tolerance about religion and different backgrounds. It is through education that this behavior will naturally take place. By educating people about what others believe, about other practices, other backgrounds, other cultures. We will have more open-minded people... this is much better than legislation just to increase and enforce diversity management (interviewee 14, female, 33 years, HR manager, food sector).

Discussion

The existence of discrimination towards certain minority groups in the workplace and in society as a whole cannot be denied and is supported by the data, replicating previous research (Jones, Peddie, Gilrane, King & Gray, 2016). Using a social power lens, the present study examined the way in which individuals use their relative power/authority to circumvent the laws and regulations regarding discrimination during hiring procedures. Drawing on 28 semi-structured in-depth interviews with individuals in different hierarchical positions in organizations in France, we distinguished two main strategies used to intentionally discriminate in the recruitment process: in-house discrimination in recruitment and outsourcing the recruitment to an external agency.

In the in-house strategy, individuals with substantial decision-making power used their legitimate and differential power to overrule recommendations regarding a candidate at the final stage of the hiring process. Moreover, discriminatory practices were justified through highlighting the vagueness of the legal framework surrounding such practices or interpreting the law in a way that best suits them. Finally, the discriminating individuals stressed the costs, administrative procedures and constraints for co-workers as reasons to select a non-diverse candidate.

When organizations outsourced their recruitment to specialised recruitment agencies, they put the responsibility to comply with the law on those agencies while simultaneously putting pressure on them to comply using their authority relationship with their specific recruitment demands, often using implicit language and codes. Discrimination was therefore to a large extent conscious and coercive power was used to do so, which has implications for organizations. Below the practical and theoretical implications of the findings are discussed and suggestions for future research are presented.

Practical implications

The findings have some important practical implications.

First of all, diversity management is receiving increased interest from scholars and practitioners alike (Ali, Metz & Kulik, 2015) and a growing number of organizations have invested in diversity management programs (Jackson & Joshi, 2004). However, not all organizations are truly committed to the underlying rationale of diversity policies. Rather, they pay lip service to diversity and inclusion, and engage in only a superficial way (Hoobler, 2005). This has been called the empty shell hypothesis (Hoque & Noon, 2004). Discrimination during recruitment clearly undermines diversity, while having a diverse workforce can contribute to creating a competitive advantage for organizations (Cox & Blake, 1991; Ely & Thomas, 2001; Kochan et al., 2003). As discrimination often seems to occur at the early stage of the recruitment process (Blommaert et al., 2013), employers often do not get access to more information about the background, skills, or experience of those applicants, thereby sustaining inequality and disparities between majority and minority job applicants.

Secondly, the ambiguous nature of anti-discrimination laws and rules are likely to be part of the problem as the interviewees justified their discriminatory practices by highlighting the vagueness of the legal framework surrounding such practices or interpreting the law in a way that best suits them. When laws are open to multiple interpretations it is easier to get away with non-compliance of those rules. Since recruitment discrimination was considered to be a conscious effort, a more comprehensive ban of discrimination is likely to be most effective. As such, we recommend that procedures, rules and laws both on governmental and organizational levels be reformulated to ensure that non-compliance would be more difficult. Conversely, we also recognize that it could be very beneficial to have some form of individual and organizational learning associated with these changes. A strengthening of rules and regulations may also present opportunities for educating individuals and managers in the subtleties and dangers of discriminatory practices.

Thirdly, Becker (1957) claimed that in a competitive environment firms that discriminate will be less profitable, which should be a strong incentive for employers not to discriminate. However, subsequent research has shown that discriminating firms can enjoy higher profits (Rosén, 2003). Organizations may rationalize the trade-off of their intention to discriminate against the risk of being sanctioned for doing so (Méon & Szafarz, 2011). For example, it has been shown that managers favour individuals to whom they are socially connected, regardless of their productivity. However, these behaviours sometimes disappear when there are paid performance bonuses (Bandiera, Barankay, & Rasul, 2009). When individuals involved in recruitment have a strong bias towards a particular group, incentives to stop discrimination may not be effective as they perceive the psychological costs of hiring someone from a social group as costlier (Méon & Szafarz, 2011). It is therefore important to take into account whether individuals involved in recruitment are operating in biased fashions and if so, what is the effect of this bias on the recruiter, applicant and organization.

Fourthly, the use of “codes” has important implications for management. While code words, such as “BBR” (i.e., standing for “Bleu, Blanc Rouge”, a reference to a native white French individual) makes it easier to discriminate, it still presents a risk to the organization. Indeed, from a legal perspective, Cavico et al. (2016) highlight that even in the absence of offensive code words or phrases a company can still be liable for operating with discriminatory intent.

Fifthly, diversity audits could be a helpful tool in overcoming discriminatory practices and enhancing equality and diversity at work. All managers have the responsibility to create inclusive workplaces by regularly conducting a diversity audit. Diversity audits are an essential element of understanding where the organization stands with regards to diversity issues and which areas are open for improvement. Assessing the overt and covert use of certain code words within the company should be monitored to make sure there are no

discriminatory or unfair employment practices (Cavico et al., 2016). From a similar perspective, Malos (2015) emphasizes that staffing decisions must be scrutinized to ensure they are not made in a biased or “stereotypical” manner and that individuals are appraised based on job-related skills, knowledge, capabilities and “valid performance metrics” (p. 278). While a social justice perspective might push some organizations in an appropriate direction, others are more driven by initiating and implementing a business case for diversity. Indeed, to plan and implement a diversity audit is a process which is imperative for gaining and maintaining a competitive advantage.

The implementation of a code of conduct could reduce discriminatory practices in recruitment if such a code of conduct is enforced and in line with the overall organizational culture (Petersen & Krings, 2009). However, in accordance with Demuijnck (2009), we highlight that establishing responsibility is needed for diversity results and that it should have the support of top management if positive outcomes are to be achieved. Making individuals aware of potential discriminatory recruitment practices, making them responsible for their behavior and creating an ethical organizational culture are all needed to reduce discriminatory recruitment practices.

Moreover, it has been argued that when selection and recruitment is being outsourced to external agencies, organizations need to manage and monitor them in terms of intangible deliverables, such as quality (Gainey & Klaas, 2003). We add here that organizations should also realise that they no longer control biases involved in recruitment.

Finally, workforce analytics and job testing are increasingly being used in the recruitment process as they are suggested as means to improve the quality of the recruitment decision and reduce agency problems between firms and HR managers (Altonji & Pierret, 2001). The information of such tools can be verified and is perhaps less prone to biases (Hoffman et al., 2017). The present study showed that individuals involved in recruitment can

be biased resulting in discriminatory recruitment practices. As a consequence, it can be argued that limiting managerial discretion and relying more heavily on test results will decrease biased hiring decisions and improve the quality of future employees (Hoffman et al., 2017; Kuncel et al., 2013).

Theoretical implications

This study contributes to existing literature on discrimination.

The findings highlight that organizations do not shy away from using their power to force recruitment agencies to engage in discriminatory hiring practices. Decision-making power holders also abuse their legitimate positional power by overruling non-discriminatory hiring recommendations by lower level workers. This is in line with previous research that has shown how managers use this type of power in the implementation of diversity policies (Özbilgin & Tatli, 2011). However, rather than using their legitimate power to comply with the law, the present study shows that individuals involved in recruitment can also use it to circumvent organizational policies or even the law. Legitimacy is a type of social power that should be accepted by subordinates (Kelman 1974). In other words, individual must perceive the authority or power of a manager to be legitimate (Carson, Carson & Roe 1993). If this is not the case, an individual would not respect a manager and managers might opt for coercive power in which they threaten subordinates to comply with their wishes.

A social power lens provides a pertinent view into discriminatory practices. In line with Milgram's (1974) experiment on obedience, the interviewees reported that they did not feel responsible, as they "just" obeyed an authority's instructions. The interviewees considered themselves instruments directed by an authority much like the participants in Milgram's experiment. The psychological process behind compliance with an individual with legitimate power may be the acceptance and internalization of their role as an organizational

member (Hamilton & Sanders, 1992). Organizational members generally accept this role that requires compliance with one's boss.

In addition, the findings highlight that many interviewees understood that the recruitment practices in their organizations were unethical. As a consequence, they morally disengaged in order to continue acting unethically. In line with Bandura's social cognitive theory (1986), the interviewees reported several dimensions of moral disengagement such as rejecting the responsibility for their behaviour by outsourcing the recruitment to an external agency or justified their behaviour by the use of excuses when they kept the recruitment in-house. Moreover, we show that individuals use especially coercive power (French & Raven, 1959), up to and including threats to recruitment agencies to blacklist them. Coercive power might be effective, but might backfire at some stage as this could lead to resistance at a certain point (Spicer & Böhm, 2007), for example in the form of whistleblowing (Near & Miceli, 1995). It has been argued that reward and coercive powers are most influential as they have a direct effect. The findings show, however, the legitimate power is also effective if one wants to discriminate in a recruitment context. Legitimate power facilitates the hidden nature of recruitment discrimination as no one feels responsible, which sustains the situation.

On a more positive note, however, such power relations are not static. Indeed, they can be circumvented or countered through substantially more communication, control and agency (Prasad & Prasad, 2000; Zanoni & Janssens, 2007).

Limitations and suggestions for future research

The present study provides some insights into the way individuals circumvent laws and rules in the recruitment process, undermining equal opportunity and diversity efforts. However, our study is not without shortcomings and the limitations are acknowledged below.

First, studies on sensitive topics that employ qualitative interviews could elicit socially desirable responses. We ensured voluntary participation and anonymity and stressed there were no right or wrong answers to reduce this bias.

Second, related to the small sample size and qualitative nature of this study, we cannot know whether our results will hold true in other contexts. The present study was conducted in France. While certain regulations exist at the European level and thus apply to other European countries as well, the qualitative nature of this study do not allow generalizations. As a consequence, we suggest that research projects in the future adopt a comparative lens by studying other cultural contexts, especially since recruitment discrimination is a global issue (ILO, 2011). Moreover, quantitative research might provide further insight into these phenomena and the prevalence of the two strategies identified in our study.

Finally, we propose that a firm's size and sector (private vs public) may offer other interesting avenues for future studies. Are certain patterns of discrimination more prone to private firms than public entities? In addition, we did not distinguish between different types of discrimination. However, differences between age, gender or race discrimination exist and individuals involved in recruitment might use different strategies when trying to discriminate based on the type to which they are dealing. This could be examined further. Similarly, the reason *why* individuals discriminate merits further study. Is it because of their own biases or play the expectations of others a role for example? Moreover, previous research has shown that individuals who are highly committed to their organization are more likely to comply with discriminatory instructions than those who are less committed (Petersen & Dietz, 2008). This interesting variable could be taken into account in future studies. Furthermore, previous research has shown that individuals who have negative attitudes themselves towards certain social groups are more likely to obey an authority and discriminate (Brief et al., 2000). Indeed, it has been argued that one's implicit attitudes predict discriminatory recruitment

practices, but those subtle biases will be acted upon only in an environment in which individuals are allowed to express them (Ziegert & Hanges, 2005). While the present study did not measure the negative attitudes of the interviewees, it would be interesting to test this in the future. Finally, organizational climate determines what is rewarded, supported and expected in an organization, thereby inferring what behavior is acceptable and desirable and what is not (Schneider, 1972). This climate is likely to influence discriminatory behaviors and attitudes during recruitment and should be taken into account in future research endeavors.

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Table 1: Demographic characteristics of the sample

No.	Gender	Age	Sector	Function	Experience	Hierarchy
1	Female	44	Events	Project manager	17 years	Manager
2	Male	58	Energy	Manager	25 years	Manager
3	Male	57	Textile	Sales manager	33 years	Manager
4	Male	30	Insurance	Manager	5 years	Manager
5	Male	34	Mining	Manager	10 years	Manager
6	Male	50	Automobile	Production manager	27 years	Manager
7	Male	40	Metallurgy	Recruitment coordinator	17 years	Coordinator
8	Male	34	Technology	HR director	8 years	Director
9	Female	34	Distribution	Responsible for packaging	9 years	Manager
10	Male	28	Maritime	Director	4 years	Director
11	Female	40	Construction	HR director	7 years	Director
12	Female	52	Energy	HR assistant	5 years	Assistant
13	Female	43	Energy	Agency director	20 years	Director
14	Male	56	Tourism	Director	30 years	Director
15	Male	26	Technology	Manager	3 years	Manager
16	Female	33	Food	HR manager	9 years	Manager
17	Female	26	Telecom	HR assistant	3 years	Assistant
18	Female	30	Construction	Project manager	7 years	Manager
19	Male	33	Consulting	Director	9 years	Director
20	Male	28	Media	Manager	2 years	Manager
21	Male	50	Distribution	HR director	19 years	Director
22	Male	29	Aerospace	Engineer/manager	5 years	Manager
23	Female	57	Service	Manager	35 years	Manager
24	Male	33	Energy	HR director	8 years	Director
25	Female	50	Commercial	Manager	17 years	Manager
26	Male	28	Education	training manager	5 years	Manager
27	Male	29	Consulting	HR director	6 years	Director
28	Male	41	Communication	Director	18 years	Director

Table 2: Overview of the main findings

Key theme	Description	% of interviewees mentioning themes
Outsource responsibility	This outsourcing strategy consists of putting the responsibility of complying with anti-discrimination law and policies on an external recruitment agency.	17.9%
Use of codes	This outsourcing strategy consists of	7.1%

	using codes to make an external recruitment agency understand the characteristics of the candidate the organization is looking for.	
Put pressure	This outsourcing strategy consists of putting pressure on the external recruitment agency to accept their discriminatory demands.	3.6%
Use of power	This in-house strategy uses power differential to overrule earlier recruitment decision(s)	21.4%
Abuse of ambiguity of laws and policies	This in-house strategy consists of using the vague and complex existing laws and policies to their advantage.	28.6%
Excuses	This in-house strategy consists of use costs, possible constraints for coworkers and administrative procedures as excuses for not engaging with anti-discrimination laws and policies.	21.4%

Figure 2: model on how organizations intentionally circumvent rules and regulations regarding discrimination.



