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Progressive Corporations at Work: The Case of Diversity Programs¹

Soochan Kim
Korea University

Alexandra Kalev
Tel Aviv University

Frank Dobbin,
Harvard University

¹ Assistant Professor of Sociology, Korea University, Ph.D. in Sociology, Harvard University, 2011; Associate Professor of Sociology, Tel Aviv University, Ph.D. in Sociology, Princeton University, 2006; Professor of Sociology, Harvard University, Ph.D. in Sociology, Stanford University, 1987.

Table of Contents

- 1. Introduction.....3
- 2. The Civil Rights Era..... **Error! Bookmark not defined.**
- 3. Factors that Make Firms Behave Progressively13
 - 3.1. Regulatory Pressure14
 - 3.2. Organizational Visibility.....17
 - 3.3. Advocacy Groups19
- 4. Progressive Programs that Have Increased Workforce Diversity42
 - 4.1. Recruitment and Training Programs43
 - 4.2. Mentoring Programs45
 - 4.3. Programs that Establish Authority for Diversity Management47
- 5. Progressive Programs that Have Failed to Increase Workforce Diversity **Error! Bookmark not defined.**
 - 5.1. Bureaucratic Hiring and Promotion Procedures to Prevent Bias**Error! Bookmark not defined.**
 - 5.2. Programs to Eradicate Managerial Bias **Error! Bookmark not defined.**
 - 5.3. Affinity Networks **Error! Bookmark not defined.**
 - 5.4. Grievance Systems..... **Error! Bookmark not defined.**
 - 5.5. Sexual Harassment Training **Error! Bookmark not defined.**
- 6. Conclusion50

Introduction

Until the late 1950s, companies in both the North and the South practiced discrimination openly. Women, African-Americans, and Latinos were rarely given opportunities to work alongside white men in the same jobs. They were generally offered unskilled jobs without promotion prospects.² Most unions were segregated by sex and race, and those that had access to the best-paying jobs were the exclusive province of white men.³

In 1961, John F. Kennedy decreed that companies wanting to do business with the federal government would have to take affirmative action to end discrimination.⁴ In 1964, Lyndon Johnson signed the Civil Rights Act, outlawing discrimination in all U.S. workplaces.⁵ In principle, Kennedy's affirmative action order and the Civil Rights Act of 1964 made discrimination illegal in corporations. In practice, most employers did not think these federal regulations would much affect them. They assumed that putting an end to outright discrimination would be enough to comply with federal regulations.⁶

The modest legal requirements, vague notions of compliance and waxing and waning enforcement meant that progress at the workplace would depend on an expanding class of personnel managers who devised a series of compliance measures.⁷ They installed new recruitment and training programs in the 1960s, formal hiring and promotion systems in the 1970s, diversity management programs in the 1980s, and work-family and anti-harassment

² See generally FRANK DOBBIN, *INVENTING EQUAL OPPORTUNITY* 22-31 (2010); RUTH MILKMAN, *GENDER AT WORK: THE DYNAMICS OF JOB SEGREGATION BY SEX DURING WORLD WAR II* 1-11 (1987); BARBARA RESKIN & PATRICIA ROOS, *JOB QUEUES AND GENDER QUEUES* 4-5 (1990).

³ DOBBIN, *supra* note 2, at 25-26; BARBARA RESKIN & PATRICIA ROOS, *JOB QUEUES AND GENDER QUEUES* 56 (1990) (discussing the role of unions in excluding women and minorities from the skilled trades in order to prevent competition for jobs).

⁴ Exec. Order No. 10,925, 26 Fed. Reg. 1977, 3 C.F.R. 87 (1961).

⁵ Civil Rights Act, 42 U.S.C. § 2000e (1964).

⁶ DOBBIN, *supra* note 2, at 1.

⁷ *Id.* at 1-5.

programs in the 1990s and beyond.⁸ By experimenting with these new personnel programs corporations played a crucial role in mediating the effects of anti-discrimination laws.

American corporations made substantial progress on race and gender integration of the workplace between the passage of the Civil Rights Act of 1964 and the end of the 1970s, but progress slowed during the 1980s as the federal government cut back significantly on Title VII enforcement.⁹ While minorities made inroads into management, research shows they were especially vulnerable to layoffs during the corporate restructuring of the 1980s and 1990s.¹⁰ In the half-century since the civil rights era, women and members of racial and ethnic minority groups have continued to face significant barriers to entering the ranks of management.¹¹ In some industries, the representation of white men in management has actually grown over time.¹² The need to understand what policies and programs are effective in bringing women and minorities into the workforce and into management positions thus remains as pressing as ever.

Thanks to variation across firms in the use of innovations, we can explore both what leads a corporation to adopt progressive employment programs and which programs have actually increased the number of women and minorities on the staff as a whole and in management. We treat programs as progressive when they are adopted under the banner of equalizing employment opportunities or promoting workforce diversity, regardless of whether

⁸ *Id.* at 13-14.

⁹ Donald Tomaskovic-Devey, Catherine Zimmer, Kevin Stainback, Corre Robinson, Tiffany Taylor & Tricia McTague, *Documenting Desegregation: Segregation in American Workplaces by Race, Ethnicity, and Sex, 1966-2003*, 71 AM. SOC. REV. 565, 567 (2006).

¹⁰ George Wilson & Debra Branch McBrier, *Race and Loss of Privilege: African American/White Differences in the Determinants of Job Layoffs From Upper-Tier Occupations*, 20 SOC. FOR. 301 (2005). Kaley Alexandra, *How You Downsize is Who you Downsize* Working paper, Department of Sociology, Tel Aviv University.

¹¹ See DONALD TOMASKOVIC-DEVEY, GENDER & RACIAL INEQUALITY AT WORK: THE SOURCES & CONSEQUENCES OF JOB SEGREGATION 21-37 (1993) (presenting data showing a lower composition of women and minorities in manager and supervisor positions).

¹² KEVIN STAINBACK & DONALD TOMASKOVIC-DEVEY, *Documenting Desegregation: Segregation in Private Sector Employment since the Civil Rights Act*, 262 (forthcoming 2011). (Frank or Sandra may send the book manuscript to the editors if you have it. Or we may find other sources)

managerial intention was to comply with the law or to actually improve the lot of the historically disadvantaged. We might have defined some of these measures as simple compliance measures and others as true progressive employment policies. For example, among the programs designed to comply with the law were active recruitment programs targeting historically black colleges, predominantly black high schools, and women's colleges.¹³ Among the programs thought to be shaped by progressive goals rather than driven by regulation, are diversity training and mentoring systems.¹⁴ But demarcating clear lines between symbol and substance would involve attributing intent to the managers who put these programs into place. It would also ignore unintended program consequences. In all likelihood, some managers hoping to promote equality of opportunity used the cover of compliance to put into place policies that they favored for their progressive purposes. At the same time, some managers hoping to appear forward-thinking to regulators and judges implemented diversity programs without any true intention of altering the status quo, but some of those programs may have promoted diversity nonetheless. Rather than trying to divine the intentions of managers, we include all of these policies under the broad umbrella of progressive employment policies.

As organizational sociologists, rather than legal scholars, our approach is to try to understand the causes of adoption of corporate diversity programs and the effects of these progressive innovations using quantitative data from studies of hundreds of firms over dozens of years. Most of the studies we review (several of which are our own) use advanced statistical techniques and longitudinal data to isolate the causes of progressive innovations in firms or to

¹³ See E.G. MATTISON, *Integrating the Work Force in Southern Industry*, in *THE NEGRO AND EMPLOYMENT OPPORTUNITY: PROBLEMS AND PRACTICES* 147, 151-52 (Herbert R. Northrup & Richard L. Rowan eds., 1965) (describing Lockheed's outreach to colleges and high schools to recruit black students).

¹⁴ See Dobbin, *supra* note 2, at 16-17 (noting that during the 1980s, personnel experts "dropped the language of legal compliance" and instead used ideas from the social sciences to promote diversity training and mentoring as ways of reducing the effects of bias and stereotyping).

isolate the effects of those innovations on workforce integration.¹⁵ Survey researchers and business groups such as Catalyst and the Society for Human Resources Management often use cross-sectional methods in which they collect data on a sample of organizations at a single point in time.¹⁶ This approach can show which attributes of firms are correlated with the adoption of progressive employment programs and which employment programs are correlated with workforce diversity. By contrast, longitudinal methods allow researchers to specify the causes of program adoption and workforce diversity with much greater reliability. As organizational sociologists our approach is resolutely empirical and thus we put more stock in studies using longitudinal data.

Understanding the progressive human resources innovations firms have embraced over the last half century is key to understanding social inequality in the U.S. today and the role of the law in addressing it. The current structure of inequality is shaped by characteristics of the labor market and by the skills and aspirations of women and men, whites and African-Americans, to be sure. But it is also shaped by corporate human resources policies adopted in reaction to antidiscrimination laws, from recruitment and training systems to promotion procedures to diversity mentoring and training programs. Research shows that when plaintiffs bring legal challenges to workplace discrimination, courts consider these measures as indicative of the

¹⁵ Most of the studies we discuss use event history analysis to study the diffusion of progressive corporate programs. Event history analysis of longitudinal data allows us to track cause in ordered events as they appear along the history of the firm. By contrast, when analyzing cross sectional data, we cannot determine whether differences between organizations with and without progressive programs are what led adopters to adopt those programs. For example, if we see more progressive employment programs among firms with many women in management, we cannot conclude that women in management promote the adoption of progressive programs, as the opposite is possible as well: there are many women in management because these programs were adopted. For a more complete discussion of event history analysis, see generally PAUL D. ALLISON, *EVENT HISTORY ANALYSIS: REGRESSION FOR LONGITUDINAL EVENT DATA* (Richard G. Niemi, SAGE Publications, Inc. 1984).

¹⁶ See, e.g., Lois Joy, Nancy M. Carter, Harvey M. Wagner & Sriram Narayanan, *The Bottom Line: Corporate Performance and Women's Representation on Boards*, CATALYST, <http://www.catalyst.org/file/139/bottom%20line%20.pdf> (2007); Society for Human Resource Management, <http://www.shrm.org/Research/Articles/Pages/Diversity.aspx> (last visited Dec. 19, 2011).

company's intent to comply with civil rights laws.¹⁷ The courts need to understand which of these measures actually promote equality of opportunity.

The article proceeds as follows. Part I sets out the legal framework for prohibiting workplace discrimination. Part II considers what factors lead firms to become progressive actors, adopting equal employment and diversity innovations. Studies show that new government regulations and judicial decisions stimulate firms to adopt progressive reforms, particularly among firms in the limelight. Advocacy by human resources professionals helps to spread many programs, and as does advocacy by historically disadvantaged groups within management. Firms with progressive corporate cultures are also more likely to take these measures.

In parts III and IV we ask what effects these innovations have had on the share of women and minorities in the corporate workforce and in good jobs. Part III finds that the measures that workplaces most commonly use, such as diversity training, diversity performance evaluations, and standardized hiring practices and grievance procedures, do not lead to a measurable increase in the diversity of a company's management, perhaps because these measures identify managers as the cause of the problem. Networking programs have also generally proven ineffective, except in the case of white women, and we suggest that this is because vertical relationships are the key to moving up in the firm. Part IV argues that measures such as targeted recruitment, mentoring programs, and granting authority to diversity managers and diversity taskforces are far more effective. These programs are designed to involve managers in problem-solving in a positive way. Perhaps that is the key to their success. Taken together the results suggest that engaging managers in diversity efforts has been more effective than blaming managers and

¹⁷ Lauren B. Edelman, Linda H. Krieger, Scott R. Eliason, Catherine R. Albiston & Virginia Mellema, *Am. J. Sociol.* *When Organizations Rule: Judicial Deference to Institutionalized Employment Structures*, 117 *AM. J. SOC.* 888, (2011) (analyzing a sample of federal employment discrimination opinions and finding that “judges increasingly defer to organizational structures in their opinions, ultimately inferring non-discrimination from their presence”).

defining them as the source of the problem. Part VI discusses the implication of these findings for future research and for the future of progressive corporate action in the realm of workforce diversity.

1. Legal Framework for Prohibiting Workplace Discrimination

The federal government began to take an active role in regulating workplace discrimination in the 1960s. Before the early 1960s, some states prohibited employment discrimination in private corporations on the basis of race, and the federal government prohibited discrimination among military contractors.¹⁸ Yet these limited regulations were rarely enforced, and companies continued to follow either explicit or unwritten policies for excluding blacks and women from the best-paying jobs.¹⁹

Beginning in the 1960s, the federal government took a series of steps that laid the framework for the current prohibitions on workplace discrimination. First, President John F. Kennedy's Executive Order 10,925 in 1961 required federal contractors to take "affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."²⁰ In 1965 President Lyndon Johnson's Executive Order 11,246 updated Kennedy's original order, requiring all federal contractors and subcontractors whose contracts exceed \$10,000 to undertake affirmative action to improve the real position of minorities in the workforce. The new order extended affirmative action requirements to all of the work done by firms with federal contracts, not just contracted work.²¹

¹⁸ DOBBIN, *supra* note 2, at 30, 32

¹⁹ *Id.* at 27-31.

²⁰ Exec. Order No. 10,925, 3 C.F.R. § 301.1 (1961), *superseded by* Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (Sept. 24, 1965).

²¹ Need citation to specific provision of executive order.
Exec. Order No. 11,246. Section 202: Provisions of Paragraphs (1) through (7).

While the original executive order only prohibited discrimination based on race, Johnson expanded the order in 1967 to prohibit discrimination based on sex and religion.²² In response to these executive orders, the largest federal contractors, led by military supplier Lockheed, joined forces in a private initiative dubbed Plans for Progress, promising to workforce segregation.²³

In the most significant anti-discrimination step of the 1960s, Title VII of the Civil Rights Act of 1964 made it illegal for private employers with a qualifying number of employees to discriminate on the basis of race, color, religion, sex, or national origin.²⁴ Kennedy's executive order only covered government contractors, but now a much wider swath of businesses had to comply with federal anti-discrimination mandates. In 1967, Congress extended Title VII protections to persons between the ages of 40 and 65 and in 1973, it prohibited recipients of federal funding from discriminating on the basis of disability.²⁵ These acts were later reinforced by 1986 age discrimination amendments protecting most workers over age 70, and by the 1990 Americans with Disabilities Act extending protections to disabled workers in private enterprises.²⁶

Congress also took a series of measures to address the status of women in the workplace. The Equal Pay Act of 1963 made it illegal to pay men and women different wages for the same work.²⁷ The Pregnancy Discrimination Act of 1978 required employers to treat pregnant women

Please see. <http://www.eeoc.gov/eeoc/history/35th/thelaw/eo-11246.html>

²² Exec. Order No. 11,375, 3 C.F.R. 320 (1967) (amending Exec. Order No. 11,246).

²³ DOBBIN, *supra* note 2, at 72-73.

²⁴ 42 U.S.C. § 2000e-2(a)(1) (2006).

²⁵ Age Discrimination in Employment Act of 1967, Pub. L. No. 90-202, § 4(a), 81 Stat. 61, 63 (establishing that employers with a qualifying number of employees cannot discriminate on the basis of age) (codified as amended at 29 U.S.C. § 623 (2008)); Rehabilitation Act of 1973, Pub. L. No. 93-112, § 501-04, 87 Stat. 355, 390-94, § 501-04 (preventing the federal government, federal agencies, programs that receive federal grants, and employers that receive federal contracts from discriminating against the disabled).

²⁶ Age Discrimination in Employment Amendments of 1986, Pub. L. No. 99-272, § 9201(b), 100 Stat. 170, 171 (codified as amended at 29 U.S.C. § 623 (2008)); Americans with Disabilities Act, Pub. L. No. 101-36, § 102(a), 104 Stat. 327, 331-32, § 102 (1990) (codified as amended at 42 U.S.C. § 12112 (2009)).

²⁷ Equal Pay Act of 1963, Pub. L. 88-38, § 3(d)(1), 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d) (2007));

the same as similarly situated employees “for all employment-related purposes,” though it did not require employers to provide maternity leaves.²⁸ In 1993 the Family and Medical Leave Act required employers to guarantee the jobs of workers who took up to 12 weeks of medical, parental, or family leave.²⁹ As Congress took these steps to improve the job prospects of working mothers, the courts also played a role in expanding protections for women by construing Title VII to outlaw sexual harassment by employers.³⁰

While this series of executive orders and laws brought broad categories of American workers under anti-discrimination protections, these measures initially had only a limited practical effect because of weak federal enforcement. Title VII of the Civil Rights Act created the Equal Employment Opportunity Commission (EEOC) to enforce the law.³¹ Johnson’s executive order created what is now the Office of Federal Contract Compliance Programs (OFCCP) to enforce affirmative action law for federal contractors.³² Yet the enforcement agencies had only limited powers, and the laws did not make clear what constituted prohibited discrimination. Neither Kennedy nor Johnson defined “affirmative action” in their orders to federal contractors, and neither established practical guidelines. Likewise, Title VII made discrimination illegal but did

see generally Barbara M. Boyle, *Equal Opportunity for Women is Smart Business*, 51 HARVARD BUS. REV. 85, 86 (1973); ROBERT L. NELSON & WILLIAM P. BRIDGES, *LEGALIZING GENDER INEQUALITY: COURTS, MARKETS AND UNEQUAL PAY FOR WOMEN IN AMERICA* 26-27 (1999).

²⁸ Pregnancy Discrimination Act, 42 U.S.C. § 2000(e) (1994).

²⁹ Family and Medical Leave Act, 29 U.S.C. § 2612(a)(1) (2006).

³⁰ *See Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986) (“[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.”); DOBBIN, *supra* note 2, at 190-219.

³¹ 42 U.S.C. § 2000e-4 (2006). For background on the causes and effects of equal employment opportunity legislation, see PAUL BURSTEIN, *DISCRIMINATION, JOBS, AND POLITICS: THE STRUGGLE FOR EQUAL EMPLOYMENT OPPORTUNITY IN THE UNITED STATES SINCE THE NEW DEAL* (1985).

³² Bernard E. Anderson, *The Ebb and Flow of Enforcing Executive Order 11246*, 86 AM. ECON. REV. 298, 299 (1996).

not define it. During the 1960s, the ambiguity of these laws caused only modest concern among employers because sanctions were rare.³³

The regulatory environment changed broadly in the early 1970s, stimulating many firms to take equal opportunity more seriously. In 1971, in *Griggs v. Duke Power*, the Supreme Court construed Title VII to extend to employer practices that were not explicitly discriminatory but which had a “disparate impact” on women or minorities.³⁴ In 1972 Congress expanded the coverage of Title VII and for the first time gave the EEOC the authority to sue employers.³⁵ In December 1971 the OFCCP set out specific affirmative action guidelines for federal contractors, calling for affirmative action plans with numerical goals and timetables for minority and female employees and with mechanisms for evaluating program effectiveness.³⁶ The OFCCP soon stepped up compliance reviews for federal contractors.³⁷

In the 1980s the legal environment changed again. The Reagan Administration put the brakes on civil rights enforcement as part of its broader efforts to reduce government regulation of business.³⁸ Enforcement of affirmative action policies against federal contractors virtually halted.³⁹ With the OFCCP’s staffing cut in half, the agency significantly reduced compliance

³³ See *Id.* at 299 (noting that “the contracting agencies varied widely” in the amount of resources devoted to enforcing the executive orders); Dobbin, *supra* note 2, at 34-38 (discussing the ambiguity of Title VII and the weakness of the EEOC).

³⁴ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

³⁵ Equal Employment Act of 1972, Pub. L. No. 92-261, [86 Stat. 103](#) (codified as amended at [42 U.S.C. sections 2000e](#) to [2000e-17](#) (1988)); see also JOHN DAVID SKRENTNY, *THE IRONIES OF AFFIRMATIVE ACTION: POLITICS, CULTURE, AND JUSTICE IN AMERICA* 126 (1996).

³⁶ 41 CFR 60-2. (especially 41 CFR60-2.10 through 41 CFR60-2.17)

Please see the following <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=d1c45e75d9268b116419e9d3501cee81&rgn=div5&view=text&node=41:1.2.3.1.2&idno=41#41:1.2.3.1.2.1>

³⁷ DOBBIN, *supra* note 2, at 75-79; Jonathan S. Leonard, *What Promises are Worth: The Impact of Affirmative Action Goals*. 20 J. Hum. Resou. 3-20 (1985); ANDERSON, *supra* note 29, at 298 299.

41 CFR 60-1.20

Please see <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=41:1.2.3.1.1&idno=41>

³⁸ DOBBIN, *supra* note 2, at 133-36

³⁹ See Lauren B. Edelman, *Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law*, 97 AM. J. SOC. 1531, 1541 (1992) (citing a congressional committee report that “effective enforcement [of Executive Order 11,246] has come to a virtual standstill” since 1980).

reviews of federal contractors and lifted sanctions of all sorts.⁴⁰ During President Carter's single term in office, the OFCCP had on thirteen occasions imposed a bar on future federal contracts, its most drastic sanction for noncompliance, but the agency only used this sanction four times during Reagan's first term in office.⁴¹ Conciliation agreements were set up for 49 percent of violators in 1980 but only 33 percent in 1985.⁴² The government also dramatically reduced its oversight of private corporations as it cut EEOC funding and staffing.⁴³ The EEOC sponsored fewer conciliation agreements and delayed decisions about pending cases.⁴⁴ The step-down of federal enforcement during the Reagan administration would persist through subsequent administrations.⁴⁵

Since the dawn of the Civil Rights Era, compliance norms have been worked out between corporations and the courts, for the most part. The OFCCP promoted certain standards, which they derived from the behavior of the leading firms involved in the voluntary Plans for Progress program developed by federal contractors in the 1960s. The courts backed certain voluntary standards that were developed in corporations. Compliance strategies, then, were in Lauren Edelman's terms "endogenous," in that they were developed by regulated businesses rather than imposed by government regulators.⁴⁶ The fact that compliance standards were developed by

⁴⁰ Virginia duRivage, *The OFCCP Under the Reagan Administration: Affirmative Action in Retreat*, 36 LAB. LAW J. 360, 364 (1985) (stating that budget cuts reduced OFCCP staffing by 52 percent and led to a drop in compliance reviews).

⁴¹ *Id.* Anderson, Bernard E **The ebb and flow of enforcing Executive Order 11246** *The American Economic Review*; May 1996; 86, 2; pg. 298. At 300.

⁴² Anderson, *supra* note 29, at 300.

⁴³ DOBBIN, *supra* note 2, at 137; *see also* J. Ronald Fox, *Breaking the Regulatory Deadlock*, 59 HARV. BUS. REV. 97 (1981) (calling for partnerships between business and government regulators to improve efficiency and reduce conflict); Caroline E. Mayer, *U.S. Relaxing Enforcement of Regulations*, WASH. POST, Nov. 15, 1981, at F1 (discussing the Reagan administration's budget cuts across federal regulatory agencies).

⁴⁴ ALFRED W. BLUMROSEN, *MODERN LAW: THE LAW TRANSMISSION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY* 270 (1993).

⁴⁵ *See* Jonathan S. Leonard, *Women and Affirmative Action*, 3 J. ECON. PERSP. 61, 73-74 (1989) ("An administration lacking the will to enforce affirmative action beyond rubber-stamped compliance reviews has resulted in an affirmative action program without practical effect since 1980.").

⁴⁶ Lauren B. Edelman, Christopher Uggen & Howard S. Erlanger, *The Endogeneity of Legal Regulation: Grievance*

industry rather than by government meant that they would change considerably over time, as personnel experts devised new practices in response to changing public perceptions of the causes of inequality. But it also meant that firms experimented with a variety of different measures, some of them were based on available personnel tools. If all firms had adopted a single set of programs in response to a clear legal mandate, it might have been difficult to assess their effect. The variation in adoption allows us to examine what affected adoption of compliance measures and which measures were effective by comparing firms.

2. Factors that Make Firms Behave Progressively

Ambiguous laws and fluctuating enforcement effected sustained changes in corporate human resources policies. These effects came about in multiple ways. Early research pointed to three driving forces behind corporate adoption of progressive equal opportunity and diversity structures: regulatory pressures, corporate visibility, and advocacy by human resources professionals and by identity groups. Since the early 1980s, research suggests, regulation has played less of a role. Instead, recent studies have highlighted advocacy from internal groups, as well as cultural norms at the industry and firm level, as drivers of innovation. Firms that have already made a commitment to progressive employment policies and those that are in industries where diversity measures are common continue to install new diversity measures even in the absence of congressional and judicial headlines. Adoption of new diversity innovations became highly path dependent. Firms in less progressive industries, and those that do not have progressive histories, are less likely to join the bandwagon.

Procedures as Rational Myth, 105 AM. J. SOC. 406, 407 (1999) (“That organizations are both responding to and constructing the law that regulates them renders the law ‘endogenous’; the content and meaning of law is determined within the social field that it is designed to regulate.”).

2.1. Regulatory Pressure

Organizational scholars have pointed to the role of legal standards and the social norms they create in promoting progressive corporate behavior.⁴⁷ Studies show that new federal regulations and judicial decisions that expand the scope of anti-discrimination law typically increase the likelihood that firms will adopt equal opportunity and diversity innovations.⁴⁸

Affirmative Action Regulations and Equal Opportunity Legislation. Direct government regulation has been shown to lead to more progressive policies. In particular, affirmative action regulations and equal opportunity laws have been the two main sources of legal pressure shaping corporate employment practices. For example, Kennedy's Executive Order in 1961 required government contractors to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race."⁴⁹ In response to the order, contractors soon wrote non-discrimination policies of their own, changed their personnel manuals, and announced in job advertisements that they were "Equal Opportunity Employers."⁵⁰ Studies have shown that federal contractors were more likely than similar firms without contracts to implement a number of progressive employment policies,

⁴⁷ See Frank Dobbin, John R. Sutton, John W. Meyer & Richard Scott, *Equal Opportunity Law and the Construction of Internal Labor Markets*, 99 AM. J. SOC. 396, 397 (1993) (discussing the influence of federal Equal Opportunity Law on progressive promotion practices); Paul J. DiMaggio & Walter W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147, 150 (1983) (noting situations in which "organizational change is a direct response to government mandate," including the hiring of affirmative action managers); cf. John W. Meyer, *The Effects of Education as an Institution*, 83 AM. J. SOC. 55, 65 (1977) (citing the role of the law in shaping organizational practice in educational systems).

⁴⁸ See Edelman, *supra* note 36, at 1535 ("Organizations that are sensitive to their legal environments develop forms of governance that conform to legal norms in order to achieve legitimacy."); Edelman, *supra* note 6, at 1402 (crediting "law and the legal environment" for the expansion of due process in the workplace); John R. Sutton & Frank Dobbin, *The Two Faces of Governance: Responses to Legal Uncertainty in American Firms, 1955-1985*, 61 AM. SOC. REV. 794, 795 (1996) (citing studies showing that the rate of adoption of due process governance practices rose during periods of increased federal enforcement of equal opportunity laws).

⁴⁹ Executive Order No. 10,925, 26 Fed. Reg. 1975, 1977 (1961).

⁵⁰ See, e.g., Public Service Electric & Gas Company, Advertisement, *Buy You a New Sports Car?*, THE TECH, Oct. 13, 1965, at 15, available at http://tech.mit.edu/archives/VOL_085/TECH_V085_S0279_P015.pdf (declaring the company to be an "Equal Opportunity Employer").

including formal equal opportunity policies, corporate compliance offices, and due process procedures.⁵¹

Equal opportunity legislation prohibited discrimination but it neither defined the meaning of discrimination nor provided clear compliance guidelines; moreover Congress decided not to create a regulatory agency with independent authority to set compliance standards.⁵² The ambiguity of regulation and rapid changes in enforcement stimulated “endogenous” compliance processes⁵³, wherein many executives hired full-time equal opportunity experts, or created new departments, to track changes in the law and in judicial interpretation.⁵⁴ These new experts came mostly from the personnel profession, and they filled in the gaps left by the federal statute. Across they decades they introduced many implements from their professional arsenal, from grievance procedures to bureaucratic hiring and promotion systems, and argued that these reforms would demonstrate civil rights compliance to the courts.⁵⁵ While these changes came about after the enactment of Title VII, in other cases corporations have adopted progressive practices in anticipation of new laws. Kelly and Dobbin show that even before the Family and Medical Leave Act was enacted in 1993, to require corporations to offer maternity leaves, many firms had created maternity leave programs in response to signals from Congress that a change was afoot.⁵⁶

⁵¹ See Edelman, *supra* note 36, at 1562 (finding that after the enactment of Title VII, firms with “contractual or administrative linkages to the federal government” were almost three times more likely to create equal employment opportunity/affirmative action offices); Frank Dobbin, Soohan Kim & Alexandra Kalev, *You Can’t Always Get What You Need: Organizational Determinants of Diversity Programs* 76 *Am. Sociol. Rev.* 386, 389 (1993) (noting that “the very first equal opportunity programs were devised by big military contractors in the South”); SUTTON & DOBBIN, *supra* note 47, at 806 (finding that between 1981 and 1985, firms with federal contracts were more likely to adopt grievance procedures).

⁵² See ANTHONY S. CHEN, *THE FIFTH FREEDOM: JOBS, POLITICS, AND CIVIL RIGHTS IN THE UNITED STATES, 1941-72* 16 (2009) (arguing that Title VII limited the effectiveness of the EEOC by “giving it only a sliver of jurisdiction over job discrimination and leaving it without any independent authority to enforce the law.”).

⁵³ EDELMAN, UGGEN & ERLANGER, *supra* note 43, at 407.

⁵⁴ DOBBIN, *supra* note 2, at 75.

⁵⁵ DOBBIN, *supra* note 2, at 75-77.

⁵⁶ Erin Kelly & Frank Dobbin, *Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity Leave*

Judicial and Administrative Enforcement. Rulings by local, state, and federal judges and bureaucrats also induced firms to embrace a number of different progressive employment programs. Employers responded with a range of bureaucratic procedures designed to put an end to managerial bias in hiring and promotion.⁵⁷ Some studies show that discrimination lawsuits and federal affirmative action compliance reviews stimulate employers to adopt progressive employment programs.⁵⁸ Others show that progressive court rulings stimulate adoption. For example, Dobbin and Kelly show that judicial rulings in the 1970s in favor of sexual harassment plaintiffs caused firms to adopt grievance procedures.⁵⁹ Firms located in jurisdictions where the courts have historically taken a harder line on equal employment opportunity cases face additional pressure to comply with the law. Guthrie and Roth find that in federal circuit court districts where judges are more likely to favor plaintiffs in discrimination suits, firms are more likely to install work-family programs designed to attract and retain female employees.⁶⁰

Policies, 105 Am. J. Sociol. 455, 456 (1999).

⁵⁷ See DOBBIN, SUTTON, MEYER & SCOTT, *supra* note 46, at 419 (discussing the effect of legal changes on the adoption of job descriptions, performance evaluations, and salary classification systems).

⁵⁸ Cf. Lauren B. Edelman, Steven E. Abraham & Howard S. Erlanger, *Professional Construction of the Law: The Inflated Threat of Wrongful Discharge*, 26 Law and Society Review 47, 79 (1992) (discussing how employers have changed their practices in response to court rulings on wrongful discharge).

⁵⁹ Frank Dobbin & Erin L. Kelly, *How to Stop Harassment: The Professional Construction of Legal Compliance in Organizations*, 112 Am. J. Sociol. 1208, 1230 (2007) (“Each time a legal landmark appeared to raise organizational risk, more executives followed personnel’s prescription of grievance procedures.”); *see also* DOBBIN, *supra* note 2, at 197. Influential cases include *Williams v. Saxbe*, 413 F. Supp. 654 (D.C. Cir. 1976) (holding that retaliatory action against a female employee who declines a male supervisor’s sexual advances constitutes sex discrimination under Title VII); *Barnes v. Costle*, 561 F.2d 983 (D.C. Cir. 1977) (holding that abolishing a female employee’s job because she refused a male supervisor’s sexual advances violates Title VII as amended by the Equal Employment Opportunity Act of 1972); *Tomkins v. Public Service Electric and Gas Co.* (Tomkins II), 568 F.2d 1044 (3d Cir. 1977) (finding a cause of action under Title VII when a female employee’s continued employment was conditioned on submitting to the sexual advances of a male supervisor).

⁶⁰ Doug Guthrie & Louise Marie Roth, *The State, Courts, and Maternity Policies in U.S. Organizations: Specifying Institutional Mechanisms*, 64 Am. Sociol. Rev. 41, 54-55 (1999) (finding that an organization is about 20 percent more likely to offer a maternity leave policy if it is located in the Second or Third Circuits, which have taken “considerably more liberal or progressive positions on equal employment opportunity, relative to other circuit court jurisdictions”).

2.2. Organizational Visibility

Studies find that firms are susceptible to indirect effects of regulatory pressure as well as to direct effects. Firms subject to scrutiny from the public and from regulators due to their proximity to the public sphere, or their sheer size, are more likely to embrace progressive employment programs.

Proximity to the public sphere. Firms that are closer to the public sector are more susceptible to normative pressures regarding fair and inclusive employment practices. On a continuum of private to public sector employers, then, various studies have suggested that government agencies are more likely than private sector firms to embrace progressive employment programs, and that in the private sector, nonprofits, regulated utilities, and consumer product firms are more likely than other employers.⁶¹ As Edelman argues, proximity to the public sector makes firms more sensitive to the legal environment.⁶² Proximity to the public sphere puts firms in contact with the civil service system, where bureaucratic procedures to ensure fairness and rights are “highly institutionalized,” and it also makes firms more visible and open to public scrutiny.⁶³ Edelman finds that federal and state agencies as well as universities and colleges are significantly more likely to establish equal employment opportunity offices.⁶⁴ In an analysis of cross-sectional data from 1991, Ingram and Simons confirm that public-sector employers are more likely to offer work/family benefits, including leaves, dependent care assistance, and flexible work schedules.⁶⁵ Kelly shows that companies close to the public sector

⁶¹ FRANK DOBBIN, LAUREN B. EDELMAN, JOHN W. MEYER, W. RICHARD SCOTT & ANN SWIDLER, *The Expansion of Due Process in Organizations*, in INSTITUTIONAL PATTERNS AND ORGANIZATIONS: CULTURE AND ENVIRONMENT, (LYNNE G. ZUCKER ed., 1988), at 82-86 (finding that the more closely a firm is linked to the public sphere, the more likely it is to adopt due process protections for employees); EDELMAN, *supra* note 29, at 1428.

⁶² EDELMAN, *supra* note 36, at 1548.

⁶³ *Id.* at 1549.

⁶⁴ *Id.* at 1562.

⁶⁵ Paul Ingram & Tal Simons, *Institutional and Resource Dependence Determinants of Responsiveness to Work-Family Issues*, 38 ACAD. MGMT. J. 1466, 1476 (1995).

are quicker to adopt work-family programs in response to the Family and Medical Leave Act of 1993.⁶⁶

Size. Organizational scholars have long argued that large organizations are most likely to create formal policies to govern the employment relationship.⁶⁷ Edelman suggests that large organizations are more responsive to their legal environment in part to avoid negative publicity from legal action, since they are more frequently targeted by enforcement agencies and are more susceptible to scrutiny from the public at large.⁶⁸ Thus, studies find that large organizations more often create formal bureaucratic systems to manage compliance with affirmative action and equal opportunity.⁶⁹

Taken together studies show that legal regulation can play a role in prompting corporations to adopt progressive measures, especially for firms that are large or close to the public sector. Yet studies show that after the Reagan administration decreased regulatory pressure in the 1980s, the law became less of a significant factor in the adoption of progressive equal opportunity offices and policies.⁷⁰ Instead, pressure from advocacy groups and from corporate culture began to play a larger role.

⁶⁶ Erin L. Kelly, *Failure to Update: An Institutional Perspective on Noncompliance with the Family and Medical Leave Act*, 44 *Law. Soc. Rev.* 33, 49, 50 (2010).

⁶⁷ See Peter M. Blau, *A Formal Theory of Differentiation in Organizations*, 35 *AM. SOC. REV.* 201, 204-207 (1970) (noting the generalization that “increasing size generates structural differentiation among organizations,” which in turn gives rise to a “need for coordination”).

⁶⁸ Edelman, *supra* note 39, at 1549.

⁶⁹ See John R. Sutton, Frank Dobbin, John W. Meyer & W. Richard Scott, *The Legalization of the Workplace*, 99 *AM. J. SOC.* 944, 963 (1994) (finding a relationship between size and the adoption rate of grievance procedures); Barbara F. Reskin & Debra Branch McBrier, *Why Not Ascription? Organizations' Employment of Male and Female Managers*, 65 *Am. Sociol. Rev.* 210, 222-23 (2000) (discussing the connection between size and the formalization of personnel practices); Alison M. Konrad & Frank. Linnehan, *Formalized HRM Structures - Coordinating Equal-Employment Opportunity or Concealing Organizational Practices*, 38 *Acad. Manage. J.* 787, 805 (1995) (finding an association between size and formalized human resources management structures).

⁷⁰ See EDELMAN, *supra* note 36, at 1534 (“While accounts that focus on law and the regulatory process find them seriously flawed, studies of work-force demographics show improvements in the economic and occupational status of minorities and women, albeit not necessarily in response to the law.”); DOBBIN, KIM & KALEV, *supra* note 50, at 389-90 (evidence shows that regulatory pressure led firms to adopt diversity programs in the 1970s, when regulation was more active, but it is no longer a “prime cause” of adoption); Erin L. Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management?: Employer Response to Antidiscrimination Law, 1961-1996*, 41 *Am. Behav.*

2.3. Advocacy Groups

Advocacy groups within the firm promote progressive employment policies, with human resources and diversity experts leading the charge. Research suggests, moreover, that as women began to enter management jobs, they successfully advocated for a number of progressive employment programs.

Human resources professionals. Personnel officials, equal opportunity consultants, and diversity experts have promoted one round of equal opportunity and diversity programs after another. In the 1960s, they wrote non-discrimination policies based on union contract clauses designed to prevent discrimination against union leaders, and they developed new recruitment programs and skills and management training systems to bring in more women and minorities and prepare them for advancement.⁷¹ In the 1970s, as the personnel profession more than doubled in size and as the proportion of women in the profession rose from a third to nearly a half, personnel experts created formal hiring and promotion systems designed to deny managers the chance to exercise bias.⁷² Human resources experts promoted the view that equal opportunity programs could offer the firm strategic advantages. As Uniroyal Tire's president argued in 1970, "In the decades ahead any organization which ignores or underestimates the potential of women—or overlooks any source of talent for that matter—will be making a fatal mistake."⁷³ Beginning in the 1980s, personnel experts used a similar rhetoric in response to the Reagan administration's efforts to put an end to affirmative action and equal opportunity enforcement. They rebranded the programs they had built for legal compliance as part of the new "diversity

Sci. 960, 971 (1998) (noting that employers "curtailed their most proactive affirmative action measures" during the cutback in federal enforcement in the 1980s).

⁷¹ DOBBIN, *supra* note 2, at 42.

⁷² *Id.* at 168-69, 224-26.

⁷³ Boyle, *supra* note 25, at 95.

management” initiative, designed to ensure that each employee could “make maximum use of his or her talents” and that companies could better serve a diverse client base.⁷⁴ Studies show that from the 1980s, when the pressure from regulators declined, personnel experts stepped up pressure on firms to adopt diversity programs under the banner of managerial effectiveness.⁷⁵ This pressure leads to results; studies show that firms that rely on professionals to design their human resources policies are most likely to install the latest diversity innovations.⁷⁶

Identity groups in the workforce. Organizational sociologists have long argued that managers choose practices that appeal to demographic groups within the firm, so as to win their cooperation and hard work.⁷⁷ This idea comes resource dependency theorists, who argue that organizations must acquire critical resources from their environments as well as from their internal constituencies. Corporate behavior may therefore be designed to satisfy unions, age cohorts, racial groups, and others within the firm. Departments to manage labor relations and affirmative action were created to absorb employee protests, such that workers with union-

⁷⁴ Statement of Wayne E. Hedien, Chairman, Allstate Insurance Company, at 1991 symposium, reprinted in CONFERENCE BOARD, *In Diversity Is Strength: Capitalizing on the New Work Force. 75th Anniversary Symposia Series*. Report Number 994. at 11-12 (Judith Alster, et al. eds., Conference Board, Inc. 1992).

⁷⁵ See Lauren B. Edelman, Sally Riggs Fuller, Iona Mara-Drita, *Diversity Rhetoric and the Managerialization of the Law*, 106 *Am. J. Sociol.* 1589, 1611-12 (2001) (arguing that personnel managers adopted a new rhetoric of “managing diversity” to replace the previous focus on compliance with the law); KELLY & DOBBIN, *supra* note 69, at 961-62 (finding that after the cutback in federal enforcement, personnel managers “downplayed legal compliance and emphasized first the goal of rationalizing human resources and later the goal of increasing profits by expanding diversity in the workforce and customer base.”).

⁷⁶ See Kelly & Dobbin, *supra* note 55, at 484 (noting that having a benefits manager makes companies more likely to adopt maternity leave policies); Edelman, Abraham & Erlanger, *supra* note 57, at 50 (discussing studies on the role of personnel professionals in leading firms to adopt bureaucratic promotion practices, due process protections, and equal employment opportunity structures); Dobbin & Kelly, *supra* note 58, at 1230 (“Organizations that looked to HR professionals for advice were significantly more likely to adopt sexual harassment procedures and training.”); Frank Dobbin & John R. Sutton, *The Strength of a Weak State: The Rights Revolution and the Rise of Human Resources Management Divisions*, 104 *Am. J. Sociol.* 441, 467 (1998) (finding that personnel managers’ associations supported the creation of new positions to oversee equal employment opportunity programs).

⁷⁷ See JEFFREY PFEFFER & GERALD R. SALANCIK, *THE EXTERNAL CONTROL OF ORGANIZATIONS: A RESOURCE DEPENDENCE PERSPECTIVE* 24-25 (1978) (describing the need for an organization to maintain “a coalition large enough to ensure survival”).

related concerns can “appeal to the personnel or industrial relations department, while minorities can articulate their interests through affirmative action offices”⁷⁸

Applied to corporate employment policies, resource dependency theory suggests that firms will embrace progressive policies only after they have achieved significant workforce, and especially management, diversity, as executives will try to win the hearts and minds of female and minority workers. In support of this argument, studies have shown that women and minorities are more supportive of diversity programs. Bobo and Kluegel find that blacks are significantly more supportive than whites of opportunity enhancement policies targeting blacks.⁷⁹ Cohen and Huffman report that in the 1996 General Social Survey, employed women were 1.2 times as likely as men to agree that “employers should make special efforts to hire and promote qualified women” to remedy past discrimination, and women managers were 1.3 times as likely to agree as men.⁸⁰ In reviewing decades of research on support for affirmative action programs, Steeh and Krysan show that blacks are consistently more supportive of government aid for minorities and hiring preferences.⁸¹

Recent research suggests that diversity in the workforce at large does not promote the adoption of progressive employment policies.⁸² However, diversity in the management ranks does promote adoption. In particular, as the proportion of white women in management increases, firms are more likely to adopt four equal opportunity and diversity measures: equal opportunity advertisements, diversity training for managers, diversity training for the entire

⁷⁸ (Pfeffer and Salancik 1978: 273).

⁷⁹ Lawrence Bobo & James R. Kluegel, *Opposition to Race-Targeting: Self-Interest Stratification Ideology or Racial Attitudes?*, 58 Am. Sociol. Rev. 443, 449 (1993).

⁸⁰ Philip N. Cohen & Matt L. Huffman, *Working for the Woman? Female Managers and the Gender Wage Gap*, 72 Am. Sociol. Rev. 681, 682 (2007).

⁸¹ Charlotte Steeh & Maria Krysan, *The Polls - Trends: Affirmative Action and the Public 1970-1995*, 60 Public Opin. Quart. 128, 135-37 (1996).

⁸² Dobbin, Kim & Kalev, *supra* note 50, at 395 (concluding there are “almost no effects of workforce diversity...on adoption of diversity programs”).

workforce, and diversity taskforces.⁸³ This suggests that identity groups successfully lobby for progressive social policies only when they win representation in powerful positions within a firm and that white women have better leverage than non-whites.⁸⁴

Feminization among human resources professionals. As women won a greater role in human resource management, they used these positions to successfully advocate for a number of progressive employment programs. The new civil rights focus in personnel departments fueled the feminization of the field. The personnel field itself grew tenfold between 1960 and 2000 while the labor force only doubled.⁸⁵ Women were nearly unknown in the field as of 1960, but they held half of specialist and manager jobs by 1980, and 70 percent of jobs by the late 1990s.⁸⁶ This change in the profession's composition shaped its agenda. In the early 1970s, federal law did not require employers to offer maternity leave policies that guaranteed that women could return to their jobs after childbirth, but personnel offices began to institute such policies between 1972 and 1975.⁸⁷ According to one study, fewer than a quarter of companies reported that they

⁸³ *Id.* at 400-01.

⁸⁴ *Cf.* Tai-Young Kim, Dongyoub Shin, Hongseok Oh & Young-Chul Jeong, *Inside the Iron Cage: Organizational Political Dynamics and Institutional Changes in Presidential Selection Systems in Korean Universities, 1985–2002*, 52 ADMIN. SCI. Q. 286, 316 (2007) (arguing that “the power of organized challengers who advocate a new institutional model in an organization is an important factor in explaining variations in organizational responses to pressures for institutional change”); David Strang & Dong-Il Jung, *Organizational Change as an Orchestrated Social Movement: Recruitment to a Corporate Quality Initiative*, in *Social Movements and Organization Theory* at 280, 307-09 (Gerald F. Davis, Doug McAdam, W. Richard Scott & Mayen N. Zald, eds., 2005) (proposing that “a social movement framework has utility for understanding mobilizing efforts inside as well as across organizations” and that the success of a social movement depends on actors at all levels of the corporate structure, not just CEOs); Timothy J. Vogus & Gerald F. Davis, *Elite Mobilization for Antitakeover Legislation, 1982-1990*, SOCIAL MOVEMENTS AND ORGANIZATION THEORY 96, 119 (Gerald F. Davis, Doug McAdam, W. Richard Scott & Mayer N. Zald, eds., 2005) (“It is when changes in incentives...are collectively interpreted as a cause of action by a well-organized set of actors that significant movements arise. Thus, the better organized the local corporate elite..., the faster the state legislature was to adopt management-friendly legislation regulating hostile takeovers.”).

⁸⁵ DOBBIN, *supra* note 2, at 5.

⁸⁶ *Id.* at 169; *see also* Patricia Roos & Joan E. Manley, *Staffing Personnel: Feminization and Change in Human Resource Management*, 99 Sociol. Focus. 245, 248 (1996).

⁸⁷ BNA (Bureau of National Affairs), *Paid Leave and Leave of Absence Policies*. No. 111, pt. (1975).
“Paid Leave and Leave of Absence Policies.” *Personnel Policies Forum, Survey No. 111*. Washington, D.C.: BNA (1975).

had job-protected maternity leave in 1969, but this number nearly tripled by 1978.⁸⁸ Five states outlawed pregnancy discrimination between 1972 and 1981, but even where pregnancy discrimination was not outlawed, personnel managers created maternity leave policies.⁸⁹

2.4 Corporate and Industry Cultures

Studies show that both internal and external cultures shape corporate human resources policies. Firms with a progressive founding team, a legalistic culture, or a history of attentiveness to new societal norms are more likely to implement progressive programs, as are firms in progressive industries.

Corporate culture. Research shows that corporate culture shapes decisions about program innovations. The preferences of founders become institutionalized in corporate structure and culture and serve as a robust predictor of future corporate behavior.⁹⁰ In a study of young technology start-ups in California, James Baron and his colleagues located and interviewed members of the founding teams about six years after founding. They learned that founders' original ideas about employment relations in their firms had lasting effects.⁹¹ When the founder had a clear bureaucratic vision of selecting employees based on skills needed to accomplish specific tasks (as opposed to selection based on long-term potential or fit with the

⁸⁸ SHEILA B. KAMERMAN, ALFRED J. KAHN & PAUL W. KINGSTON, *MATERNITY POLICIES AND WORKING WOMEN* 56 (1983).

⁸⁹ Erin Kelly & Frank Dobbin, *Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity Leave Policies*, 105 *Am. J. Sociol.* P. 470. Dobbin (2009:172) – Inventing Equal Opportunity.

⁹⁰ See James N. Baron, Michael T. Hannan & M. Diane Burton, *Labor Pains: Change in Organizational Models and Employee Turnover in Young, High-Tech Firms*, 106 *Am. J. Sociol.* 960, 1012 (2001) (discussing research showing that “founders’ initial organizational blueprints shaped not only the evolution of human resource practices and the HR function, but numerous other facets of organizational evolution as well.”); James N. Baron, Michael T. Hannan & M. Diane Burton, *Building the Iron Cage: Determinants of Managerial Intensity in the Early Years of Organizations*, 64 *Am. Sociol. Rev.* 527, 528 (1999) [hereinafter Baron, *Building the Iron Cage*] (arguing that founding conditions have “an indelible and enduring influence on how enterprises evolve”).

⁹¹ Baron, *Building the Iron Cage*, *supra* n. 89, at 543.

organizational culture, for example), the firm grew to be more heavily bureaucratic than otherwise similar firms, even if the founders had left the firm.⁹² The gender mix of the workforce in the early days had a lasting effect as well, and firms with fewer women became more bureaucratic.⁹³

Many firms have embraced the wider societal culture of legalism, whereby interactions are guided by law-like principles and ideals, formal corporate structures and procedures are modeled on the state, and individual employees are viewed as rights-bearing.⁹⁴ Sutton, Dobbin, Meyer and Scott find variation in corporate cultures of legalism, such that employers with an orientation to legalistic rules and practices are more likely to take up both rights-enhancing and rights-limiting personnel rules.⁹⁵ Kelly and Kalev find that employers create law-like principles for handling flexible work arrangements such as flextime, telecommuting, and job-sharing, even though there are no laws mandating these benefits and even where managers retain discretionary authority over their use.⁹⁶ In a recent study of the diffusion of six diversity programs, Dobbin, Kim and Kalev find that firms with a history of formalizing employment rights and rules were significantly more likely to adopt formal pro-diversity programs: equal opportunity advertisements, diversity training, diversity taskforces, and mentoring programs.⁹⁷

Industry culture. A firm's use of progressive employment practices is also affected by its peers. Research shows that managers feel pressure to succumb to popular management trends

⁹² *Id.* at 529-30, 539.

⁹³ *Id.* at 543-44.

⁹⁴ See SUTTON & DOBBIN, *supra* note 48, at 794 (discussing a rise in the use of law-like procedures to solve workplace disputes, which “implies a qualitatively new image of the worker as a self-actualizing, career-oriented, rights-bearing individual”); see generally PHILIPPE NONET & PHILIP SELZNICK, *LAW AND SOCIETY IN TRANSITION: TOWARD RESPONSIVE LAW* (1978).

⁹⁵ *Id.* at 794

⁹⁶ Erin L. Kelly & Alexandra Kalev, *Managing Flexible Work Arrangements in U.S. Organizations: Formalized Discretion or ‘A Right to Ask’*, 4 *Socio-Economic Rev.* 379, 382 (2006).

⁹⁷ Dobbin, Kim & Kalev, *supra* note 50, at 395.

of all sorts.⁹⁸ Tolbert and Zucker find that municipal civil service reforms began to spread broadly between 1880 and 1930 after becoming popular in large cities.⁹⁹ Several other studies similarly show that innovations spread quickly within susceptible sectors.¹⁰⁰ The adoption of progressive employment programs reflects this broader trend: norms in the field are highly influential.¹⁰¹ A recent study shows that the proportion of industry members with diversity training, diversity taskforces, diversity performance evaluations, and mentoring programs predicts adoptions by other industry members.¹⁰²

Taken together, extant research points to a shift in what drives corporate adoption of progressive practices. While early studies pointed to the roles of regulation, public visibility, and advocacy from human resources managers in popularizing equal opportunity and diversity programs, more recent studies have highlighted the roles of identity group advocates, corporate culture, and sectoral cultures in promoting these programs. Almost regardless of the law, a firm may be rendered susceptible to adopting progressive policies due to its location in an industry that favors such policies, its history of progressive programs, and its past success in appointing women to management. The flip side of this pattern is that firms that are not located in a

⁹⁸ See John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 Am. J. Sociol. 340, 348 (1977) (arguing that “powerful organizations force their immediate relational networks to adapt to their structures and relations” and “attempt to build their goals and procedures directly into society as institutional rules”); DiMaggio & Powell, *supra* note 46, at 152 (“Organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful”) and at 153 (“To the extent managers and key staff are drawn from the same universities and filtered on a common set of attributes, they will tend to view problems in a similar fashion, see the same policies, procedures and structures as normatively sanctioned and legitimated, and approach decisions in much the same way.”).

⁹⁹ Pamela S. Tolbert & Lynne G. Zucker, *Institutional Sources of Change in the Formal Structure of Organizations: The Diffusion of Civil Service Reform, 1880-1935*, 28 ADMIN. SCI. Q. 22, 30, 35 (1983) (finding support for the prediction that “as a reform measure is increasingly taken for granted because of social legitimation, cities will begin to adopt it as a ‘social fact,’ regardless of any particular city characteristics.”).

¹⁰⁰ See Heather A. Haveman, *Follow the Leader: Mimetic Isomorphism and Entry into New Markets*, 38 ADMIN. SCI. Q. 593, 620 (1993) (finding that in the savings and loan industry, “organizations imitate other organizations that are or are perceived by organizational decision makers to be successful”); Lawton R. Burns & Douglas R. Wholey, *Adoption and Abandonment of Matrix Management Programs: Effects of Organizational Characteristics and Interorganizational Networks*, 36 ACAD. MANAGE. J. 106, 130 (1993) (finding that adoption of an administrative innovation by a prestigious hospital influences neighboring hospitals’ decision to adopt).

¹⁰¹ Dobbin, Kim & Kalev, *supra* note 50, at 400.

¹⁰² *Id.*

progressive industries and do not have a history of adopting progressive policies or appointing women to management will be less likely to adopt progressive policies and programs in the future as well.

We now turn to the popularity, and efficacy, of specific programs that firms have adopted over the decades in pursuit of equality of opportunity. We discuss a range of different programs, and review the social science literature on their utility as instruments for raising the proportion of women and minorities in the workforce. We begin with policies that have not proven effective at increasing race and gender equality at work, and then turn to programs that social science research has found to be effective. The main lessons to be drawn from this section are, first, that programs that define managers as part of the problem, rather than part of the solution, have not been followed by increases in actual diversity of the workforce. Second, members of disadvantaged groups do not benefit much from ties to other disadvantaged workers, through network programs, but do benefit from ties to more powerful managers, through mentoring.

3. Progressive Programs that Have Failed to Increase Workforce Diversity

Corporations have adopted a wide range of innovations under the banner of equality of opportunity that have not proven to increase workforce diversity. Studies published to date suggest that many of the most popular progressive innovations in the area of equal opportunity, including bureaucratic hiring and promotion procedures, grievance procedures, diversity and anti-harassment training, and networking programs, have not helped to open doors for women and minorities. Given their popularity, it is important to understand why these programs are not helping to foster change. We review each broad category of programs in turn, and discuss what is known about its effects.

3.1. Bureaucratic Hiring and Promotion Procedures to Prevent Bias

Since the early 1970s, equal opportunity experts have advocated bureaucratic hiring and promotion procedures that would level the playing field by preventing managerial cronyism and bias from tainting the appointment process.¹⁰³ Common to these procedures is standardization, wherein all job applicants and current employees are treated according to the same rules. Formal job posting systems are expected to ensure that promotion opportunities are known to all current employees. Job descriptions are supposed to guarantee that supervisors use consistent criteria to select workers. Salary classification systems are designed to standardize wages across similar jobs in different departments and eliminate gender and racial bias in wage-setting. Annual performance reviews are to ensure that raises, promotions, and discipline are based on objective performance, not the whimsy of managers. While these practices have been adopted by many companies, research finds they are not particularly effective in increasing workforce diversity.

Many of these standardized hiring and promotion practices first became popular in the union context, and personnel managers then adopted them to solve concerns about discrimination. Early in the 1970s, executives began to hear concerns about minorities facing a distinct set of barriers for mobility at work.¹⁰⁴ Unions had long demanded formal job posting systems to prevent managers from blackballing unionists.¹⁰⁵ Equal opportunity experts proposed job posting systems based on the union model, as well as written job descriptions that specified prerequisites. The EEOC and judges responded favorably to these practices as means of

¹⁰³ Dobbin, Sutton, Meyer & Scott, *supra* note 46, at 406-06.

¹⁰⁴ AUGUST SCHOFER, *General Electric's 1970 Report for the US Commission on Civil Rights, Exhibit No. 2U Before the United States Commission on Civil Rights, Clarification and Rebuttal of Staff Report: The Civil Rights Implications of Suburban Freeway Construction at* http://www.law.umaryland.edu/marshall/usccr/documents/cr12h8112_C.pdf. at 949.

¹⁰⁵ Robert M. Fulmer & William E. Fulmer, *Providing Equal Opportunities for Promotion*, 53 Pers. J. 491, 492 (1974).

preventing cronyism.¹⁰⁶ In order to check wage setting based on the gender or race of job-holders rather than on job requirements, personnel experts recommended union-inspired salary classification systems, which established skill, education, and experience requirements that allowed managers to place similar jobs into wage bands.¹⁰⁷

Equal opportunity experts also argued that a written annual performance evaluation, with objective output measures, could fight prejudice.¹⁰⁸ A 1974 article in Personnel suggested: “Performance reviews should . . . be based on solid criteria available to all concerned parties,” to ensure promotion decisions based on ability which, “coincidentally” conforms to the EEOC’s guidelines.¹⁰⁹ In their 1967 study the Bureau of National Affairs found that companies were creating performance evaluations to prevent discrimination.¹¹⁰

These standardized hiring procedures became widely popular after the 1980s as measures to stem bias and promote equality of opportunity. According to a 2002 national survey, job posting spread from 20 percent of middling and large corporations in 1971, to 90 percent by 2002.¹¹¹ Among the medium sized and large employers in a 1986 survey, the use of job descriptions rose from 22 percent in 1956 to 80 percent by 1985, and the use of classification systems rose from 23 percent to 70 percent over the same period.¹¹² Between 1956 and 1966, the prevalence of performance evaluations in the sample rose only from 20 percent to 35, and by 1986, 80 percent of employers had installed them, showing a dramatic growth in their popularity.¹¹³

¹⁰⁶ *Id.* at 493.

¹⁰⁷ Chayes, Antonia. 1974. Make Your EEO Program Court-Proof. *Harvard Business Review* 52 (5): 81–89.. Page 84.

¹⁰⁸ Schofer *supra note 104 at 926.*

¹⁰⁹ Herbert Froehlich & Dennis Hawver, *Compliance Spinoff: Better Personnel Systems*, 51 *Personnel* (1974).

¹¹⁰ Bureau of National Affairs A Current Look at: (1) The Negro and Title VII (2) Sex and Title VII. pt. at 16 (1967).

¹¹¹ DOBBIN, *supra note 2*, at 116.

¹¹² Dobbin, Sutton, Meyer & Scott, *supra note 46*, at 412.

¹¹³ *Id.*

Evidence on the effectiveness of these procedures is thin, but it is not promising. There is some positive evidence. Reskin and McBrier find that large employers with formal personnel procedures have more women in management,¹¹⁴ Baron, Hannan, Hsu, and Koçak find that Silicon Valley technology firms founded with bureaucratic personnel systems have made more progress in hiring female workers.¹¹⁵ Elvira and Zatzick find that minorities may be less vulnerable to layoffs when personnel decisions are bureaucratized.¹¹⁶ Dencker finds that firms that base their personnel decisions on formal performance evaluations, rather than seniority, promote more women during restructuring.¹¹⁷

Yet most of the evidence suggests that bureaucratic procedures have neutral, or even negative, effects on workplace diversity. Studies by Edelman and Petterson, Konrad and Linnehan, and Huffman and Velasco find that formal personnel systems are not associated with increases in workforce diversity.¹¹⁸ A number of studies have identified mechanisms through which bureaucratic practices may thwart equality of opportunity. For example, job posting systems require managers to notify existing workers of open jobs. But Pager, Western, and Bonikowski show that managers make biased hiring decisions when sorting comparable

¹¹⁴ Reskin & McBrier, *supra* note 68, at 226-27.

¹¹⁵ James N. Baron, Michael T. Hannan, Greta Hsu & Ozgecan Kocak, *In the Company of Women: Gender Inequality and the Logic of Bureaucracy in Start-Up Firms*, 34 WORK & OCCUPATIONS 35, 58 (2007).

¹¹⁶ Marta M. Elvira & Christopher D. Zatzick, *Who's Displaced First? The Role of Race in Layoff Decisions*, 41 INDUS. REL. 329, 354 (2002).

¹¹⁷ John C. Dencker, *Corporate Restructuring and Sex Differences in Managerial Promotion*, 73 AM. SOC. REV. 455, 473 (2008).

¹¹⁸ Konrad & Linnehan, *supra* note 68, at 805 (finding that formalized “identity-blind” human resources structures had no significant effects on management-level diversity, though “identity-conscious” structures did); Lauren B. Edelman & Stephen M. Petterson, *Symbols and Substance in Organizations Response to Civil Rights Law*, in THE FUTURE OF AFFIRMATIVE ACTION, 17 RESEARCH IN SOCIAL STRATIFICATION AND MOBILITY 107, 129 (Kevin T. Leicht, ed., 1999) (finding that formal equal employment opportunity offices and affirmative action programs have little direct effect on workforce diversity); Matt L Huffman & Steven C. Velasco, *When More is Less: Sex Composition, Organizations, and Earning in U.S. Firms*, 24 WORK AND OCCUPATIONS 214, 237 (1997) (finding that formal employment procedures do not reduce the wage gap for women).

applicants of different races who respond to job advertisements.¹¹⁹ Thus while bureaucratic systems may ensure that jobs are posted, they do not ensure that managers give full consideration to applicants from historically disadvantaged groups. Job descriptions have also been linked to the slow career advancement of women and minorities. Job descriptions induce the formation of narrow job titles, which can leave women and minorities in marginalized jobs with limited opportunities for advancement and training.¹²⁰ The proliferation of narrow job titles may also reduce workers' perceptions of unfair treatment, and thereby "cool out" ambitious women and minorities. Individuals are more likely to accept differences in pay, work conditions or promotion opportunities when these differences are associated with different job categories.¹²¹ Furthermore, even where a perception of discrimination arises, narrow job definitions make it difficult to establish wage or rank norms based on similarity of tasks.

Performance evaluations have been subjected to the closest scrutiny. Field and laboratory studies suggest that raters may exercise gender bias even on supposedly "objective" performance evaluations.¹²² Meta-analyses show a persistent gap in ratings of black and white

¹¹⁹ Devah Pager, Bruce Western & Bart Bonikowski, *Discrimination in a Low-Wage Labor Market: A Field Experiment*, 74 AM. SOC. REV. 777, 785 (2009) (finding in a field experiment in the low-wage labor market in New York City that white applicants were twice as likely as equally qualified whites to receive a callback or offer).

¹²⁰ See William T. Bielby & James N. Baron, *Men and Women at Work: Sex Segregation and Statistical Discrimination*, 91 AM. J. SOC. 759, 787 (1986) (finding that organizations assign different job titles based on gender and that these titles "acquire tremendous inertia"); James N. Baron & William T. Bielby, *The Proliferation of Job Titles in Organizations*, 31 ADMIN. SCI. QUART. 561, 578 (1986) (demonstrating the "tendency for [job title] fragmentation (under some circumstances) to preserve the standing of high-status occupational groups [and] to demarcate women's work from men's work"); David Strang & James N. Baron, *Categorical Imperatives: The Structure of Job Titles in California State Agencies*, 55 AM. SOC. REV. 479, 492 (1990) (finding that "job title proliferation serves to segregate sexes and races within seemingly integrated lines of work"); Donald Tomaskovic-Devey & Sheryl L. Skaggs, *An Establishment-Level Test of the Statistical Discrimination Hypothesis*, 26 Work. Occupation 422, 439 (1999) (discussing the segregation of women and minorities into jobs with lower pay and less training); James N. Baron & Jeffrey Pfeffer, *The Social Psychology of Organizations and Inequality*, 57 SOCIAL PSYCH. QUART. 190, 196 (1994) (surveying research on racial and gender segregation based on job titles).

¹²¹ See Baron & Pfeffer, *supra* note 120, at 197 (discussing research showing that "individuals believe in equal rewards within categories but are more likely to accept differences in rewards across categories").

¹²² Kathryn M. Bartol, *Gender Influences on Performance Evaluation*, in HANDBOOK OF GENDER AND WORK 165, 167 (Gary N. Powell ed., 1999).

workers.¹²³ Some of the racial gap is due to the race of raters: whites tend to give higher job performance ratings to other whites, and blacks to other blacks.¹²⁴ This helps to explain the lower ratings for black employees, since most managers are white.¹²⁵

Research also shows that firms may make personnel decisions based on factors other than performance ratings¹²⁶ or apply different standards to different groups.¹²⁷ Elvira and Zatzick find that controlling for performance scores, tenure, and job, whites were less likely than blacks to be laid off, and more likely to receive promotions, raises, and positive subsequent ratings.¹²⁸

Roscigno's analysis of civil rights complaints shows that minority workers are judged more severely than their white counterparts for subpar performance.¹²⁹ Castilla and Benard find, in a laboratory study, that subjects assign men higher bonuses than women with identical performance scores, but only when told that the employer is meritocratic.¹³⁰

Salary classification systems have been cited in civil rights suits, by plaintiffs claiming that gender bias led to lower pay scales for jobs dominated by women.¹³¹ Some argue that these

¹²³ Patrick F. McKay & Michael A. McDaniel, *A Reexamination of Black-White Mean Differences in Work Performance: More Data, More Moderators*, 91 J. APPLIED PSYCHOL. 538 (2006); Philip L. Roth, Allen L. Huffcutt & Philip Bobko, *Ethnic Group Differences in Measures of Job Performance: A New Meta-Analysis*, 88 J. APPL. PSYCH. 694, 702 (2003) (finding that objective measures of job performance show more room for bias than subjective measures).

¹²⁴ Kurt Kraiger & J. Kevin Ford, *A Meta-Analysis of Rater Race Effects in Performance Ratings*, 70 J. APPL. PSYCHOL. 56, 59-60 (1985).

¹²⁵ See Elvira & Zatzick, *supra* note 116, at 332 n.3 (stating that 77 percent of managers in the sample were white).

¹²⁶ See *Id.* at 350 (finding a higher probability that a minority employee will be laid off after controlling for performance ratings); Ellen R. Auster & Robert Drazin, *Sex inequality at higher levels in the hierarchy: An intraorganizational perspective*, 58 Sociol. Inq. 216, 224-25 (1988) (showing that positive performance ratings had greater impact on salary for men than for women in high-level jobs); Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 Am. J. Sociol. 1479, 1512-13 (2008) (finding racial and gender disparities in the salary increases awarded to employees with identical performance reviews).

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¹²⁸ Elvira & Zatzick, *supra* note 116, at 350-52.

¹²⁹ Vincent J. Roscigno & Lisette Garcia, *Race Discrimination in Employment*, in VINCENT J. ROSCIGNO, THE FACE OF DISCRIMINATION 21, 30 (2007) (arguing that "discriminatory firing is often masked...through allegations of poor performance" and that "[d]ifferential criteria and sanctions for supposedly poor performance are rampant").

¹³⁰ Emilio J. Castilla & Stephen Benard, *The Paradox of Meritocracy in Organizations*, 55 ADMIN. SCI. Q. 543, 543 (2010).

¹³¹ ROBERT L. NELSON & WILLIAM P. BRIDGES, LEGALIZING GENDER INEQUALITY: COURTS, MARKETS AND UNEQUAL PAY FOR WOMEN IN AMERICA 42-45 (1999).

systems permit too much wage discretion. An early case study by Towers-Perrin consultants found that in one service sector firm, the only two corporate officers outside of their wage band were women, who were given “exceptional” salaries below the band.¹³² On the other hand, Elvira and Graham find in a study of 8,000 workers in a financial firm that the remuneration disparity between men and women is greater for bonuses and incentive pay, distributed without formal rules, than for base salary, subject to formal rules.¹³³

Taken together, the evidence we have to date on the effects of formal personnel procedures on workplace equality of opportunity provides scant support for the idea that these systems promote equality of opportunity. None of the bureaucratic procedures has shown a consistent positive effect on workforce integration. Negative effects are commonly observed. Commonly, hiring and promotion procedures appear to codify disadvantage in formal organizational structure by formalizing selection and promotion criteria that advantage white men or by permitting bias to taint decision-making. As the discussion above has suggested, job descriptions support gender and racial segregation that make unequal treatment appear to be part of the labor process rather than to be a consequence of discrimination. Similarly, performance evaluations and salary classification systems can be used by managers to justify disparate treatment of different groups rather than prevent it. The common pattern in the above discussion is that formal bureaucratic procedures may reproduce inequality rather than eradicating it by cloaking unequal treatment of women and minorities in neutral, universal, and rational procedures and practices.¹³⁴

¹³² C.F. Fretz & Joanne Hayman, *Progress for Women? Men are Still More Equal*, HARV. BUS. REV. 133, 137 (1973).

¹³³ Marta M. Elvira & Mary E. Graham, *Not Just a Formality: Pay System Formalization and Sex-Related Earnings Effects*, 13 ORGAN. SCI. 601, 601 (2002).

¹³⁴ Feminists have made this point powerfully. Kathy Ferguson argues that bureaucracy creates a “scientific organization of inequality.” KATHY E. FERGUSON, *THE FEMINIST CASE AGAINST BUREACRACY* 7 (1984). Joan Acker argues that “[r]ational-technical, ostensibly gender-neutral, control systems [in organizations] are built upon

3.2. Programs to Eradicate Managerial Bias

Social psychologists trace inequality to bias among managers. Stereotyping is a natural cognitive mechanism that influences how people process information about others. It is inevitable given our innocent tendency to make associations between categories and concepts.¹³⁵ Social-cognition research shows that individuals unconsciously categorize others into in-groups and out-groups, and favor in-group members.¹³⁶ The implicit associations we make between race, gender, ethnicity, and social roles can have the effect of reproducing existing patterns of inequality.¹³⁷ This is especially true in contexts that reflect traditional gender and racial power relations, such as in an organization with a typical division of labor by race and sex.¹³⁸ Managers may unwittingly select women for jobs traditionally dominated by women and men for jobs dominated by men, with the effect of preserving between-group differences.

Once firms had initiated the bureaucratic anti-discrimination programs, described above, many turned to the task of minimizing the effects of cognitive bias. They did this through two principal initiatives, diversity training to make managers and workers more aware of bias and its effects on hiring and promotion, and diversity performance evaluations designed to give managers feedback on their own work with women and minorities and to make clear that their

and conceal a gendered substructure.” Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC’Y 139, 154 (1990).

¹³⁵ See generally Galen V. Bodenhausen, C. Neil Macrae & Jennifer Garst, *Stereotypes in Thought and Deed: Social-Cognitive Origins of Intergroup Discrimination*, in INTERGROUP COGNITION AND INTERGROUP BEHAVIOR 311 (Constantine Sedikides, John Schopler & Chester A. Insko, eds., 1990).

¹³⁶ Barbara Reskin, *The Proximate Causes of Employment Discrimination*, 29 CONTEMP. SOC. 319, 321-22 (2000).

¹³⁷ See John T. Jost, Mahzarin Banaji & Brian A. Nosek, *A Decade of System Justification Theory: Accumulated Evidence of Conscious and Unconscious Bolstering of the Status Quo*, 25 POL. PSYCHOL. 881, 912 (2004) (“The evidence demonstrates that people are motivated not only to hold favorable attitudes toward themselves and toward members of their own groups...but also to hold favorable attitudes toward the existing social system and the status quo.”).

¹³⁸ See Cecilia L. Ridgeway & Lynn Smith-Lovin, *The Gender System and Interaction*, 25 Annu. Rev. Sociol. 191, 211 (1999) (finding that in contexts where men and women have unequal status and power, male-female interactions show gender-based behavioral differences).

salaries, bonuses, and promotions would be based in part on diversity performance. However, studies show that diversity training and diversity performance evaluations have not promoted race and gender diversity at work.

Diversity training. Employers added race relations sessions to their management training curricula in the 1960s.¹³⁹ Soon federal agencies hired the same trainers to enlighten federal employees. By 1972, fifty thousand Social Security Administration staffers had completed similar workshops.¹⁴⁰ When the Bureau of National Affairs surveyed industry leaders in 1976, it found that nearly seventy percent offered equal opportunity training for managers.¹⁴¹

In the 1980s, diversity trainers shifted focus away from compliance with civil rights law and toward the business rationale for diversity.¹⁴² They framed diversity training as part of an effort to rationalize the allocation of human resources, arguing that it was inefficient to allow managers to select workers based race or gender.¹⁴³ Diversity training became widely popular in large firms: a 1991 Conference Board survey found that 63 percent of leading employers offered diversity training.¹⁴⁴ Surveys that included smaller, medium sized, firms show that these trainings continued to spread and put the number at about 30 percent by the early 1990s and about 40 ten years later.¹⁴⁵

¹³⁹ Dobbin, *supra* note 2, at 144-45; *see also* Boyle, *supra* note 24, at 93 (describing seminars to make managers re-examine their stereotypes about female employees).

¹⁴⁰ DOBBIN, *supra* note 2, at 146.

¹⁴¹ Bureau of National Affairs, Equal Employment Opportunity: Programs and Results. PPF Survey No. 112 (1976) at 9.

¹⁴² *See* Lauren B. Edelman, Sally Riggs Fuller & Iona Mara-Drita, *Diversity Rhetoric and the Managerialization of Law*, 106 AM. J. SOC. 1589, 1590-91 (2001) (discussing how proponents of the new managerial rhetoric about diversity “explicitly disassociate their efforts from civil rights law” and expand the definition of diversity to include categories not protected by the law).

¹⁴³ WILLIAM JOHNSON & ARNOLD PACKER, *Workforce 2000: Work and Workers for the Twenty First Century*. Indianapolis: Hudson Institute; U.S. Department of Labor. (1987).

¹⁴⁴ Mary J. Winterle, *Workforce Diversity: Corporate Challenges, Corporate Responses*. No. 1013, pt. 21 (1992).

¹⁴⁵ Alexandra Kalev, Frank Dobbin & Erin Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, 71 AM. SOC. REV. 589, 599 (2006).

While diversity training was the flagship practice in many diversity management programs, it did not prove to increase workforce diversity. In our analysis of survey data from a national sample of 830 employers between 1971 and 2002 we find that diversity training is followed by a 7 percent decline in the odds of black women in management, even though it is also followed by a 10 percent increase in the odds of Hispanic women in management.¹⁴⁶ Previous studies had similarly found little effect of diversity training, although most focused on short term changes in attitudes and self-reported behavior, not on workforce composition over decades.¹⁴⁷ A number of case studies found that training can elicit backlash from white men.¹⁴⁸ Two diversity training experts report that after attending the sensitivity trainings that became popular in the mid-1980s, trainees often “left confused, angry, or with *more* animosity toward differences” rather than less.¹⁴⁹ Experienced trainers report that they often encounter anger and resistance.¹⁵⁰ Field and laboratory studies also suggest that training may reinforce stereotypes and exacerbate discrimination.¹⁵¹ It is possible that these negative reactions are a response to the form of training, and the failure of trainers to cause participants to internalize the need for equal

¹⁴⁶ Frank Dobbin, Alexandra Kalev & Erin L. Kelly, *Diversity Management in Corporate America*, 6 CONTEXTS 21, 24 (2007).

¹⁴⁷ See K. Kraiger, J. Kevin Ford & Eduardo Salas, *Application of Cognitive, Skill-Based, and Affective Theories of Learning Outcomes to New Methods of Training Evaluation*, 78 J. APPLIED PSYCHOL. 311, 319-20 (1993) (discussing how to measure attitudinal outcomes of diversity training using self-reported data); Carol T. Kulik & Loriann Roberson, *Common Goals and Golden Opportunities: Evaluations of Diversity Education in Academic and Organizational Settings*, 7 ACAD. MGMT. LEARNING & EDUC. 309, 313 (2008) (stating that most evaluations of diversity training focus on its impact on participants’ attitudes).

¹⁴⁸ See Heather MacDonald, *Cashing in on Affirmative Action: The Diversity Industry*, *The New Republic*, July 5, 1993, 22, at 25 (“As diversity programs proliferate across corporate America, group infighting has become a problem second only to ‘backlash’ by white men.”); Rynes & Rosen, *supra* note 145, at 67 (discussing possible negative outcomes from diversity training, including “backlash by white males”).

¹⁴⁹ Rohini Anand & Mary-Frances Winters, *A Retrospective View of Corporate Diversity Training from 1964 to the Present*, 7 ACAD. MGMT. LEARNING & EDUC. 356, 361 (2008).

¹⁵⁰ Carol T. Kulik, Molly B. Pepper, Loriann Roberson & Sharon K. PARKER, *The Rich Get Richer: Predicting Participation in Voluntary Diversity Training*, 28 J. Organ. Behav. 753, 754 (2007).

¹⁵¹ See FREDERICK R. LYNCH, *THE DIVERSITY MACHINE: THE DRIVE TO CHANGE THE WHITE MALE WORKPLACE* 18-19 (1997) (arguing that diversity policies “encourage the concept that an individual’s thought and style can be deduced from his or her ethnic or gender identity”); Katherine C. Naff & J. Edward Kellough, *Ensuring Employment Equity: Are Federal Diversity Programs Making a Difference?*, 26 INT’L J. PUB. ADMIN. 1307, 1310 (2003) (discussing criticism of diversity programs from both the left and the right).

opportunity in the workplace. Most diversity training programs are mandatory, are directed at managers, and focus on legal liability. According to social psychologists, both the lack of voluntary participation and the emphasis on sanctions may inhibit the internalization of motives and enhance externalization and resistance.¹⁵²

Other studies find weak positive effects of training on attitudes in the short term. Kulik and Roberson found 51 studies of organizational diversity training efforts that used either pre- and post-test assessments or a post-test control group.¹⁵³ Most reviewed studies found improved knowledge of, or attitudes toward, diversity, although a number of those studies found only modest improvement on one of several measures. Few looked beyond the immediate post-treatment test, and none looked at changes beyond one year out.¹⁵⁴

Diversity performance evaluations. In addition to adopting training programs to try to influence managers' attitudes about diversity, corporations have also adopted evaluation systems in which managers are judged based on their progress in diversity goals. In an article in the *Harvard Business Review* in 1974, Theodore Purcell championed General Electric's "measurement system with rewards and penalties designed to produce behavioral changes in managers."¹⁵⁵ The equal opportunity performance evaluation was already becoming popular. A company president of a leading firm that the Towers-Perrin consultancy studied in 1973 argued that firms must "place responsibility for achieving equal opportunity objectives where it

¹⁵² Elliot Aronson & J. Merrill. Carlsmith, *Effects of Severity of Threat in the Devaluation of Forbidden Behavior*. 66 J. Abnorm. Soc. Psych. 584-88 584 (1963); Roland Benabou & Jean Tiroli. *Intrinsic and Extrinsic Motivation*. 70 Rev. Econ. Stud. 498 489-520 (2003); LEON Festinger & James M. Carlsmith. 1959. *Cognitive Consequences of Forced Compliance* 58 J. Abnorm. Soc. Psych. 203-10 209 210 (1959)

¹⁵³ Kulik & Roberson, *supra* note 148, at 309-31.

¹⁵⁴ KATERINA BEZRUKOVA & JOSHI B. APARNA & KAREN A. JEHN, *Can We Teach Diversity? A Review of Diversity Trainings in Educational and Organizational Settings* (University of Santa Clara 2008); Sara Rynes & Benson Rosen, *A Field Survey of Factors Affecting the Adoption and Perceived Success of Diversity Training*, 48 Person. Psych. 247-70 (1995).

¹⁵⁵ Theodore V. Purcell, *How G.E. Measures Managers on Fair Employment*, 52 HARVARD BUS. REV. 99, 99-100 (1974).

rightfully belongs: with operating management, with each of us.”¹⁵⁶ In the Bureau of National Affairs’ 1976 study of leading firms, four in ten manufacturers, three in ten service firms, and two in ten non-profits had equal opportunity performance evaluations.¹⁵⁷ In a more representative 2002 survey of American middling and large employers, only 4% of the sample had them by 1985, but by 2002 nearly 1 in 5 firms had them.¹⁵⁸

Studies of the effects of diversity performance evaluations, however, are not promising. Firms that create diversity performance evaluations see small decreases in the share of black men in the ranks of management.¹⁵⁹ However, in firms that have assigned responsibility for diversity, to a manager or taskforce, the negative effect does not appear.¹⁶⁰ This suggests that monitoring can prevent adverse effects of diversity evaluations.

Attempts to reduce cognitive bias, through diversity training and diversity performance evaluations, appear to be ineffective. Perhaps they elicit unintended cognitive reactions that enhance exclusion rather than inclusion. What is common to both diversity training and performance evaluations is that they place blame for workforce segregation on managers. We suspect that this message does not help rally managers to the cause. As discussed earlier, social psychologists have long argued that internalization of motives is less likely to occur under conditions of strong sanctions and lack of choice. Both programs create these conditions. The programs also give managers few tools for dealing with diversity in the workplace. As we will see in Part IV, successful programs are those that empower managers to act.

¹⁵⁶ Quoted in Robert W. Ackerman, *How Companies Respond to Social Demands*, 51 HARV. BUS. REV. 88, 94 (1973).

¹⁵⁷ Bureau of National Affairs Equal Employment Opportunity: Programs and Results, *supra* note 141, at 9.

¹⁵⁸ Kalev, Dobbin & Kelly, *supra* note 147 at 599.

¹⁵⁹ Dobbin, Kalev & Kelly, *supra* note 148, at 24.

¹⁶⁰ Kalev, Dobbin & Kelly, *supra* note 147, at 606-07.

3.3. Affinity Networks

Network theorists in sociology argued from the early 1970s that people find jobs through network contacts, and that promotion depends as much on who you know as on what you know.¹⁶¹ While white men often have ties to other white men in positions of advantage, women and minorities are often stymied in job search and advancement by poor contacts with those in power.¹⁶² Since the early 1980s, diversity managers and workers themselves have called for affinity networks, bringing together minorities and women based on shared status characteristics. For example, Cisco Systems has a Women's Action Network; the Cisco Black Employee Network; the Cisco Latino Network; the Cisco Asian Affinity Network; the Gay Lesbian Bisexual Transgender and Advocates Network; and Indians Connected.¹⁶³ Affinity network activities at various corporations include regular brownbag lunches, on-site meetings with speakers, and lavish national conferences.¹⁶⁴ Networks provide a place for members to meet with similarly situated others and share information and career advice. Affinity networks had spread to about 20 percent of a broad national sample of medium and large firms by 2002.¹⁶⁵

These network programs, sometimes labeled “affinity groups” or “employee resource groups,” have not shown promising effects on inclusion. Qualitative research show that whites

¹⁶¹ See MARK GRANOVETTER, GETTING A JOB: A STUDY OF CONTACTS AND CAREERS 22 (1974) (noting that “personal contacts are of paramount importance in connecting people with jobs”); ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 181-86 (1977) (discussing the power that comes from social connections with sponsors, peers, and subordinates); Ronald S. Burt, *The Gender of Social Capital*, 10 RATIONALITY & SOC'Y 5, 6 (1998) (discussing the importance of social capital in the workplace).

¹⁶² See Herminia Ibarra, *Homophily and Differential Returns: Sex Differences in Network Structure and Access in an Advertising Firm*, 34 Admin. Sci. Quart. 422, 423-28 (1992) (surveying research on access to networks based on gender); Herminia Ibarra, *Race, Opportunity and Diversity of Social Circles in Managerial Networks*, 38 Acad. Manage J. 673, 674-82 (1995) (surveying research on access to networks based on race).

¹⁶³ Cisco System website accessed Jan. 3, 2012 at http://www.cisco.com/web/about/ac49/ac55/about_cisco_employee_networks.html.

¹⁶⁴ Raymond A. Friedman & Kellina M. Craig, *Predicting Joining and Participating in Minority Employee Network Groups*, 43 Ind. Relat. 793, 794 (2004); see also Kelly Crow, *Staying Focused on Diversity Goals in Harder Times*, N.Y. TIMES, Oct. 28, 2003, at G2 (discussing one corporation's national conference).

¹⁶⁵ Kalev, Dobbin & Kelly, *supra* note 146, at 599.

can develop negative attitudes toward African-American organizing efforts.¹⁶⁶ One quantitative study showed that networking is followed by a small rise in white women in management and a small decline in black men, with no effects on other groups.¹⁶⁷ It may be that networks of black workers strengthen racial boundaries and intergroup tension at the workplace. Some studies, however, suggest that employee mobilization efforts can shape corporate diversity programs. Network programs can help to mobilize support for new progressive employment programs.¹⁶⁸ Hence, networking programs may have indirect, positive effects on workforce diversity.

3.4. Grievance Systems*By the late 1960s, personnel experts were promoting civil rights grievance procedures based on the 1930s union model.¹⁶⁹ Gloria Gery advocated a “grievance system...to assure that all employees have an opportunity to resolve complaints...without having to appeal to external organizations such as the EEOC.”¹⁷⁰ The idea was to intercept civil rights complaints before they reached the government, and to remedy underlying problems through local conciliation.*

The Conference Board found that by 1979, 88 percent of non-union firms with over 5000 workers had grievance procedures. Among large union firms, 67 percent had procedures for non-union workers.¹⁷¹ Some of these predated the Civil Rights Act of 1964, and were not designed to

¹⁶⁶ Friedman & Craig, *supra* note 166, at 795 (“From the earliest days of network groups and continuing to this day, some senior managers...have approached network groups fearing that they might become unions and have expressed anxiety about their power and the kinds of complaints or demands they may express”).

¹⁶⁷ Dobbin, Kalev & Kelly, *supra* note 147, at 24.

¹⁶⁸ See Forrest Briscoe & Sean Safford, *The Nixon-in-China Effect: Activism, Imitation, and the Institutionalization of Contentious Practices*, 53 *Admin. Sci. Quart.* 460, 482 (2008) (finding that employee activist groups promote the adoption of domestic partnership benefits in “activism-prone firms” and heighten the influence of peer companies on adoption by other firms); Dobbin, Kim & Kalev, *supra* note 50, at 404-06 (discussing the role of internal advocacy groups in pressuring firms to adopt progressive programs).

¹⁶⁹ Ronald Berenbeim, *Non-Union Complaint Procedures* at 5 (Conference Board, 1980).

¹⁷⁰ Gloria J. Gery, *Equal Opportunity: Planning and Managing the Process of Change* 56 *Pers. J.* 203 (1977), *reprinted in* READINGS IN HUMAN RESOURCE MANAGEMENT 361-75, 370 (Michael Beer & Bert Spector, eds., 1985).

¹⁷¹ Berenbeim, *supra* note 174, at 4.

address civil rights grievances, but longitudinal studies show that most were adopted in response to federal civil rights law. In Edelman's 1989 survey, 31 percent of firms had installed grievances procedure to handle discrimination complaints.¹⁷² A 1986 survey found that only 4 percent of employers added a non-union grievance procedure between 1964 and 1972, but 35 percent added one between 1973 and 1986, after civil rights law was bolstered in the early 1970s.¹⁷³

Evidence that grievance procedures can remedy civil rights complaints is weak. On the positive side, in an analysis of evidence from workplace ethnographies, Lopez, Hodson, and Roscigno find that grievance mechanisms are associated with lower levels of sexual harassment though with no change in the levels of general harassment.¹⁷⁴ Yet in a 1970 Conference Board study, most personnel managers reported that their grievance systems did not reduce complaints to the government.¹⁷⁵ Edelman, Uggen, and Erlanger found, in a sample of 200 employers in 1989, that internal grievance procedures did not reduce complaints to external regulators.¹⁷⁶ Nor did the courts recognize their efficacy. In tens of thousands of published rulings in civil rights cases up to 1986, Edelman and colleagues found only four in which judges took procedures into account in assessing liability.¹⁷⁷

3.5. Sexual Harassment Training

Sexual harassment protections have become central to many corporate diversity management programs. Harassment was not mentioned in the Civil Rights Act, but feminist law professor

¹⁷² Edelman, Uggen & Erlanger, *supra* note 43, at 414-15.

¹⁷³ Sutton & Dobbin, *supra* note 47, at 802.

¹⁷⁴ Steven H. Lopez, Randy Hodson & Vincent J. Roscigno, *Power, Status, and Abuse at Work: General and Sexual Harassment Compared*, 50 *Sociol. Quart.* 3, 23 (2009).

¹⁷⁵ Berenbeim, *supra* note 171, at 45.

¹⁷⁶ Edelman, Uggen & Erlanger, *supra* note 43, at 425.

¹⁷⁷ *Id.* at 439.

Catharine MacKinnon argued that harassment at work should be treated as sex discrimination under Title VII.¹⁷⁸ The courts at first balked, refusing to treat workplace sex harassment as sex discrimination. In 1976 and 1977 three federal courts found that retaliatory actions against female employees who refused male supervisors' sexual advances constituted sex discrimination under Title VII.¹⁷⁹ The Supreme Court ruled in 1986 that hostile environment harassment was covered by the Civil Rights Act.¹⁸⁰ In 1998, dual Supreme Court decisions favored both grievance procedures and harassment training as anti-harassment measures.¹⁸¹

The court rulings did not require specific measures for preventing sexual harassment, but personnel experts sketched law-like procedures designed to convince both executives and judges of their legal standing.¹⁸² Grievance procedures, they argued, could intercept harassment complaints before they reached federal agencies and simultaneously telegraph the firm's commitment to ending harassment.¹⁸³

By that time, grievance procedures were already ubiquitous in American firms, thanks to the advocacy of HR experts.¹⁸⁴ In 1991, the Wall Street Journal reported, harassment training

¹⁷⁸ CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 143-213 (1979); *see also* ABIGAIL SAGUY, *WHAT IS SEXUAL HARASSMENT: FROM CAPITOL HILL TO THE SORBONNE* 28-29 (2003) (noting that an Eleventh Circuit judge quoted from MacKinnon's book in a 1982 case finding sexual discrimination based on a hostile work environment).

¹⁷⁹ *Barnes v. Costle*, 561 F.2d 983, 984 (D.C. Cir. 1977); *Tomkins v. Public Service Electric and Gas Co.* 568 F.2d 1044, 1045 (3d Cir. 1977); *Williams v. Saxbe*, 413 F. Supp. 654, 657 (D.D.C. 1976).

¹⁸⁰ *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 66 (1986) ("[A] plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile or abusive work environment.").

¹⁸¹ *Burlington Industries v. Ellerth*, 524 U.S. 742, 765 (1998) (when an employer raises an affirmative defense to a hostile environment claim, the presence of a complaint procedure is relevant though not required as a matter of law, and the employee's failure to use the complaint procedure is also relevant); *Faragher v. City of Boca Raton*, 524 U.S. 775, 807-08 (1998) (same).

¹⁸² *See, e.g.*, Jeri Spann, *Dealing Effectively with Sexual Harassment: Some Practical Lessons from One City's Experience*, 19 *Pub. Person. Manage.* 53, 67-68 (1990) (recommending clear anti-harassment policies and procedures for investigating and resolving complaints).

¹⁸³ *See* Michele Hoyman & Ronda Robinson, *Interpreting the New Sexual Harassment Guidelines*, 43 *Pers. J.* 996, 999 (1980) ("The foundation of an employer's compliance program is a strong statement from top management that sexual harassment will not be tolerated"); Patricia Linenberger & Timothy J. Keaveny, *Sexual Harassment: The Employer's Legal Obligations*, 58 *Human Resource Management*, 65-66 (1981a).

¹⁸⁴ (no author listed), *Nation's Business* 15 (1998).

had nearly saturated the Fortune 500.¹⁸⁵ By 1997, 95 percent of employers in a broad national sample, including medium-sized and large firms, reported that they had sexual harassment grievance procedures in place and over 70 percent reported that they had anti-harassment training.¹⁸⁶

###As with grievance procedures, there is little evidence that the training prevents harassment. Susan Bisom-Rapp's review of scholarly research unearths no evidence that training reduces the incidence of harassment.¹⁸⁷ All in all, the jury is still out on whether either of these interventions functions to reduce the incidence of harassment.

4. Progressive Programs that Have Increased Workforce Diversity

We now turn to programs that research has shown to be effective at promoting workforce integration. The innovations that promote workforce diversity are targeted recruitment efforts, skill and management training, mentoring, and diversity officers and taskforces. First, it appears that diversity programs succeed when they use active measures to diversify the pipeline: identify women and minority candidates, through recruitment, and provide them with skills, through training. Second, mentoring, taskforces, and diversity staff members have one thing in common that distinguishes them from diversity training and performance evaluations: they directly engage managers solving the problems of identifying, appointing, and retaining women and minorities.

¹⁸⁵ Joann S. Lublin, *Sexual Harassment is Topping Agenda in Many Executive Education Programs*, Wall Street Journal, Dec. 2, 1991, at B1.

¹⁸⁶ Frank Dobbin & Erin L. Kelly, *How to Stop Harassment: The Professional Construction of Legal Compliance in Organizations*, 112 AM. J. SOCIOLOGY 1203, 1228 (2007).

¹⁸⁷ Susan Bisom-Rapp, *Fixing Watches with Sledgehammers: The Questionable Embrace of Employee Sexual Harassment Training by the Legal Profession*, 24 U. ARK. LITTLE ROCK L. REV. 147, 148 (2001).

4.1. Recruitment and Training Programs

Perhaps the most straightforward way to increase the share of women and minorities in the workforce is to increase their share in the labor pool. Among the very first steps firms took in reaction to antidiscrimination legislation of the 1960s was to install targeted recruitment programs and special training programs to increase opportunity for minorities.

Many leading firms—Lockheed, Proctor and Gamble, Chase Manhattan Bank—had longstanding recruitment programs targeting white men. They recruited managers by visiting colleges and universities, and recruited line workers and bank tellers by visiting high schools.¹⁸⁸ After the civil rights revolution, firms extended these programs to target blacks, and America’s historically black colleges soon faced an onslaught of recruiters. Lockheed brought busloads of black college students from Tuskegee Institute in Alabama on recruitment visits to their Georgia plant, as well as counselors from segregated black high schools.¹⁸⁹ Howard saw 400 recruiters visit in 1964 and again in 1965 for a graduating class of 450.¹⁹⁰ A 1967 Bureau of National Affairs survey found that among leading employers, 31 percent had created new recruitment systems for blacks between 1965 and 1967.¹⁹¹ More than half of the firms were now advertising through organizations like the NAACP and the Urban League. A third sent recruiters to “predominantly Negro high schools and colleges,” and a fifth were recruiting at women’s colleges.¹⁹²

Firms also created training programs with the goal of helping women, African-Americans and Latinos move into skilled jobs and management jobs. As of 1960, most companies had not

¹⁸⁸ Hugh L. Gordon, Interview by Joyce A. Patterson, Cobb County Oral History Series No. 75, Kennesaw State University. (2000).

¹⁸⁹ E.G. MATTISON, *Integrating the Work Force in Southern Industry*, in *THE NEGRO AND EMPLOYMENT OPPORTUNITY: PROBLEMS AND PRACTICES* 147, 151-52 (Herbert R. Northrup & Richard L. Rowan eds., 1965).

¹⁹⁰ Gene Grove, *When a 'No. 2' Applies for a Job*, New York Times September 18, 1965, at SM 32.

¹⁹¹ Bureau of National Affairs A Current Look at: (1) The Negro and Title VII (2) Sex and Title VII. No. 82, pt. (1967). at 1

¹⁹² *Id.* at pt.at 10

enrolled any women or minorities in management training, according to Bureau of National Affairs (BNA) studies, but by 1966, 31 percent of large employers offered management training and 21 percent had special programs to enroll minorities in training.¹⁹³ Employers with skill and management training programs now began to enroll blacks.¹⁹⁴ By 1965, GM had enrolled minorities in its apprenticeship programs and its own engineering school.¹⁹⁵ In Newark, blacks took up 80% of Western Electric's training spots by 1967.¹⁹⁶ Between 1967 and 1985, the number of employers enrolling women and minorities in management training and apprenticeships grew steadily.¹⁹⁷ By 2002, 68 percent of firms offered management training and 20 percent of all firms targeted women or minorities for inclusion in management training.¹⁹⁸

Research has shown that targeted recruitment programs have been effective. Analyzing data from the Multi-City Study of Urban Inequality, Holzer and Neumark find that firms that add recruitment and screening programs for women and minorities are indeed more likely to hire them.¹⁹⁹ Edelman and Petterson similarly find that active recruitment programs are associated with increased workforce diversity.²⁰⁰ Konrad and Linnehan show that “identity-conscious” human resource management practices, designed specifically to attract and retain women and minorities, are associated with greater gender and racial diversity in the ranks of management.²⁰¹

¹⁹³ *Id.* at pt.

¹⁹⁴ Bureau of National Affairs (1986b). *Affirmative Action Today: A Legal and Practical Analysis*. Washington, DC, Bureau of National Affairs. p. 14.

¹⁹⁵ HAROLD S. MCFARLAND, *Minority Group Employment at General Motors*, in *THE NEGRO AND EMPLOYMENT OPPORTUNITY: PROBLEMS AND PRACTICES* 131, 133 (Herbert R. Northrup & Richard L. Rowan eds., 1965).

¹⁹⁶ NATION'S BUSINESS (NO AUTHOR LISTED), *More Jobs for Negroes*, *Nation's Business* September. 36 (1967).

¹⁹⁷ Bureau Of National Affairs *Affirmative Action Today: A Legal and Practical Analysis*. pt. (1986b).at 14

¹⁹⁸ Kalev, Dobbin & Kelly, *supra* note 141, at 599.

¹⁹⁹ Harry J. Holzer & David Neumark, *What Does Affirmative Action Do?*, 53 *Industrial & Labor Relations Review* 240, 269 (2000) (finding that firms that use affirmative action recruitment measures “generate greater flows of minority applicants, and more recent hires (or employees) who are minority or female.”).

²⁰⁰ Edelman & Petterson, *supra* note 118, at 130 (finding that “affirmative action recruitment programs appear to produce an increase in the workforce representation of minorities and, to a lesser extent, women.”).

²⁰¹ Konrad and Linnehan, *supra* note 68, at 805-06.

These “identity-conscious” practices aim to increase the workforce diversity by closely monitoring personnel decisions made about employees from minority groups and by “making special efforts to employ and promote the career progress” of minorities.²⁰² By contrast, some studies show that training programs that have the potential to reduce gender and racial gap in skill, are rarely offered to women and minorities, despite high profile initiatives by large firms to draw women and minorities to training programs.²⁰³

4.2. Mentoring Programs

Research shows that individuals with extensive mentoring relationships received more promotions, earned higher incomes and were more satisfied with their pay and benefits than those with less extensive mentoring.²⁰⁴ Young and inexperienced protégés receive psychological and career support from their mentors and learn how their mentors have navigated into managerial positions. Having personal guidance and support at work evidently facilitates career development.²⁰⁵ Mentors confer key career resources on their protégés, such as visibility and access to prestigious tasks, which workers with no mentors may lack. One study of random mentor assignment within a single firm found that mentees have improved social networks and tactical knowledge, which may help their careers.²⁰⁶

²⁰² *Id.* at 790.

²⁰³ See David Knoke & Yoshito Ishio, *The Gender Gap in Company Job Training*, 25 *Work & Occupations* 141, 160-61 (1998) (finding a persistent gap in female employees’ access to job training); Song Yang, *Racial Disparities in Training, Pay-Raise Attainment, and Income*, 32 *Res. Soc. Stratification. Mobility* 323, 326 (2007) (finding that Hispanic workers are less likely than white workers to receive job training).

²⁰⁴ George Dreher and Ronald Ash. A Comparative Study of Mentoring among Men and Women in Managerial, Professional and Technical Positions. *Journal of Applied Psychology*, 75, 539-46 (1990).

²⁰⁵ See Emilio J. Castilla, *Social Networks and Employee Performance in a Call Center*, 110 *Am. J. Sociol.* 1243 (2005) (examining the short- and long-term performance benefits for employees who are hired based on referrals by existing employees); Eliza G.C. Collins and Patricia Scott, *Everyone Who Makes It Has a Mentor*, 56 *Harvard. Bus. Rev.* 89 (1978); Gerard R. Roche, *Much Ado about Mentors*, 57 *Harvard. Bus. Rev.* 4 (1979).

²⁰⁶ See Paul Cameron Moore, *The Transfer of Human and Social Capital: Employee Development Through Assigned Peer Mentoring* (2001) (unpublished Ph.D. Dissertation, Stanford University) (describing ethnographic research that found various benefits to mentees in an organizationally instituted mentoring program).

Management psychologists have argued that corporations should extend the advantages of mentoring to the historically disadvantaged by creating formal mentoring programs that match aspiring female and minority managers with volunteer mentors.²⁰⁷ A study from the early 1980s of nine firms famed for their commitment to fairness found that every one promoted mentoring.²⁰⁸ By the early 1990s, two studies showed that 20 to 30 percent of America's biggest firms had formal mentoring programs.²⁰⁹ In a broader, sample of American firms, only 4 percent had special mentoring programs for women and minorities by 1990, but 10 percent had mentoring programs by 2002.²¹⁰

In our studies, mentoring programs show strong positive effects on black women, and Hispanic and Asian men and women in management.²¹¹ In a report prepared for a taskforce of the National Academies of Science, we examined the effects of mentoring programs in different industries, finding that in industries with significant numbers of college educated non-managerial workers, who are eligible for promotion to management jobs, mentoring programs led to increases in all seven historically disadvantaged groups in management (white women, and black, Hispanic, and Asian-American men and women).²¹² Others have found similar positive effects of mentoring on African-Americans.²¹³ On the negative side, studies have found that cross-race

²⁰⁷ See David A. Thomas, *The Truth About Mentoring Minorities: Race Matters*, Harvard Bus. Rev. 99 (April 2001) (describing elements of successful mentoring programs for minority executives); cf. David Neumark & Rosella Gardecki, *Women Helping Women? Role-Model and Mentoring Effects on Female Ph.D. Student in Economics*, 33 Journal of Human Resources 220, 221 (1996) (noting that advocacy groups have proposed mentoring programs in academic fields in which women are underrepresented).

²⁰⁸ Susan Vernon-Gerstenfeld & Edmund Burke, *Affirmative Action in Nine Large Companies: A Field Study*, 62 Personnel. 67 (1985).

²⁰⁹ DOBBIN, *supra* note 2, at 153; Joanne Miller, Corporate Responses to Diversity, Center for the New American Workforce (1994), at 12 (reporting that 16% of companies that offered targeted programs for minorities included a mentoring component, and 20% of companies that offered targeted programs for women included mentoring).

²¹⁰ Kalev, Dobbin & Kelly, *supra* note 146, at 599.

²¹¹ Dobbin, Kalev & Kelly *supra* note 147, at 24.

²¹² Diversity Management and Managerial Diversity Addendum to "Best Practices or Best Guesses". pt. (2006). at 3

²¹³ See Thomas, *supra* note 211, at 101 (finding that high-potential minority employees who had mentors were more likely to stay motivated and maintain a high level of performance).

mentoring relationships are harder to form and maintain.²¹⁴ One study also found that same-sex mentoring does not improve academic job placement for female graduate students in economics, likely because female mentors are not well enough established in their fields to improve career outcomes for their female graduate protégés.²¹⁵ These two studies indicate that those designing mentoring programs should consider the identities of both mentors and mentees. Overall, mentoring programs appear to be highly effective in helping white women and members of minority groups move into management.

4.3. Programs that Establish Authority for Diversity Management

Studies find that companies that give staff members direct responsibility for managing diversity efforts achieve gains in the number of women and minorities in higher-level jobs. Large corporations, in particular, have assigned responsibility for managing diversity to full time diversity staff members, sometimes with their own staffs. The Affirmative Action Officer, the Equal Opportunity Office, and the Race Relations Taskforce of the 1970s were often replaced, or augmented, with the Diversity Manager, Diversity Department, or Diversity Council in the 1980s.²¹⁶ Assigning someone to take charge of diversity built on the oldest principle from management theory: to achieve a new goal, the first step is to put someone in charge.

Diversity managers and departments. In the face of statutes, bureaucratic regulations, executive orders, and case law, many corporations of the 1970s hired full time staff members, or created new departments, to manage their equal opportunity and diversity programs.²¹⁷ A full time diversity staffer, according to consultants, can focus attention on managing diversity. A

²¹⁴ *Id.* at 104-06.

²¹⁵ Neumark & Gardecki, *supra* note 211, at 243-45.

²¹⁶ See Erin Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961 to 1996*, 41 AM. BEHAV. SCI. (1998).

²¹⁷ *Id.* at 964-66.

recent study shows that the appointment of a full time diversity staffer in the average firm leads, for instance, to a 10 percent increase in the proportion of white women in management and a 15 percent increase in the proportions of both black men and black women in management over about five years.²¹⁸ The same research has shown that diversity managers play a role in ensuring the effective implementation of other corporate equality and diversity programs.²¹⁹ When it comes to separate departments promoting diversity or equal opportunity Edelman and Petterson show that diversity departments increase gender and racial diversity by promoting diversity recruitment programs, which in turn increase workforce diversity.²²⁰

Diversity taskforce. Diversity consultants promoted diversity “taskforces” that can engage managers from across the firm in seeking solutions to stubborn problems of recruitment, retention, and promotion.²²¹ The idea was to hold regular meetings among people from different departments who would talk over problems faced by the firm and brainstorm for solutions.²²² Our own 2002 survey shows that taskforces began to spread in the wider population of firms in the late 1980s and had reached 20 percent of firms by 2002.²²³

An analysis of national survey data shows that following the establishment of diversity taskforces, firms see significant increases of white women, and black, Hispanic, and Asian-American men and women in management.²²⁴ Furthermore, the presence of a diversity taskforce

²¹⁸ Kalev, Dobbin & Kelly, *supra* note 146, at 605.

²¹⁹ *Id.* at 606-07 (“Diversity training, evaluation, networking, and mentoring programs are more effective in firms with responsibility structures.”).

²²⁰ Edelman & Petterson, *supra* note 118, at 130.

²²¹ SARAH B. GRANT & MARY C. GENTILE, Kurt Landgraf & Du Pont Merck Pharmaceutical Company (A) § Harvard Business School Case 9-394-202 (Harvard Business School Press 1995).

²²² See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 *Columb. Law Rev.* 458, 524-25 (2001) (describing systems in which specialists across divisions compare practices to identify recurring problems and share solutions).

²²³ Kalev, Dobbin & Kelly, *supra* note 146, at 599.

²²⁴ Dobbin, Kalev & Kelly, *supra* note 147 at 24.

in an organization improves the operation of most other diversity programs.²²⁵

What makes these various innovations successful? The innovations that promote workforce diversity are targeted recruitment efforts, skill and management training, mentoring, and diversity officers and taskforces. Broadly speaking, we can identify several mechanisms of success. First, it appears that diversity programs succeed when they use active measures to increase the diversity of the candidate pool by identifying women and minority candidates through targeted recruitment, and by providing women and minorities with the right skills through training.

The other successful innovations, mentoring, taskforces, and diversity staff members, have one thing in common: they directly engage managers in managing diversity efforts, in solving the problem of identifying, appointing, and retaining women and minority candidates. We suspect that one reason this makes innovations successful is that it prevents decoupling. When manager ignore innovations and go on with business as usual, the innovations become decoupled from everyday practice and have no effect on it. Decoupling may occur because executives establish programs in order to create an appearance of compliance with no intention to alter their daily routine. Diversity managers and taskforces may reduce decoupling.²²⁶ Those appointed to take charge of diversity become invested in and promoters of the goal. Indeed an analysis of diversity programs has found that programs that are ineffective and even harmful, such as diversity training and performance evaluations, are less likely to backfire in firms with diversity managers or taskforces.²²⁷

²²⁵ Kalev, Dobbin & Kelly, *supra* note 146, at 607.

²²⁶ See John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC, 340, 358 (1977) (discussing the link between decoupling and maintaining face); Edelman & Petterson, *supra* note 118, at 114 (arguing that “more specialized structures with clear goals” are easier to evaluate, so they are less likely to be decoupled and more likely to produce effects).

²²⁷ Kalev, Dobbin & Kelly, *supra* note 146, at 607.

In interviews, managers and executives tell us that diversity managers and taskforces are effective because they identify specific problems and remedies. If the taskforce sees that the company has not been recruiting African-American engineers, it will suggest sending recruiters to historically black colleges. If a company has trouble retaining women, the diversity manager may talk to women at risk of leaving and try to work out arrangements that will keep them on the job. Managers and taskforces feel accountable for change, and they monitor quarterly employment data to see if their efforts are paying off. Taskforces may be so widely effective, some diversity managers tell us, because they cause managers from different departments to “buy into” the goal of diversity. Taken together evidence from quantitative and qualitative research suggests that when managers are equipped with tasks and tools, organizational goals are more likely to be achieved than when managers are identified as the source of the problem.

5. Conclusion

American companies have adopted a series of progressive employment programs that have altered the way managers recruit, hire, discipline, promote, compensate, and discharge workers. Corporations and their personnel officers selected the specific programs from the start, for federal regulations outlawing employment discrimination left firms largely to their own devices when it came to compliance. One consequence is that the coverage of corporate diversity measures remains spotty across firms. Diversity training is by far the most popular of the core diversity programs, and only some 40 percent of middling to large firms have adopted it.²²⁸ Other highly touted innovations, such as mentoring and diversity taskforces, are found in only 10 to 20 percent of American workplaces, according to data from national samples.²²⁹

²²⁸ Kalev, Dobbin & Kelly, *supra* note 146, at 599.

²²⁹ *Id.*

Thus the first question we have addressed concerns the forces that lead firms to behave as progressive actors, embracing equal opportunity and diversity programs. Longitudinal studies of the adoption of these programs by U.S. corporations shed light on why the take-up of programs has been uneven, and why the take-up of some programs has stalled. Studies of program innovation in the 1960s and 1970s identified public policy as the driving force behind the creation of special recruitment programs, equal opportunity offices, and bureaucratic employment practices. New regulations, and reinforcement of existing regulations, led firms to embrace progressive policies. Employers that enjoyed substantial public visibility were more likely to embrace these innovations. But after about 1980, a different dynamic took over, as the Reagan Administration curtailed enforcement activities and as human resources experts began to replace the legal rationale for progressive programs with a business rationale, under the banner of diversity management.

From the early 1980s, corporate embrace of progressive employment programs was driven largely by advocacy from the personnel profession, by advocacy from women in management, and by progressive cultures at both the industry and firm levels. Regulation played less of a role and social norms played more of a role. Now innovations are put into place among firms that have already made a commitment to progressive employment policies and those that are in industries where progressive innovations are common. Adoption of new diversity innovations is now highly path dependent. Progressive firms, surrounded by progressive industries, continue to install new diversity measures even in the absence of congressional and judicial headlines.

The second question we address concerns the efficacy of these progressive employment programs. Studies show that employment segregation by race and gender declined significantly

in the 1960s and 1970s, but has changed little since then.²³⁰ Are the progressive employment programs that corporations have continued to install since Reagan cut back federal enforcement contributing to greater opportunity for white women and members of minority groups?

The record is mixed. Treating diversity like any other business goal - putting someone in charge and focusing on implementation and outcomes – has direct positive effects on diversity. The assignment of responsibility to a full time diversity staffer, or a diversity taskforce, leads to increases in diversity even among management jobs. Moreover, firms that assign responsibility for diversity management see increases in the effectiveness of other programs, and decreases in the likelihood of adverse consequences. We suspect that these managerial innovations prevent decoupling, and improve implementation of other diversity innovations.²³¹ And while assigning an individual or group responsibility for promoting diversity is effective, measures that individualize the blame for disparities, such as diversity performance evaluations and diversity training, are not. Those popular, and expensive, remedies have shown little evidence of efficacy.

Mentoring programs are also widely effective at promoting diversity in the management ranks. Like the assignment of diversity managers and taskforces, mentoring gives corporate leaders a direct role in the promotion of diversity. Unlike diversity performance evaluations and training, mentor assignment gives managers a positive role in the promotion of diversity. Unlike networking programs, mentoring programs help women and minorities build ties with those in powerful positions. The social ties offered by networking programs are typically to those in similar lower level positions. As we have seen such programs do not foster managerial diversity.

More research is needed, to be sure, on why popular diversity performance evaluations, diversity training, and affinity network programs have not promoted workforce diversity.

²³⁰ Tomaskovic-Devey, Zimmer, Stainback, Robinson, Taylor & McTague, *supra* note 3, at 582-84.

²³¹ Kalev, Dobbin & Kelly, *supra* note 146, at 606-07.

Research to date is consistent with the view that these programs fail by identifying managers as the source of organizational bias, rather than as the solution to the problem of diversity management. Research, as well, is needed to understand why hugely popular formal hiring and promotion innovations have not been shown to lead to increases in workforce diversity.

The findings from extant research point to managers as powerful actors in shaping organizational behavior. If progressive innovations vary in their effectiveness depending on the way they engage managers, we need to learn more about managers' reactions and actions in relation to corporate diversity missions and goals. We need to learn more both about the ways managers enhance implementation, as the interviews discussed above suggest, and about the ways in which managers forestall implementation.

The findings have several tangible public policy implications. First among these is that federal equal opportunity and affirmative action regulations no longer appear to be contributing directly to the diffusion of progressive corporate diversity programs. In contrast to early research, studies pertaining the period after 1980, have found that being a federal contractor, facing an affirmative action compliance review, and facing a discrimination lawsuit do not increase firm's propensity to embrace diversity programs.²³² To the extent that these programs mediate equal opportunity law, as some of them do, policymakers might consider how to redesign public policy interventions to encourage firms to adopt progressive employment policies.

Second is that the programs that have become popular under the banner of diversity management have quite mixed effects on actual workforce diversity. Policymakers and judges need to understand which corporate programs have contributed to the integration of the workforce, so that they can design public policies, and injunctive relief in discrimination cases, based on evidence about how firms can open opportunity. Thus, a recent survey shows that two

²³² Dobbin, Kim & Kalev, *supra* note 50, at 393 .

times as many firms have diversity training programs, which have proven ineffective, as have mentoring programs, which have proven highly effective.²³³ Meanwhile, many programs that have proven effective in the past, notably special recruitment for women and minorities and special programs to enroll them in management training, have lost their caché in the corporate world. Our survey suggests that firms should rethink their diversity program choices, abandoning ineffective programs for effective ones.

²³³ *Id.* at 386-411.