

PROGRESSIVE CORPORATIONS AT WORK: THE CASE OF DIVERSITY PROGRAMS

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ABSTRACT

During the civil rights era in the 1960s, the federal government passed a series of measures to end racial and gender discrimination in the workplace. Yet the laws and regulations did not clearly define what constituted illegal discrimination and gave only weak enforcement power to federal agencies. As a result, over the following decades, corporations themselves have defined how they will comply with civil rights law. Human resources managers have created a series of programs designed to improve the status of women and minorities in the workplace, from formalized hiring and promotion procedures to diversity training to mentoring programs. Since firms have made different decisions about which programs to implement, researchers can track firms across time to study the causes and effects of the various programs.

In this article, we review many studies, some of which are our own, to find out what factors lead firms to implement anti-discrimination programs and which of these programs are actually successful at increasing workforce and management diversity. We find that regulatory pressure from the federal government has become less influential in driving firms to adopt diversity programs. Instead, advocacy from groups within the firm and industry culture have played greater roles in recent decades. We also find that some of the most popular equal opportunity programs are not actually the most effective. Formalized hiring and promotion procedures, diversity training, and grievance procedures do not lead to improvements in workforce diversity. We argue that these programs are ineffective because they treat managers as the source of the problem. The programs that do lead to results, such as recruitment initiatives and diversity taskforces, are successful because they engage managers in finding solutions. We also conclude that members of historically disadvantaged groups do not benefit from networking programs, but they do benefit from mentoring programs, which link them directly to managers who can help them advance in their careers.

Our findings have important public policy implications. Despite progress

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since the civil rights era, women and minorities are still underrepresented in management-level positions. Therefore, it remains as pressing as ever to understand which programs are effective in promoting workplace equality. The conclusions we present here offer guidance for managers deciding which programs to implement, courts awarding injunctive relief in discrimination suits, and agencies enforcing equal opportunity laws.

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I. INTRODUCTION

Until the late 1950s, American companies in both the North and the South practiced discrimination openly. Corporations generally offered women, African-Americans, Latinos, and Asian-Americans only unskilled jobs without promotion prospects.¹ Most unions were segregated by sex and race, and those unions that had access to the best-paying jobs were the exclusive province of white men.²

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.³ In 1964, Lyndon Johnson signed the Civil Rights Act, outlawing discrimination in U.S. workplaces.⁴ 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.⁵

Over the following decades, due to modest legal requirements, vague definitions of compliance, and the waxing and waning of federal enforcement, corporations had considerable latitude to design their own measures to comply with anti-discrimination laws.⁶ Led by an expanding class of human resources managers, corporations installed new recruitment and training programs for women and minorities in the 1960s, formal hiring and promotion systems in the 1970s, diversity management programs in the 1980s, and work-family and anti-harassment programs in the 1990s and beyond.⁷ By experimenting with these new personnel programs, corporations played a crucial role in defining what forms compliance should take and thereby shaped 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

1. 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).

2. DOBBIN, *supra* note 1, at 25–26; RESKIN & ROOS, *supra* note 1, at 56 (discussing the role of unions in excluding women and minorities from the skilled trades in order to prevent competition for jobs).

3. Exec. Order No. 10,925, 3 C.F.R. 86 (1962).

4. Civil Rights Act of 1964, 42 U.S.C. § 2000e (2006).

5. DOBBIN, *supra* note 1, at 1.

6. *Id.* at 1–5.

7. *Id.* at 13–14.

government cut back significantly on enforcement.⁸ 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.⁹ While minorities made inroads into upper-level positions, research shows they were especially vulnerable to layoffs during the corporate restructuring of the 1980s and 1990s.¹⁰ In some industries, the representation of white men in management has actually grown over time.¹¹ 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.

To that end, in this article we evaluate corporations' anti-discrimination and diversity programs from the perspective of organizational sociologists rather than legal scholars. We bring together quantitative data from studies of hundreds of firms over dozens of years to analyze which factors have led firms to adopt equal opportunity and diversity programs and which of these programs have actually been effective at increasing workforce and management diversity. The results show that some of the most popular programs, such as diversity training, diversity performance evaluations, and grievance procedures, are not the most effective at changing workforce composition. These programs define managers as the source of the problem, while more successful programs such as taskforces and targeted recruiting efforts engage managers in finding solutions. The results also show that members of disadvantaged groups do not benefit much from ties to other disadvantaged workers through networking programs, but do benefit from ties to more powerful managers through mentoring.

Most of the studies we review (several of which are our own) use advanced statistical techniques and longitudinal data to track firms across time in order to isolate the causes and effects of various innovations.¹² Survey researchers and

8. 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).

9. 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).

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); Alexandra Kalev, *How You Downsize Is Who You Downsize: Structural Vulnerability and Accountability* 4-6 (April 2010) (working paper) (on file with author).

11. Kevin Stainback & Donald Tomaskovic-Devey, *Documenting Desegregation: Equal Opportunity in Private Sector Employment Since the Civil Rights Act of 1964* 261-62 (2011) (unpublished manuscript) (on file with author).

12. 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

business groups such as Catalyst and the Society for Human Resources Management often use cross-sectional methods in which they analyze data on a sample of organizations collected at a single point in time.¹³ This approach can show which firm attributes are correlated with the adoption of progressive employment programs and which employment programs are correlated with workforce diversity. By contrast, the longitudinal studies we review here allow researchers to specify the causes of program adoption and the effects of these programs on 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.

We treat programs as progressive when they are adopted under the banner of equalizing employment opportunities or promoting workforce diversity, regardless of whether managerial intention was to comply with the law or to actually improve the lot of the historically disadvantaged. We could have defined some of these measures as simple compliance measures and others as truly 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.¹⁴ By contrast, diversity training and mentoring programs are generally thought to be shaped by progressive goals rather than driven by regulation.¹⁵ 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.

Understanding the human resources innovations firms have embraced over

adopted. For a more complete discussion of event history analysis, see generally Paul D. Allison, *Regression for Longitudinal Event Data*, in *EVENT HISTORY ANALYSIS 1984* (Quantitative Applications in the Social Sciences, Sage Paper Ser. No. 07-046, 1984).

13. 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 (2007) <http://www.catalyst.org/file/139/bottom%20line%202.pdf>; SOCIETY FOR HUMAN RESOURCE MANAGEMENT, <http://www.shrm.org/Research/Articles/Pages/Diversity.aspx> (last visited Dec. 19, 2011).

14. 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).

15. See DOBBIN, *supra* note 1, 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).

the last half century is key to understanding the role of the law in addressing social inequality in the United States today. The current structure of inequality is shaped by characteristics of the labor market and by the skills and aspirations of workers, to be sure. But it is also shaped by corporate human resources policies adopted in reaction to anti-discrimination 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 company's intent to comply with civil rights laws.¹⁶ Of course, the legal test for (non-) discriminatory intent is determined by judicial opinion, and is different from the academic, empirical, test—or that has been the case thus far. By examining quantitative data rather than relying on assumptions about the benefits of these programs, this article can help corporations, courts, and the public understand which of these measures actually promote equality of opportunity.

The article proceeds as follows. Part I lays out the legal framework for prohibiting workplace discrimination. Part II considers what factors lead firms to become progressive actors by adopting equal employment and diversity innovations. We draw on studies that show that new government regulations and judicial decisions stimulate firms to adopt progressive reforms, particularly among firms in the limelight. We also demonstrate that advocacy by human resources professionals helps to spread many programs, as does advocacy by historically disadvantaged groups within management. Finally, we show that 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 upper-level jobs. In Part III we find that many of the measures that workplaces commonly use, such as diversity training, diversity performance evaluations, and standardized hiring practices and grievance procedures, do not lead to measurable increases in the diversity of a company's management. We posit that perhaps this is 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, rather than horizontal, 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 likely successful because they are designed to involve managers in problem-solving in a positive way. Part V discusses the implication

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

of these findings for further research and for the future of corporate diversity initiatives.

II.

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.¹⁷ Yet these limited regulations were rarely enforced, and companies continued to follow either explicit or unwritten policies for excluding racial minorities and women from the best-paying jobs.¹⁸

Beginning in the 1960s, the federal government took a series of steps that laid the framework for the current prohibitions on workplace discrimination. In 1961, President John F. Kennedy's Executive Order 10,925 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."¹⁹ In 1965, President Lyndon Johnson's Executive Order 11,246 updated Kennedy's original order, requiring all federal contractors and subcontractors whose contracts exceeded \$10,000 to undertake affirmative action to improve the real position of minorities in the workforce.²⁰ The new order extended affirmative action requirements to all of the work done by firms with federal contracts, not just contracted work.²¹ While Johnson's original executive order only prohibited discrimination based on race, he 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 that promised to eradicate workforce segregation.²³

In the most significant anti-discrimination measure 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,

17. DOBBIN, *supra* note 1, at 30, 32.

18. *Id.* at 27–31.

19. Exec. Order No. 10,925, 3 C.F.R. 86 (1962), *superseded by* Exec. Order No. 11,246, 3C.F.R. 167 (1966).

20. Exec. Order No. 11,246, 3 C.F.R. 167 (1966). The executive order allows the Secretary of Labor to exempt contracts that fall below a specified amount of money. *Id.* at 170. The implementing regulations establish the \$10,000 threshold amount. 41 C.F.R. § 60-1.5(a) (1978).

21. 3 C.F.R. 167, at 168–69 (requiring contractors to agree to refrain from employment discrimination and take affirmative action measures "[d]uring the performance of this contract"). Kennedy's previous executive order only applied the anti-discrimination and affirmative action provisions "[i]n connection with the performance of work under this contract." 3 C.F.R. 86, at 87–88.

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

23. DOBBIN, *supra* note 1, at 72–73.

religion, sex, or national origin.²⁴ The executive orders had 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 to prohibit age discrimination against 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 Congress later broadened these acts by passing age discrimination amendments in 1986 that protected most workers over age 70, and by extending protections to disabled workers in private enterprises through the Americans with Disabilities Act in 1990.²⁶

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 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 twelve 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

This series of actions by the federal government provided sweeping anti-discrimination protections for broad categories of American workers, but these measures initially had only a limited practical effect because of weak enforcement. Title VII of the Civil Rights Act created the Equal Employment Opportunity Commission (EEOC) to enforce the law.³¹ Johnson’s executive

24. Civil Rights Act of 1964, 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 (codified as amended at 29 U.S.C. § 623 (2008)) (establishing that employers with a qualifying number of employees cannot discriminate on the basis of age); Rehabilitation Act of 1973, Pub. L. No. 93-112, §§ 501–04, 87 Stat. 355, 390–94 (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 of 1990, Pub. L. No. 101-36, § 102(a), 104 Stat. 327, 331–32 (codified as amended at 42 U.S.C. § 12112 (2009)).

27. Equal Pay Act of 1963, Pub. L. No. 88-38, § 3(d)(1), 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d) (2007)); see generally ROBERT L. NELSON & WILLIAM P. BRIDGES, *LEGALIZING GENDER INEQUALITY: COURTS, MARKETS AND UNEQUAL PAY FOR WOMEN IN AMERICA* 26–27 (1999); Barbara M. Boyle, *Equal Opportunity for Women is Smart Business*, 51 HARVARD BUS. REV. 85, 86 (1973).

28. Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (2006).

29. Family and Medical Leave Act of 1993, 29 U.S.C. § 2612(a)(1) (2006).

30. See *Meritor Sav. 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 1, at 190–219.

31. 42 U.S.C. § 2000e-4 (2006). For background on the causes and effects of equal

order created what is now the Office of Federal Contract Compliance Programs (OFCCP) within the Department of Labor to enforce affirmative action requirements 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 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 prohibit employer practices that were not intentionally discriminatory but 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 The OFCCP set out specific affirmative action guidelines for federal contractors, calling for affirmative action plans with numerical goals and timetables for hiring minority and female employees and demanding mechanisms for evaluating program effectiveness.³⁶ The OFCCP soon stepped up compliance reviews for federal contractors.³⁷

The legal environment changed again in the 1980s, when 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

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).

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 1, at 34–38 (discussing the ambiguity of Title VII and the weakness of the EEOC).

34. 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. § 2000e–2000e-17 (1988)); see also JOHN DAVID SKRENTNY, *THE IRONIES OF AFFIRMATIVE ACTION: POLITICS, CULTURE, AND JUSTICE IN AMERICA* 126 (1996).

36. Compliance Responsibility for Equal Employment Opportunity, 43 Fed.Reg. 49,239, 49,250–52 (Oct. 20, 1978) (to be codified at § 41 C.F.R. pt. 60-2) (setting out requirements for affirmative action programs).

37. See *id.* at 49,245 (setting out procedure for compliance reviews); DOBBIN, *supra* note 1, at 77–79 (describing heightened enforcement by the Department of Labor); Jonathan S. Leonard, *What Promises are Worth: The Impact of Affirmative Action Goals*, 20 J. HUM. RESOURCES 3 (1985) (analyzing the effects of federal compliance reviews); Anderson, *supra* note 32, at 299 (discussing the centralization of federal enforcement under President Carter).

38. DOBBIN, *supra* note 1, 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

OFCCP's staffing cut in half, the agency significantly reduced compliance reviews 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. By contrast, the agency only used this sanction four times during Reagan's first term in office.⁴¹ The agency set up conciliation agreements for 49 percent of violators in 1980 but only 33 percent in 1985.⁴² The government also dramatically reduced its oversight of private corporations under Title VII 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

Due to this lack of vigorous federal enforcement, and the lack of clarity surrounding standards of compliance, the government largely left corporations to develop their own voluntary methods for complying with anti-discrimination laws. Equal opportunity legislation prohibited discrimination, but it neither defined the meaning of discrimination nor provided clear compliance guidelines. Congress decided not to create a regulatory agency with independent authority to set compliance standards.⁴⁶ Even when the OFCCP promoted certain standards, the agency derived these standards from the behavior of the leading federal contractors involved in the voluntary Plans for Progress program in the 1960s. The courts, too, backed certain voluntary standards that were developed by

committee report that "effective enforcement [of Executive Order 11,246] has come to a virtual standstill" since 1980).

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

41. Anderson, *supra* note 32, at 300.

42. *Id.*

43. DOBBIN, *supra* note 1, 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 Anderson, *supra* note 32, at 300 (discussing an emphasis on "voluntary compliance rather than strong enforcement" during the George H.W. Bush administration); Alexandra Kalev and Frank Dobbin, *Enforcement of Civil Rights Law in Private Workplaces: The Effects of Compliance Reviews and Lawsuits Over Time*, 31 L. & SOC. INQUIRY 855, 891 (2006) (noting that even the increase in enforcement under the Clinton administration "did not bring back the administrative efficacy of the 1970s" because of the dramatic cutbacks in OFCCP staffing); 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. 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").

corporations. As Lauren Edelman argues, compliance strategies have therefore been “endogenous,” in that they have been developed by regulated businesses rather than imposed by government regulators.⁴⁷ Many executives hired full-time equal opportunity experts or created new departments to track changes in the law and in judicial interpretation.⁴⁸ These new experts came mostly from the personnel profession, and they filled in the gaps left by the federal statute. Across the 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.⁴⁹

The fact that compliance standards have been developed by industry rather than by government means that they have changed considerably over time, as personnel experts have devised new practices in response to changing public perceptions of the causes of inequality. The variation in adoption allows us to compare firms and draw conclusions about what factors have led firms to adopt compliance measures and which of those measures have been effective. We now turn to the factors that impel firms to seek a more diverse workforce, before moving on to analyze which programs are most successful.

III.

FACTORS THAT LEAD FIRMS TO IMPLEMENT DIVERSITY PROGRAMS

Longitudinal studies of U.S. corporations show that the factors that lead firms to adopt progressive employment measures have changed over time. 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. Human resources experts began to replace the legal rationale for progressive programs with a business rationale, under the banner of diversity management. In this section, we identify four main factors that encourage firms to increase workforce diversity: regulatory pressure, organizational visibility, advocacy group activity, and corporate and industry culture. We also address the way the relative importance of these factors has changed over the past decades.

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

48. DOBBIN, *supra* note 1, at 75.

49. *Id.* at 75–77.

A. Regulatory Pressure

Organizational scholars have pointed to the role of legal standards and the social norms they create in promoting diversity initiatives.⁵⁰ 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 such initiatives.⁵¹ Government regulation played a particularly important role in the 1960s and 1970s as firms responded to a wave of new anti-discrimination directives by Congress and federal agencies.

1. Affirmative action regulations and equal opportunity legislation

Affirmative action regulations and equal opportunity laws have been the two main sources of legal pressure shaping corporate employment practices. For example, Kennedy's 1961 Executive Order 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."⁵² 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."⁵³ Studies have shown that federal contractors were more likely than similar firms without contracts to implement a number of policy innovations, including formal equal opportunity policies, corporate compliance offices, and due process procedures.⁵⁴ Other research

50. See 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); 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); 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).

51. See Edelman, *supra* note 39, at 1535 ("Organizations that are sensitive to their legal environments develop forms of governance that conform to legal norms in order to achieve legitimacy."); Lauren B. Edelman, *Legal Environments and Organizational Governance: The Expansion of Due Process in the American Workplace*, 95 AM. J. SOC. 1401, 1402 (1990) (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).

52. Executive Order No. 10,925, 3 C.F.R. 86 (1962).

53. 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").

54. See Frank Dobbin, Soohan Kim & Alexandra Kalev, *You Can't Always Get What You Need: Organizational Determinants of Diversity Programs*, 76 AM. SOC. REV. 386, 389 (1993) (noting that "the very first equal opportunity programs were devised by big military contractors in

demonstrates that actions by Congress have also prompted corporations to make changes to their policies. For example, Kelly and Dobbin show that even before Congress enacted the Family and Medical Leave Act 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.⁵⁵

2. *Judicial and administrative enforcement*

Rulings by local, state, and federal judges and bureaucrats have also induced firms to embrace a number of different innovations. Employers have responded to these rulings with a range of bureaucratic procedures designed to put an end to managerial bias in hiring and promotion.⁵⁶ Some studies show that discrimination lawsuits and federal affirmative action compliance reviews stimulate employers to formalize personnel systems.⁵⁷ Other studies show that progressive court rulings stimulate change. For example, Dobbin and Kelly demonstrate that judicial rulings in the 1970s in favor of sexual harassment plaintiffs caused firms to adopt grievance procedures.⁵⁸ 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 create

the South”); Edelman, *supra* note 39, 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); Sutton & Dobbin, *supra* note 51, at 806 (finding that between 1981 and 1985, firms with federal contracts were more likely to adopt grievance procedures).

55. Erin Kelly & Frank Dobbin, *Civil Rights Law at Work: Sex Discrimination and the Rise of Maternity Leave Policies*, 105 AM. J. SOC. 455, 456 (1999).

56. See Dobbin, Sutton, Meyer & Scott, *supra* note 50, at 419 (discussing the effect of legal changes on the adoption of job descriptions, performance evaluations, and salary classification systems).

57. See Leonard, *supra* note 37, at 4 (finding that regulatory pressure from the OFCCP led to some gains in female and minority employment by federal contractors); cf. Lauren B. Edelman, Steven E. Abraham & Howard S. Erlanger, *Professional Construction of the Law: The Inflated Threat of Wrongful Discharge*, 26 LAW & SOC’Y REV. 47, 79 (1992) (discussing how employers have changed their practices in response to court rulings on wrongful discharge).

58. Frank Dobbin & Erin L. Kelly, *How to Stop Harassment: The Professional Construction of Legal Compliance in Organizations*, 112 AM. J. SOC. 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 1, at 197. Influential cases include *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 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).

formal work-family programs.⁵⁹

B. 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.

1. 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 pursue diversity initiatives; within the private sector, nonprofits, regulated utilities, and consumer product firms are more likely than other employers to take these measures.⁶⁰ Edelman finds that federal and state agencies as well as universities and colleges are significantly more likely to establish equal employment opportunity offices.⁶¹ 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 family leave policies, dependent care assistance, and flexible work schedules.⁶² Kelly shows that companies close to the public sector were quicker to adopt work/family programs in response to the Family and Medical Leave Act of 1993.⁶³ As Edelman argues, proximity to the public sector makes firms more sensitive to the legal environment.⁶⁴ Proximity to the public sphere puts firms in contact with the government civil service system, where bureaucratic procedures to ensure fairness and rights are “highly institutionalized,” and also makes firms more visible and open to public scrutiny.⁶⁵

59. Doug Guthrie & Louise Marie Roth, *The State, Courts, and Maternity Policies in U.S. Organizations: Specifying Institutional Mechanisms*, 64 AM. SOC. 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”).

60. 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 82, 82–86 (Lynne G. Zucker ed., 1988) (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 51, at 1428.

61. Edelman, *supra* note 39, at 1562.

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

63. Erin L. Kelly, *Failure to Update: An Institutional Perspective on Noncompliance with the Family and Medical Leave Act*, 44 LAW & SOC'Y REV. 33, 49–50 (2010).

64. Edelman, *supra* note 39, at 1548.

65. *Id.* at 1549.

2. Size

Organizational scholars have long argued that large organizations are most likely to create formal policies to govern the employment relationship.⁶⁶ 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.⁶⁷ Thus, studies find that large organizations more often create formal bureaucratic systems to manage compliance with affirmative action and equal opportunity laws and regulations.⁶⁸

Taken together, these studies show that legal regulation plays a role in prompting corporations to adopt progressive measures, especially for firms that are large or close to the public sector and therefore more influenced by regulatory pressure. Yet studies show that after the Reagan administration decreased the enforcement of anti-discrimination laws and regulations in the 1980s, the law became less of a significant factor driving firms to adopt equal opportunity offices and policies.⁶⁹ Instead, pressure from advocacy groups and from corporate culture began to play a larger role.

C. Advocacy Groups

Since the civil rights era, advocacy groups within firms have promoted progressive diversity programs, with human resources and diversity experts leading the charge. Research suggests, moreover, that as women have begun to enter management jobs, they have successfully advocated for a number of progressive employment programs.

66. See Peter M. Blau, *A Formal Theory of Differentiation in Organizations*, 35 AM. SOC. REV. 201, 204–07 (1970) (noting the generalization that “increasing size generates structural differentiation among organizations,” which in turn gives rise to a “need for coordination”).

67. Edelman, *supra* note 39, at 1549.

68. See Alison M. Konrad & Frank Linnehan, *Formalized HRM Structures - Coordinating Equal-Employment Opportunity or Concealing Organizational Practices*, 38 ACAD. MGMT. J.787, 805 (1995) (finding an association between size and formalized human resources management structures); Barbara F. Reskin & Debra Branch McBrier, *Why Not Ascription? Organizations' Employment of Male and Female Managers*, 65 AM. SOC. REV. 210, 222–23 (2000) (discussing the connection between size and the formalization of personnel practices); 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).

69. See Dobbin, Kim & Kalev, *supra* note 54, 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); Edelman, *supra* note 39, 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.”); Erin L. Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961-1996*, 41 AM. BEHAV. SCIENTIST 960, 971 (1998) (noting that employers “curtailed their most proactive affirmative action measures” during the cutback in federal enforcement in the 1980s).

1. *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 and training programs to bring in more women and minorities and prepare them for advancement.⁷⁰ 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.⁷¹ Human resources experts promoted the view that equal opportunity programs could offer firms 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."⁷² 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 management" initiative, designed to ensure that each employee could "make maximum use of his or her talents" and argued that companies with such programs could better serve a diverse client base.⁷³ As the pressure from regulators declined, personnel experts stepped up pressure on firms to adopt diversity programs under the banner of managerial effectiveness.⁷⁴ This pressure led to results; studies show that firms that relied on professionals to design their human resources policies were most likely to install the latest diversity innovations.⁷⁵

70. DOBBIN, *supra* note 1, at 42.

71. *Id.* at 168–69, 224–26.

72. Boyle, *supra* note 27, at 95.

73. Wayne E. Hedien, *Managing Diversity: A Full-Time, Top-Down Commitment*, in CONFERENCE BOARD, IN DIVERSITY IS STRENGTH: CAPITALIZING ON THE NEW WORK FORCE 75TH ANNIVERSARY SYMPOSIA SERIES 11–12 (Judith Alster, Theresa Brothers & Holly Gallo eds., 1992).

74. See Lauren B. Edelman, Sally Riggs Fuller & Iona Mara-Drita, *Diversity Rhetoric and the Managerialization of the Law*, 106 AM. J. SOC. 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").

75. See 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. SOC. 441, 467 (1998) (finding that personnel managers' associations supported the creation of new positions to oversee equal employment opportunity programs); Edelman, Abraham & Erlanger, *supra* note 57, at 50 (discussing studies on the role of personnel professionals in leading firms to adopt bureaucratic

2. 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 commitment.⁷⁶ This idea comes from resource dependency theorists, who argue that organizations acquire critical resources from internal constituencies as well as from their environments.⁷⁷ Corporate behavior is therefore designed to satisfy unions, age cohorts, racial groups, and other demographic groups within the firm. Managers create departments to absorb employee protests, so that workers with union-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 diversity policies only after they have achieved significant diversity in the workforce, and especially in the ranks of management, since 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 female managers were 1.3 times as likely to agree as male managers.⁸⁰ In reviewing decades of research on support for affirmative action programs, Steeh and Krysan show that blacks are consistently more supportive of government policies for advancing minorities and using affirmative action in hiring.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

promotion practices, due process protections, and equal employment opportunity structures); Kelly & Dobbin, *supra* note 55, at 484 (noting that having a benefits manager makes companies more likely to adopt maternity leave policies).

76. 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”).

77. *Id.* at 258–62.

78. *Id.* at 273.

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

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

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

82. Dobbin, Kim & Kalev, *supra* note 54, at 395 (concluding there are “almost no effects of workforce diversity . . . on adoption of diversity programs”).

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 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

3. *Feminization among human resources professionals*

As women have achieved a greater role in human resource management, they have used these positions to successfully advocate for a number of progressive employment programs. 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, personnel offices instituted maternity leave policies guaranteeing that women could return to their jobs after childbirth, even though federal law at the time did not require companies to do so.⁸⁷ According to one study, fewer than a quarter of companies reported that they 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,

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 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*, in 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 1, at 5.

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

87. See *Paid Leave and Leave of Absence Policies*, [Nov.] Personnel Pol’y F. Surv. (BNA) No. 111, at 13–16 (Nov. 1975) (finding in a 1975 survey that about nine out of ten companies provided maternity leave to employees).

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

personnel managers created maternity leave policies.⁸⁹

As this research shows, even during periods of weak federal enforcement of anti-discrimination laws, advocacy groups within corporations promote the development of progressive employment policies. Personnel managers and women in high-level positions play especially important roles in this process. These two trends combined in the 1970s and 1980s as women began to dominate the field of human resources management, leading corporations to become increasingly responsive to the needs of working mothers.

D. 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.

1. 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, 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 using rules and procedures to select employees based on skills, rather than relying on managerial intuition and discretion, the firm grew to be more bureaucratic than otherwise similar firms, even if the founders had left the firm.⁹² Moreover, firms that created bureaucracy to guide personnel decisions improved the prospects of women.⁹³

89. DOBBIN, *supra* note 1, at 172 (stating that Massachusetts, Connecticut, Montana, California, and Wisconsin outlawed pregnancy discrimination between 1972 and 1981, but that companies in other states also adopted maternity leave programs); Kelly & Dobbin, *supra* note 55, at 470 (showing growth in the percentage of employers with maternity leave both in California, which outlawed pregnancy discrimination, and New Jersey and Virginia, which did not).

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. SOC. 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. SOC. 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* note 90, at 543.

92. *Id.* at 529–30, 539.

93. 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 &

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 state governance structures, 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 equal opportunity advertisements, diversity training, diversity taskforces, and mentoring programs.⁹⁷

2. 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 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

OCCUPATIONS 35, 48 (2007).

94. See Sutton & Dobbin, *supra* note 51, 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. Sutton & Dobbin, *supra* note 51, 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-ECON. REV. 379, 382 (2006).

97. Dobbin, Kim & Kalev, *supra* note 54, at 395.

98. See DiMaggio & Powell, *supra* note 50, at 152 ("Organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful."); John W. Meyer & Brian Rowan, *Institutionalized Organizations: Formal Structure as Myth and Ceremony*, 83 AM. J. SOC. 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").

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 Lawton R. Burns & Douglas R. Wholey, *Adoption and Abandonment of Matrix Management Programs: Effects of Organizational Characteristics and Interorganizational Networks*, 36 ACAD. MGMT. J. 106, 130 (1993) (finding that adoption of an administrative innovation by a prestigious hospital influences neighboring hospitals' decision to adopt); Heather

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 adoption of these programs 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 industry culture in promoting these programs. A firm may be more 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 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.

IV.

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, including bureaucratic hiring and promotion procedures, diversity and anti-harassment training, networking programs, and grievance procedures 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.

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").

101. Dobbin, Kim & Kalev, *supra* note 54, at 400.

102. *Id.*

A. *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 all current employees are informed about promotion opportunities. 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 intended to ensure that raises, promotions, and discipline are based on objective performance, not the whim 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 address concerns about discrimination. Early in the 1970s, executives began to hear concerns about minorities facing a distinct set of barriers to upward 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 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. A 1974 article

103. Dobbin, Sutton, Meyer & Scott, *supra* note 50, at 406.

104. See *Hearing before the U.S. Commission on Civil Rights held in Baltimore 1970, General Electric's Commitment to Equal Opportunity/Minority Relations*, July 1970, submitted with Statement on Behalf of the General Electric Co., Ex. No. 28 before the U.S. Commission on Civil Rights, Aug. 19, 1970, 949 (1970), http://www.law.umaryland.edu/marshall/usccr/documents/cr12h8112_C.pdf (stating that a General Electric taskforce found that about half the identified barriers to upward mobility applied to all employees, but that "the special problems affecting minority employees require special efforts to correct them").

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

106. *Id.* at 493.

107. See Antonia Chayes, *Make Your EEO Program Court-Proof*, HARV. BUS. REV., Sept.-Oct. 1974, at 81, 84 (encouraging companies to scrutinize job classifications "to ensure that prescribed qualifications and pay scales can be justified on business grounds and that inadvertent barriers have not been erected against women and minorities").

in *Personnel* suggested that companies should base performance reviews on “solid criteria available to all concerned parties” to ensure promotion decisions based on ability, which “coincidentally” conformed to the EEOC’s guidelines.¹⁰⁸ In their 1967 study, the Bureau of National Affairs found that companies were reviewing their selection and placement tests to ensure they conformed to job requirements and instituting standardized evaluations as part of new promotion policies.¹⁰⁹

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 mid-sized and large corporations in 1971 to 90 percent by 2002.¹¹⁰ 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.¹¹¹ The prevalence of performance evaluations in the sample rose only from 20 percent to 35 percent between 1956 and 1966, but over 80 percent of employers had installed performance evaluations by 1986.¹¹²

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.¹¹³ Baron, Hannan, Hsu, and Koçak show that Silicon Valley technology firms founded with bureaucratic personnel systems have made more progress in hiring female workers in “core technological roles.”¹¹⁴ Elvira and Zatzick find that minorities may be less vulnerable to layoffs when personnel decisions are bureaucratized.¹¹⁵ Dencker shows that firms that base their personnel decisions on formal performance evaluations, rather than seniority, promote more women during restructuring.¹¹⁶ Yet most of the research concludes 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.¹¹⁷

108. Herbert Froehlich & Dennis Hawver, *Compliance Spinoff: Better Personnel Systems*, 51 PERSONNEL 62, 65 (1974).

109. *A Current Look at: (1) The Negro and Title VII, (2) Sex and Title VII*, [Dec.] Personnel Pol’y F. Surv. (BNA) No. 82, at 14, 16 (Dec. 29, 1967).

110. DOBBIN, *supra* note 1, at 116.

111. Dobbin, Sutton, Meyer & Scott, *supra* note 50, at 412.

112. *Id.*

113. Reskin & McBrier, *supra* note 68, at 226–27.

114. Baron, Hannan, Hsu & Kocak, *supra* note 93, at 58.

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

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

117. Lauren B. Edelman & Stephen M. Petterson, *Symbols and Substance in Organizations*

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 applicants of different races who respond to job advertisements.¹¹⁸ Bureaucratic systems only 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. Employers may use job descriptions to create narrow job titles, and then relegate women and minorities to marginal jobs that do not provide opportunities for training, visibility, and advancement.¹¹⁹ 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.¹²⁰ Furthermore, even where a perception of discrimination arises, narrow job definitions make it difficult for workers to establish that they are paid differently from workers performing similar tasks.

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 & OCCUPATIONS 214, 237 (1997) (finding that formal employment procedures do not reduce the wage gap for women); 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).

118. 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 blacks to receive a callback or offer).

119. See James N. Baron & William T. Bielby, *The Proliferation of Job Titles in Organizations*, 31 ADMIN. SCI. Q. 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"); James N. Baron & Jeffrey Pfeffer, *The Social Psychology of Organizations and Inequality*, 57 SOC. PSYCHOL. Q. 190, 196 (1994) (surveying research on racial and gender segregation based on job titles); 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"); 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 & OCCUPATIONS 422, 439 (1999) (discussing the segregation of women and minorities into jobs with lower pay and less training).

120. See Baron & Pfeffer, *supra* note 119, at 197 (discussing research showing that "individuals believe in equal rewards within categories but are more likely to accept differences in rewards across categories").

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.¹²¹ Meta-analyses show a persistent gap in ratings of black and white workers.¹²² Some of the racial gap is due to the fact that managers who are responsible for conducting performance evaluations are overwhelmingly white.¹²³ Studies show that whites tend to give higher job performance ratings to other whites, and blacks to other blacks.¹²⁴ Research also shows that firms may make personnel decisions based on factors other than performance ratings or apply different standards to different groups.¹²⁵ 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.¹²⁶ Roscigno’s analysis of civil rights complaints shows that minority workers are judged more severely than their white counterparts for subpar performance.¹²⁷ In a laboratory study, Castilla and Benard find that subjects assign men higher bonuses than women with identical performance scores, but only when they are told that the employer is meritocratic.¹²⁸ As all of these studies show, performance evaluations still leave room for managerial bias, both in the assignment of ratings to employees of different groups and in the use of those ratings to make personnel decisions.

Salary classification systems receive similar criticism for permitting too

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

122. 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. APPLIED PSYCHOL. 694, 702 (2003) (finding that objective measures of job performance show more room for bias than subjective measures).

123. See Elvira & Zatzick, *supra* note 115, at 332 n.3 (stating that 77 percent of managers in the sample were white); Stainback & Tomaskovic-Devey, *supra* note 11, at 262 (showing the overrepresentation of white males in management positions across sectors).

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

125. See Ellen R. Auster & Robert Drazin, *Sex Inequality at Higher Levels in the Hierarchy: An Intraorganizational Perspective*, 58 SOC. INQUIRY 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. SOC. 1479, 1512–13 (2008) (finding racial and gender disparities in the salary increases awarded to employees with identical performance reviews); Elvira & Zatzick, *supra* note 115, at 350 (finding a higher probability that a minority employee will be laid off after controlling for performance ratings).

126. Elvira & Zatzick, *supra* note 115, at 350–52.

127. Vincent J. Roscigno & Lisette Garcia, *Race Discrimination in Employment*, in 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”).

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

much discretion by managers. Plaintiffs have cited these systems in civil rights suits, claiming that gender bias led to lower pay scales for jobs dominated by women.¹²⁹ An early case study by Towers-Perrin consultants found that in one service sector firm, the only two corporate officers who received salaries below their wage band were women.¹³⁰ 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, which are distributed without formal rules, than for base salary, which is subject to formal rules.¹³¹

Overall, the evidence we have to date provides scant support for the idea that formal personnel systems promote equality of opportunity. None of the bureaucratic procedures has shown a consistent positive effect on workforce integration. Instead, researchers commonly observe negative effects. Hiring and promotion procedures appear to codify disadvantage in the organizational structure by formalizing selection and promotion criteria that advantage white men or by permitting bias to taint decision-making. Job descriptions support gender and racial segregation by making unequal treatment appear to be part of the labor process rather than a consequence of discrimination. Similarly, managers can use performance evaluations and salary classification systems to justify disparate treatment of different groups. The common pattern is that formal bureaucratic procedures may reproduce inequality rather than eradicating it by cloaking unequal treatment of women and minorities in apparently neutral, universal, and rational procedures and practices.¹³²

B. Programs to Eradicate Managerial Bias

Once firms initiated bureaucratic anti-discrimination programs, described above, many turned to the task of minimizing the effects of managers' cognitive biases. Their efforts drew upon research by social psychologists about bias and stereotyping. Stereotyping is a natural cognitive mechanism that influences how people process information about others, and it is inevitable given our innocent tendency to make associations between categories and concepts.¹³³ Social-

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

130. C.F. Fretz & Joanne Hayman, *Progress for Women? Men are Still More Equal*, HARV. BUS. REV., Sept.-Oct. 1973, at 133, 137.

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

132. Feminists have made this point powerfully. Kathy Ferguson, for example, 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 and conceal a gendered substructure." Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC'Y 139, 154 (1990).

133. See generally Galen V. Bodenhausen, C. Neil Macrae & Jennifer Garst, *Stereotypes in Thought and Deed: Social-Cognitive Origins of Intergroup Discrimination*, in INTERGROUP

cognition research shows that individuals unconsciously categorize others into in-groups and out-groups and favor in-group members.¹³⁴ The implicit associations we make between race, gender, ethnicity, and social roles can have the effect of reproducing existing patterns of inequality.¹³⁵ 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.¹³⁶ Managers may select women for jobs traditionally dominated by women and men for jobs dominated by men, with the effect of preserving between-group differences.

Personnel managers have sought to address managerial bias through two principal initiatives. They have promoted diversity training to make managers and workers more aware of bias and its effects on hiring and promotion. They have also instituted diversity performance evaluations designed to give managers feedback on their own work with women and minorities and to make clear that their salaries, bonuses, and promotions will be based in part on diversity performance. However, studies show that diversity training and diversity performance evaluations have not promoted racial and gender diversity at work.

1. Diversity training

Employers added race relations sessions to their management training curricula in the 1960s.¹³⁷ Soon federal agencies hired the same trainers to enlighten federal employees. By 1972, fifty thousand Social Security Administration staffers had completed diversity workshops.¹³⁸ When the Bureau of National Affairs surveyed industry leaders in 1976, it found that nearly 70 percent offered equal opportunity training for managers.¹³⁹

In the 1980s, diversity trainers shifted the focus away from compliance with civil rights law and toward the business rationale for diversity.¹⁴⁰ This shift

COGNITION AND INTERGROUP BEHAVIOR 311 (Constantine Sedikides, John Schopler & Chester A. Insko, eds., 1990).

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

135. 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.”).

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

137. DOBBIN, *supra* note 1, at 144–45; see also Boyle, *supra* note 27, at 93 (describing seminars to make managers re-examine their stereotypes about female employees).

138. DOBBIN, *supra* note 1, at 146.

139. *Equal Employment Opportunity: Programs and Results*, [Jan.–June] Personnel Pol’y F.Surv. (BNA) No. 112, at 9 (Apr. 27, 1976).

140. 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

represented part of the broader effort to rationalize the allocation of human resources, with proponents of workforce diversity arguing that it was inefficient to allow managers to select workers based race or gender.¹⁴¹ Diversity training became widely popular in large firms: a 1991 Conference Board survey found that 63 percent of leading employers offered diversity training for managers and 40 percent trained all employees.¹⁴² Surveys that include smaller and medium-sized firms show that these trainings have continued to spread, with less than 10 percent of firms offering diversity training in 1990 and almost 40 percent in 2002.¹⁴³

While diversity training has been the flagship practice in many corporations' equal opportunity programs, it has not been shown 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.¹⁴⁴ Previous studies similarly found little effect of diversity training, although most focused on short-term changes in participants' attitudes and self-reported behavior, not on workforce composition over decades.¹⁴⁵ These studies found only weak positive effects of diversity training on participants' attitudes in the short term. Kulik and Roberson reviewed 51 studies of diversity training that used either pre- and post-test assessments or a post-test control group.¹⁴⁶ Most of these studies found improved knowledge of, or attitudes toward, diversity, although a number of those studies found modest or no impact on participants' attitudes toward specific demographic groups.¹⁴⁷ Bezrukova, Aparna, and Jehn's review of the literature finds a trend of positive short-term responses to diversity training but mixed or negative long-term

law" and expand the definition of diversity to include categories not protected by the law).

141. See WILLIAM JOHNSON & ARNOLD PACKER, *WORKFORCE 2000: WORK AND WORKERS FOR THE TWENTY FIRST CENTURY* xiv (1987) ("The shrinking numbers of young people, the rapid pace of industrial change, and the ever-rising skill requirements of the emerging economy make the task of fully utilizing minority workers particularly urgent between now and 2000.").

142. MARY J. WINTERLE, *WORKFORCE DIVERSITY: CORPORATE CHALLENGES*, CORPORATE RESPONSES 21 (1992).

143. 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).

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

145. 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).

146. Kulik & Roberson, *supra* note 145, at 313.

147. *Id.*

responses.¹⁴⁸

Diversity training may be ineffective because it promotes resistance from participants rather than encouraging them to buy into the goal of workplace diversity. A number of case studies find that training can elicit backlash from white men.¹⁴⁹ 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.¹⁵⁰ Experienced trainers report that they often encounter anger and resistance.¹⁵¹ Field and laboratory studies also suggest that training may reinforce stereotypes and exacerbate discrimination.¹⁵² 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 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 managers from internalizing the goals of the training and instead enhance externalization and resistance.¹⁵³

148. KATERINA BEZRUKOVA, JOSHI B. APARNA & KAREN A. JEHN, *Can We Teach Diversity? A Review of Diversity Trainings in Educational and Organizational Settings* 23 (2008) (unpublished manuscript) (on file with author); *see also* Sara Rynes & Benson Rosen, *A Field Survey of Factors Affecting the Adoption and Perceived Success of Diversity Training*, 48 PERSONNEL PSYCHOL. 247, 263 (1995) (finding that human resources professionals who responded to a survey gave “rather modest assessments of long-term success” of diversity training).

149. *See* Heather MacDonald, *Cashing in on Affirmative Action: The Diversity Industry*, THE NEW REPUBLIC, July 5, 1993, at 22, 25 (“As diversity programs proliferate across corporate America, group infighting has become a problem second only to ‘backlash’ by white men.”); Sara Rynes & Benson Rosen, *What Makes Diversity Programs Work?*, HR MAGAZINE, Oct. 1994, at 67, 67 (discussing possible negative outcomes from diversity training, including “backlash by white males”).

150. 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).

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

152. *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).

153. *See* Elliot Aronson & J. Merrill Carlsmith, *Effect of the Severity of Threat on the Devaluation of Forbidden Behavior*, 66 J. ABNORMAL SOC. PSYCHOL. 584, 584 (1963) (noting that inducing compliance by reward or punishment “is an inefficient method of social control, for one must continue to reward or to punish the response in order to ensure continued compliance”); Roland Benabou & Jean Tirol, *Intrinsic and Extrinsic Motivation*, 70 REV. ECON. STUD. 489, 516 (2003) (providing an economic analysis of why “explicit incentive schemes may sometimes backfire, especially in the long run, by undermining agents’ confidence in their own abilities or in the value of the rewarded task”); Leon Festinger & James M. Carlsmith, *Cognitive Consequences of Forced Compliance*, 58 J. ABNORMAL SOC. PSYCHOL. 203, 209–10 (1959) (finding that the greater the pressure that is used to elicit a subject to do or say something contrary to her private

2. 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 in part based on their progress at improving workplace diversity. 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."¹⁵⁴ A company president argued that firms must "place responsibility for achieving equal opportunity objectives where it rightfully belongs: with operating management, with each of us."¹⁵⁵ 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.¹⁵⁶ In a more representative 2002 survey of American mid-sized and large employers, only 4 percent of firms in the sample incorporated diversity efforts into managers' performance evaluations by 1985, but, by 2002, nearly one in five firms took diversity efforts into account.¹⁵⁷

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.¹⁵⁸ However, in firms that have assigned responsibility for diversity to a manager or taskforce, the negative effect does not appear.¹⁵⁹ 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 make managers more likely to exclude rather than include women and minorities. Rather than giving managers tools to improve diversity, both diversity training and performance evaluations 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 rather than empowering managers to act.

opinion, the weaker the subject's tendency to change her opinion to match what she has done or said).

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

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

156. *Equal Employment Opportunity: Programs and Results*, *supra* note 139, at 9.

157. Kalev, Dobbin & Kelly, *supra* note 143, at 599.

158. Dobbin, Kalev & Kelly, *supra* note 144, at 24.

159. Kalev, Dobbin & Kelly, *supra* note 143, at 606-07.

C. 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.¹⁶⁰ White men often have ties to other white men in positions of advantage, but women and minorities are often stymied in job search and advancement by a lack of contacts with people in power.¹⁶¹ Since the early 1980s, diversity managers and workers themselves have called for networking programs, sometimes labeled “affinity groups” or “employee resource groups,” to bring together minorities and women based on shared status characteristics. Companies may offer affinity groups for women, members of specific racial or ethnic groups, gay and lesbian employees, or parents, among other categories.¹⁶² Affinity network activities at various corporations include regular brown bag lunches, on-site meetings with speakers, and lavish national conferences.¹⁶³ Networks provide a place for members to meet with similarly situated colleagues and share information and career advice. Affinity networks spread to about 20 percent of a broad national sample of medium and large firms by 2002.¹⁶⁴

These networking programs have not shown promising effects on inclusion. Qualitative research shows that majority managers can develop negative attitudes toward minority employees’ organizing efforts.¹⁶⁵ One quantitative study demonstrates 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

160. 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).

161. See Herminia Ibarra, *Homophily and Differential Returns: Sex Differences in Network Structure and Access in an Advertising Firm*, 34 *ADMIN. SCI. Q.* 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. MGMT. J.* 673, 674–82 (1995) (surveying research on access to networks based on race).

162. See *Affinity Networks: Building Organizations Stronger Than Their Parts*, NETWORK OF EXECUTIVE WOMEN, 2 (2006), http://www.newnewsletter.org/bestpractices/newreport3_affinity_0407.pdf. For examples of a company’s affinity groups, see, e.g., CISCO SYSTEMS, INC., http://www.cisco.com/web/about/ac49/ac55/about_cisco_employee_networks.html (last visited Jan. 3, 2012).

163. Raymond A. Friedman & Kellina M. Craig, *Predicting Joining and Participating in Minority Employee Network Groups*, 43 *INDUS. REL.* 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).

164. Kalev, Dobbin & Kelly, *supra* note 143, at 599.

165. See Friedman & Craig, *supra* note 163, 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.”).

groups.¹⁶⁶ It may be that networks solidify group boundaries and intergroup tension at the workplace. Some studies, however, suggest that employee network programs can help to mobilize support for new progressive employment programs.¹⁶⁷ Hence, networking programs may have indirect positive effects on workforce diversity, but they do not show significant direct effects.

D. Grievance Systems

Corporations have also instituted formal grievance systems to allow workers to bring complaints about race and gender discrimination. Starting in the late 1960s, personnel experts promoted civil rights grievance procedures based on the 1930s union model.¹⁶⁸ 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.”¹⁶⁹ 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 5,000 workers had grievance procedures.¹⁷⁰ Among large union firms, 54 percent had complaint procedures for non-union workers.¹⁷¹ Some of these grievance systems predated the Civil Rights Act of 1964 and were not designed to address civil rights grievances, but longitudinal studies show that most grievance systems were adopted in response to federal civil rights law. In Edelman’s 1989 survey, 31 percent of firms had installed grievance procedures 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 the government bolstered the enforcement of civil rights law in the early 1970s.¹⁷³

Research provides only weak evidence that grievance procedures can remedy civil rights complaints. On the positive side, in an analysis of evidence

166. Dobbin, Kalev & Kelly, *supra* note 144, at 24.

167. See Forrest Briscoe & Sean Safford, *The Nixon-in-China Effect: Activism, Imitation, and the Institutionalization of Contentious Practices*, 53 ADMIN. SCI. Q. 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 54, at 404–06 (discussing the role of internal advocacy groups in pressuring firms to adopt progressive programs).

168. See RONALD BERENBEIM, *NONUNION COMPLAINT SYSTEMS: A CORPORATE APPRAISAL I* (1980) (discussing the need for employers to create a “meaningful grievance mechanism” for racial and sexual discrimination complaints).

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

170. BERENBEIM, *supra* note 168, at 4.

171. *Id.*

172. Edelman, Uggen & Erlanger, *supra* note 47, at 414–15.

173. Sutton & Dobbin, *supra* note 51, at 802.

from workplace ethnographies, Lopez, Hodson, and Roscigno find that grievance mechanisms are associated with lower levels of sexual harassment, although not with lower levels of harassment of other types.¹⁷⁴ Yet in a 1970 Conference Board study, most personnel managers reported that their grievance systems did not reduce complaints to the government, which may suggest that grievance systems do not remedy problems.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 have the courts recognized their efficacy. In almost five hundred published pre-1986 rulings in civil rights cases where grievance procedures were mentioned, Edelman and colleagues found only four in which judges took workplace grievance procedures into account in assessing liability.¹⁷⁷

E. 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 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 sexual harassment as gender discrimination. Then 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 the Civil Rights Act covered situations where workplaces created a hostile environment for female employees.¹⁸⁰ In 1998, dual Supreme Court decisions favored both grievance procedures and anti-harassment training as measures to address sexual harassment.¹⁸¹

The court rulings did not require specific measures for preventing sexual

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

175. BERENBEIM, *supra* note 168, at 45.

176. Edelman, Uggen & Erlanger, *supra* note 47, at 425.

177. *Id.* at 439.

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. Pub. Serv. Elec. & Gas Co.* 568 F.2d 1044, 1045 (3d Cir. 1977); *Williams v. Saxbe*, 413 F. Supp. 654, 657 (D.D.C. 1976).

180. *Meritor Sav. 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 Indus. v. Ellerth*, 524 U.S. 742, 765 (1998) (finding that 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).

harassment, but personnel experts sketched law-like procedures designed to convince both managers 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 sexual harassment.¹⁸³ Human resources experts also promoted training for employees and managers. In 1991, the *Wall Street Journal* reported that anti-harassment training had nearly saturated the Fortune 500.¹⁸⁴ 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.¹⁸⁵

As with grievance procedures, there is little evidence that the training prevents sexual harassment. Bisom-Rapp's review of scholarly research unearths no evidence that training reduces the incidence of harassment.¹⁸⁶ Just as diversity training and grievance procedures have not been found to improve workplace diversity in general, programs that are specifically designed to stem sexual harassment have not been shown to have the intended effects.

Our review of numerous studies shows that some of the most popular corporate diversity programs, from diversity training to bureaucratic hiring procedures to networking, do not fulfill their promise of increasing the representation of women and minorities. Corporations may laud these programs as evidence of their commitment to diversity, but they fail to produce tangible, on-the-ground results.

V.

PROGRAMS THAT HAVE INCREASED WORKFORCE DIVERSITY

We now turn to programs that research has shown to be effective at promoting workforce integration: targeted recruitment efforts, skill and management training, mentoring, and diversity officers and taskforces. Our

182. See, e.g., Jeri Spann, *Dealing Effectively with Sexual Harassment: Some Practical Lessons from One City's Experience*, 19 PUB. PERSONNEL MGMT. 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 PERSONNEL 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 in Employment*, 20 HUM. RESOURCE MGMT. 11, 15 (1981) ("Once a court action has been instituted against an employer, there is little a manager can do, so it is advisable to establish and maintain a preventive program before suit is filed.").

184. Joann S. Lublin, *Sexual Harassment is Topping Agenda in Many Executive Education Programs*, WALL STREET J., Dec. 2., 1991, at B1.

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

186. 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).

review of the research suggests two conclusions about what makes these programs effective. First, it appears that diversity programs succeed when they use active measures to diversify the pipeline. 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 in solving the problems of identifying, appointing, and retaining women and minorities.

A. 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 anti-discrimination legislation of the 1960s was to install targeted recruitment and training programs to increase opportunities for minorities.

Many leading firms—such as Lockheed, Procter & Gamble, and 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.¹⁸⁷ After the civil rights revolution, firms extended these programs to target minority job candidates, and America's historically black colleges soon faced a swell of recruiters. Lockheed brought busloads of black college students from Tuskegee Institute in Alabama on recruitment visits to their Georgia plant and hosted visits by counselors from segregated black high schools.¹⁸⁸ Howard University saw 400 recruiters visit in 1964 and again in 1965 for a graduating class of 450.¹⁸⁹ A 1967 Bureau of National Affairs survey found that among leading employers, 31 percent had created new recruitment systems for blacks between 1965 and 1967.¹⁹⁰ More than half of the firms were now advertising through organizations like the NAACP and the Urban League, while a third sent recruiters to predominantly black high schools and colleges and a fifth recruited at women's colleges.¹⁹¹

Firms also created training programs with the goal of helping women, African-Americans, and Latinos move into skilled jobs and management positions. As of 1960, most companies had not enrolled any women or minorities in management training, according to Bureau of National Affairs studies, but by 1967, 31 percent of companies offered management training and

187. Interview by Joyce A. Patterson with Hugh L. Gordon, Pers. Manager, Lockheed, at Kennesaw State Univ. 10–11 (July 18, 2000) (transcript available) (discussing Lockheed's outreach to colleges and high schools).

188. 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).

189. Gene Grove, *When a 'No. 2' Applies for a Job*, N.Y. TIMES, Sept. 18, 1965, at SM32.

190. *A Current Look at: (1) The Negro and Title VII, (2) Sex and Title VII*, supra note 109, at 1.

191. *Id.* at 8, 10.

21 percent had special programs to enroll African-Americans in training.¹⁹² By 1965, GM enrolled minorities in its apprenticeship programs and its own engineering school.¹⁹³ In Newark, blacks made up 80 percent of Western Electric's training cohort by 1967.¹⁹⁴ By 2000, 68 percent of firms offered management training and 20 percent of all firms targeted women or minorities for inclusion in this training.¹⁹⁵

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.¹⁹⁶ Edelman and Petterson similarly find that active recruitment programs are associated with increased workforce diversity.¹⁹⁷ 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.¹⁹⁸ These "identity-conscious" practices aim to increase 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.¹⁹⁹ To be sure, some studies show that training programs do not always live up to their full potential to reduce gender and racial gaps. Even though large firms have made high-profile initiatives to extend training to a more diverse group of participants, female and minority employees often lack access to these training programs.²⁰⁰ Still, research demonstrates that recruitment and training programs have a positive impact on workplace integration overall.

192. *Id.* at 18.

193. 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).

194. *More Jobs for Negroes*, *NATION'S BUSINESS*, Sept. 1967, at 36.

195. Frank Dobbin, Dan Schrage & Alexandra Kalev, *Stuck in Neutral: Consequences of Bureaucratic Equal Opportunity Innovations* 34 (unpublished manuscript) (on file with authors).

196. Harry J. Holzer & David Neumark, *What Does Affirmative Action Do?*, 53 *INDUS. & LAB. REL. REV.* 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").

197. Edelman & Petterson, *supra* note 117, 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").

198. Konrad & Linnehan, *supra* note 68, at 805-06.

199. *Id.* at 790.

200. 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*, 25 *RES. SOC. STRATIFICATION & MOBILITY* 323, 326 (2007) (finding that Hispanic workers are less likely than white workers to receive job training).

B. Mentoring Programs

Research shows that employees who have significant mentoring relationships receive more promotions, earn higher pay, and are more satisfied with their salaries and benefits than those who receive less extensive mentoring.²⁰¹ 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.²⁰² Mentors confer key career resources on their protégés, such as visibility and access to prestigious tasks, which workers who do not have 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.²⁰³

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.²⁰⁴ A study from the early 1980s of nine firms famed for their commitment to fairness found that every one promoted mentoring.²⁰⁵ By the early 1990s, two studies showed that 20 to 30 percent of America's biggest firms had formal mentoring programs.²⁰⁶ In a broader sample of American firms, only 4 percent had special mentoring programs for women and minorities by 1990,

201. George Dreher & Ronald Ash, *A Comparative Study of Mentoring Among Men and Women in Managerial, Professional, and Technical Positions*, 75 J. APPLIED PSYCHOL. 539, 539 (1990).

202. See Emilio J. Castilla, *Social Networks and Employee Performance in a Call Center*, 110 AM. J. SOC. 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 HARV. BUS. REV. 89 (1978); Gerard R. Roche, *Much Ado About Mentors*, 57 HARV. BUS. REV. 4 (1979).

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

204. See David A. Thomas, *The Truth About Mentoring Minorities: Race Matters*, 79 HARV. BUS. REV. 99 (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 J. HUM. RESOURCES 220, 221 (1996) (noting that advocacy groups have proposed mentoring programs in academic fields in which women are underrepresented).

205. Susan Vernon-Gerstenfeld & Edmund Burke, *Affirmative Action in Nine Large Companies: A Field Study*, 62 PERSONNEL 54, 57 (1985) ("The companies also deliberately encourage mentor relationships between seasoned managers and new minority and female managers.").

206. DOBBIN, *supra* note 1, at 153; JOANNE MILLER, *CORPORATE RESPONSES TO DIVERSITY* 12 (1994) (reporting that 16 percent of companies that offered targeted programs for minorities included a mentoring component, and 20 percent of companies that offered targeted programs for women included mentoring).

but 10 percent offered mentoring programs by 2002.²⁰⁷

In our studies, mentoring programs result in strong gains in the numbers of black women and Hispanic and Asian men and women in management.²⁰⁸ In a report prepared for a taskforce of the National Academies of Science, we examine the effects of mentoring programs in research and development-intensive industries in particular.²⁰⁹ We demonstrate 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 seven historically disadvantaged groups in management (white women and black, Hispanic, and Asian men and women).²¹⁰ Other studies demonstrate similar positive effects of mentoring on African-Americans.²¹¹ On the negative side, one study finds that cross-race mentoring relationships are harder to form and maintain.²¹² Another study finds 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 protégés.²¹³ These two studies indicate that corporations designing mentoring programs should consider the identities of both mentors and mentees. Overall, however, mentoring programs appear to be highly effective in helping white women and members of minority groups move into management positions.

C. *Programs that Establish Authority for Diversity Management*

Large corporations have often 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, by the Diversity Manager, Diversity Department, or Diversity Council in the 1980s.²¹⁴ Assigning someone to take charge of diversity builds on the oldest principle from management theory: to achieve a new goal, the first step is to put someone in charge. 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.

207. Kalev, Dobbin & Kelly, *supra* note 143, at 599.

208. Dobbin, Kalev & Kelly, *supra* note 144, at 24.

209. Frank Dobbin & Alexandra Kalev, *Diversity Management and Managerial Diversity 2* (2006) (unpublished manuscript) (on file with author).

210. *Id.* at 3.

211. *See* Thomas, *supra* note 204, at 101 (finding that high-potential minority employees who had mentors were more likely to stay motivated and maintain a high level of performance).

212. *Id.* at 104–06.

213. Neumark & Gardecki, *supra* note 204, at 243–45.

214. *See generally* Erin Kelly & Frank Dobbin, *How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961 to 1996*, 41 AM. BEHAV. SCI. 960 (1998).

1. *Diversity managers and departments*

In the face of statutes, bureaucratic regulations, executive orders, and case law, many corporations in the 1970s hired full time staff members or created new departments to manage their equal opportunity and diversity programs.²¹⁵ According to consultants, a full-time diversity staffer can focus attention on managing diversity. A recent study shows that the appointment of a full-time diversity staffer in the average firm leads 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.²¹⁶ Diversity managers have a positive effect in part because they play a role in ensuring the effective implementation of other corporate equality and diversity programs.²¹⁷

2. *Diversity taskforces*

Diversity consultants have also promoted diversity “taskforces” that can engage managers from across the firm in seeking solutions to stubborn problems of recruitment, retention, and promotion.²¹⁸ The taskforces hold regular meetings among people from different departments to talk over problems faced by the firm and brainstorm solutions.²¹⁹ Our own survey shows that taskforces began to spread in the wider population of firms in the late 1980s and reached 20 percent of firms by 2002.²²⁰ An analysis of national survey data shows that following the establishment of diversity taskforces, firms see significant increases in white women and black, Hispanic, and Asian-American men and women in management.²²¹ Furthermore, the presence of a diversity taskforce in an organization improves the operation of most other diversity programs.²²²

D. *Discussion: Successful Innovations*

What makes these various innovations successful? Broadly speaking, we can identify several mechanisms by which targeted recruitment efforts, skill and

215. *Id.* at 964–66.

216. Kalev, Dobbin & Kelly, *supra* note 143, at 605.

217. *Id.* at 606–07 (“Diversity training, evaluation, networking, and mentoring programs are more effective in firms with responsibility structures.”). Edelman and Petterson show that diversity departments increase gender and racial diversity by promoting recruitment programs, which in turn increase workforce diversity. *Supra* note 117, at 130.

218. See SARAH B. GRANT & MARY C. GENTILE, HARVARD BUSINESS SCHOOL CASE 9-394-202: KURT LANDGRAF & DU PONT MERCK PHARMACEUTICAL COMPANY (A), 3–4 (Harvard Business School Press 1995) (presenting a case study of one company’s use of a diversity taskforce).

219. See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 524–25 (2001) (describing systems in which specialists across divisions compare practices to identify recurring problems and share solutions).

220. Kalev, Dobbin & Kelly, *supra* note 143, at 599.

221. Dobbin, Kalev & Kelly, *supra* note 144, at 24.

222. Kalev, Dobbin & Kelly, *supra* note 143, at 607.

management training, mentoring, and diversity officers and taskforces promote workplace diversity. First, it appears that 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 these candidates with the right skills through training.

Mentoring, taskforces, and the presence of diversity staff members all have one thing in common: they directly engage managers in finding strategies for improving workforce diversity. We suspect that one reason this makes innovations successful is that it prevents decoupling. Decoupling may occur when executives establish programs in order to create an appearance of compliance with no intention to alter their daily routine. When managers ignore innovations and go on with business as usual, the innovations become decoupled from everyday practice and have no effect on it. Diversity managers and taskforces may reduce decoupling.²²³ 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.²²⁴

In interviews, managers and executives tell us that diversity managers and taskforces are effective because they identify specific problems and remedies.²²⁵ 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 in” to the goal of diversity. Evidence from quantitative and qualitative research shows 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.

VI.

CONCLUSION

Since the 1960s, American companies have adopted a series of employment programs that have altered the way managers recruit, hire, discipline, promote, compensate, and discharge workers. Corporations and their personnel officers

223. See Meyer & Rowan, *supra* note 98, at 358 (discussing the link between decoupling and maintaining face); Edelman & Petterson, *supra* note 117, 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).

224. Klev, Dobbin & Kelly, *supra* note 143, at 607.

225. Interviews on file with authors.

selected the specific programs from the start, because federal regulations outlawing employment discrimination left firms largely to their own devices when it came to compliance. One consequence is that the adoption 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 mid-sized to large firms have adopted it.²²⁶ 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.²²⁷

Thus the first question we have addressed concerns the forces that lead firms to behave as progressive actors, embracing equal opportunity and diversity programs. 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, in addition to 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 requirements. Adoption of new diversity innovations has become highly path-dependent. Firms in less-progressive industries, and those that do not have progressive histories, are less likely to join the bandwagon.

The second question we have addressed 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.²²⁸ Are the employment programs that corporations have continued to install since Reagan cut back federal enforcement contributing to greater opportunity for 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 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 programs are successful because they prevent decoupling and improve implementation of other diversity innovations.²²⁹ While assigning an individual or group

226. Kalev, Dobbin & Kelly, *supra* note 143, at 599.

227. *Id.*

228. Tomaskovic-Devey, Zimmer, Stainback, Robinson, Taylor & McTague, *supra* note 8, at 582–84.

229. Kalev, Dobbin & Kelly, *supra* note 143, at 606–07.

responsibility for promoting diversity is effective, measures that individualize the blame for disparities, such as diversity performance evaluations and diversity training, are not effective. Those popular, and expensive, remedies have shown little evidence of success.

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 stake in the promotion of diversity. Unlike diversity performance evaluations and training, mentoring programs give managers a positive role. Mentoring programs are more effective at fostering managerial diversity than networking programs, which create social ties between workers in similar lower-level positions. By contrast, mentoring programs help women and minorities build ties with those in powerful positions.

More research is needed, to be sure, on why popular programs such as diversity performance evaluations, diversity training, and affinity networks have not promoted workforce diversity. Research to date is consistent with the view that these programs fail because they identify managers as the source of organizational bias, rather than as the solution to the problem of diversity management. Further research is also needed to understand why formal hiring and promotion systems have not been shown to lead to increases in workforce diversity—and yet continue to remain hugely popular.

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 to corporate diversity missions and goals, and we need to learn more about the ways managers both enhance and forestall implementation.

Our findings have several tangible public policy implications. First, 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 to 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 a firm's propensity to embrace diversity programs.²³⁰ 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 effective diversity policies.

Second, our analysis shows that 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 better design public policies and order more effective injunctive relief

230. Dobbin, Kim & Kalev, *supra* note 54, at 393.

in discrimination cases. A recent survey shows that twice as many firms have diversity training programs, which have proven ineffective, as mentoring programs, which have proven highly effective.²³¹ Meanwhile, many programs that have proven effective in the past, notably targeted recruitment for women and minorities and special programs to enroll women and minorities in management training, have lost their cachet in the corporate world. Our research suggests that firms should rethink their diversity program choices in light of the evidence, abandoning ineffective programs for effective ones. Our study provides a guide not just for how corporations can spend their diversity resources most efficiently, but also for how they can best carry on the legacy of the civil rights movement and improve the position of historically disadvantaged groups in the workplace.

231. *Id.* at 392 (finding that about 20 percent of firms in the sample have diversity training, while only about 10 percent of firms have mentoring programs).

