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The Origins and Legacy of the Civil Rights Act of 1964

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Abstract

Purpose This paper provides a historical review of the origins and legacy of the 1964 Civil Rights Act through the lens of the African American Civil Rights and the Women's Rights Movements.

Design/Methodology/Approach The historical narrative was developed using psychological, historical, and legal source material.

Findings While the Civil Rights Act did not immediately change the landscape of equality in the American workplace, it signaled a fundamental shift in the treatment of racial and gender diversity. In concert with other social, legal, and political shifts, it paved the way for progress on issues like affirmative action, pregnancy discrimination, and sexual harassment.

Implications Without an understanding of the historical development and consequences of the Civil Rights Act, it is easy to lose sight of how the act has shaped the understanding of equality in the American workforce. Further, the way in which rights movements evolved alongside each other illuminates a need to focus not only on equality between majority and minority groups but also on issues of equality among minority groups.

Originality/Value Previous reviews of the Civil Rights Act and rights movements tend to focus narrowly on one issue or group, and approach that concern from a single academic discipline. In contrast, we provide a review of the roots and consequences of the Civil Rights Act based on the developments of two rights movements, and draw from sources in psychology, history, political science, and legal perspectives to provide a broader picture of this landmark legislation.

Keywords Civil rights act of 1964 · Equal employment opportunity · Race · Ethnicity · Gender · Civil rights · Workplace

There is no antidote against the opium of time, which temporally considereth all things: our fathers find their graves in our short memories, and sadly tell us how we may be buried in our survivors. (Thomas Browne, *Hydriotaphia* 1658/1977)

Introduction

The Civil Rights Act of 1964 (henceforth, CRA) was a watershed moment in American history. Its passage summarily outlawed the systematic, far-reaching, and in some cases, legally sanctioned discrimination that had prevailed for decades across a number of areas of American society. The passage of the CRA was the result of a multitude of forces, including changes wrought by major historical events, social movements, and state and federal legislation. In turn, the Act was a defining moment that irrevocably changed the future of American society. The current paper offers a historical review of the CRA with a focus on Title VII, which prohibited workplace discrimination based on race, color, religion, sex, or national origin. We trace the

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historical roots and impact of Title VII by exploring the interplay of social, political, and legal forces that shaped the modern history of the American workplace.

While a historical review may not be the normal fodder of psychological journals, we feel that a narrative review of the CRA and Title VII provides several benefits. As academicians and professionals, it is important for us not only to understand the content of the laws and regulations related to equality and discrimination but also the historical context of these laws. As suggested by our opening quote, the passage of time can dull our collective memories of the circumstances surrounding the passage of the CRA—in particular, the widespread institutional racism and sexism of the period and the efforts of key groups and individuals in bringing about much-needed change. Forgetting the historical context surrounding the CRA and subsequent legislation may result in an underestimate of the effectiveness and importance of the CRA and related laws in sustaining current American society (Hanges et al. 2011; Herring 2006). It is impossible to see the impact of effective laws when the conditions that led to their passage and implementation are forgotten or minimized. Indeed, effective legislation creates the false impression that it is no longer relevant today. Further, a historical perspective allows us to understand how the expression of racial and gender discrimination shifts, highlighting current and forthcoming concerns in view of their historical development (e.g., the shift from explicit to implicit workplace discrimination). Law and society evolves based on and grounded in history, not independent of it. We hope that this review will not only provide context for past discrimination and progress, but will also highlight the distance we must still traverse to achieve full workplace equality.

The current review goes beyond previous work by situating legal events within a broader history that includes employment trends and social movements. While previous works, including Gutman et al. (2011) and Hanges et al. (2013), have outlined the legislative, executive, and judicial actions and standards impacting fair employment practices, these works do not discuss the broader employment and social trends surrounding these topics. Further, the current review pulls from sources within psychology, law, sociology, political science, history, African American studies, and gender studies to provide a contextual grounding of past and current Equal Employment Opportunity (EEO) laws. This contextual approach provides background on the movements that culminated in the passage of the CRA and other civil rights legislation, as well as their impact on employment trends. This broader, contextualized view provides key evidence of the historical and continued need for EEO law and policy.

While the CRA sought to remove discrimination based on race, color, religion, sex, or national origin in American

society, we limit this review to a discussion of racial and gender equality movements. This decision was made based on space limitations as well as the salience of these two movements. Further, the lion's share of Equal Employment Opportunity Commission (EEOC) charges filed between 1992¹ and 2011 alleged discrimination based on race or gender (Office of Research, Information and Planning 1997, 2012a), suggesting that a historical discussion focused on racial and gender equality in the workplace will provide a reasonably accurate reflection of the status of fairness in organizations. While we do not intend to ignore or minimize the struggles and victories of other racial and ethnic groups, we focus principally on the African American civil rights movement due to both space limitations and the long history of this group's struggle for equality in the American workplace. We address other race and ethnicity-based movements in the discussion, and encourage readers to pursue additional sources, including Gregory (2011) and Takaki (2008) for reviews of discrimination and equality movements based on religion, color, or national origin, and Espiritu (1992), Rosales (1997), and Cobb and Fowler (2007) for reviews of the Pan-Asian American, Chicano, and Native American civil rights movements, respectively.

The Tension between Tradition and Change: Rights Movements Prior to 1964

Racial Discrimination and the Civil Rights Movement

Segregation now, segregation tomorrow, segregation forever. (George Wallace 1963)

During his 1963 inaugural address as the governor of Alabama, George Wallace declared his support for continued racial segregation. His attitude reflected centuries of institutionalized discrimination against African Americans, which began with the importing of African slaves in the British colonies. The rise in tobacco production, which required a considerable labor force, led to a rapid increase in the slave population in the early 1700s (Klarman 2007). Quaker condemnation of slavery in the north during the mid-1700s and the struggle for American independence from British rule led to the adoption of emancipation laws in northern states.

With the invention of the cotton gin in the 1790s and expansion into the American West, slavery created conflicts between the north and south. However, northern states opposed attempts to expand slavery into new

¹ Unfortunately, we could not assess whether this was true before 1992 because data on lawsuits were not available from the EEOC website prior to this date.

territories largely to protect the West for Caucasian Americans (Klarman 2007). Additionally, even free African Americans were subject to racism, including segregation and disenfranchisement; for example, competition between free African Americans and immigrants for menial positions culminated in a series of anti-African American mob attacks between 1830 and 1850 (Klarman 2007; Robinson 1997).

The conflict over slavery came to a head with Abraham Lincoln's election in 1860 and the Civil War. In 1862, Lincoln issued the Emancipation Proclamation, an executive order that freed slaves in rebelling states. While race riots broke out in some northern states subsequent to its passage due to fears that emancipation would drive down wages as freed slaves migrated north (Klarman 2007), northern attitudes toward emancipation shifted as former slaves and African American freemen joined the Union army (Riches 2004). Following the Civil War, the Thirteenth Amendment, prohibiting slavery in the U.S., was ratified. In response, southern states passed "black codes," limiting the freedoms of emancipated slaves and in some cases requiring them to sign agricultural labor contracts (Klarman 2007). Northern Republicans reacted by drafting the Civil Rights Act of 1866 and the Fourteenth Amendment, which guaranteed equal protection to all citizens and included provisions that initiated Reconstruction (Klarman 2007).

While Reconstruction resulted in significant gains for African Americans, including the Fifteenth Amendment,² discrimination persisted (Robinson 1997). Southern African Americans were exploited in their positions working for Caucasian American landowners (Goluboff 2007) and most northern states still denied African Americans the right to vote. Despite the promise of the Fifteenth Amendment, its protections were narrow, failing to prohibit poll taxes, literacy tests, or property requirements frequently used to bar African Americans from voting (Goluboff 2007). While African Americans were often disenfranchised in the north, they were able to vote and be elected in the south. Consequently, the enfranchisement and election of African Americans officials in the South enhanced the perception that northern Republicans had used the Reconstruction to institute "black rule," a myth that united Caucasian Southerners and sparked the inception of white supremacist groups like the Ku Klux Klan (Riches 2004).

Economic recession and class conflict ended Reconstruction in 1876. Newly elected Southern Democrats rolled back Reconstruction protections, limiting the rights of African American laborers, formalizing systems of

segregation in education, and disenfranchising African Americans. Combined with the escalation of mob violence and lynching, the institution of Jim Crow laws drove African Americans north during the 1890s. However, job opportunities for African Americans in the North were limited, and competition for jobs ignited racial tension and mob violence. The Supreme Court decision in *Plessy v. Ferguson* (1896) upheld the separate-but-equal doctrine and spurred the spread of segregation throughout the U.S., thereby further limiting employment opportunities for African Americans (Klarman 2007).

With the entrance of the U.S. into World War I, opportunities to fill jobs left by Caucasian enlistees drew more African Americans to urban and Northern settings (Goluboff 2007; Klarman 2007), though segregation in employment, housing, and education, as well as violence against African Americans, persisted (Cashman 1991). During the Great Depression, African Americans still faced discrimination in hiring, pay, and the receipt of welfare assistance, despite some relief from the New Deal (Cashman 1991; Goluboff 2007; Hall 2005). Nevertheless, racial attitudes became slightly more progressive, and groups like the National Association for the Advancement of Colored People (NAACP) instructed African Americans about their rights and mobilized early grassroots resistance (Klarman 2007).

Entry into World War II threw discrimination in the U.S. into sharp relief; many questioned how the U.S. could oppose the Axis powers while denying the rights of its own citizens, especially as many African American men joined the still-segregated armed services (Cashman 1991). The conscription of Caucasian males created economic opportunity for African Americans back home and enlisted African Americans learned valuable skills (Klarman 2007). The war also sparked an increasingly vocal movement for African American rights, ranging from grassroots resistance of segregation to mass protests (Sugrue 2012). For example, A. Phillip Randolph, the leader of the Brotherhood of Sleeping Car Porters, began organizing a March on Washington to protest racial discrimination in defense industries (Jones 1977). In response, Roosevelt issued Executive Order 8802 (1941), which encouraged "full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin" and established the first EEO enforcement agency, the Fair Employment Practice Committee (FEPC; Hanges et al. 2013).

Despite these steps, a difficult road still lay ahead of civil rights activists at the war's end. African American workers were dismissed without benefits to create job openings for Caucasian veterans (Riches 2004). Additionally, although President Truman supported the creation of civil rights legislation (Shull 1999) as well as a permanent

² The Fifteenth Amendment prohibits denying a citizen the right to vote based on race, color or previous condition of servitude.

FEPC, he did not support its attempts to change the discriminatory hiring policies of the Capital Transit Company (Riches 2004). However, Truman's support for civil rights increased through his presidency. He assembled a special committee on civil rights during his first term and issued Executive Order 9981 in 1948, which integrated the armed forces in the face of threats of a draft boycott by A. Phillip Randolph.

The civil rights movement picked up speed during the Cold War as critics at home and abroad again questioned America's commitment to freedom (Dudziak 1999). Finally, the Supreme Court struck a major blow to segregation in *Brown v. Board of Education* (1954), in which NAACP lawyer Thurgood Marshall successfully attacked the "separate but equal" provision established by *Plessy v. Ferguson* (1896). While African Americans celebrated this victory, grassroots White Citizens Councils spread in the South, vowing to defend segregation, and a coalition of Republicans and Southern Democrats issued the Southern Manifesto in 1956, which defended states' rights to refuse desegregation (Cashman 1991).

Following the *Brown* decision, grassroots groups of African Americans began challenging segregation, mounting major mass protests. The Montgomery Bus Boycott, organized as a one-day protest after the arrest of Rosa Parks, grew into a year-long struggle against the city's segregation in transportation. The boycott spread to other cities, and Martin Luther King, Jr. emerged as a leader of nonviolent civil rights protests (Riches 2004). The attempt to integrate Little Rock Central High School in Arkansas focused national attention on civil rights; as nine African American students attempted to enter the segregated school in 1957, governor Orval Faubus called the Arkansas National Guard to block the entrance. In response, Eisenhower called in the 101st Airborne Division of the Army to protect the students. The mass movement for civil rights and the government's support angered segregationists, who retaliated with threats and attacks on civil rights supporters (Cashman 1991). The Civil Rights Act of 1957, the first civil rights bill since Reconstruction, was filibustered by South Carolina senator Strom Thurmond but eventually passed, albeit with much of its original language removed.

Protests continued in the 1960s. In early 1960, students initiated sit-ins in nearly 80 communities (Oppenheimer 1989), signaling the involvement of a younger generation in the civil rights struggle. The Nashville sit-in, involving over 500 students, achieved integration at city lunch counters and the placement of African American workers in non-menial positions (Riches 2004). After Kennedy took office, he supported civil rights through executive action rather than legislation. His 1961 Executive Order 10925 took important steps to prevent racial discrimination in

employment by increasing contractor accountability and creating the President's Committee on Equal Employment (Hanges et al. 2013). This order required government contractors to avoid discriminatory practices and to take affirmative action to insure that applicants were treated without regard to race, creed, color, or national origin.

In summary, there were many legislative attempts to rectify racial discrimination and inequity in the U.S. after the Civil War. Unfortunately, there were few readily observable positive consequences of this legislative action. Between 1860 and 1960, passions on both sides of the issue became heated; as the civil rights protests of the 1960s gained traction, the segregationists ratcheted up their resistance. The outrage and mob violence in response to the Freedom Rides of 1961, the integration of the Universities of Alabama, Mississippi, and Georgia, and the resultant protests illustrated the extreme resistance of segregationists.

Women's Rights: From Suffrage to the CRA

The true republic—men, their rights and nothing more; women, their rights and nothing less. – Motto of The Revolution, weekly women's rights journal published by Susan B. Anthony and Elizabeth Cady Stanton (Castle 1973)

As with the African American civil rights movement, forces pushing for gender equality began building long before the CRA. The first wave of American feminism began with the 1848 Seneca Falls Convention in New York, which resulted in a declaration outlining grievances and set the stage for the women's rights movement. Annual national conventions on women's rights were held from 1850 to 1860. The early suffrage movement was in part inspired by the abolitionist movement, which made suffrage leaders aware of the legal limitations on their rights to property and earnings (Moon 2011). The conclusion of the Civil War further destabilized gender as well as racial hierarchies, though these changes were insufficient to overcome the paternalism and protectionism that characterized gender relations at the time. Nevertheless, early suffrage efforts yielded some nearly immediate results, with Wyoming passing the first women's suffrage law in 1869 and a handful of other states following suit. However, the Supreme Court ruled that the Fourteenth and Fifteenth Amendments did not apply to women (Shull 1999).

These early efforts to improve women's position extended beyond voting rights. The Women's Christian Temperance Union (WCTU) pushed for laws to protect women and children in areas such as education and child labor (Moon 2011). Other social feminist movements in the late 1800s and early 1900s sought to protect women from employment abuses. The National Woman's Trade Union

League, established in 1903, advocated for improved working conditions for women, and a Supreme Court ruling upholding maximum working laws for women triggered a flurry of other protectionist statutes (Berkeley 1999), including mandatory breaks and prohibitions against night work. Proponents of protectionist labor legislation saw hazardous working environments as harmful to women's abilities to bear children (Kelly 1922). Despite their goal to protect women, many of these groups held white supremacy views (Berkeley 1999; Moon 2011). Nevertheless, women's rights gained traction in the African American community as well; in 1896, the National Association of Colored Women was formed. Women also achieved representation in national politics, with Jeannette Rankin being elected to the House of Representatives in 1917.

The U.S. entry into World War I in 1917 marked a period of rapid change for women's rights. Women were officially allowed to serve in the military for the first time. World War I also provided other job opportunities for women, who were able to work in munitions factories and other industrial sectors that usually employed men. The massive influx of women into industrial settings sparked the creation of the U.S. Women's Bureau, which used the war as an impetus for addressing public health and safety issues in industry (Moon 2011). Finally, in 1920, the 19th amendment, which granted women the right to vote, was signed into law, ending the first wave of feminism. After achieving suffrage in 1920, the gender equality movement underwent a period of diffusion through the 1920s and the Great Depression (Kleinberg 1999). The lack of large scale activity was in part due to disagreement over the focus and future of the movement and in part because the women's movement had been accused of being subversive, unpatriotic, and communist (Kleinberg 1999; Moon 2011).

The United States' involvement in World War II in 1941 reignited the women's rights movement, as women entered the workforce at an unprecedented rate to fill jobs left open by enlisted soldiers and serve in the military themselves (Anderson 1981). Between 1940 and 1945, 5 million women were recruited, trained, and employed in all sectors of the economy (Moon 2011), and the number of working women rose by 50 percent over the course of the war (Kleinberg 1999). The Equal Rights Amendment (ERA), which was first proposed in 1923 and stated that equality under the law should not be based on sex, gained momentum during the war due to greater female involvement in industry, though it sparked an old debate between protectionist feminists and equal rights feminists (Berkeley 1999; Moon 2011).

However, once the war ended, widespread pressure pushed women to return to traditional roles. Women who filled the labor gap during the war were fired to create jobs

for veterans (Hazou 1990; Kleinberg 1999; Rupp and Taylor 1987), and it was argued that women endangered their femininity and put their families at risk for delinquency when they competed with men (Berkeley 1999). A 1946 Gallup Poll indicated that 80 % of Americans believed that a woman should not work if her husband was employed (Weatherford 1997). Nevertheless, female labor activists remained active after the end of the war by unionizing women who had moved to female-sector jobs like food service, retail, and telecommunications, and pushing for equal pay (Berkeley 1999; Moon 2011). Despite pressures toward traditional gender roles, feminist literary perspectives gained influence in the 1950s and 1960s and changes also emerged in norms related to women's reproductive health, eventually culminating in federal approval of the birth control pill in 1960.

While major social changes for gender equality were realized after World War II, progress was slower on the legal front. Congress established the Civil Rights Commission in 1957, however, this agency focused on issues related to race. It took nearly a decade for the Commission to view gender equality as an enforceable civil right (Weatherford 1997). Women were also still subject to a number of protectionist laws and policies, including working hour laws and prohibitions on night work. Consequently, women were relegated to predominately low-status, low-paying, and traditionally feminine jobs (Kleinberg 1999). Gender inequality in employment had severe economic consequences for women. In 1965, women earned 58 cents for every dollar earned by men (Berkeley 1999). Gender inequalities also persisted in education; in 1950, the proportion of female students in higher education was lower than at any point since 1870 (Kleinberg 1999).

Despite continued resistance to women's rights, legal changes in favor of women's rights moved forward under Kennedy's presidency. In 1961, Kennedy established the first Presidential Commission on the Status of Women, chaired by Eleanor Roosevelt. Congress also passed the Equal Pay Act in 1963, which outlawed pay discrimination based on gender. While this latter act signaled forthcoming change in the legal system regarding gender inequalities in employment, it was difficult to enforce and largely ineffective (Berkeley 1999). This same year, efforts to obtain women's rights were further energized by Betty Friedan's *The Feminine Mystique* (1963), an influential book which outlined the push for traditional gender roles and women's unspoken but deep unhappiness in these roles.

In summary, the power of social pressure allowed the women's movement to accomplish its mission of obtaining women's right to vote by 1920. Unfortunately, the movement was not very successful in overturning protectionist employment laws or extending laws to address workplace equality. Indeed, as with the African American civil rights

movement, legislation passed after the 1920s was largely ineffective. Social forces after this time also worked against the attainment of workplace equality; however, by the end of the 1950s and in the early 1960s, the social pressure for gender equality was growing.

The Civil Rights Act of 1964

We are confronted primarily with a moral issue. It is as old as the scriptures and as clear as the American Constitution. The heart of the question is whether all Americans are afforded equal rights and equal opportunities, whether we are going to treat our fellow Americans as we want to be treated. (John F. Kennedy, June 11, 1963)

Following mass protests in the African American community and subsequent violent responses, Kennedy laid the groundwork for a civil rights bill in a series of speeches over the summer of 1963 (Wright 2005). In November of 1963, shortly after committing to push through the CRA, Kennedy was assassinated. While Kennedy had consistently championed equal rights, little was known about the commitment of his successor, Lyndon B. Johnson. Despite this uncertainty, any turmoil within the Civil Rights Movement caused by Kennedy's assassination was brief; on November 27th, Johnson called for the passage of the CRA as a monument to Kennedy (Wright 2005).

The CRA, as proposed to the House of Representatives, initially only included provisions for racial equality. Howard Smith, an avowed detractor of the act, proposed the addition of sex-based protections on February 8, 1964. Despite the historical connection between the African American civil rights and women's rights movements, conflict erupted among members of the House following Smith's proposition. Representative Martha W. Griffiths of Michigan stated that, "I feel as a white woman when this bill has passed this House and the Senate and has been signed by the President that white women will be the last at the hiring gate" (Remarks of Representative Griffiths 1964). Others voiced concerns that the amendment was inappropriate. Edith Green of Oregon argued "for every discrimination that has been made against a woman in this country, there has been 10 times as much discrimination against the Negro" (Remarks of Representative Green 1964). Despite concerns over this addition, the Act passed through the House with the gender addendum intact.

Scholars continue to debate Smith's intent in introducing the alteration—was he motivated to sabotage the bill or did he genuinely wish to advance women's rights? While it is commonly argued that Smith intended to sabotage this bill (e.g., Gregory 2003), there were indications that he

might have truly wished to advocate for women's rights. Smith had strong ties to the National Women's Party, and had been carefully lobbied by the group prior to the introduction of this amendment, implying that he could have aimed to further women's rights (Osterman 2009). Subsequent to its passage through the House, Johnson employed his considerable political prowess to push the CRA into law, working with civil rights groups to campaign the Senate (Wright 2005). After a 54-day filibuster, a substitute bill was drafted and introduced to the Senate. While this bill was somewhat weaker than the bill presented by the House, it included Title VII, which protected the rights of women and racial minorities in the workplace. Finally, after a total of 57 working days discussing the bill, on July 2, 1964, Johnson signed the compromise CRA, passing it out of the Senate and into law.

The Legacy of the CRA

Promises Unfulfilled: America and Race Post-CRA

All we say to America is, 'Be true to what you said on paper.' (Martin Luther King, Jr., 1968)

The CRA signaled an unprecedented victory and early Supreme Court case rulings, such as *Griggs v. Duke Power Co.* (1971), indicated that the CRA was different from previous legislation. Additionally, social change was apparent after the passage of the CRA with the continued growth of the African American middle class, as well as new opportunities provided by government set-asides for federal contractors and government expansion (Collins 1983). However, other events that followed the passage of the CRA quickly dampened the optimism of the civil rights movement. While the Supreme Court took strides toward school desegregation (Klarman 2007), violence once again erupted in Selma, Alabama in response to a massive drive to register African American voters. Images of protestors being beaten and sprayed with tear gas by law enforcement outraged and horrified the American public, prompting the push for the Voting Rights Act of 1965. While Congress cooperated in the passage of this act, it later resisted Johnson's attempts to initiate employment legislation and legal enforcement of desegregation and civil rights (Shull 1999).

Johnson responded by strengthening the Civil Rights Act through two executive orders targeted at equal employment by government contractors (Hanges et al. 2013). Executive Order 11246 (1965) dissolved the FEPC and led to the establishment of the Office of Federal Contract Compliance Programs (OFCCP). The order also required federal contractors to include an equal opportunity

claim in each contract and delineated obligations for federal contractors to be in good standing with federal agencies (Gutman et al. 2011). These obligations included performing minority utilization in all job categories and the establishment of goals timetables, data tracking, and reporting plans to correct any deficiencies (Hanges et al. 2013).

Despite Johnson's advocacy for civil rights, events in the late 1960s impeded progress. Martin Luther King's 1966 movement to desegregate Chicago housing resulted in a violent mob attack, and race riots over segregation in housing lead to backlash against racial progress (Riches 2004). The fallout was further exacerbated by the increasing visibility of Black Nationalist and Black Power groups, which were rooted in post-WWI calls for self-determinism (Joseph 2010). In contrast to the early civil rights movement associated with Dr. King and student organizations, which drew supporters from a variety of backgrounds (Gill 2009; Shor 2009), these organizations specifically located their power base within the African American community (Nuruddin 2009) and sought to address issues of segregation through community control rather than through moral persuasion and non-violence (Nuruddin 2009). Though these groups positively impacted education, economics, art, politics, and other issues (Joseph 2010), the extreme viewpoints vocalized by leaders like Stokely Carmichael and Malcolm X and the visibility of the militant Black Panther Party fractured the civil rights movement (Klarman 2007). The assassination of Martin Luther King and resultant nationwide riots, along with the vocal African American condemnation of the U.S.'s involvement in the Vietnam War, indicated that a new era of civil rights struggles had begun.

In his campaign for presidency in 1968, Richard Nixon capitalized on this instability by admonishing "extremist" civil rights activists and criticizing Johnson's policies (Riches 2004). Nixon's presidency, as well as Ford's tenure after Nixon's resignation in 1974, signaled a clear break from Johnson's civil rights advocacy (Shull 1999). Both presidents gave less attention to civil rights in public statements (Shull 1999). Further, Nixon ardently opposed using busing to desegregate schools, proposing a 1-year moratorium on court busing orders in 1972, and both Nixon and Ford nominated conservative candidates for their judicial appointments (Riches 2004). Nevertheless, the growing attention on job access and income equality in the 1970s highlighted the importance of Title VII and affirmative action (Zuckerman 2011). The EEOC was able to continue its work during the Nixon and Ford administrations, in part because both presidents accepted the new civil rights laws and the EEOC but also because Bill Brown, then head of the enforcement agency, worked independently when necessary (Zuckerman 2011). Further,

in an attempt to address the growing backlog of employment discrimination complaints and accusations that the Justice Department was dragging its feet in bringing Title VII suits (Hanges et al. 2013), the Equal Employment Opportunity Act passed in 1972. This act amended Title VII by extending the coverage of the EEOC to smaller employers³ as well as state and local governments (Jones 1977), providing the EEOC with direct enforcement powers, and creating the Equal Employment Opportunity Coordinating Council (EEOCC), which was charged with maximizing enforcement efforts and efficiency (Hanges et al. 2013). Nevertheless, by the time Jimmy Carter took office in 1977, the EEOC was still criticized for its disorganization, backlog of cases, and lack of credibility (Zuckerman 2011).

In response, Carter initiated a reorganization of the federal Government's Equal Employment Opportunity enforcement programs (Hanges et al. 2013). The Civil Rights Reform Act of (1978) established the EEOC as the principle federal agency in fair employment enforcement, charged with enforcing Title VII, the Equal Pay Act, and the Age Discrimination in Employment Act, as well as ensuring Equal Employment Opportunity for federal employees (Hanges et al. 2013). The EEOC would later collaborate with the Civil Service Commission, the Department of Labor, and the Department of Justice, whose advisory board was chaired by I/O psychologist Raymond Katzell, to issue the Uniform Guidelines on Employee Selection Procedures (1978). Carter's appointed head of the EEOC, Eleanor Holmes Norton, also reorganized the EEOC, reducing the case backlog, shortening conciliation times, and demonstrating the legitimacy of the EEOC to large employers in cases against General Electric, the Ford Motor Company, and Sears, Roebuck & Co. (Zuckerman 2011). In addition to strengthening the EEOC, Carter also used appointments to show support for civil rights (Shull 1999), increasing the number of African American federal judges from 4 % in 1977 to 9 % in 1981 and appointing two African American women to his cabinet (Riches 2004).

The late 1970s also witnessed a major shift in the Supreme Court's position on affirmative action. Affirmation action, first established in Kennedy's executive order 10925 (1961) and strengthened by Johnson's executive orders 11246 (1965) and 11375 (1964), had become a deeply divisive issue. Affirmative action had produced substantial gains in government and private sector

³ The employment practices of organizations with 15 or more employees that worked 5 days a week for at least twenty weeks in the current or preceding calendar year were now covered by EEOC (Equal Employment Opportunity Act 1972).

employment for African Americans (Konrad and Linnehan 1999); for example, African Americans in public employment increased at double the rate of Caucasian American employees during the 1970s (Steinberg 1995). Opponents argued that affirmative action violated the equal protection clause of the Constitution and Title VII of the Civil Rights Act of 1964 (Konrad and Linnehan 1999), while supporters believed that a proactive strategy was needed to reduce employment and education discrepancies. The Supreme Court generally sided with affirmative action supporters during the early 1970s. However, this position was challenged by *Regents of the University of California v. Bakke* (1978), in which a Caucasian applicant was denied entry into the University of California at Davis medical school while racial and ethnic minority applicants with lower scores gained admission (Riches 2004). The Court ruled that affirmative action was legal, in that race could be considered in admissions decisions as long as it was not the only criterion (Konrad and Linnehan 1999), but that racial quota systems were not.

Rising social conservatism and an economic recession increased the appeal of Ronald Reagan's commitment to minimalist government, deregulation, and laissez faire economics (Shull 1999). Reagan opposed busing and affirmative action (Days 1984; Riches 2004), and supported lifting many of the EEOCs guidelines and recommendations for equal employment (Zuckerman 2011). Reagan's policies were based on a belief that the CRA was intended to provide equal opportunity, not equal results (Zuckerman 2011). Reagan's appointment to head of the EEOC, Clarence Thomas, shifted the organization's focus to efficiency, leading to a 50 % decrease in the number of lawsuits it filed and to accusations in 1984 that the EEOC had settled thousands of cases prematurely (Zuckerman 2011).

Civil rights supporters hoped that George Herbert Walker Bush's call for a "kinder, gentler America" would make him friendlier to their cause than his predecessor (Shull 1999). Bush eventually supported the American with Disabilities Act, but his administration also supported giving organizations more latitude in defending against charges of discriminatory practices and using practices that resulted in "unintended discrimination" (Shull 1999, p. 98). Two Supreme Court decisions in the late 1980s also signaled a further shift away from affirmative action. The first, *City of Richmond v. Croson* (1989), limited the use of government set-aside programs for minority-owned organizations such that government contractor decisions could no longer be based on race except in cases where the contractors had directly experienced discrimination (Konrad and Linnehan 1999). The second case, *Wards Cove v. Atonio* (1989) dramatically changed the procedure and standards of evidence for trying discrimination cases. The ruling placed a greater burden of proof on the plaintiff in

adverse impact cases while decreasing the burden placed on defendants (Hanges et al. 2013).

The 1990 Civil Rights Act was proposed as an attempt to roll back the Supreme Court ruling in *Wards Cove*. The Act aimed to resolve these issues while also forbidding "race-norming," which involved the adjustment of scores or score cutoffs based on race or other group status (Hanges et al. 2013). Bush vetoed the bill, expressing his resistance to legislation involving quotas (Shull 1999). Bush signed a later version of the bill; however, a leaked administration directive calling for the end of government affirmative action programs and regulations further bruised his reputation with regards to civil rights (Shull 1999).

Bill Clinton's election in 1992 signaled yet another shift in the executive branch. Clinton was a strong supporter of affirmative action and a vocal opponent of racism (Shull 1999). He emphasized the importance of diversity in employment, a stance which he put into practice with his judicial and cabinet appointments (Shull 1999). Clinton also issued executive order 13050, which created a Presidential Advisory Board on race, though the board's report was later criticized by both Republicans and Democrats (Dreier 1997/2000; Shull 1999).

Through the 1990s, the national focus on the social and economic issues facing the African American community increased, as exemplified by the 1995 "Million Man March," in which African Americans and social activists descended on the nation's capital to call attention to issues like unemployment and poverty. Further, in spite of the Clinton administration's support, affirmative action once again became a "wedge issue" in the 1996 presidential campaign. Detractors continued to denounce the policies as instituting quotas, preferential treatment, or reverse racism despite the legal prohibitions on quota use and reports that reverse racism charges comprised only 2 % of charges filed with the EEOC in 1994 (National Employment Lawyers Association 1995).

The 2000 election once again signaled that race, and especially affirmative action, remained a crucial issue in U.S. politics. While Al Gore campaigned on promises to defend affirmative action, his opponent, George W. Bush, opposed affirmative action in favor of a plan of affirmative access and equal opportunity. In addition to a marked gender gap between women and male voters in their preferences for Gore and Bush, respectively, this election stirred up controversy over the possibility of disenfranchisement of over one million African American and Hispanic voters in the critical Florida election (Riches 2004). Despite charges of election corruption, the Civil Rights Division of the Department of Justice eventually determined that there was no racial discrimination, and Bush took office after Gore conceded in December 2000. The September 11, 2001 attacks, though sparking nearly

1,000 incidents of bias and hate crimes against mostly Arab, Muslim, and South Asian victims (Ahmad 2011), actually narrowed racial differences between Caucasian and African Americans (Sengupta 2001). Four years later, Hurricane Katrina and the government's inadequate planning and slow response sparked renewed criticisms of the administration's treatment of African Americans and issues of poverty (Ward 2011).

Affirmative action also received continued court challenges. In *Grutter v. Bollinger* (2003), the University of Michigan's diversity policy was challenged. University officials defended against claims that their policy introduced a quota system favoring African American applicants by stating that their policy depended on income. Bush criticized the university, accusing them of using an illegal and unconstitutional quota system and holding up California and Texas' 'affirmative access' policies as exemplars, even though universities in those states had seen a tremendous downturn in African American admissions (Riches 2004). Nevertheless, the Court upheld its previous support for affirmative action programs, though three justices wrote further opinions stating their hopes that diversity programs would end in 25 years. Interestingly, this case also signaled one of the first times that affirmative action policies were supported based on appeals to the benefits of a diverse student body, rather than to redress historic inequalities.

While the decision in *Grutter* allowed public colleges and universities to take race into account to insure academic diversity, recent cases, including *Fisher v. University of Texas* (2009) and *BAMN v. Regents of Univ. of Michigan* (2012), may challenge that ruling. At the University of Texas at Austin, students in the top 10 % of Texas high schools are automatically admitted to the public university system. While this policy is not explicitly race-based, it has increased racial diversity by capitalizing on the racial homogeneity of individual high schools. Abigail Fisher, a Caucasian applicant, just missed the cut-off at her high school, and was denied admission to the University of Texas at Austin. Subsequently, she challenged the University of Texas's admission policy as racially discriminatory. This case will be heard by the Supreme Court; due to the recent political shift of the court to the right, it is possible the plaintiff will prevail, which would result in a ruling that might end or severely limit race-based affirmative action in higher education. Similarly, the 6th Circuit Court of Appeals recently overturned Michigan's 2006 ban on considering race and gender in college admissions in *BAMN v. Regents of Univ. of Michigan* (2012). The state plans to appeal this ruling, which, if granted *certiorari*, would bring yet another challenge to affirmative action in front of the U.S. Supreme Court.

State laws also sculpted the affirmative action landscape. In 1996, Proposition 209 passed in California.

Proposition 209, opposed by affirmative action advocates, amended California's constitution to prohibit its government from considering race, ethnicity, or sex in public employment or education. In other words, affirmative action policies considering sex or race were no longer legal in public employment or education. The Proposition was challenged throughout the 2000s, and in 2010, Proposition 209 was found constitutional for the second time, with a further challenge rejected in 2012. Laws aimed to counter Proposition 209, such as SB 185, have failed to pass as recently as 2011. Other states followed California's lead. For example, Michigan adopting a law similar to Proposition 209 in 2006, though as discussed above, this law was recently overturned by the 6th Circuit, subject to appeal.

Other issues relevant to racial equality arose throughout the first decade of the twenty-first century. Barack Obama was elected as president in 2008 amid claims that his victory signaled both a fulfillment of Martin Luther King, Jr.'s dream of an egalitarian nation and the beginning of a "post-racial" era (Ward 2011). Indeed, in 2009, Obama signed into law the Lily Ledbetter Fair Pay Act, an amendment to the CRA which states that the statute of limitations resets with each discriminatory paycheck. Ironically, Obama's election may have actually decreased support for policies such as affirmative action, as one study indicated that post-election, participants were less likely to believe that racism is a problem in the U.S. or to support policies like affirmative action and diversity initiatives to address inequalities (Kaiser et al. 2009).

The late 2000s and early 2010s also marked increased judicial consideration of psychological research on implicit bias and subtle discrimination through expert witness testimony. While the theory of implicit bias as a motivator of discrimination suffered a blow when the *Walmart v. Dukes* (2011) case was dismissed, recent cases have again employed arguments concerning the role of implicit bias in employment discrimination. Anthony Greenwald, pioneer of the Implicit Attitudes Test, provided expert testimony in the case of *Pippen v. State of Iowa* (2012). While implicit bias theory in this case was initially rejected in 2012, subject to appeal, another case concerning implicit bias, *McReynolds and Merrill Lynch* (2012) received *certiorari* from the Supreme Court in 2012. In *McReynolds v. Merrill Lynch*, William Bielby provided expert witness testimony on the role of implicit bias; thus, when hearings begin on this case, arguments on subtle and implicit employment discrimination will again be considered by the Supreme Court.

Women's Rights Post-CRA: Equal Rights Now

I think the important thing about my appointment is not that I will decide cases as a woman, but that I am

a woman who will get to decide cases. Sandra Day O'Connor as quoted in Hait (1982)

While proponents of gender equality celebrated the CRA's passage, their elation turned to disillusionment when it became clear that the EEOC did not intend to enforce the prohibition on gender discrimination (Barakso 2004). Indeed, the first suit enforcing the CRA, filed in 1966, targeted only racial discrimination, even though the organization was also guilty of gender discrimination (Berkeley 1999). In 1966, the third National Conference of the Commission on the Status of women met, but delegates were prohibited from taking action (Berkeley 1999). Following the conference, 28 delegates, including Betty Friedan, established the National Organization for Women (NOW). The newly formed NOW petitioned the EEOC in 1966 for public hearings on sex-segregated Help-Wanted advertisements. These petitions produced public hearings in 1967, and an official statement ruling the segregated ads illegal in 1968. NOW also successfully pressured the New York Times to end its practice of advertising for positions separately based on gender (Barakso 2004).

As its membership swelled, NOW made gains in other areas; Sylvia Roberts, a NOW attorney, won the first sex discrimination case under the CRA in 1969 (*Weeks v. Southern Bell*). In 1970, NOW created a Federal Compliance Committee which pushed for the enforcement of equal opportunity laws by contractors and filed a complaint with the Office of Federal Contract Compliance that over 1,000 organizations failed to file affirmative action plans for hiring women. In 1971, the Civil Service Commission ruled that references to gender must generally be removed from federal job descriptions. The early 1970s also saw two victories against major corporations. American Telephone and Telegraph paid out 38 million dollars in a lawsuit to female and racial minority employees, and Newsweek, in response to a discrimination suit, vowed to increase the number of women writers to at least one-third of the staff, though the paper was accused of not meeting this goal 2 years later (Graham 1997). While AT&T was dismembered before reaching the hiring goal outlined in the resultant consent decree, this case resulted in the first agreement with a major U.S. firm on affirmative action policies; as such, it paved the way for adoption of affirmative action among large firms in general (Williams 2008).

In addition to NOW's gains, President Johnson passed Executive Order 11375 in 1967, extending Executive Order 11246 to cover female federal employees. Throughout the 1970s, women also became increasingly visible in governmental positions. In 1972, 344 women held positions in state legislatures and in 1975, Gerald Ford appointed the third woman in American history to a cabinet-level position.

While the participation of women in both the Republican and Democratic national conventions dropped in 1976, 1977 saw the election of two women to state gubernatorial positions for the first time since 1925. In the same year, Jimmy Carter was the first president to appoint two women, including Patricia Roberts Harris, an African American woman, to cabinet positions. Carter appointed over five times the number of women to lower level federal judgeships than all his predecessors combined (Clark 2003). By 1982, 900 women held positions as state legislators, a nearly 300-fold increase from 1972 (Weatherford 1997).

While the CRA evidently had an impact in protecting women's rights in the workplace, it was not the first legislation proposed to further women's rights. The ERA, discussed earlier, was presented to Congress in every session between 1923 and 1970. With the exception of 3 years, it stalled in committee and did not reach a vote. While Republicans and Democrats added support for the passage of the ERA to their party platforms in 1940 and 1944, respectively, the ERA also attracted significant detractors, including many labor unions and women's groups, which maintained support for protective labor legislation (Berkeley 1999).

The National Organization for Women inspired a new wave of support for the ERA in the late 1960s and early 1970s. In 1970, 20 NOW members won a meeting with senators to discuss the ERA. Later in 1970, the DC contingent of NOW presented the Senate leadership with a petition for the ERA as part of a nationwide Women's Strike for Equality. Congressional hearings on the ERA began in 1970, and by 1972, Congress passed the ERA and sent it to state legislatures. Thirty of the required 38 states ratified the amendment by the end of 1973; however, grassroots groups formed in opposition of the ERA's passage. For example, Phyllis Schlafly used her personal publication to lead a group of conservative men and women in an attack on the ERA (Berkeley 1999). Schlafly appealed to traditional family values and gender roles, arguing that the ERA and the supposed "gender blind" society it would create posed a serious threat to the American family (Berkeley 1999). In 1972, Schlafly formed STOP ERA, a grassroots group of mostly middle-class, Caucasian housewives that targeted state legislators with messages that the ERA would endanger marriage and the traditional homemaker role. In the face of substantial opposition, the tide shifted against the ERA as ratifications trickled in through 1977 and five states rescinded ratification. NOW sprang into action, tapping local networks to organize marches in 1977 and rallying a 100,000 person March to extend the deadline set forth by Congress. Although NOW achieved an extension, the ERA still failed to receive ratification from the required 38 states by the 1982 deadline.

While the ERA did not receive ratification, some gains for women in the workplace occurred in the late 1970s, perhaps in part spurred by the increasing visibility of the ERA; Title IX, outlawing sex discrimination in education passed into law in 1972, and the Pregnancy Discrimination Act, which protected pregnant women in the workplace, was passed into law in 1978. Moreover, discussion around the ERA served as a fundraiser for organizations like NOW and forced feminists to re-examine their political agenda (Mayeri 2009). Finally, while the Supreme Court had only begun to deal with sex-based laws in the early 1970s, by the 1980s, it had struck down many sex-based laws and established a standard for intermediate scrutiny (Mayeri 2009). Though the ERA did not pass into law, its visibility may have served to influence or accelerate other gains in women's rights.

The rise of the New Right and Moral Majority rapidly followed Schlafly's campaign and other grassroots movements in the late 1970s and early 1980s. For example, in 1980, the Republicans dropped the passage of the ERA from their party platform (Weatherford 1997). The election of Ronald Reagan in 1980 likewise signaled a conservative political turn, despite his support for women's ability to earn pensions (Shull 1999), an executive order creating a task force on legal equality for women (Shull 1999), and appointment of the first female Supreme Court Justice, Sandra Day O'Connor. Under Reagan, the national body of the Commission on the Status of Women died (Weatherford 1997). In 1983, Barbara Honegger resigned from the Justice Department and loudly denounced its antidiscrimination project as a sham; instead of defending or justifying the department and its policies, the White House responded by minimizing Honegger's role in the Department. In 1986, Congress halved the budget of the Civil Rights Commission (Weatherford 1997). Despite liberal distress over the growing EEOC backlog of cases, Clarence Thomas candidly eschewed support for affirmative action goals (Barakso 2004). This conservative term had a considerable negative impact on comparable worth, one major issue for gender equality in the workplace. Reagan's administration opposed comparable worth (Shull 1999), which pushed for equal pay for jobs that require equal work, skills, or training, regardless of the demographic breakdown of job holders.

While the push for gender equality experienced setbacks in the 1980s, early victories unambiguously changed the understanding of equality in the workplace. In the late 1980s and 1990s, this understanding expanded to cover forms of sexual harassment and promotion difficulties for women. The EEOC issued its first set of guidelines on sexual harassment in 1980, establishing that it constituted sex discrimination under Title VII (Zuckerman 2011). In 1986, the Supreme Court's ruling in *Meritor Savings v.*

Vinson (1986) marked the first time that these guidelines were tested (Gutman et al. 2011). Further, in *Price Waterhouse v. Hopkins* (1989), the Supreme Court heard the case of a female employee who was rejected for partnership due to supposedly unladylike behavior. In this ruling, the Court established that "we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group" (490 U.S. 228, 1989). In the mid-1980s and 1990s, attention was also drawn to difficulties experienced by women in ascending the corporate ladder. Recognition of this problem, coined the "glass ceiling," led to the creation of the Glass Ceiling Commission, which explored the barriers women and minorities face in career advancement.

In the early 1990s, second wave feminism ended, and third wave feminism began, highlighting the participation of younger activists and an acceptance of pluralism. During this time, women again became more visible in governmental positions. In 1992, 24 women were elected to the House of Representatives in what was called the "Year of the Woman," and President Clinton appointed more women to high office than any previous president. Over the course of his first two years in office, Clinton appointed women and minorities to 58 % of his judicial posts (Wright 2000), and over 30 % of his early appointees were women (Shull 1999). Gains in women's rights, including representation in politics, trickled in throughout the late 1990s and 2000s. The first female Speaker of the House of Representatives, Nancy Pelosi, was appointed in 2007, and Hillary Clinton became the first woman to win a presidential primary in 2008. Further, in 2009, the Hate Crimes Prevention Act was extended to cover gender, sexual orientation, disability, and gender identity following the murders of Matthew Shepard and James Byrd, Jr., who were targeted due to their sexual orientation and race, respectively. Despite gains in the representation of women and minorities in government, progress remains to be made. While the nature of bias and discrimination has shifted from explicit to more implicit subtle forms (e.g. Deitch et al. 2003), it remains a salient issue for women and minorities in the workplace.

Discussion

We have situated the Civil Rights Act of 1964 within a comparative historical narrative of the African American and women's rights movements. Early rights movements focused on racial issues, with women's rights issues gaining attention on a national level around the end of the Civil War. Both movements struggled with equality in the workplace, and gains for each were staggered, slow, and

wrought with resistance. Further, prior to the passage of the CRA, the legal victories achieved were rarely enforced and did little to change pervasive discrimination against African Americans and women. The CRA was a tremendous victory for these rights movements, as evidenced by the sustained increase in female and racial minority employment. Not only was the Act's passage a victory in itself, but it also served as an instrument for change and a tool for marginalized groups to begin securing equal employment (Hall 2005; Minchin 1999).

The CRA, bolstered by subsequent legislation and Court rulings, fundamentally altered the demography of the American workplace. In 1966, more than 50 percent of private sector organizations that reported to the EEOC⁴ had no African American male representation, and more than 70 % reported no African American female employees (Tomaskovic-Devey and Stainback 2007). Through the late 1960s and 1970s, African Americans experienced a considerable increase in inclusion in these workplaces, though progress for African American men stalled during the 1970s and 1980s. By 2002, these numbers had dropped considerably, with 21 and 28 % of EEOC employers reporting no African American males or females, respectively (Tomaskovic-Devey and Stainback 2007). Notably, the percentage of the workforce comprised of women increased 1.23 % from 47 to 48.23 %, and the percentage of the workforce comprised of minorities increased 6.88 % from 27.4 to 34.28 % between 1998 and 2010 (Office of Research, Information and Planning 2012b). Occupational segregation for African Americans and women also declined until 1980, after which only sex-segregation continued to make significant declines (Tomaskovic-Devey et al. 2006). However, progress remains to be made—there was a larger imbalance between the percentage of men and women craftworkers in 2010 relative to 1998.

Regarding access to the most desirable managerial jobs, Caucasian men have maintained high levels of access since the CRA, but African American men and especially Caucasian women have made rapid improvements (Tomaskovic-Devey and Stainback 2007). In particular, women have gone from being underrepresented in management from 70 % to only 12 %. Similarly, African American men went from being underrepresented 90 % in 1966 to being underrepresented by 54 % in 1983. Caucasian women and

African Americans have also increased their representation in professional jobs (Tomaskovic-Devey and Stainback 2007). Caucasian men went from being over-represented 45 % in 1966 to being over-represented by 25 % in professional jobs. In contrast, Caucasian women, African American men, and African American women went from being 60, 90, and 90 % underrepresented in professional jobs to being 17 % overrepresented, 63 % underrepresented, and 52 % underrepresented, respectively.

There have also been gains in public sector employment, with African Americans increasing their employment in the government and their access to managerial or professional positions within the government at a greater rate than Caucasian males during the 1970s and 1980s (Steinberg 1995; Collins 1983). Overall, African Americans increased in their representation in public sector professional positions by 9.7 % between 1960 and 1982, whereas Caucasian Americans increased in their representation in professional positions by 4 % in this period (Collins 1983). In terms of managerial representation, African Americans increased their representation by 5 %, whereas Caucasian Americans decreased their representation by 0.5 % (Collins 1983). The employment of Caucasian women in the public sector likewise increased in the late 1960s through the early 1980s, growing at an average rate of 0.5 % a year between 1968 and 1971, and at an average rate of 1.25 % a year between 1972 and 1984 (Kellough 1989). Finally, between 1987 and 1992, Caucasian women had more promotional opportunities than Caucasian men at the highest ranks (Konrad and Linnehan 1999; Powell and Butterfield 1997).

It is important to note that, despite gains made through the CRA and related policies, a number of issues persist for women and minorities in the workplace. Though organizations have become more open to racial minorities and women, there is still evidence of status segregation. According to Tomaskovic-Devey and Stainback (2007), Caucasian men still tend to have access to the best quality jobs. Surprisingly, when focusing only on women in private organizations reporting to the EEOC, African Americans were just as segregated in 2002 as they were in 1966 (Tomaskovic-Devey and Stainback 2007). Further, despite some progress, there are still wage gaps between African American and Caucasian American employees (Mason 2006), and between men and women (DeNavas-Walt et al. 2010), and gaps persist between men and minorities and women in executive management positions (Office of Research, Information and Planning 2012b). Further, affirmative action remains a political wedge issue (e.g., Miga 2012), and both sexual harassment and the glass ceiling remain issues for women in the workplace (Meyerson and Fletcher 2000; Office of Research, Information and Planning 2012c). While the CRA has been relatively effective at reducing overt discrimination, subtle (Dovidio

⁴ The EEOC began collecting private-sector employment data in 1966. Prior to 1983, private sector organizations that were federal contractors with 25 or more employees, or organizations without federal contracts that had 100 or more employees were required to report employment counts based on gender and ethnicity. Currently, private sector organizations with 50 or more employees that are federal contractors, or with 100 or more employees that are not federal contractors, must report these statistics (Tomaskovic-Devey et al. 2006).

and Hebl 2005) and implicit racism and sexism (Benokraitis and Feagin 1986) endure. These more indirect forms of discrimination may be particularly harmful, as they can be more difficult to identify and act upon (Dovidio and Hebl 2005). Moreover, discrimination against other ethnic groups—such as Arab, Hispanic, and Asian Americans—remains a salient issue in today's workplace.

The history of the CRA and the civil rights movements makes salient several other issues to which researchers and practitioners should attend. First, legislation concerning race, ethnicity, and gender is constantly evolving. Thus, practitioners' knowledge of relevant laws and guidance on rights in the workplace may rapidly become outdated. As a result, practitioners are urged to continue their education on civil rights legislation throughout their careers to insure that their companies are adequately protected. Moreover, such legislation might be used to inform workplace programs aimed at insuring a productive and safe environment for all employees.

Second, researchers should be aware of external pressures that might influence the level and manifestation of prejudice, as well as discrimination in the workplace. That is, prejudice may have impacted workplace decision-making under Reagan in a very different way than it may have impacted such decision-making under Clinton. So, while most prejudice and discrimination research tends to focus on individual decision makers, researchers are urged to expand their inquiry to better understand the impact of the workplace and broader social environment on such decisions. For example, some research suggests that prejudice impacts hiring decisions when an organization sends messages that biased hiring decisions are acceptable (Ziegert and Hanges 2005). Researchers should attend to these more implicit processes in their research to not only better understand their impact but also how to recognize and prevent them. Practitioners are likewise encouraged to consider how to create processes and practices that prevent indirect and subtle discrimination from occurring.

In addition to understanding the history of workplace equality and rights movements, it is also important to understand how those movements have intersected and, at times, conflicted. While our review does not detail the rich history of interactions between the rights movements due to space limitations, this history can nonetheless provide unique insights into the legacy of the CRA and its implications in the workplace. For example, some civil rights groups, like the Student Nonviolent Coordinating Committee, derided a position paper on the oppression of women in the 1960s (Berkeley 1999), and many civil rights activists felt the problems of racism and racial discrimination were more pressing than the problems of sexism (Springer 2005). Conversely, the second-wave feminist movement, which was largely driven by Caucasian women,

often displayed discomfort about race and privilege, and faced accusations that its issues were trivial compared to those of the African American civil rights movement (Berkeley 1999).

Additional examples of the interactions and conflicts between groups illustrate the multidimensional character of the civil rights movements. Many other racial and ethnic minorities have been excluded from employment opportunities, housing, suffrage, and other aspects of life. For example, Anti-Chinese and Japanese sentiment ignited in the mid-1800s and produced decades of segregation that excluded immigrants from testifying in court, voting, owning property, public employment, various occupations, and even citizenship (Klarman 2007). Racial and ethnic minorities were targets of discrimination prior to and during World War II, notably in the form of Japanese internment and the Zoot Suit Riots of 1943. However, as defense industry jobs drew racial minority workers to the cities, World War II laid the groundwork for intergroup collaboration to challenge segregation and discrimination (Alvarez and Widener 2011). As the African American civil rights movement gained speed, it sparked other civil rights movements. In some cases, such as the annual conference of the Alianza Federal de Pueblos Libres, during which Mexican and African American leaders ratified a joint "Treaty of Peace, Harmony, and Mutual Assistance," different racial and ethnic groups built coalitions to further their common goals and strengthen the movement for civil rights (Behnken 2011).

However, issues of race, class, economics, and religion also sometimes pitted racial and ethnic movements against one another. For example, some Mexican–American business owners opposed the African American civil rights movements, refusing to integrate businesses prior to 1964 for fear of driving away Caucasian customers (Behnken 2011), and in 1992, racial tensions between African Americans, Latino/as, and Korean Americans were ignited during 6 days of rioting in Los Angeles following the acquittal of four LAPD officers accused of beating Rodney King (Yamamoto 1999). While we only offer a handful of examples due to space limitations, the interrelations, coalitions, and conflicts built between rights movements speak to the complexity inherent in considering the meaning and practice of fairness in organizations.

Several implications emerge from understanding conflicts that arise among rights movements. First, the emphasis on protecting minority groups in organizations is principally to insure that majority and minority groups receive equal opportunities; this view should be expanded to cover equal opportunities between minority groups. To the extent that policies engender competition among minority groups, it may be difficult to foster a cohesive workforce. Organizations should consider whether their

policies provide equal protection for these groups and promote diversity, fairness, and cohesion to healthy organizational levels (Kyrillidou et al. 2009; Lowry and Hanges 2008).

Similarly, conflicts between rights movements have resulted in the marginalization of individuals belonging to multiple minority groups simultaneously, such as African American women. Individuals in the intersection of different classifications are often forced to “choose” a dominant identity: should they strive for African American rights or women’s rights? Thus, while individuals might theoretically identify with more than one category simultaneously, conflicts between movements may not allow for the expression of this categorization. While theoretical work has emerged in the literature on the intersections of categorization (e.g., Crenshaw 1989), limited attention is awarded to the concerns of individuals in these intersections in the workplace. In particular, arguments for the intersectionality of identity (e.g., African American women are evaluated with a different standard given their dual categorization) has fared inconsistently in court (Fogg-Davis 1996). For example, the argument that African American women should be treated as a discrete class failed in *De Graffenreid v. General Motors* (1976), but succeeded in *Jeffries v. Harris City Community Action Association* (1980). Moreover, the Supreme Court has yet to address the issue of intersectionality in its interpretation of the Equal Protection Clause (Fogg-Davis 1996). Thus, practitioners and researchers alike should invest more energy in assessing and addressing the needs of those marginalized classes, especially those who tend to engage in identity integration.

Finally, a historical review of the movements for racial and gender equality also throws light on other movements, such as the movement for lesbian, gay, bisexual, and transsexual (LGBT) rights. The radical politics that helped women’s and civil rights progress emboldened the gay rights movement during the 1960s and 1970s (Cain 1993). Urbanization centralized these civil rights movements (i.e., African Americans, women, gays, and lesbians), providing opportunities for the gay rights movement to develop alongside the women’s and civil rights movements (Eskridge 2001). Indeed, gay rights advocates explicitly and deliberately sought to identify themselves with the civil rights movement. For example, protesters at the Stonewall Riots, a marked turning point in the gay rights movement, used slogans from the abolitionist movement, such as “Gay Power” and “We Want Freedom Now” (Hall 2008).

These strategies may have begun to pay off: the movement for gay rights has made some progress, primarily outside of the workplace, although some state-level employment laws prohibit discrimination based on sexual orientation in the workplace. Thus, while dramatic changes in the broader U.S. legal system have yet to occur with

respect to gay rights in the workplace, some steps have been made in this direction. Consequently, the movement for sexual orientation equality appears to be gaining ground on a national level. Organizations should think proactively about how to structure their selection, assessment, and training systems to insure that they do not result in discrimination against employees or potential employees based on their sexual orientation or gender identification. Organizations should also think deeply about their culture and climate and the messages they send to LGBT employees. By taking these steps, organizations will be better prepared for the impact of legislation protecting gay rights if it is passed. Similar recommendations are offered for researchers. Specifically, given the increased importance and discussion of sexual orientation in the workplace, researchers should investigate the role of sexual orientation, and, correspondingly, homophobia, in the workplace. In particular, attention should be paid to the kinds of climates and work environments that engender and support sexual orientation diversity.

Conclusion

In sum, the movements for racial and gender equality have evolved slowly and against great resistance. The CRA, bolstered by subsequent legislation and Court rulings, fundamentally changed the nature of the American workplace. However, there are still many obstacles to overcome on the path to full workplace equality. This paper provided a historical context of the impact of the CRA. It is critical to understand both the content and the context of the laws and regulations related to equality and discrimination; as our opening quote states, without such context, the passage of time dulls our collective memories. We offer this context to awaken our collective memories to provide a lens for interpreting the status of Equal Employment Opportunity and to encourage assessment about the future of equality and diversity in the U.S.

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