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What Legal Protections Do Victims of Bullies in the Workplace Have?

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CONTENTS

From the Editor	141
What Legal Protections Do Victims of Bullies in the Workplace Have? <i>William Marty Martin, Yvette P. Lopez, and Helen N. Lavan</i>	143
Unsatisfactory Working Conditions and Voice: An Analysis Involving Employees in Sweden <i>Bengt Furåker</i>	157
The Social Effects of Labor Organization in the United States: Legal Reform and Public Policy <i>Raymond L. Hogler and Christine A. Henle</i>	175
Are Less-Educated Women in the Blind Spot of Pay Equity? <i>Marie-Josée Legault</i>	195

NEW SCHOLARS

Decent Work for the Street Vendors in Mumbai, India— A Distant Vision! <i>Debdulal Saha</i>	229
Promoting the Underlying Principle of Acceptance: The Effectiveness of Sexual Orientation Employment Antidiscrimination Legislation <i>Laura G. Barron</i>	251

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FROM THE EDITOR

Welcome to the sixth issue of the *Journal of Workplace Rights*. The *Journal of Workplace Rights* is dedicated to the proposition that human rights should not be compromised by employers. It uses an expansive definition of human rights based on the Universal Declaration of Human rights as passed by the United Nations in 1948. A list of proposed topics can be found on our website. The Journal invites prospective authors to submit articles that are completely unrelated to these topics as long as their focus is on workplace rights. Before I preview this issue's articles, I wish to pay special thanks to the following Editorial Board members who did a terrific job of reviewing them in a timely yet thorough manner: Teri Domagalski, Kelly Dye, Adrienne Eaton, Mark Learmonth, Mark-Bernhard Ungericht, and Hoyt Wheeler. In addition, Connie Bygrave, Jerry Carbo, Tricia Cleland, Leon Levitt, Brigid O'Farrell, and Rahul Varman took time from their very busy schedules to excellently serve as ad hoc reviewers for this issue. And as always, Ann O'Hear provided impeccable manuscript editing service.

The first article is by Marty Martin, Yvette Lopez, and Helen LaVan, and it is entitled, "What legal protections do victims of bullies in the workplace have?" This article shatters the myth that victims of U.S. workplace bullies are powerless, notwithstanding the inadequacy of American anti-bullying law. The second article, by Bengt Furåker, is "Unsatisfactory working conditions and voice: An analysis involving employees in Sweden." It discusses the difficulty of demanding improvements in working conditions, which must be even more challenging in less labor-friendly countries.

The third article, by Ray Hogler and Chris Henle, is entitled "The social effects of labor organization in the United States: Legal reform and public policy." This paper demonstrates the positive social effects of union density and provides a roadmap for the labor movement to increase membership. The fourth article, by Marie-Josée Legault, is "Are less-educated women in the blind spot of pay equity?" This paper analyzes the impact of pay equity legislation on working Québécois women, with surprising and important results.

The final two articles in this issue constitute our “New Scholars” section. We will never publish an issue without at least one paper by a “New Scholar,” defined as a student or a professor holding an untenured or non-permanent appointment. We have published articles by scholars at all career stages, but we feel that New Scholars tend to produce particularly high-quality research, perhaps because they tend to have fewer administrative burdens than their more senior colleagues. Papers by New Scholars go through exactly the same review process as all other papers. The only preferential treatment that New Scholars receive is that they jump to the front of the publication queue so that their papers may be published ahead of those by other authors.

The fifth article, by Debdulal Saha, is entitled “Decent work for the street vendors in Mumbai, India—A distant vision!” A huge percentage of the global workforce is engaged in small-scale retail trade, and the more we learn about this type of worker the more we can develop the decency of this type of work. Our final paper, by Laura Barron, is “Promoting the underlying principle of acceptance: The effectiveness of sexual orientation antidiscrimination legislation.” Like the paper by Hogler and Henle earlier in this issue, this article uses quantitative analysis to demonstrate the positive effects of progressive legislation. We have already become the leading academic journal for workplace issues pertaining to the gay, lesbian, bisexual, and transgendered (GLBT) community. GLBT-oriented scholars need to send their work to the *Journal of Workplace Rights*.

If you have as much fun reading these articles as I did while editing them, you are in for a very good time indeed. Our plan is to publish more than four issues this year. So if you want to be published quickly in the world’s most progressive English-language academic journal, please send me your work. Readers with any questions about this journal should contact me electronically at jwr@rowan.edu.

Joel Rudin
Editor

WHAT LEGAL PROTECTIONS DO VICTIMS OF BULLIES IN THE WORKPLACE HAVE?

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ABSTRACT

Workplace bullying has evolved into an insidious, pervasive workplace issue. However, very few investigations have utilized comprehensive research methods to gain an understanding of how victims of bullying fare when pursuing their rights in courts. The plaintiffs are not suing for bullying; they are suing because the bullying violated some other law, such as an anti-discrimination law or some form of constitutional protection. Using policy capturing of litigated federal court cases, we find that victims of workplace bullying prevailed in 15.6% (82 out of 524) of the cases. The most frequently identified reasons for filing a cause of action were retaliation, harassment, discrimination, civil rights, constitutional amendments, state laws, and unlawful termination. The plaintiff success rate is an above-average rate because other studies have found even lower success rates for plaintiffs suing under similar laws for reasons unrelated to bullying. The present study provides guidance for victims of workplace bullies and their attorneys who are considering pursuing their rights upon being bullied in the workplace.

DEFINITION OF WORKPLACE BULLYING

Workplace bullying has come to be described by a variety of definitions and terms, and therefore defining bullying with any precision or consensus has

continued to be a challenge (Keashly & Jagatic, 2003; Saunders, Huynh, & Goodman-Delahunty, 2007). Yet the consistencies surrounding the existing definitions of workplace bullying include those involving intentional, intimidating, humiliating, undermining behavior that is persistently repeated over time and is meant to cause harm to a target who feels powerless to stop or prevent the abuse (Keashly & Neuman, 2004; Keashly & Nowell, 2003; Lutgen-Sandvik, Tracy, & Alberts, 2007; Von Bergen, Zavaletta, & Soper, 2006); it thereby creates a hostile work environment (Lutgen-Sandvik et al., 2007) for the victim. Despite the various descriptions, the use of varying terminology, and the agreements and disagreements surrounding the topic of workplace bullying, research has been consistent with regard to the seriousness and the severity of the costs associated with this type of problematic behavior (Yamada, 2004).

This study, however, focuses on the definition offered by one of the leading legal advocates for antibullying legislation in the United States (Lueders, 2008), David Yamada. Yamada's (2000) definition encompasses several of the more consistent elements making up other definitions of workplace bullying in the extant literature. Therefore, workplace bullying will be described, following Yamada, as "the intentional infliction of a hostile work environment upon an employee by a coworker or coworkers, typically through a combination of verbal and nonverbal behaviors" (Yamada, 2000: 3). Here it is presumed that a supervisor could be construed as a coworker and nonverbal behavior could be interpreted as physical behavior.

The creation of a hostile work environment is critical for victims of workplace bullying. As there is no existing U.S. federal or state law providing specific recourse for victims of workplace bullying (Yamada, 2000), several other existing laws have been used in an attempt to indirectly combat it (Harthill, 2009; Yamada, 2000). Therefore, in their efforts to combat workplace bullying, representatives of victims must work creatively to find ways to protect individuals who have suffered from such bullying, for example, through various existing antidiscrimination laws. However, it has been stated that "existing law has failed to play an adequate role in preventing bullying and providing relief to severely bullied employees" (Yamada, 2004: 2). Therefore, this study sets out to examine whether victims of workplace bullying do in fact have no protection or recourse, given the lack of a specific antibullying law, or whether the existence of other laws, specifically those dealing with harassment and discrimination, has, in fact, offered some protection or recourse in the form of monetary damages.

IMPACT OF WORKPLACE BULLYING ON THE VICTIM

The link between workplace bullying and its psychological and physiological consequences has been well established in the literature. In fact,

proponents of antibullying legislation have continued to focus on the numerous empirical research studies that have consistently illustrated the detrimental health problems that victims are shown to suffer (Lueders, 2008). Yet the severity of the symptoms is often associated with what previous research has viewed as degrees of bullying. The degrees of bullying are contingent on the frequency, intensity, and duration of bullying behaviors (Lutgen-Sandvik et al., 2007). Lutgen-Sandvik et al. (2007) describe workplace bullying by using a comparison with first-, second-, and third-degree burns. They posit that workplace bullying occurs along a continuum, and along the continuum the psychological and physiological effects associated with workplace bullying increase in accordance with the intensity, frequency, and duration of the bullying. For instance, at the highest level, bullying is likened to a “third-degree burn resulting in . . . deep scarring and permanent damage” (Lutgen-Sandvik et al., 2007). Therefore, the more exposed a victim is to workplace bullying, the more likely it is that he/she will suffer psychological and physiological consequences of it (Lutgen-Sandvik et al., 2007).

The psychological effects associated with experiencing workplace bullying include depression (Kivimaki et al., 2003; Niedhammer, David, & Degioanni, 2007), burnout (Einarsen, Matthiesen, & Skogstad, 1998), reduced self-esteem (Von Bergen et al., 2006), posttraumatic stress disorder (Leymann & Gustafsson, 1996), prolonged duress stress disorder (Scott & Stradling, 2001), alcohol abuse (Richman et al., 2001; Rospenda, 2002), and suicide (Leymann, 1990). In effect, Niedhammer et al. (2007) describe workplace bullying as a risk factor for the maintenance of mental health. The physiological effects include elevated blood pressure, increased risk of coronary heart disease (Kivimaki et al., 2005), and impairments in physical health including muscular-skeletal disorders, psychosomatic ailments, and sleeping problems (Keashly & Neuman, 2004).

The effects of bullying, however, are not limited to its psychological and physiological consequences. Additional effects may include interpersonal and familial consequences (Jennifer, Cowie, & Anaiadou, 2003; Rayner, Hoel, & Cooper, 2002; Tracy, Lutgen-Sandvik, and Alberts, 2006) as well as social isolation and financial problems due to absence from work (Von Bergen et al., 2006).

Consequently, the cumulative toll for targets of workplace bullying is horrendous, at best as evidenced by the authors of one qualitative research study of nurses:

The unrelenting, calculated and deliberate nature of the bullying resulted in profound psychological harm, physical illness, and professional and financial destruction for many of those interviewed. The patterns of bullying also continued past the point where it was clear the psychological will and physical health of the targets had been broken. (Hutchinson et al., 2006: 246)

PREVALENCE OF WORKPLACE BULLYING IN THE UNITED STATES

Workplace bullying is a social phenomenon that unfortunately has become very common in today's workplace. The study of workplace bullying began in the 1980s in Sweden and spread to other Scandinavian and European countries by the mid-1990s (Zapf & Einarsen, 2001). More recent studies have helped expose the global relevance of workplace bullying (Harvey, Treadway, & Heames, 2007; Heames and Harvey, 2006; Lutgen-Sandvik et al., 2007), acknowledging this phenomenon as a prevalent concern in various countries around the world.

Interest in workplace bullying continues to grow internationally (Lutgen-Sandvik et al., 2007), and unfortunately the topic has continued to receive much more attention internationally than in the United States (Vega & Comer, 2005). This is somewhat disconcerting, considering that while workplace bullying is continuing to increase in organizations today (Heames & Harvey, 2006), it seems to be much more prevalent in the United States (Mikkelsen & Einarsen, 2001; Zapf & Einarsen, 2001) than elsewhere, due to the cultural values of the United States, which emphasize individuality, assertiveness, masculinity, achievement, and a relatively higher power disparity than found in Scandinavian cultural values. Thus, it might be anticipated that the characteristic of individuality would lead to individuals being less inclined to go to the aid of a victim. The characteristic of assertiveness could trigger an incident of workplace bullying through forcefulness. In general, the characteristic of masculinity would be associated with increased aggressive behavior. In terms of achievement, people with a high need for achievement may be focused on advancing themselves relative to others. As for the power disparity, there is research evidence that indicates bullying is more likely to occur when high levels of power imbalance are present (Ashforth, 1994; Ireland, 2000; Salin, 2003).

Based upon the American Workplace Survey conducted by Lutgen-Sandvik et al. (2007), it was estimated that workplace negativity is higher in the United States than comparable Scandinavian populations, with 30–35% of U.S. workers experiencing a negative act at least once a week over a 6–12 month period. The distinction between workplace negativity and workplace bullying offered by Lutgen-Sandvik et al. (2007: 854) is that workers “did not always equate . . . negativity with the concept of bullying.” For instance, of those participants in their study who reported being bullied at work, only one-third of the members of the group identified themselves as targets of bullying (Lutgen-Sandvik et al., 2007). Consequently, while U.S. workers report persistent negativity in the workplace, it is presumed that U.S. workers “have naturalized bullying as a normal part of the job, that ‘bullying’ terminology has not made its way into popular American language” (Lutgen-Sandvik et al., 2007: 854). It is also presumed that perhaps because of the competitive nature often present within U.S. culture, perceptions of

being bullied may reflect feelings of weakness or passivity, indicating that U.S. workers may be less inclined to engage in self-labeling that presents them as having been bullied (Lutgen-Sandvik et al., 2007).

Given the advanced state of the discussion of workplace bullying in the international context, this study's focus is aimed specifically at its occurrence in the United States. Research in the United States alone has indicated that nearly 37% of the American workforce, approximately 54 million Americans, have succumbed to some form of workplace bullying (Workplace Bullying Institute, 2007). When combining the victims of workplace bullying with those who have witnessed workplace bullying, the numbers increase to nearly 49% of the American workforce, or approximately 71.5 million American workers (Workplace Bullying Institute, 2007). Other reports have indicated that the percentage of individuals in the United States who have experienced some form of bullying at one point or another in their work lives actually falls between 38% and 90% (Glendinning, 2001; Vega & Comer, 2005). The reason for such a wide variance may stem from the lack of a commonly agreed upon operational definition of workplace bullying (Schat, Frone, & Kelloway, 2006).

EXISTING LAW AND WORKPLACE BULLYING

As previously indicated, there is no existing U.S. federal or state law providing specific recourse for victims of workplace bullying (Yamada, 2000). With no direct legal protection available to victims, existing statutory and common-law protections have been examined (Yamada, 2004) and in some cases utilized to try to provide some recourse; however, despite their potential, existing laws have been deemed inadequate, further driving the push for new legislation (Yamada, 2004).

The most noteworthy statutory and common-law protections will be briefly reviewed here, including federal statutes, state statutes, constitutional protections, and common-law claims by which victims of workplace bullying may file a cause of action in the absence of federal and state workplace bullying statutes.

The federal statutes include the Civil Rights Act (including Title VII); the Americans with Disabilities Act (ADA); the Age Discrimination in Employment Act (ADEA); the Fair Labor Standards Act (FLSA); the Occupational Safety and Health Act (OSHA); the Whistleblower Protection Act; and two union-related statutes: the National Labor Relations Act (NLRA) and the Labor Management Relations Act (LMRA). Other federal statutes worthy of mention include the Employee Retirement Income Security Act (ERISA), the Family and Medical Leave Act (FMLA), the Fair Credit Act, and the False Claims Act.

Of note is Title VII of the Civil Rights Act of 1964, which is an anti-discrimination and antiharassment law. Workplace bullying victims may find recourse if the act of bullying can be attributed to one of the protected characteristics i.e. race, color, national origin, religion, and/or sex) (Harthill, 2009;

Yamada, 2000), thus potentially offering some element of protection. An additional antidiscrimination and antiharassment law that may offer protection to victims is the Americans with Disabilities Act. "Disability discrimination law can serve as a potential response to workplace bullying where the offending behavior creates or exacerbates a recognized disability" (Yamada, 2004: 8). Yet another antidiscrimination and antiharassment law is the Age Discrimination in Employment Act of 1967, which protects employees from status-based harassment related to age (Harthill, 2009; Yamada, 2000). These antidiscrimination statutes also provide protection against retaliation. Federal statutes unrelated to antidiscrimination and antiharassment issues include the Occupational Safety and Health Act of 1970, the Whistleblower's Protection Act, the National Labor Relations Act, and the Labor Management Relations Act.

Just as there is no specific law at the federal level, there is currently no law at the state level providing specific recourse for victims of workplace bullying (Yamada, 2000). However, legislators in several states like Hawaii, Oregon, Missouri, and Kansas have worked at or are working at introducing legislation specifically geared toward combating such bullying (Von Bergen et al., 2006). Additionally, in *Torres v. Parkhouse* (2001), the California Supreme Court took the initial step in tying workplace bullying to a protected class, in cases of racial and gender-based harassment (Von Bergen et al., 2006). Finally, workers' compensation provides a system for allowing employees who suffer injuries while at work a percentage or portion of their salary and help with medical expenses (Yamada, 2000). Victims of workplace bullying may potentially be covered by workers' compensation for work-induced injuries including the emotional, physical, and psychological distress that may be caused by the employment situation.

In addition to federal and state statutes, constitutional amendments are often used to seek legal protections from bullying. The most commonly used are the First, Fourth, and Fourteenth Amendments. The First Amendment provides protection for the freedom of religion, of speech, and of the press, and for the freedom to assemble and to petition. The Fourth Amendment provides protection from unreasonable searches and seizures. The Fourteenth Amendment provides for due process within each state.. Less commonly, protection is sought under the Fifth Amendment, which provides for due process in general; the Eighth Amendment, which provides protection from excessive bail and fines or cruel and unusual punishment; and the Eleventh Amendment, which provides states with immunity to actions brought by citizens in federal courts against them.

Finally, common-law claims are also invoked by victims of workplace bullying and may potentially involve any one of the following: defamation, the doctrine of intentional infliction of emotional distress (IIED), breach of contract, and unlawful termination. IIED is one of the primary common-law torts used in the attempt to battle workplace bullying. This doctrine is a non-status-based legal theory that requires plaintiffs to prove support for the following elements: that the conduct of the defendant was intentional and reckless; that the conduct was

outrageous, extreme, and intolerable, thereby going beyond the limits of what would be considered generally acceptable behavior; that the conduct caused the plaintiff emotional distress; and that the resulting emotional distress was severe (Von Bergen et al., 2006; Yamada, 2000).

METHODOLOGY

Content analysis has been used to discern, that is, capture, the policies of the organizations in the litigated cases and in other organizational processes. Various studies have recently employed the methodology of using litigated case analysis as an integral part of their research methodology (Hall & Wright, 2008; Johnson et al., 2008; Kotkin, 2007; Kulik, Perry, & Pepper, 2003; Lahey, 2008; Lockwood, 2008; Lucero, Allen, & Middleton, 2006; Perry, Kulik, & Bourhis, 2004). The data for this research were acquired by using the Bureau of National Affairs' database of litigated cases. All usable cases for the years 2006 to 2008 were retrieved using the search strategy "(bully OR bullying AND employee)." The BNA database contains litigated cases from state and federal courts at all levels. The timeframe of the most recent three years was selected in order to discern a relatively recent perspective on litigation relating to bullying, that is, to discern what is going on currently in the legal arena. This search resulted in 524 usable cases, which comprise the data. The data were coded in the following way. If a given case contained a certain characteristic, it was coded as 1. If not, this case was coded as 0 on the relevant characteristic. For example, if the case was filed under the Age Discrimination in Employment Act, then the Age Discrimination in Employment Act was coded as 1. Or, for example, if there was retaliation present, it was coded as 1. Otherwise, it was coded as 0. Table 1 contains a list of case characteristics.

We were seeking to identify the legal protections for individuals who had been bullied. In addition to finding out which laws were involved in the litigation, we were interested in finding out what kinds of behavior were involved in the bullying. Whether there was discrimination, discipline, intimidation, unfair pay, or harassment involved in the bullying was also of interest to us. Additionally, since bullying is not protected under any specific law in the United States, we were interested in whether civil actions were heard, such as actions over defamation, the intentional infliction of emotional distress, or the invasion of privacy. We were also seeking to discern which party (the individual or the company) prevailed in the litigation. We also sought to find out whether financial damages were awarded. See Table 1 for full clarification of the variables.

RESULTS

There was a total of 524 usable responses for each item of relevance. An overwhelming majority (94.8%; n=497) of the legal cases indicated that there was

Table 1. Case Characteristics

Type of behavior	Laws	Civil actions
Claim of unfair treatment	Civil Rights Act	Defamation
Discrimination	ADEA	Intentional infliction of emotional distress
Retaliation	FLSA or EPA	Breach of contract
Unfair labor practice	NLRA	Unlawful termination
Exposure to hazard	OSHA	All torts (slander, termination, defamation, IIED) except invasion of privacy
Unfair labor practice, unionization	Worker's compensation	Invasion of privacy
Harassment	ERISA	
Discipline, suspension	FMLA	
Banned access	LMRA	
Intimidation	Fair Credit Act	
Interference	False Claims Act	
Unfair play	Whistleblowers Protection Act	
Failure to reinstate	State laws Constitutional amendments	

a claim of unfair treatment. This makes intuitive sense because of the nature of the sample, in which a requirement is an actionable cause.

There were many different reasons explaining why the plaintiffs in the 524 usable cases filed suit in the court system. Table 2 shows the 10 most frequent reasons for filing a cause of action. In descending order, from the most frequently identified reason to the least frequently identified reason among the top 10 most frequently identified reasons, are the following: retaliation (65.8%; n=345); harassment (58.1%; n=304); discrimination (52%; n=272); civil rights (48.3%; n=253); constitutional amendments (21.8%; n=114); state laws (13.7%; n=72); unlawful termination (11.8%; n=62); ADEA (9.4%; n=49); FMLA (5.7%; n=30); and FLSA/Equal Pay Act (EPA) (4.2%; n=22). Interestingly, all torts, including intentional infliction of emotional distress, accounted for only 2.2% of the cases.

Table 2. The Ten Most Frequent Reasons for Filing a Cause of Action

Reason	Number	Percentage
Retaliation	345	65.8%
Harassment	304	58.1%
Discrimination	272	52.0%
Civil rights	253	48.3%
Constitutional amendments	114	21.8%
State laws	72	13.7%
Unlawful termination	62	11.8%
ADEA	49	9.4%
FMLA	30	5.7%
FLSA/EPA	22	4.2%

Note: The claim of unfair treatment was purposely eliminated from Table 2, because virtually every claim included this reason.

Not surprisingly, the vast majority of reasons explaining why the plaintiffs pursued legal cases over workplace bullying are based upon federal statutes like Title VII and legal bases arising under Title VII, such as retaliation, harassment, and discrimination. Of note was the fact that constitutional amendments were identified in almost one out of four (21.8%) of the cases, which may suggest that workplace bullying represents a violation of a basic legal right as recognized by the U.S. Constitution. Of the constitutional amendments, the First, Fourth, and Fourteenth were the most prevalent.

Table 3 portrays the cases in which the individual prevailed. Surprisingly there were 82 such cases, because in the absence of a bullying law it would not be expected that this many individuals would prevail.

Of course, nearly every individual claimed unfair treatment—98.8%. Next in frequency was the claim of retaliation, which is probably what really generated the lawsuits. Specifically, what the present authors believe is that the workers who filed these lawsuits were those who had claimed their rights under various civil rights laws and who were then retaliated against.

One of the most vexing problems regarding protection for individuals who have been bullied in the workplace is the distinction between harassment, which in many cases is legally protected and which in this study was involved in 49.4% of the cases in which the individual prevailed, and bullying, which in most cases is not legally protected. Forty-seven percent of the individuals who prevailed filed lawsuits under various federal antidiscrimination laws, including

Table 3. Frequencies of Case Characteristics of Litigated Bullying Cases in Which the Individual Prevailed (n=82)

Reason	Number	Percentage
Claim of unfair treatment	81	98.8%
Retaliation	50	61.4%
Harassment	41	49.4%
Discrimination, Title VII, ADA, hostile environment	39	47.0%
Civil rights in general	37	44.6%
State laws	19	22.9%
Constitutional amendments	13	15.7%
Unlawful termination	13	15.7%

Note: "Discrimination" refers to individuals protected by antidiscrimination legislation. "Civil rights in general" refers to individuals not protected by antidiscrimination legislation. Case characteristics are not mutually exclusive and may appear in more than one category. For example, harassment and hostile environment may appear in the same case.

Title VII and the Americans with Disabilities Act. An additional 4.8% filed under the Age Discrimination in Employment Act. Civil rights laws in general accounted for 44.6% of the cases in which the individual prevailed. State laws accounted for 22.9% of the cases in which the individual prevailed. Fifteen percent of the individuals who prevailed claimed protection under various constitutional provisions. Cases in which an individual was terminated (15.7%) were more likely to be resolved in favor of an individual than cases in which there was unfairness in the form of unfair pay (7.2%) or unfair disciplinary action or suspension (4.8%).

The authors expected that intentional infliction of emotional distress would be claimed, as would various tort actions. However, this is not what we found. A union was involved only in 8.4% of the cases. However, it is possible that arbitration was used rather than litigation to resolve conflicts associated with a hostile environment or harassment in the unionized workplace.

DISCUSSION

Even though there is no common law or statutory cause of action dealing with workplace bullying, victims of workplace bullying have filed cause of action for harassment, discrimination, or some violation of civil rights. This was empirically demonstrated in our study. Of note is the fact that retaliation, which

is a subset of discrimination, was the number one reason why individuals filed a legal claim in the study.

The legal bases used by respondents in our study to file a legal claim over workplace bullying included not only federal antidiscrimination statutes but also state statutes and constitutional amendments. In this era of corporate downsizing, it is worth noting that more than 1 out of 10 (11.8%) of the respondents referenced unlawful termination. However, even in a period in which the workforce is aging, less than 1 in 10 (9.4%) referenced the ADEA.

Clermont and Schwab (2009) found that the success rate for the use of the ADA was almost 1 out of 10 (9.12%), with slightly more than 1 out of 10 (10.88%) for Title VII, slightly more than 1 out of 10 (11.67%) for the ADEA, and nearly 2 out of 10 (19.55%) for the FMLA. In this study, the overall success rate was found to be 15.6% (82 out of 524 cases).

The strengths of this study are that it is empirical and draws upon actual litigated cases involving workplace bullying. This in and of itself represents a significant contribution to the workplace bullying literature. Furthermore, this study also adds to the body of knowledge by providing researchers, policymakers, legal practitioners, human resources professionals, and plaintiffs with not only the legal theories used in all workplace bullying cases but also those workplace bullying cases in which the plaintiff prevailed. More specifically, plaintiff attorneys can rely upon retaliation claims, harassment claims, discrimination claims, Civil Rights claims, and even, Constitutional claims to “right the wrongs” of workplace bullying assuming that the facts of the case support these claims.

Future research should extend the case analysis or policy-capturing methodology to review not only litigated cases but also arbitrated cases. A cross-national study would also add to the existing literature, noting differences and similarities in both litigation outcomes and legal theories.

The recommendations arising from the study for individuals who are bullied are as follows. Individuals should exhaust all internal company complaint, reporting, investigating, and dispute resolution mechanisms prior to considering a legal course of action. If the process or the results are not satisfactory by the time the individual has exhausted all the internal mechanisms, then the individual should pursue legal action, even in the absence of a specific federal or state workplace bullying statute, given that the individual has at least an approximately 16% possibility of prevailing. In cases of retaliation, harassment, or discrimination, the possibility of prevailing is higher. Individuals should pursue their rights under both federal and state statutes, given that in 22% of the cases in which the individual prevailed, the cases were heard in state courts. It is recommended that the lawsuit not be based heavily on intentional infliction of emotional distress, since this issue was used successfully in an exceedingly small proportion (2.2%) of the cases in our study.

Our recommendations for attorneys are as follows. If bullying is claimed as evidence of a workplace violation, then a plaintiff is more likely to be successful

in the claim. Attorneys should be sensitive to the fact that juries are considering workplace bullying along with other workplace-related claims, for instance, discrimination. This not only has a judicial impact but a public policy impact as state legislatures consider passing statutes addressing workplace bullying. Although there are no federal or state statutes that exist today regulating workplace bullying. However there are drafts of such legislation in various states. If any of these legislative bills become law, then the law is within the purview of the judiciary.

In conclusion, even in the absence of a federal or state statute banning workplace bullying in the United States, plaintiffs have prevailed by making workplace bullying part of an existing statutory, constitutional, or tort law claim. Although no protection exists under current U.S. law for victims of bullying, victims of workplace bullying can use and have successfully used other legal claims.

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**UNSATISFACTORY WORKING CONDITIONS
AND VOICE: AN ANALYSIS INVOLVING
EMPLOYEES IN SWEDEN**

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ABSTRACT

From the classic distinction by Albert Hirschman between exit, voice, and loyalty, we can infer that employees who are dissatisfied with their working conditions have two “active” options: they can either leave their employer or raise their voices against conditions they consider to be bad. In this article—based on a 2006 survey among employees in Sweden—I ask to what extent dissatisfied workers raise their voices and, if they do so, which ways do they choose. Another task is to explore how willingness to leave the job, loyalty, and other factors influence what people do. Also, I discuss whether various forms of voice can be characterized as collective or as individual. The available data show that employees in Sweden most often speak to managers about workplace failings. Other common steps entail talking to workmates and raising issues at staff meetings, while only 10% call in union representatives. Most people do more than one thing, and complaints are thus likely to be spread among the workers. Many factors are important in employees’ decisions as to which kinds of action they choose. Those who want to switch to another workplace have a greater propensity to bring up problems with workmates and to contact union representatives, whereas strong loyalty or organizational commitment is associated with a lesser propensity to take these actions. On the other hand, loyalty has no significant effects on people’s inclination to speak to managers or to discuss issues at staff meetings. In these cases, another factor becomes the most crucial: fear of criticizing unsatisfactory working conditions. Employees who are afraid of expressing their disapproval are less inclined to talk to managers and to bring up complaints at staff meetings.

This article deals with what employees do when they have complaints about the state of affairs at the workplace. People who are dissatisfied with their situation have a number of different options: they can leave their employer, they can raise their voices against inadequate conditions, or they can be passive. Although both leaving the job and passivity will be touched upon in the article, its principal focus is on voice. I examine to what extent and how people act to obtain improvements. Do they, for example, speak with managers, bring up issues at staff meetings, or contact union representatives? Do they choose individual rather than collective forms of action? An attempt is also made to explore the determinants behind the different ways of expressing discontent. The empirical basis for the investigation is a survey of a random sample of employees, carried out in Sweden in 2006.

THEORETICAL PERSPECTIVES

A main point of departure for the present study is the classic distinction by Albert Hirschman (1970) between exit, voice, and loyalty. This distinction stems from an analysis of “the firm producing saleable outputs for customers,” but it may also be “applicable to organizations (such as voluntary associations, trade unions, or political parties) that provide services to their members without direct monetary counterpart” (Hirschman, 1970: 3). The precondition for the whole discussion is dissatisfaction. When customers are discontented with a firm’s products, they may stop buying these products, and when members of an organization are disappointed, they may leave (exit) the organization. An alternative way of handling the situation is using voice, that is, making complaints to the firm or the organization. Besides exit and voice, Hirschman introduces a third concept: loyalty. The last-mentioned concept is not so well defined, but it is said to refer to a “special attachment to an organization”—which apparently implies “a less rational” but not “wholly irrational” relationship (Hirschman, 1970: 38, 77). It seems evident that loyalty makes exit less likely to occur, but the effects on voice are less clear. “As a rule,” however, loyalty “activates voice,” and the reason is that individuals who are attached to an organization also want it to do things properly and to do away with failings in the organization (Hirschman, 1970: 78). Conversely, due to this “special attachment,” people may avoid criticizing the organization, if they believe that criticism does more harm than good.

Hirschman is interested in what makes people choose exit or choose voice and how the two are interrelated. Focusing on work organizations, there are certain things to notice. The exit option is indeed important for discontented individuals, but it is of limited value if they have few alternative job openings or other sources of income. Still, when exit is reasonably realistic, employees may use the threat of it as a lever to improve conditions. Above all, in small organizations it can be rather devastating for the employer if some individuals

quit, especially if they belong to a category of personnel with key job-specific skills. It is usually a much greater step for an employee to exit from a job than it is for a customer to stop buying products from a firm. Leaving a job often entails a big change in a person's life, and it is rather likely to be a definitive event. Once an individual has left the organization, it may be difficult or impossible for him or her to come back. This speaks for voice as a first option, at least if people see some possibility of accomplishing improvements. Even if voice is not an immediately successful strategy, there may still be a chance of future change for the better—and this needs to be weighed against the exit alternative.

Another issue to be considered is whether voice is an individual or a collective matter. Norwegian sociologist Sverre Lysgaard (1961) has provided an excellent analysis of the preconditions for the formation of a workers' collective. His study concentrates on the industrial proletariat, but similar developments may also occur among subordinate white-collar employees. Lysgaard focuses on the social elements and processes behind the transformation of individual workers into a more or less integrated social agent. In relation to an "insatiable" technical-economic system—that is, the firm—such a unit represents workers' entrenchment and defense mechanism.

The emergence of a workers' collective has to do with a number of circumstances and processes. Having fundamentally the same position in a hierarchical work organization appears to create identification, as it is easy to identify with people with whom one shares the basic conditions of life or work. This is not to deny that workers can be divided in several other ways (e.g., in terms of religion or ethnicity). Identification in turn promotes interaction, but—according to Lysgaard—the latter activity requires some degree of physical proximity between individuals. The development of the means of communication in recent decades has, of course, greatly changed the preconditions for interaction since Lysgaard wrote his book, but the basic reasoning may still be valid. Finally, being in the same situation and more or less constantly interacting with one another, workers are likely to develop similar interpretations and feelings regarding the problems they face and what can be done to solve them. On the basis of a common interpretation of the situation, they may begin to act collectively. Once established, the collective is held together by several social and psychological mechanisms. A whole ideology may emerge, providing a framework for the way individual workers define their situation.

Lysgaard does not take much notice of the union as a formal organization but emphasizes that it is different from a workers' collective. The two categories are analytically distinct, and the principal focus of Lysgaard's study is the processes behind the formation of the informal kind of unit. We should not take it for granted that collective action means union activity, although it is generally accurate to assume that "unions matter" (Yates, 1998). Often, in order for a workers' collective to become a stable social force that can stand up against a demanding employer, it needs some formal organization. A union is then the

most realistic option, as it offers the structure and stability required to counteract the power of the employer.

A situation in which individual workers interact directly—and without involving others—with management is characterized by Lysgaard as the technical-economic system's "ideal situation." The implication is that in terms of the issues dealt with, the individual workers are not backed up by the power of the collective. Grievances become a matter between management and the individual, and no one else has any say with respect to how they are handled. In contrast, when issues are channeled via the collective, following Lysgaard, we have the "ideal situation" for the workers' collective. The way problems are treated is then a concern for the collective, and it basically becomes impossible for individuals to work out their own settlements with employers or vice versa.

Many sociologists argue that contemporary advanced societies have gone through, or are going through, a process of individualization (e.g., Bauman, 2001; Beck & Beck-Gernsheim, 2002). If this is correct, we should expect the technical-economic system—in Lysgaard's terminology—to achieve its "ideal situation" rather frequently. Moreover, today, the class dimension is often treated as irrelevant. It has, for example, been claimed that the working class no longer differs from the middle class, as it has adopted the middle class's individualistic values (Pakulski & Waters, 1996). We should not deny that the individualization thesis has some substance to it, but we must definitely be somewhat cautious with regard to our conclusions in this regard (Furåker, 2005). Many authors provide very little empirical evidence to substantiate their conclusions. Without going deeper into this issue here, I wish to emphasize that the question of whether, or to what extent, employment relations have become individualized is still in need of investigation.

This does not mean that no data exist in support of the individualization thesis. One important piece of information concerns the development of union density in various countries. In recent decades, there has undoubtedly been a significant decline in unionization levels across most of the Western world (Phelan, 2007; Visser, 2006). The implication is that increasingly large proportions of employees do not have access to the kind of collective power that trade unions can represent. Instead they are left with having to make individual agreements with employers. Yet, there are still strong unions, not least in Sweden (for more details on Swedish unions and unionization patterns see, e.g., Kjellberg, 1998, 2009).

RESEARCH QUESTIONS, DATA, AND VARIABLES

This article studies the extent to which dissatisfied workers make their voices heard, and, if they do, in which forms they do it and how common various forms are. The article also aims to explore the question of whether willingness to switch to another workplace, loyalty to the employing organization, and other factors affect the way in which employees convey their discontent. Exit from the

workplace is normally an individual action, but what about voice? Treading in the footsteps of Lysgaard, a crucial question is to what extent voice is a collective action or simply an individual protest. The dataset to be used here provides information as to whether employees have brought up their complaints with managers, at staff meetings, with workmates, with union representatives, at union meetings, by writing petitions, by making lists of signatures and so forth, or by taking other kinds of action.

Empirically, the present article is based on a survey carried out by Statistics Sweden in the fall of 2006. A random sample was drawn from among participants in the regular labour force survey (LFS). Given this arrangement, it was possible to include LFS information in our dataset. The individuals selected were asked if they would be willing to fill out a questionnaire dealing with their work and labour market situation. A total of 2,584 individuals answered yes and thus received the survey. In all, 1,851 individuals, or 72% of those who had agreed to participate, actually filled out and returned the questionnaire to Statistics Sweden. It must be added, however, that 1,001 individuals did not agree to participate in the first place. Our controls with regard to the makeup of respondents do not indicate any very significant biases.

The main dependent variables are built on answers to the question of what respondents have done—during the last two years—in relation to inadequate working conditions. People were asked whether they had brought up issues (a) with managers; (b) at staff meetings; (c) with workmates; (d) with union representatives; (e) at union meetings; (f) by writing petitions, making lists of signatures, and the like; and (g) in other ways. Two other options were also offered: it was possible to reply that one had been passive and to reply that one had nothing to complain about. Respondents could mark all relevant alternatives and were not asked to rank them.

No data are available on exits in our survey—that would require a completely different research design—but there is an item on people's willingness to leave their employing organization. More specifically, respondents were asked whether or not they wanted to switch to another workplace/employer. They could then answer this question with "yes," "perhaps," or "no," and these answers have been used in the subsequent analyses. We can thus study whether, or to what extent, willingness to exit for another workplace/employer is linked to voice.

Furthermore, the survey provides data on organizational commitment, here taken to be synonymous with loyalty in Hirschman's terminology (see also Sverke & Hellgren, 2001). Organizational commitment is rather commonly measured as an index based on a series of questions (see Gallie et al., 1998). Three of these questions are included in our survey: the first question asks whether people are proud of the organization in which they work; the second enquires whether they would be willing to work extraordinarily hard to help the employer succeed; and the third asks whether they would prefer to stay with this employer rather than take a much better-paid job somewhere else. As the third item is clearly

correlated with willingness to leave the workplace/employer, only the two first items have been used here for the index. Thus, loyalty or organizational commitment is here based on two questions: whether people are proud of their employing organization and whether they would be willing to put extra effort into making it successful.

As our dataset contains some information on employees' fear of criticizing deficient working conditions, this dimension is also taken into account in the analysis. The key question is, then, whether individuals who hesitate to communicate criticism refrain from making use of different voice options. Respondents were asked whether they "often," "sometimes," "seldom," or "never" felt afraid to express their grievances; in addition to these four options, they could answer that they saw no failings to complain about.

In the search for determinants behind the choice of voice options, a large number of "objective" independent variables were run. On and off, the following nine appear in the tables below: sex, age, socioeconomic category, industry, sector, type of employment contract, usual weekly working hours, size of workplace, and union membership. To some degree, these independent variables were run for the purpose of control, but several of them are indeed relevant to the theoretical issues treated here.

If the advocates of the individualization thesis are correct, there should be no differences at all across socioeconomic categories. On the other hand, if Lysgaard's analysis is still relevant, we should expect manual workers to be more ready to use collective strategies and less inclined to use individual forms of action. Our data are not really sufficient to test this hypothesis, but they may provide some hints as to an answer. The role of unions will also be dealt with. Unions in Sweden are to a large extent class based. As a general rule, the three large organizations—the LO, TCO, and SACO—recruit manual workers, lower/middle-level white collar workers, and higher-level white collar workers respectively. Due to some minor differences in the quality of the survey data, I prefer the use of socioeconomic category instead of union affiliation, but the two variables are by and large interchangeable.

Another issue is whether people are unionized or not: being a union member may imply being supported by a strong organization. This may in turn affect people's propensity to do something about inadequate working conditions; it should at least be easier to contact union representatives. However, as pointed out above, the unionization rate is very high in Sweden, which means that union membership is not a very useful category for discriminating between workers. It is true that membership rates have declined during recent years (85% of all employees were unionized in 1993 compared to 77% in 2006) (Kjellberg, 2009), but the latter percentage is still at the top of the international scale. Nonmembers are often young people on temporary contracts and/or in part-time jobs. Actually, age, type of employment contract, and working hours may be more important than membership, and they are also included in the data analyses. The underlying

assumption is that employees who are less integrated into the workplace will be less inclined to use some of the voice options; above all, they can be expected to take up issues at staff meetings less often than others, and to involve union representatives less often.

RESULTS

In an examination of the survey data, the first step is to give a general overview of what respondents have done in relation to inadequate working conditions. Just under 13% did not see anything to complain about in the workplace and about the same proportion said they have been passive (data not shown). Rather few of those answering “no failings” reported being passive, so these two items evidently measure separable constructs. A large majority of people have things to complain about and we shall now concentrate on the action they have taken in regard to these. Table 1 provides information on the four most common ways of expressing discontent.

As shown in the first column of figures in Table 1, the alternative “spoken to manager” represents the highest proportion of responses; a clear majority of respondents have spoken to a manager. Somewhat fewer individuals have discussed the problem with workmates, and still fewer—but nevertheless clearly more than a third—have raised their voices at staff meetings. One out of 10 has brought up grievances with a union representative. In other words, it is relatively rare to call in the union. The remaining alternatives (see above) were marked by very few employees and will therefore not be treated further here.

The rest of Table 1 presents data on whether respondents have chosen other options as well, and the table should thus be read horizontally. Looking at the first row under the heading “Percentages of Employees Who Have Also Used the Other Main Options,” we find that 59.2% of those who have spoken to management have also spoken to workmates, half have brought up issues at staff meetings, and 14.7% have contacted union representatives. As people could give multiple answers, the percentages here add up to more than 100%. The second, third, and fourth rows under this heading should be read in the same way. Hence, 75.9% of those who have spoken to workmates have also spoken to management, 56% have brought up issues at staff meetings, and 16% have contacted union representatives. Evidently, when they have complaints, people most frequently combine several kinds of action. Among those employees who have spoken to management, only 13% have done nothing else. These individuals can be said to represent what Lysgaard characterized as the technical-economic system’s ideal situation. Complaints are to a large extent shared with others, which is a necessary but not sufficient step for collective action to come about. There is no information in the dataset directly corresponding to the ideal situation of the workers’ collective, but we should observe that very few of those who have contacted union representatives have done nothing else.

Table 1. Worker Reactions to Inadequate Working Conditions

The Four Most Common Ways of Expressing Discontent	Percentage of Employees Who Have Used the Option Specified to the Left (Number given in parentheses)	Percentages of Employees Who Have Also Used the Other Main Options			
		Spoken to Manager	Spoken to Workmates	Brought Up Issue at Staff Meeting	Contacted Union Representative
Spoken to Manager	56.7 (1,050)	—	59.2	50.0	14.7
Spoken to Workmates	44.2 (819)	75.9	—	56.0	16.0
Brought Up Issue at Staff Meeting	36.9 (683)	77.0	67.2	—	16.0
Contacted Union Representative	10.0 (186)	82.8	70.4	58.6	—
Total	100 (1,851)	1,050	819	683	186

In order to study how various factors affect each of the options in Table 1, several binary logistic regressions were run. The dependent variables were then divided into two categories. Table 2 focuses on the steps taken within the formal structure of the employing organization. The first dependent variable captures whether employees have spoken to managers and the second whether they have brought up issues at staff meetings. Table 3 gives us the outcome on the remaining two main kinds of action. These are linked to workmates and unions respectively, the first representing an informal way of complaining and the second standing for a formal move outside the employing organization.

Table 2 presents the outcomes of the regressions on the first two dependent variables. The first of these concerns whether employees have put across their complaints to management. Without going into details on the variables controlled for but not shown in the table—industry, sector size of workplace, and usual weekly working hours—it may be pointed out that employees in health/social care as well as in education are particularly apt to speak to managers.

Among the results presented in Table 2, we see that the differences on sex and age cannot be verified statistically, although they are rather large. In contrast, socioeconomic category can clearly be seen to be a significant factor: in comparison with manual workers, the two categories of white-collar workers are both more inclined to speak to managers. It is also worth noting the outcome on type of employment contract: to have a temporary job means being less eager than others to speak with managers. This is probably a sign of a lower degree of workplace attachment and integration among temporary employees.

The independent variables discussed so far deal with objective circumstances, whereas the two variables at the end of the table refer to individuals' attitudes or feelings. People who are willing to switch to another workplace/employer do not differ clearly from those unwilling to do so, whereas those who have answered "perhaps" are more inclined to talk to managers. A possible interpretation is that the latter hesitate about what to do and therefore try this voice option. Loyalty or commitment did not turn out to be significant, and it is accordingly excluded from this regression (and, by the way, from the next regression in Table 2 as well). Conversely, being afraid of criticizing unsatisfactory working conditions seems to be an important factor: respondents who have reported feeling troubled tend to be less likely to bring up complaints with management, although the coefficient for those who answered "yes, often" is not statistically confirmed (but it is very close to being so). Unsurprisingly, we find an extremely low odds ratio for those who have seen no faults in the workplace. It should be added that as many as about one-third of the respondents said that they often or sometimes felt afraid of openly articulating their disapproval.

On the variable regarding employees' tendency to bring up complaints at staff meetings (the column furthest to the right in Table 2), socioeconomic category is not included in the regression, as it could not be demonstrated to have any significant effects. The same holds for willingness to change to another

Table 2. Effects of Various Factors on Whether Workers Have Spoken with Managers about Workplace Failings or Brought Up Issue at Staff Meetings

Independent Variables	Spoken to Manager	Brought Up Issue at Staff Meeting
Sex		
Male	1.19	1.10
Female (ref.)	1	1
Age		
16–24	0.75	0.57
25–34	0.91	0.99
35–54 (ref.)	1	1
55–64	0.78	0.91
Socioeconomic category		
Manual worker (ref.)	1	
Lower/middle-level white-collar worker	1.80***	
Higher white-collar worker	1.75**	
Type of employment contract		
Permanent (ref.)	1	1
Temporary	0.59**	0.51**
Willingness to quit workplace/employer		
Yes	1.18	
Perhaps	1.40**	
No (ref.)	1	
Afraid of criticizing failings		
Yes, often	0.61	0.47**
Yes, sometimes	0.62**	0.65**
Sees no failings	0.01***	0.05***
No, seldom	0.85	0.86
No, never (ref.)	1	1
Nagelkerke R ²	0.22	0.18
Constant	3.28***	1.59
N	1,702	1,735

Note: *** = $p < .001$; ** = $p < 0.01$; * = $p < 0.05$. Includes controls for industry, sector, size of workplace, and usual weekly working hours; using binary logistic regressions and odds ratios.

Table 3. Factors Affecting Whether Workers Have Spoken with Workmates or Contacted Union Representatives about Workplace Failings

Independent Variables	Spoken to Workmates	Contacted Union Representative
Sex		
Male	0.87	0.62*
Female (ref.)	1	1
Age		
16–24	0.93	0.41
25–34	1.00	0.69
35–54 (ref.)	1	1
55–64	0.89	1.19
Union membership		
Yes		3.49**
No (ref.)		1
Willingness to quit workplace/employer		
Yes	1.73***	2.65***
Perhaps	1.49**	1.66*
No (ref.)	1	1
Loyalty/organizational commitment		
High	0.59***	0.42**
Medium high	0.76	0.46**
Medium low	0.83	0.52**
Low (ref.)	1	1
Nagelkerke R ²	0.07	0.13
Constant	1.13	0.06***
N	1,751	1,750

Note: *** = $p < .001$; ** = $p < 0.01$; * = $p < 0.05$. Includes controls for industry, sector, size of workplace, and usual weekly working hours; using binary logistic regressions and odds ratios.

workplace/employer: people who want to quit—and people who perhaps want to quit—are no more likely than others to ventilate their grievances at staff meetings. Again, however, industry, sector, size of workplace, and usual weekly working hours are controlled for. I will not provide a detailed discussion of the results on these variables, but a few things may be mentioned. There are certain significant differences between industries, once more with the highest coefficients for health/social care and education. The underlying explanation is

probably that staff meetings are more or less frequent in various industries. Size of workplace is another factor that may be related to the frequency of staff meetings.

Neither the results on sex nor the results on age are statistically significant in this case, but the very low coefficient for the youngest employees is not far from it, and it should be noted that the youngest age category is relatively small. Actually, with regard to inclination to bring up complaints at staff meetings, only two statistically significant variables are visible in Table 2. First, we see a clear effect for kind of employment contract: temporary employees are less keen on speaking up at such meetings. Second, being afraid of criticizing failings is also a principal variable: individuals who are anxious in this respect are less inclined to use staff meetings to raise complaints.

Table 3 shows factors impacting on employees' propensity to speak with workmates and to contact union representatives about workplace failings, two types of action that are outside the formal structure of the employing organization. The variables are partly the same as in Table 2, but only partly. Socioeconomic category, sector, size of workplace, and fear of criticizing deficient working conditions are excluded, and the reason is of course that these variables do not matter very much. Fear of expressing discontent about workplace failings has been replaced by loyalty or organizational commitment. Industry, type of employment contract, and usual weekly working hours are controlled for, but the results are not displayed. Finally, in the analysis on employees' contacts with union representatives, union membership is included.

Starting with the dependent variable on whether employees have spoken to workmates about unsatisfactory working conditions, it should be mentioned that there are some significant industry differences (not shown). To proceed to the independent variables appearing in the table, we again find no clear sex or age differences. Willingness to switch to another workplace/employer is, on the other hand, an essential factor. Those who want to exit are more inclined to talk to workmates than those who answered "no" to this question, with respondents who checked "perhaps" in an in-between position. Moreover, loyalty or organizational commitment now turns out to have significant effects. Being highly loyal or committed is associated with a tendency to avoid speaking with workmates about workplace failings. The reason for this may be that the most committed employees consider it disloyal to speak about these failings to co-workers. There is also another possibility, namely, that these employees are simply less dissatisfied with working conditions.

On the last dependent variable—measuring employees' contacts with union representatives regarding inadequate working conditions—we meet a partly different picture. For the first time we run into a clear sex difference: male employees are less apt than female employees to contact union representatives. It can also be observed that the odds ratio for the youngest age category is very low but not statistically verified. Union membership has not been found to be a factor of

great consequence for any of the previous dependent variables, but now—of course—we find a strong effect.

The two final independent variables are also important. First, being interested in switching to another workplace/employer seems to increase the propensity to get in touch with union representatives. Second, loyalty or organizational commitment is a crucial factor as well: being highly committed tends to make people contact the union less frequently.

DISCUSSION

This article has demonstrated what employees in Sweden do when they consider their working conditions unsatisfactory. Clearly, the most common action is to speak to managers (57% have done so), followed by speaking to workmates (44%), bringing up issues at staff meetings (37%), and contacting union representatives (10%). These results are perhaps not much of a surprise. It is of course convenient to take up problems with people who have the power to do something about them. At the same time, a clear majority of those who have spoken with managers have also spoken with workmates. About half of them have brought up issues at staff meetings and some have contacted union representatives. No more than 13% have done nothing except contacting management. In other words, complaints are rather likely to be spread among the collective of workers. However, this is not the same as—and it does not have to lead to—taking collective action. Unfortunately we have insufficient information to explore that issue further, but at least we know that people do not very often call in the union. An explanation might be that such an act entails a consensus-breaking element, that is, a step implying that issues cannot be resolved without the intervention of a third party.

Nevertheless, unions may play a significant role as a background force. Sometimes a more or less hidden threat of action may be sufficient to make managers improve working conditions. For a long time, trade unions in Sweden have been strong both nationally and in workplaces. Other data in our survey indicate that a large majority of employees consider unions important for obtaining good deals with employers (Bengtsson & Berglund, forthcoming; Furåker & Berglund, 2003).

Socioeconomic category plays a significant role with regard to one of the dependent variables in my analysis: speaking with managers. It is more common for white-collar workers than for blue-collar workers to do this. The same pattern is revealed with respect to those who have done nothing but speak to managers. These results can be interpreted as an expression of more individualistic leanings among white-collar workers. In consequence, the assumption in some of the sociological literature that class does not matter any more (Beck & Beck-Gernsheim, 2002; Pakulski & Waters, 1996) appears to be too hastily

arrived at. On the other hand, socioeconomic category is not very important as regards the other dependent variables under examination.

According to Hirschman, discontented individuals have two main options: to leave the organization or raise their voices against its shortcomings. In this study, we have no information on exits from the workplace but only information on willingness to exit. Unsurprisingly, willingness to leave for another workplace/ employer is strongly associated with discontent, and it is also associated with a greater tendency to speak with workmates and to contact union representatives. On the option of speaking to managers, there are some interesting results. Respondents who are clearly positive about switching to another workplace/ employer do not differ significantly from those answering in the negative, whereas people answering “perhaps” are more inclined to speak to managers. It thus seems that a degree of uncertainty can trigger this kind of action.

Hirschman’s analysis entails the assumption that loyalty can be an intervening factor, making people either bring up complaints or avoid being critical, depending on how they look at the consequences for the organization. I have used a simple index on organizational commitment as an indicator of loyalty, exploring its role in relation to the voice options in focus. Strong loyalty or organizational commitment appears to decrease people’s inclination to speak to workmates about workplace failings and to take up problems with union representatives. It is thus the propensity to avoid criticism that seems to be crucial, and I cannot discover any sign pointing in the opposite direction, that is, that loyal employees will be especially eager to voice their complaints. There are no significant effects of loyalty/organizational commitment on respondents’ readiness to speak to managers or to bring up issues at staff meetings.

In the latter two cases, another factor turns out to be important instead: fear of criticizing unsatisfactory working conditions. People who worry about demonstrating their disapproval are less ready to raise complaints with managers and at staff meetings. However, we should note that fear of criticizing inadequate working conditions does not have any clear impact on respondents’ tendency to talk with workmates—probably there are often at least some people or some person with whom individuals can speak familiarly—or to contact union representatives.

CONCLUSIONS

What practical conclusions can be drawn from this study? To some extent, the results point in different directions. On the one hand, most employees in Sweden do take some kind of action when facing inadequate conditions at the workplace. The most common thing is to speak with managers, and as a rule this is combined with other measures. On the other hand, about one-third of the respondents say they are often or sometimes afraid of criticizing workplace failings. Are these divergent patterns indicative of positive workplace conditions

or not? It is hard to give an unambiguous answer to this question. Obviously most people go ahead and take action in connection with grievances, but the numbers reporting fear of raising their voices is noteworthy in a country with such a high degree of unionization as Sweden.

Employees' worries about criticizing unsatisfactory working conditions must be considered an important issue in a democratic and freedom-of-speech perspective. The whole issue poses a critical challenge to the unions. Sweden has a law on codetermination, aimed at employee participation in employer decision making. This law was enacted in 1976, and since then it has been modified a number of times. The right to participate in decision making is mainly confined to employee representatives, that is, to the established unions. Employers are obliged to inform the unions and to initiate negotiations with them before deciding on any major change. One problem is, of course, that the processes of codetermination may not involve rank-and-file workers very much. Another question is whether or how codetermination has changed over the years, especially in workplaces where the unions have been weakened. For these and various other reasons, it seems to be about time to take a look at the way the law works today.

We have also seen that temporary workers are less inclined to speak to managers and to bring up issues at staff meetings. This finding is not surprising, because these workers are often new arrivals. For some, the job is just a short-term undertaking, and they will soon leave it for another job or other activities. Consequently, there is no reason for them to worry greatly about inadequate working conditions. Those who stay on need some time to become socially integrated. How long this integration process will be has to do with the attention paid to it by managers, other employees, and unions. All these actors have good reasons to contribute to making the process as short as possible—with the help of introductory programs and the like. The proportion of temporary employees has increased in Sweden during the last two decades—particularly among the youngest workers—and their situation needs to be examined more closely. One should perhaps not express preconceived opinions about such an examination, but the outcome would presumably encourage unions and some political parties to call for improvements in the law on fixed-term contracts.

A little more than one-third of employees brought up complaints at staff meetings. There is a great deal of variation across industries, which is most likely partly due to the frequency of such meetings. It may be more or less easy to get employees together on a regular basis, but it is vital for them to have this opportunity of discussing problems and conveying complaints. Accordingly, a demand should be made for regular staff meetings to be organized in all workplaces where this is possible and convenient. The frequency with which gatherings can take place must of course be decided in each workplace, but it is crucial that the intervals in between meetings should not be too long. A prerequisite for such meetings to function properly is a social climate that allows

people to voice their complaints. Clearly, unions may have a significant role in relation to the organization of staff meetings.

Speaking with workmates is undeniably a significant voice option. Actually, it is the second most common way of expressing criticism. This is the informal option, and it is important that all employees in a workplace feel that they can bring up various issues with colleagues. A positive social atmosphere cannot be ordered either from above or from below, but managers, the already employed, and unions can do a great deal to avoid some workers becoming isolated and excluded from normal social interaction in the workplace.

Finally, contacting union representatives is normally not the first step taken when working conditions are inadequate; if it is the first step taken, management may consider it a hostile action. Therefore it is not surprising that this measure is the least common of the top four ways of expressing discontent. It is also a fact that stronger loyalty or organizational commitment means a lower inclination to contact union representatives. Still, this voice option is indeed essential for workers, as they are often unable to do much as individual actors. In the struggle for improvements, support from an organized, collective force can be decisive. We might even say that without backing from such a force, individual workers are time and again completely lost.

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ARE LESS-EDUCATED WOMEN IN THE BLIND SPOT OF PAY EQUITY?

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ABSTRACT

In this article I will show two things: first, that the labour market is still very divided with respect to gender; and second, that the material impact of this division differs sharply by level of education. Among occupations that require the least education, women pay a very high price for this gender-based division of employment. In contrast to occupations where more education is needed, occupations requiring the least education show a huge difference in wages according to whether they are predominantly male or predominantly female. This difference is a widespread phenomenon that favours so-called male occupations. The corresponding pay gap, in men's favour, in occupations requiring a high school diploma (Secondary V in Quebec) or less, is shrinking only slightly, whereas the gaps between men and women in occupations requiring more education are clearly closing. The article then demonstrates that three often-mentioned options for action at present offer little hope of countering this particular phenomenon: these options are the application of Quebec's Pay Equity Act, collective bargaining, and internal promotion. The problem still affects approximately 500,000 women, after 25 years of equal access programs and close to 15 years of implementation of the Pay Equity Act. Employment equity programs are the most promising initiatives, provided that they can find their way into the affected employment sectors.

INTRODUCTION

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INTRODUCTION

While women have made a number of gains in terms of labour force participation, the division of labour is still largely gender based. A gendered concentration

of workers still exists in certain occupations and certain jobs, even though other occupations have a more mixed workforce. After 25 years of employment equity policy in Quebec, some jobs still have such a high concentration of women or men that they can be called predominantly female or predominantly male.

To determine whether an occupation is predominantly female or male, the Institut de la statistique du Québec (ISQ) uses a diversity index that can be expressed as the difference between the proportion of men or women in the overall labour force and their proportion in a specific occupation.

In 2006, for instance, the proportion of women in the labour force was 47%, while that of men was 53%. An occupation is considered “female” if the proportion of women in that occupation is equal to or greater than the 47% in the labour force, and “predominantly female” if the proportion of women is equal to or greater than 73.5%. Conversely, if women account for less than 47% of persons in an occupation, down to 23%, the occupation is termed “male”; if the proportion of women is less than 23%, the occupation is termed “predominantly male.”

Of the 520 occupations listed in Canada’s National Occupational Classification (NOC), in 2006, 347 were deemed male or predominantly male and 174 were deemed female or predominantly female (see Table 1). There were, therefore, almost twice as many male or predominantly male occupations as there were female or predominantly female occupations, and so men had more diverse options available to them. Approximately three-quarters of workers are employed in male/predominantly male or female/predominantly female occupations (78.7% of working women, 73.3% of working men).

In 2006, women were working in 221 occupations in which there was a very high concentration of men. Conversely, men were to be found in 71 occupations with a very high proportion of women, stretching over all sectors of the economy.

In this article, I will show two things: first, that the labour market is still very divided with respect to gender and, second, that the material impact of this division on the pay gap differs sharply by level of education. Among occupations that require the least education, women pay a very high price for the gender-based division of employment. In contrast to occupations where more education is needed, occupations requiring the least education show a huge difference in wages according to whether they are male/predominantly male or female/predominantly female. This difference is a widespread phenomenon that favours so-called male occupations. In Quebec, high school education ends at the completion of Secondary V (the equivalent of Grade 11 in the rest of Canada). The corresponding pay gap in men’s favour in occupations requiring the completion of Secondary V or less is shrinking only slightly, whereas the pay gaps between men and women in occupations requiring more education are clearly closing. I will examine three options for action that, at present, offer little hope for improvement. The problem still affects approximately 500,000 women, after 25 years of equal access programs and close to 15 years of implementation of the Pay Equity

Table 1. Breakdown of Labour Force by Degree to Which Occupations Are Female or Male, Quebec, 1991-2006

	2006		2001		1991	
	Number of occupations	% of Labour Force	Number of occupations	% of Labour Force	Number of occupations	% of Labour Force
Women						
In female or predominantly female occupations	174	78.7	170	77.7	152	79.2
In male occupations	125	15.4	115	16.6	109	14.8
In predominantly male occupations	221	6	221	5.7	245	6
Total	520	100	506	100	506	100
Men						
In male or predominantly male occupations	347	73.3	337	75.5	353	77.3
In female occupations	102	20.3	103	18.2	92	16.5
In predominantly female occupations	71	6.4	66	6.3	61	6.2
Total	520	100	506	100	506	100

Source: Institut de la statistique du Québec (ISQ).

Act, which is supposed to be an international model of its type (Chicha, 2006). Most studies of the factors leading to the success/failure of pay equity programs focus on unionization and organization size (England & Gad, 2002) but not on the effect of job segregation combined with the level of education of workers. This article shows that we should pay attention to these latter factors.

PAY AND EMPLOYMENT EQUITY LEGISLATION IN QUEBEC AND IN CANADA

Employment Equity

The government of Quebec has never adopted proactive legislation regarding employment equity in the private sector, aside from requiring organizations that solicit contracts and subsidies from the government to hire women, under a “contractual obligation.”

It is only the Canadian government that has followed a proactive approach to the private sector, since 1985, in the case of organizations that employ 100 employees or more, under the Employment Equity Act. This law is covering 1.1 million employees in 2008, that is, a very small proportion (7%) of the 14.4 million Canadian workers. The federal government also imposes a “contractual obligation.”

Systemic discrimination is the fundamental concept behind the entire Quebec legal apparatus in the area of equity. Systemic discrimination is neither explicit nor voluntary, neither conscious nor intentional. It is often the result of a management system that is based on a certain number of presuppositions, most often implicit, with respect to various groups, a system including practices and traditions that perpetuate a situation of inequality with respect to the members of specified target groups. Systemic discrimination involves discrimination that is built into employment systems, often unintentionally. Such systems always have an adverse impact on one group (e.g., women) compared to another (e.g., men); they may reflect old social values (e.g., men are breadwinners and should be paid more).

To establish the existence of systemic discrimination, it is necessary to demonstrate the “under-use” of the members of the four specified target groups: women, members of cultural communities, people with disabilities, and Native People (Commission des droits de la personne et des droits de la jeunesse du Québec [CDPDJQ], 2003a, 2003b; Legault, 2002). The members of the target groups are underused when their numbers in a given job in a given organization are less than their availability rate on the job market. When this threshold for underuse is established, the employer may practice preferential hiring or promotion for the members of the target groups *when they have the same qualifications as the other candidates*, until the group has the same representation rate in the organization as this availability rate on the job market. Affirmative action programs aim

essentially at increasing the representation of the members of the target groups and at breaking down the sexual segregation of jobs by providing members of the target groups with access to all types of jobs.

Pay Equity

In Canada and in the rest of North America as well, pay equity, also known as “fair wages” or “fair pay,” is a means to redress a particular kind of gender-based intraorganization wage discrimination that results from a combination of gender-based occupational segregation and the underpayment of women’s work. The need for pay equity is indeed premised on the conclusion that female jobs have been undervalued and underpaid because they have been performed primarily by women (the “overcrowding hypothesis”: see Alksnis, Desmarais, & Curtis, 2008; Bergmann, 1971, 1974; Sorensen, 1990). Unlike employment equity, pay equity focuses on gender and not on race, disability, or any other discriminating status. A key lesson learned from a complaint-based, human rights-style approach is that it is not as effective as a proactive approach for redressing discrimination built into compensation systems (Beeman, 2004). Quebec, the first jurisdiction to require pay equity in 1976, changed its initial complaint-based approach to a proactive one in 1996. This has now been in force for close to 15 years. The basic three-step pay equity process includes the following: defining female and male jobs, using a gender-neutral job evaluation system to assess the value of female and male jobs, and using a method to determine fair wages for female jobs that are of comparable value to male jobs.

Nearly all of the 14 Canadian jurisdictions are involved with pay equity: (1) the federal public service, federal Crown corporations, and private firms crossing provincial boundaries (the banking, communication, and transportation industries); (2) 9 out of 10 provincial governments, a category that covers the provincial public service, broader public sector organizations (e.g., schools, hospitals), and private firms operating within the provincial boundaries; and (3) three territories. Private sector organizations are covered by proactive legislation in two jurisdictions: Ontario since 1988 and Quebec since 1996 (Weiner, 2002).

Pay equity in Quebec is handled within a single organization under the Pay Equity Act, as compared to broader, more centralized wage-setting mechanisms in other countries (e.g., Australia). Gender-neutral job evaluation is the key to pay equity. Though they were compatible with pay equity, in reality, job-evaluation systems either incorporated gender bias or were used in a gender-biased manner. Pay (like employment) equity is aimed at redressing systemic gendered discrimination in wage setting. A job’s value is defined in terms of skill, effort, responsibility, and working conditions. The aggregate value of female jobs is compared to the aggregate value of a corresponding male job—or to the corresponding point on a line where the x axis represents wages and the y axis represents job evaluation scores.

Pay equity is directed at redressing the underpayment of women's work while temporarily taking occupational segregation for granted (Armstrong & Cornish, 1997). However, it is theoretically possible that over time, the higher wages that become associated with female jobs because of pay equity could attract a higher proportion of men to particular occupations:

As long as women's jobs are paid fairly given their value, pay equity is achieved even though occupational segregation continues. Employment equity, on the other hand, is designed to reduce occupational segregation among traditional male jobs by removing the barriers that have kept women (and other designated groups) out. Employment equity "accepts" the wages associated with traditionally female jobs, that is, it is unconcerned that female jobs may be underpaid relative to their value. (Weiner, 2002: S102)

Some feel that pay equity is not needed, because employment equity will remove the barriers that prevent women from moving into more highly paid male jobs. Such a view makes two inappropriate assumptions. First, it makes the assumption that all men's jobs pay more than all women's jobs; the pay of janitors compared to the pay of nurses shows that this is not true. Second, it makes the assumption that all women will move into higher-level male jobs; this denies the continuing need for what have traditionally been female jobs. Pay equity is needed because of the presence of both occupational segregation and the underpayment of women's work (Weiner, 2002: S102).

True, nurses are better paid than janitors are; but these are different-level jobs, so one could say that this argument is not conclusive. We will see here that among jobs requiring the same lower level of education, men's jobs are generally better paid than women's. That being said, there are various types of gender wage gaps, not all of which are being addressed by pay equity legislation:

- Men working in higher-valued jobs than women (segregation in employment, employment and pay inequity),
- Men and women working in substantially the same jobs, but men working in higher-wage industries (segregation in employment, employment and pay inequity),
- Men and women working in substantially the *same jobs* for the *same employer* but men having higher human capital or productivity or men being paid more (unequal pay for equal work, direct discrimination),
- Men and women working in *equally valued jobs* for the same employer but men being paid more (discrimination that pay equity is designed to redress). (Weiner, 2002, S 103)

We will focus here on the first source of pay inequity that pay equity legislation fails to address and eradicate (men working in higher-valued jobs than women). Baker and Fortin (1999) have looked at the relationship between the proportion of men and women in an occupation and their pay and shown that in the United

States, there is a negative relationship between hourly wages and the proportion of women in an occupation (this was also the conclusion of Sorensen, 1990). This is related to pay equity since the proportion of women in an occupation is expected to be related to wages at the level of the firm. Nan Weiner, a Canadian expert, asserts that this latter relationship “does not exist in Canada” (Weiner, 2002: S113). An in-depth analysis shows that things are not that simple.

LABOUR FORCE CONCENTRATION OF WOMEN AND MEN

Is the situation changing in terms of gendered workforce concentration? Some underlying trends are stable, as can be seen from a previous article (Legault, 2010). The 10 occupations with the largest number of workers in 2006 were among the top 20 in 2001 and 1991, with one exception. The top three female occupations remained the same: secretary (98% women), sales clerk (56.7%), and cashier (86.1%); sales clerk and cashier are relatively unskilled occupations.

If we broaden the scope of our study to include the top 50 occupations for women in 2006, we obtain a range that encompasses two-thirds of working women. If, from this group, we take occupations where no more than a high school diploma is required, it can be seen (see Table 2) that a third of the women in the labour force work in 20 occupations that have a very high percentage of female employees.

In 2006, women were still underrepresented in the less-skilled, predominantly male occupations: truck driver, automotive service technician, carpenter, janitor, material handler, delivery driver, and construction labourer (Legault, 2010). Construction industry occupations in general are still predominantly male (98.8% male: Legault & Danvoye, 2007).

Women have made noteworthy progress as bus drivers, subway operators, and other transit operators (proportion of jobs in these occupations held by women rising from 21.2% in 1991 to 26.1% in 2001) and among technical sales specialists (proportion rising from 21.5% in 1991 to 27.4% in 2001)—which pushed these two occupations from “predominantly male” to just “male”—and among shippers and receivers (rising from 17.6% to 22.3%), often thanks to affirmative action measures, at the very least for bus drivers and subway operators, due to city governments’ legal liabilities.

Yet overall, it can be seen that there is a higher proportion of men than women in the manufacturing industries, while there are more women than men in the service industries. Even within the service sector, there are still some gender divisions, with more men than women employed in the transportation industry, for instance.

If, as we did for women, we broaden our scope to include the top 100 occupations for men in 2006, we arrive at a range that encompasses virtually two-thirds of the men in the labour force. If, from this group, we take occupations that

Table 2. Selection of Occupations in Which No More than a High School Diploma Is Required, among Top 50 for Women in 2006, Quebec

Rank	Occupational structure NOC-S 2006	Labour force (15 and over)	% of female labour force	% women
1	Secretaries (except legal and medical)	99,105	5.4	98
3	Cashiers	70,425	3.8	86.1
5	General office clerks	55,740	3.0	87.2
8	Accounting and related clerks	45,250	2.4	84.8
9	Food and beverage servers	41,605	2.2	76.4
10	Nurse's aides, orderlies, and patient service associates	41,245	2.2	81.4
16	Receptionists and switchboard operators	24,940	1.3	87.8
17	Customer service, information, and related clerks	24,065	1.3	63.5
19	Hairstylists and barbers	22,225	1.2	85.2
20	Customer service representatives in financial services	21,300	1.2	88.3
23	Industrial sewing machine operators	16,920	0.9	89.8
24	Visiting homemakers, house-keepers, and related occupations	14,920	0.8	86.6
27	Elementary and secondary school teacher's assistants	12,985	0.7	83.2
29	Administrative clerks	12,755	0.7	74.3
31	Licensed practical nurses	11,895	0.6	91.4
32	Other occupations in support of health services	11,805	0.6	85.2

Table 2. (Cont'd.)

Rank	Occupational structure NOC-S 2006	Labour force (15 and over)	% of female labour force	% women
33	Babysitters, nannies, and parents' helpers	11,190	0.6	96.6
34	Estheticians, electrologists, and related occupations	10,895	0.6	96
37	Bookkeepers	9,765	0.5	80.4
	Total (% women: weighted average)	559,030	30.2	86.5
	Total for top 50 occupations (% women: weighted average)	1,222,945	66.1	67.7
	Total for 520 occupations	1,849,195	100	47.1

Source: Institut de la statistique du Québec (ISQ).

require no more than a high school diploma, it can be seen (Table 3) that 28.2% of working men are employed in 37 occupations in which the percentage of male workers is very high.

In other words, if, from all occupations, we first take the top ones for women and for men, so that we have around two-thirds of all male and female workers, and if we then look at occupations that (1) require no more than a high school diploma and (2) are predominantly male or female, in other words, highly gender divided, then it can be seen that a third of working women are employed in 20 occupations having a very high proportion of female workers (weighted average of 86.5%), and that 28.2% of men work in 37 occupations having a very high proportion of male workers (weighted average of 90.5%). This means that around a third of men and women work in predominantly male or predominantly female occupations requiring no more than a high school diploma.

Does gender division, or gender-based concentration of workers, affect all occupations in the economy to the same degree? Occupational sex segregation is well distributed throughout the economy and is not restricted to occupations requiring lower levels of education. If, from the top 50 occupations for women and the top 100 occupations for men, we aggregate those requiring a junior college diploma or university degree and involving managerial duties—this time without choosing those with the highest proportion of male or female workers and without excluding mixed workforce occupations—and those requiring a high

Table 3. Selection of Occupations in Which No More than a High School Diploma Is Required, among Top 100 for Men in 2006, Quebec

Rank	Occupational structure NOC-S 2006	Labour force (15 and over)	% of Male labour force	% men
2	Truck drivers	63,385	3	96.5
4	Automotive service technicians and truck and bus mechanics	37,630	1.8	98.4
5	Carpenters	34,600	1.7	98.7
6	Janitors, caretakers, and building superintendents	34,170	1.6	82.1
7	Material handlers	33,210	1.6	89.1
8	Delivery and courier service drivers	30,908	1.5	92.8
10	Construction trades helpers and labourers	27,935	1.3	94.1
15	Shippers and receivers	24,450	1.2	75.2
18	Welders and related machine operators	22,995	1.1	95.8
20	Security guards and related occupations	20,790	1	75.3
21	Construction millwrights and industrial mechanics (excluding those in the textile industry)	20,660	1	98.2
28	Heavy equipment operators (excluding crane operators)	16,120	0.8	98.7
29	Machinists and machining and tooling inspectors	16,030	0.8	94.5
30	Landscaping and grounds maintenance labourers	15,375	0.7	88.3
31	Labourers in wood, pulp, and paper processing	15,055	0.7	87.2

Table 3. (Cont'd.)

Rank	Occupational structure NOC-S 2006	Labour force (15 and over)	% of Male labour force	% men
33	General farm workers	14,570	0.7	71.4
34	Electricians (excluding those in the industrial and power systems)	14,400	0.7	98.5
40	Storekeepers and parts clerks	12,020	0.6	86.8
44	Public works and maintenance labourers	10,875	0.5	86.7
51	Taxi and limousine drivers and chauffeurs	9,555	0.5	92.9
55	Plumbers	8,765	0.4	98.3
58	Motor vehicle body repairers	8,550	0.4	97.3
67	Printing press operators	7,540	0.4	85.5
70	Furniture and fixture assemblers and inspectors	7,435	0.4	79.3
71	Heavy-duty equipment mechanics	7,415	0.4	98.4
73	Cabinetmakers	7,305	0.4	89.9
74	Residential and commercial installers and servicers	7,215	0.3	95.2
78	Butchers, meat cutters, and fishmongers—retail and wholesale	6,915	0.3	84
81	Specialized cleaners	6,495	0.3	87.8
82	Chefs	6,455	0.3	76.3
83	Residential home builders and renovators	6,220	0.3	97
90	Process control and machine operators in food and beverage processing	5,485	0.3	70.3

Table 3. (Cont'd.)

Rank	Occupational structure NOC-S 2006	Labour force (15 and over)	% of Male labour force	% men
91	Plasterers, drywall installers, and finishers and lathe operators	5,475	0.3	93.8
94	Letter carriers	5,255	0.3	68.8
98	Sawmill machine operators	4,950	0.2	94.3
99	Service station attendants	4,750	0.2	71.7
100	Bricklayers	4,730	0.2	99
	Total (% men: weighted average)	585,760	28.2	90.5
	Total for top 100 occupations (% men: weighted average)	1,415,485	68	58.1
	Total for 520 occupations	2,080,075	100	52.9

Source: Institut de la statistique du Québec (ISQ).

school diploma or less, and compute the average male/female concentration, we obtain relatively comparable weighted average proportions of women and men for the four groups seen in Table 4.

Experts tend to assert that “Gender gaps are closing in terms of education, hours and days worked” (England & Gad, 2002: 292), and this is a fact. But still, education and hours of work being equal for given social groups, there is gendered concentration in many occupations, throughout the economy. And while the concentration of one gender or the other in an occupation is not restricted to jobs requiring lower-level qualifications, the consequences of such segregation are much more serious in such jobs. According to the “crowding hypothesis,” we are supposed to observe the following sequence of events. Women are crowded into some occupations, typically referred to as “women’s work,” which reduces their wage:

For simplification, this model assumes that women and men have equal abilities and thus without discrimination they would be paid equally. Hence, it predicts that because of discrimination women and men are segregated into different occupations and that those doing “women’s work” earn less than those doing “men’s work” even though all workers are equally well qualified for both jobs. (Sorensen, 1990: 56)

Table 4. Concentration by Sex and by Level of Education
Required for Occupation, Quebec, 2006

Occupations	Top 50 among women	Top 100 among men
Requiring a junior college or university degree, and involving managerial duties	75.8%	73.4%
Requiring a high school diploma or less	72.8%	69.3%

Source: Institut de la statistique du Québec (ISQ).

A reading of contemporary data leads to slightly different conclusions; in this case, progress in women's earnings is noticeable in jobs requiring education, refuting the crowding hypothesis; however, the crowding hypothesis is still confirmed as there is far more inertia in job sectors involving less-educated workers. In other words, the effects of a lower level of education on wages are not the same for women as for men, as we shall see.

OCCUPATIONAL SEX SEGREGATION HAS A VERY SIGNIFICANT MATERIAL IMPACT ON THE LESS EDUCATED

The General Wage Gap: Comparing Hourly Rates of Pay

In industrialized societies in general, the average rates of pay—whether hourly, weekly or annual—for men are higher than those for women, the size of the gap varying with the pay period considered.

The advantage of making comparisons in terms of annual compensation is that such compensation represents the actual employment income available to workers, taking into account the actual duration of paid work, excluding periods of unemployment, time between temporary jobs, and part-time work but including overtime hours. On the other hand, it does not provide a precise indication of the value of work in the marketplace, as variations in the length of time worked confuse the picture.

Weekly compensation is closer to representing the value of work in the marketplace, as it excludes confounding factors such as periods without employment (due to temporary job status or to periods of unemployment during the year), but it is nevertheless affected by two other confounding factors: work pattern (full-time or part-time) and overtime hours.

Looking at hourly compensation gives us the advantage of not introducing any confounding factors such as work pattern (full-time, part-time), employment status (permanent, temporary), periods without employment, or overtime hours.

The gap between men's and women's hourly pay is always less than the gap between men's and women's weekly or annual pay. Weekly and annual rates offer a more accurate picture of real income, as they take into account the actual time worked. On the other hand, the hourly rate tells us more about market value, and that is why I have chosen to focus on hourly rates here. Please keep in mind that these rates represent the smallest pay gap.

A Narrowing Gender Pay Gap in General

Aggregate gaps are narrowing and the general trend is toward equity. In Quebec, men's hourly pay rate was higher than women's throughout the period 1998–2008, but the difference shrank by 3.8 percentage points during that period (see Table 5). While hourly rates rose for both sexes over that time, the increase was higher for women (33.2%) than for men (27.4%). This consistent trend can be explained by employers' propensity to invest in training and raise pay when employees are more stably employed.

But what happens to the difference between men's and women's rates of pay if the level of education required for jobs is taken into account? Extensive studies of the relationship between education and pay, both in the general population and among women in particular, have shown how the gap in pay between men and women can be reduced if the gap in education is reduced, and the same applies to skills acquired outside the educational system (Blau, Ferber, & Winkler, 2002; Blau & Kahn, 2000; Drolet, 2001; Gunderson, 2006; Gunderson & Muszynski 1990; O'Neill & Polachek, 1993). According to this point of view, the specialized vocational training programs for trades are part of the problem, as they are

Table 5. Gaps in Hourly Pay between Men and Women, Quebec, 1998–2008

Hourly	1998	2003	2008	Change 1998–2008
All men	\$16.79	\$18.82	\$21.39	+ 27.4%
All women	\$14.01	\$15.93	\$18.65	+ 33.2%
Gap men–women	\$2.78	\$2.89	\$2.74	
Gap in % terms	16.6%	15.4%	12.8%	–3.8 pp

Source: Institut de la statistique du Québec (ISQ).

informally, but efficiently, closed to women. According to the theory of human capital, a worker's level of pay can be partly explained by his or her productivity factors, including education and skills. In other words, one portion of the gendered wage gap is attributable to differences in the wage-determining characteristics of women and men, such as age, education, and training (Gunderson, 1998).

I have divided the working population into four groups that remain constant throughout the study: no high school diploma (less than a high school diploma), high school diploma (completed), postsecondary study (but no university degree), and university degree. The term "least educated" refers to the no high school diploma group, while the term "less educated" refers to both the no high school diploma group and the high school diploma group. Table 6 shows that while women's hourly rates of pay are lower than men's for all levels of education, women's rates rose more than men's over the period from 1998 to 2008.

BUT THE LEAST-EDUCATED FEMALE WORKERS STILL TRAIL BEHIND

Despite the solid findings of previous studies as discussed above, they all ignore one obvious fact: there can be a huge difference between the pay levels of predominantly male and predominantly female occupations requiring the same level of education. In other words, the return on education investment can differ for men and women, and the return on lack of education can differ as well. The effect of low education on pay is not the same for women as it is for men. This runs counter to widespread myths according to which the wage gap is closing at the lower and middle salary ranges, while increasing at the higher salary ranges (Leck, St. Onge, & Lalancette, 1995). In Table 7, it can be seen that the ratio of women's average hourly rate to men's average hourly rate of pay varies with level of education. The lowest ratio for women is among the

Table 6. Hourly Pay, by Sex and Level of Education,
Quebec, 1998–2008 (in current dollars)

Year	No high school diploma		High school diploma		Postsecondary study		University degree	
	M	W	M	W	M	W	M	W
1998	\$13.08	\$9.75	\$15.22	\$12.27	\$16.15	\$13.63	\$24.04	\$20.16
2008	\$15.73	\$11.93	\$18.88	\$15.82	\$20.76	\$17.69	\$29.97	\$25.94
Change 1998–2008	+ 20.3%	+ 22.3%	+ 24%	+ 29%	+ 28.5%	+ 30%	+ 24.7%	+ 28.7%

Source: Institut de la statistique du Québec (ISQ).

Table 7. Ratio of Women's Average Hourly Rate of Pay to Men's Average Hourly Rate of Pay, by Level of Education, Quebec, 1998–2008

Level of education	1998	2008
No high school diploma	74.5	75.8
High school diploma	80.6	83.8
Postsecondary study	84.4	85.2
University degree	83.9	86.5

Source: Institut de la statistique du Québec (ISQ).

least-educated workers, where women earn just 75.8% of what is earned by men with the same level of schooling.

Figure 1 illustrates the percentage differences between the hourly rates of pay of men and women (in men's favour, in all cases) by level of education (no high school diploma, high school diploma, junior college or postsecondary study, and university degree), between 1997 and 2008. Trend lines (linear regression) through the scatters of distinct points for each level of education indicate the general trend; they take into account all the points, even extreme values.

Figure 1 clearly shows a downward trend in the mean differences between men's and women's average hourly rates of pay between 1997 and 2008, for all levels of education combined (from 15.77% to 12.81%). The smallest differences were among the better educated and indicated a similar decline (from 16.12% to 14.79% for the junior college/postsecondary group, and from 13.58% to 13.45% for those with a university degree). The differences for high school graduates were greater, but they fell, too (from 18.22% to 16.21%).

A Growing Gender Pay Gap Inversely Proportional to Education

What is striking, however, is the huge distance between the gender gap of men and women having no high school diploma and that of men and women in the most highly educated group. Furthermore, the gap for the least-educated group shows only a slight downward trend (from 25.83% to 24.16%), while others show a clear downward trend.

Not Even a Downward Trend in the Weekly Gender Pay Gap among the Least-Educated Group

What happens if we examine the same differences between men and women, but this time in terms of average weekly pay? Figure 2 shows the percentage differences in weekly rates of pay between men and women, by level of education.

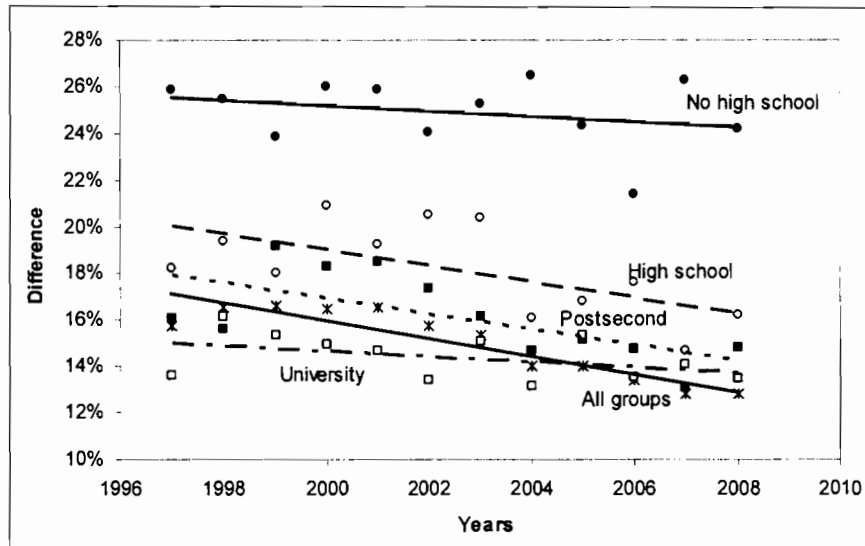


Figure 1. Percentage differences in average hourly compensation of men and women (employees) by level of education, Quebec, 1997–2008 (in current dollars).

Source: Institut de la statistique du Québec (ISQ). Average hourly compensation excludes the self-employed and, where a worker holds down more than one job, it reflects the worker's primary job, the one in which he or she works the greatest number of hours.

It is clear from Figure 2 that the average differences between men and women, between 1997 and 2008, for all levels of education taken together, were much higher, but were still following a downward trend (from 28.21% to 23.07%). The smallest differences were among the most highly educated and showed the same falling trend (from 29.03% to 26.06% for those with junior college/postsecondary education, and from 24.04% to 19.76% for university graduates). The differences were greater for those with only a high school diploma, but these differences were also dropping (from 29.62% to 26.81%).

Yet what is even more striking in this case is the huge distance between the gender gap of men and women having no high school diploma and that of men and women in the most highly educated category. Moreover, the gap for the least-educated group does not appear to be falling but remaining more or less stable (moving only from 39.39% to 39.16%).

In both cases, it should be noted that the pay differences in men's favour, while generally declining, are much higher and more stable among the least-educated group than among junior college graduates and university graduates.

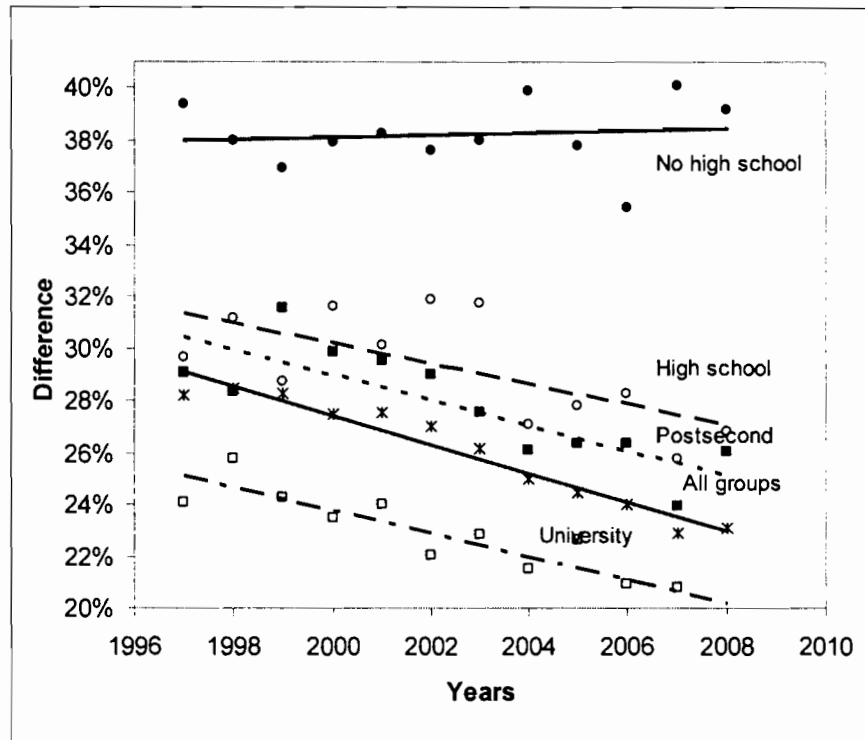


Figure 2. Percentage differences in average weekly compensation of men and women (employees) by level of education, annual mean figures, Quebec, 1997–2008 (in current dollars).

Source: Institut de la statistique du Québec (ISQ). Average weekly compensation is for employees only. Where a worker holds down more than one job, it reflects the worker's primary job, the one in which he or she works the greatest number of hours.

While the less-educated women predominantly hold down the lowest-paid jobs in the service sector (sales clerks, cashiers, servers, office clerks, and nurse's aides), as we saw earlier, the less-educated men occupy the better-paid jobs, being employed in the construction trades and as truck drivers, automotive service technicians, and truck and bus mechanics.

In other words, for the same level of education, the predominantly male occupations are much better paid than the predominantly female occupations. It is also in these jobs that occupational segregation by sex is the most stable and that equal access programs are the most ineffective, as we will see below.

A Total of 494,000 Working Women Affected

How many women are affected by this situation? In 2008, women who had no high school diploma made up 11.2% of the labour force, whereas those who had graduated from high school accounted for 15.4%. All in all, 494,000 working women and 682,000 men had a high school education or less. Is there a decline in the size of the aggregate group of women with a high school education or less? Yes, but it is slow, as can be seen from Figure 3, in which I have combined high school graduates and nongraduates.

Of course, pay is only one aspect of job quality, and it is not the sole criterion on which job seekers base their choice, as they must take a number of different factors into consideration. I could also discuss job quality on the basis of gender and level of education: the Institut de la statistique du Québec has developed a typology of job quality that can be used to compare all salaried jobs (self-employed workers are excluded) within a given economic territory with one another and over time, and to compare groups of workers having specific characteristics (sex, age, unionized status, ethnic origin) from the point of view of the quality of their jobs, based on the result of a combined index of four indicators: pay, qualifications, stability, and working hours (Cloutier, 2008). The results are just the same: female-dominated jobs requiring a high school diploma or less

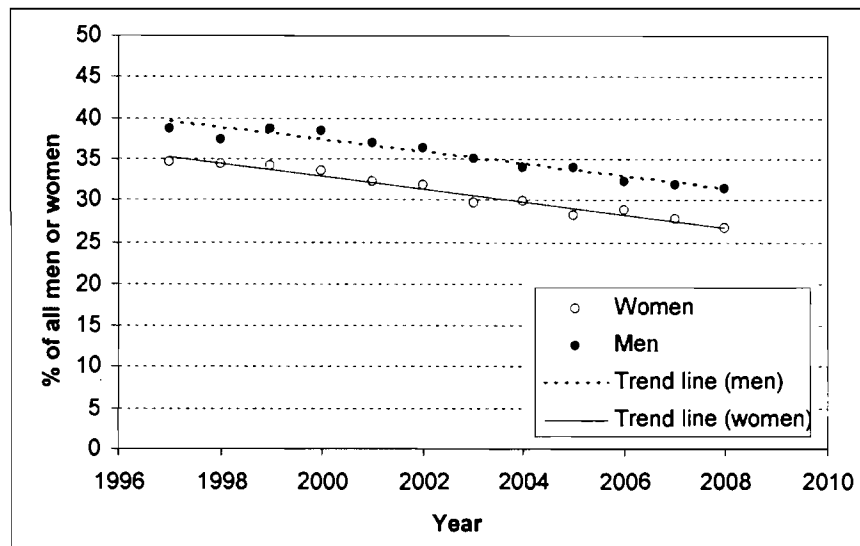


Figure 3. Percentage of men and women with high school diplomas or less, Quebec, 1997–2008.

Source: Institut de la statistique du Québec (ISQ).

have low scores according to this index, while male-dominated jobs have higher scores (Legault, 2010).

To sum up, the ISQ's job quality typology shows a gap, to the disadvantage of women, in the proportions of men and women in good jobs, although the gap narrowed between 1997 and 2007. When the men's and women's groups are broken down by level of education (highest diploma/degree earned), it can be seen that the gap chiefly affects the less-educated women. In the section of the labour force that has no high school diploma, women are at the greatest disadvantage, while they are also at a distinct disadvantage among the high school diploma group. The gap between women and men has remained roughly stable, and the only consolation is to be found in the fact that the total number of men and women with a high school diploma or less has declined, although the group remains large. Finally, in the section of the labour force that has a university degree, the gap between women and men is narrowing. While the total number of men and women in this latter group is rising, the number of women is increasing more than the number of men.

WHY IS THIS INEQUITY A PUBLIC POLICY ISSUE?

The Vicious Circle of Poverty

The situation of women with little education is of particular concern, because their chances of getting ahead are minimal. It is hard for adults in low-paying jobs to move up the employment ladder. One U.S. study has shown that, over a six-year period beginning in the early 1990s that saw very strong economic growth, only 27% of these adults managed to increase their earnings and rise above, on a sustainable basis, the poverty line defined for a family of four (Holzer, 2004). Another, more recent U.S. research project, using data from the Panel Study on Income Dynamics, reached a similar conclusion. Investigating low-wage workers over the period 1995–2001, the researchers discovered that 6% of those who were employed full-time and 18% of those employed part-time, regardless of the year that was taken as the reference period, found themselves out of work in the following year. Of those who did manage to remain employed, 40% had to get by on the same or lower wages (Theodos & Bednarzik, 2006). Over a third of low-wage employees work in the retail, food and beverage, or hotel industries, where there are few employment or training programs (Osterman, 2008), although one interesting experiment in the form of a union apprenticeship program has been documented (San Francisco Multiemployer Group and Hotel Employees and Restaurant Employees [HERE], Local 2: see Lynch, 2004).

It can be seen that women's relative position in terms of pay has generally been improving, when all educational levels are considered together. According to an analysis that aggregated three sources of U.S. national data, at least half of the improvement in women's relative position is due to the improvement in

their educational level and qualifications and to their accumulated work experience (O'Neill & Polachek, 1993). The remainder of the advancement, say O'Neill and Polachek, is attributable to two factors. First, it can be attributed to the marginal returns on schooling and work experience (in other words, the benefits in terms of pay for each level of education completed—the “sheepskin effect”—or accumulated work experience), which, while positive for both sexes, is greater for women. Second, the decline in manufacturing jobs among men must also be considered. Returns on accumulated work experience have been improving, because as women are staying longer in the labour market, they and their employers have been investing more in on-the-job training, and employers have been less reluctant to reflect these investments by increasing women's wages accordingly. These explanations amount to very good news for women who have access to training, but they are of little comfort to women who do not (O'Neill & Polachek, 1993).

It is all the more important to increase access to non-traditionally female jobs for poor women moving from welfare to work under the new workfare regimes, because this offers an opportunity for women to support their families and move out of poverty (as is well illustrated by Bingham & Gansler, 2002).

On-the-Job Training Is Not Well Developed in Women's Occupations Requiring Little Education

Women who hold jobs requiring few skills but who would like to improve their situation through on-the-job training face a further obstacle. According to a U.S. survey of managers (Black & Lynch, 2001), in 53% of nonmanufacturing companies and 46% of manufacturing firms, the skills required for relatively unspecialized production work and for frontline service work expanded in the 1990s as a result of increased computerization and reduced supervision, in a wide range of jobs, whether principally men's or women's. This gives employees greater responsibility for problem solving and decision making. While these jobs are still among those requiring the least qualifications, the level of qualifications they do require has risen somewhat. Yet 38% of job candidates do not have sufficient command of basic reading, writing, and arithmetical skills, and 31% of employers say they cannot find enough workers with the necessary qualifications for low-skilled jobs (Lynch, 2004). A quarter of all workers also say they are not sufficiently prepared (Leuven & Oosterbeek, 1999).

Given this situation, on-the-job training could be an attractive option, since it would give workers access to better-paid jobs through internal mobility. Surveys show that on-the-job training opportunities increase with the level of qualification already attained (better-qualified workers stand a better chance of being offered further training), with unionization, and with the size of the organization (16% of small businesses offer training, compared with 80% of large companies; Lynch, 2004). An employer's interest in such training declines as

a worker's mobility in the job market increases, since the employer runs the risk of losing its investment. The least-qualified and poorest-paid employees are the most mobile, and, what is more, any training they get may add to their mobility (Lynch, 2004). The jobs held by the least-qualified women are the ones in which employers invest least in on-the-job training: the jobs of sales clerk, cashier, server, receptionist, office clerk, hairstylist, industrial sewing machine operator, visiting homemaker, teacher's assistant and school aide, babysitter, esthetician, and so forth. As a result, women have limited opportunities for on-the-job training (Consultation Group on Employment Equity for Women, 1995).

Employment Equity Programs Are Not Very Successful in These Sectors

While some employment equity programs have led to significant progress in achieving a mixed-gender workforce in certain occupations, the Quebec government's incentive-based approach has produced only limited results in terms of desegregation (Agocs, 2002; Chicha, 2001; England & Gad, 2002) especially among those with the least education. Analysts have come to the same conclusion regarding U.S. programs of the same type (Leonard, 1989, 1990).

The two most recent assessments of Quebec programs date from 1998 (Chicha, 2001; CDPDJQ, 1998), but we will have to make do with them, as the information supplied by companies under this program is not accessible to researchers. Since December 1989, 295 companies have been required to participate in the contractual obligation program (CDPDJQ, 2008), under which they must implement an equal access program before they may receive a contract or grant worth \$100,000 or more from the government of Quebec.

Few companies have fulfilled their obligations and completed the process involved in the program, but 60 are in the implementation phase. This means they have not finished carrying out their program and so have not obtained any results. Only 14 companies have been subjected to sanctions (preventing them from bidding for a contract or applying for a grant from the government until they have fulfilled the terms of their undertaking) and have therefore suffered the consequences (CDPDJQ, 2008). The same poor results, pointing toward lack of political will, poor funding, enforcement, and surveillance, insufficient stringency in the application of the program, and lack of sanctions, have been observed in the Canadian federal-level programs (Agocs, 2002) and in the U.S. programs as well (LaTour, 2008; O'Farrell, 1999).

The number of women employed in organizations subject to the contractual obligation rose by 3.4% between 1989 and 1996, while total employment in these organizations declined by 4.9%. Women made progress in particular in professional and technical positions and, though to a lesser degree, in managerial and supervisory positions. Blue-collar jobs represent the last frontier; in 1998, the CDPDJQ estimated that the number of women employed in blue-collar

occupations would have to rise by 13% in order to meet the objectives of the programs set up under the contractual obligations. The fact that men from cultural communities are making inroads into blue-collar employment indicates that the real problem here is women's access to predominantly male occupations, especially in the private sector.

On the Canadian federal level, the Employment Equity Act (EEA) applied to 1,121,770 public- and private-sector workers who came under federal jurisdiction and to 636 employers (with 100 or more employees) in 2008 (Human Resources and Skills Development Canada [HRSDC], 2009). According to the annual reports on the application of the EEA, women's representation in the private sector rose from 40.9% of the total workforce in 1987 to 42.7% in 2008 (HRSDC, 2009). This very small increase did not even meet the low EEA standard, as women's availability for the jobs offered in these companies was 48.1% of the labour force.

In 2007, the highest proportions of women were still found among administrative and senior clerical personnel (75.5%), clerical personnel (66%), and intermediate sales and service personnel (64.3%). Women remain underrepresented in senior management (21.9%) and among semiprofessionals and technicians (19.4%) (HRSDC, 2009).

Among manual workers in low-wage occupations requiring few qualifications (not requiring a recognized, exclusive skill—see last column of Table 8), women's representation has been going up and down. Among semiskilled manual workers, women's representation has increased, while among skilled crafts and trades workers it has risen, though remaining extremely low (all of these three groups involve occupations requiring a high school diploma or less). The skilled crafts and trades group is very significant in assessing the progress women are making in blue-collar employment, as recognized certification is required to practise these trades and ensures exclusivity. What is more, these occupations are the best paid in relation to the level of education required and are the most often unionized.

In the workforce to which the EEA applies, the improvement in women's representation in blue-collar jobs has been small and unsteady among skilled crafts and trades workers and among other less or unskilled manual workers. In short, in purely quantitative terms, progress has been rather slim in the blue-collar occupational groups.

Equity programs, in place in Canada for the past 25 years, have failed time and again in blue-collar sectors, although they are working well in white- and pink-collar sectors. There are many factors leading to such a situation. Since the mid-1990s, Canada and its provincial governments have been retreating from policy response to systemic discrimination, under the influence of both the rise of neoconservatism and the important American backlash movement against affirmative action and its "reverse discrimination" effect of reducing the hiring and promoting of men; this backlash movement is embodied in three major ballot initiatives that have led to the banning of affirmative action following much

Table 8. Percentage of Women in Three Major Blue-collar Occupational Groups in the Federally Regulated Private Sector

Year	Skilled crafts and trades workers	Semiskilled manual workers	Other manual workers
1987	1.4	4.4	8.3
1992	2.6	6	11.7
1993	2.9	4.5	11.4
1994	2.9	6.9	8.5
1995	3.1	7.4	8.7
1996	3.2	5.7	10.2
1997	4.6	6.8	10.4
1998	2.4	6.7	16.3
1999	2.6	11.8	13.6
2000	2.8	6.7	10.4
2001	3	11.4	8.9
2002	3.3	11.4	7.3
2003	3.7	10.9	4.7
2004	3	11.6	10.7
2005	3.3	11.8	11.2
2006	3.4	11.9	11.7
2007	3.6	12.6	10.3

Source: Human Resources Development Canada (HRDC), 1989–2002; Human Resources and Skills Development Canada (HRSDC), 2003–2008.

publicised cases in: the California Civil Rights Initiative (Proposition 209), the Washington State Civil Rights Initiative (Proposition 200), and the Michigan Civil Rights Initiative (Proposal 2, Michigan 06-2). These three propositions have eliminated affirmative action altogether for women and minorities in state employment, education, and contracting. Similarly, the Civil Rights Act introduced in Congress in 1997 would have ended affirmative action for federal programs (LaTour, 2008; O'Farrell, 1999).

We must also note that the compliance review process is inadequately resourced and insufficiently stringent; significant sanctions simply do not exist for employers who fail to implement their requirements. These requirements are set very low: employers just have to hire minorities at the same rate as the market does; there are no sanctions for failing to remove job barriers identified in

the employment systems review, or for hiring members of a designated group into a ghetto of poor jobs where women, people with disabilities, or immigrant workers are over-represented. An employer who fails to implement the requirements can lose the opportunity to bid on future federal contracts as a sanction, but this is never applied. All this is no surprise, as the Human Rights Commission is underfunded and does not have the funds needed to conduct audits (Agocs, 2002).

“Good” blue-collar jobs have always been the most resistant to women’s integration; explanations for this rest heavily on case studies, among which some constant trends may be rigorously analysed. There is, for instance, a steady decline in manufacturing, which may account for a defensive reaction from blue-collar workers; but labour force projections suggest that blue-collar work will continue to be an important source of employment for women as well as men. Thus, for the foreseeable future, blue-collar work continues to offer opportunities for women; whether they will be employed in skilled trades or in sweatshops is more of a concern.

Sex stereotyping in curricula, teachers’ attitudes, and administrative practices also often deny girls the early preparation they need to enter vocational and academic programs that lead to high-paying skilled jobs (Harlan & Berheide, 1994; O’Farrell, 1999). Established human resources (HR) practices and hostility from managers and coworkers remain obstacles to women’s entry to and success in blue-collar jobs (O’Farrell, 1999).

In the building and craft trades, some other obstacles are well known: a brotherhood culture excluding women, with men resenting the loss of a monopoly on high-wage jobs and the loss of gender privilege at home, resenting the loss of masculine pride in doing a harsh, dangerous, but skilled and useful job, resenting the pressure to drop their coarse or macho customs and language, fearing a loss of prestige and lower wages, the cost of harassment and health and safety complaints, and the constraint of maternity and children among women (Eisenberg, 1998; LaTour, 2008; Moccio, 2009). In an enlightening class analysis of this situation among building trades workers, Paap (2006) offers a materialist interpretation of workers’ and unions’ labour market closure (to avoid competition over a very rewarding market given the low level of education required) and of the closed system of training and hiring, controlled by unions (for a dominated class has therefore gained the possibility to pass on a privilege to its heirs—though most often only to males). These are crown jewels of paramount importance for male workers in the field.

A further factor may involve the fact that shift work is common among both skilled and unskilled workers. This usually involves rotation between day and night shifts, which may deter women from contemplating a career in a skilled trade.

But above all, I need to stress that the very fact that equity programs have had more success in improving vertical mobility (women’s access to management and professional jobs) than in improving horizontal mobility (women moving

to men's jobs) is not a local matter but a universal one (Charles & Grusky, 2004). In industrialized developed countries, there is a widespread combination of slow-paced *desegregative* change (horizontal desegregation), which can be compared with corresponding rates of change elsewhere in the gender stratification system (vertical segregation, hierarchical gaps) and the failure of egalitarian policies to reduce gender segregation in jobs, although we can observe the good effects of these policies on women's access to higher-level jobs (vertical desegregation). According to Charles & Grusky (2004), though we can see cross-national variations in segregated and desegregated occupations, there are substantial commonalities in the underlying structure of segregation, based on quantitative analyses of standardised survey data. It is useful to distinguish between the vertical and horizontal forms of segregation, because the former is more effectively undermined by the rise of egalitarian institutional practices than the latter; as a result, there is a persistent hypersegregation of manual and nonmanual work in the lowest-level jobs (Charles & Grusky, 2004). A complete understanding of this phenomenon has not yet been achieved, because the authors put forward an essentialist explanation that fails to persuade the present author.

WHAT NEEDS TO BE DONE?

Pay equity legislation seems ineffective for women's jobs requiring the least education, as we can see after 15 years of implementation. It is not that we do not know better ways to proceed: for instance, the pay equity process can hardly redress inequities in organizations that are filled with female jobs, for example, primary schools, child care centers, and social service organizations, but also garment manufacturers, retail stores, big offices, personal service enterprises, and private home care and health organizations. Obviously, the women employed in such female-dominated organizations are underpaid, since similar jobs in organizations that employ both men and women (e.g., municipalities) tend to be underpaid. *Proxy comparison* allows predominantly female organizations to compare with a public sector organization such as a municipality or hospital. In Ontario, this radical approach overcame the lack of pay equity coverage for female jobs in those sectors of the economy most likely to require it. Still, proxy comparison was limited to the public sector, because it was felt to be too intrusive to require private sector organizations to share wage information with their competitors (Weiner, 2002). Proxy comparison was not considered in Quebec's Pay Equity Act. In light of the above, such a political compromise should be reconsidered.

Pay equity bargaining follows the same pattern, because blue- and white-collar workers are usually in separate bargaining units, and blue-collar unions do not want their members to be used in comparisons with clerical jobs. They feel this would violate the "fair comparison" principle. Interestingly, under Quebec's Pay equity legislation, a pay equity plan is prepared for the entire organization,

unless a union makes a request that it be allowed to prepare a separate pay equity plan for the jobs it represents! Male unions exhibit an ongoing resistance to their members' being used as a means of comparison with those performing female jobs (Forrest, 2007; Haiven, 2007); this can be easily understood—though not excused—as soon as the way wages are influenced by the gender of the workforce is understood (the crowding effect: Sorensen, 1990).

How does this issue relate to responsible employment practices? Leck and Saunders (1992) found that the presence of formalized equity programs, those characterized by goals, timetables, plans, audits, and a responsible person, was related to increases in the representation of minorities in both management and nonmanagement jobs; the same was found to be true in universities (Stewart & Drakich, 1995). Another factor leading to responsible employment practices is the implementation of actions designed to remove discriminatory barriers and systemic obstacles. Among others, such actions as an antiharassment policy (Agocs, 2002), which is very important in male-dominated blue-collar environments where sexist harassment is a powerful deterrent to women and drives/keeps many of them out of the field (Bingham & Gansler, 2002; LaTour, 2008; Moccio, 2009). This level of requirements means nothing without surveillance, which in return requires funding. There is a cruel lack of funding in employment equity policy. In general, the government of Quebec has opted for a voluntary approach with respect to private employers. As a result, most corporations do not care about equity policy or else settle for some small-scale measures when subject to “contractual obligation,” while the Human Rights Commission has no means of controlling. In fact, though organizations that do not comply with their contractual obligation may be subjected to sanctions, only 14 out of 299 participants since 1989 have been sanctioned, and only six have completed their program (CDPDJQ, 2009). Clearly, what we need is a proactive law, given the results obtained in the Canadian public sector where there is such legislation.

As a result of the lack of such a law for the private sector, there has been a general failure, since 1980, to adequately enforce the equal employment laws in the local workplace. Thus, “Supply explanations are inadequate on their own; obstacles stemming from the workplace figure heavily into the underrepresentation of women in skilled blue-collar jobs” (Padavic, 1997: 150).

Case studies, small surveys, and stories of individual blue-collar women have consistently found that within workplaces there are often a small number of very hostile men, a small number of very supportive men who help women survive, and a large group of men in the middle who may be swayed in either direction (Eisenberg, 1998; O’Farrell, 1999). Apparently, we could lean upon this larger group, if the right conditions are provided:

Attitudes of the ambivalent group . . . are likely to be affected mainly by whether or not their own jobs are threatened, and the extent to which they associate women coming into the job with their work being deskilled,

devalued, or eliminated altogether. We find less hostility towards women when men's jobs were not threatened by concerns such as lay-offs. (O'Farrell, 1999: 707)

For women with a high school diploma or less, blue-collar jobs, far better paid than these women are accustomed to, represent an attractive option, but one to which it is hard for them to gain access. That is why employment equity policies are a major issue, though we may wonder if any measure can succeed in the face of industry's reluctance, which experts can analyse thoroughly but without being able to propose many adequate solutions: "Although Moccio does indeed attempt to describe the basis of male electricians' overwhelmingly negative reactions to the entrance of women in the trade, her solutions don't seem to address those issues specifically" (Cook, 2010).

According to one recent publication (Rubery & Grimshaw, 2003), equity policies are *the* major contemporary employment issue for women in Europe and North America. Internationally, women have been making significant progress in education, and as a result they have made great strides in the professions and in managerial and white-collar occupations. But few countries have really solved the problem of poorly educated women gaining access to decent jobs. For men with the same level of schooling, the situation is very different; jobs in the skilled crafts and trades and in semiskilled manual work are much better paid than the predominantly female jobs held by women with the same education. To change this, not only do we need a far stronger commitment from the government, but we also need far more ways to control and monitor the application of equity programs on the shop floor, and particularly to apply sanctions against harassing practices, to help women stay in their jobs and attract new women to the field.

The main flaws in implementing these programs are well known, as are the ways to enhance implementation. In summary, HR practices (the formal and informal procedures that employers use to recruit, train, and promote workers) can exclude women and minorities, due to a sexist bias, even when they appear neutral on the surface. These procedures are part and parcel of maintaining a segregated workforce and culture or, conversely, of getting rid of it. An effective employment equity policy should take control of the following in order to desegregate the workplace:

- moving away from individual complaints to class action suits or proactive affirmative action legislation, which have proven effective in cases of discrimination or harassment (Bingham & Gansler, 2002; LaTour, 2008);
- enforcing goals and schedules that are subject to sanctions, first and foremost in all big state-funded infrastructure-building initiatives; there is strong evidence that affirmative action policies, coupled with strong monitoring and the threat of financial sanctions for noncompliance, have had positive results for women and minorities (Legault, 2003; Leonard, 1989, 1990; Reskin, 1998);

- ensuring strong government support of equity policy, taking the same form as the World War II campaign to attract women into the industrial workforce: posters, ads in nationwide magazines, songs displayed to large public audiences; it is in no way “normal” that the post–Civil Rights Act campaign to get women into trades and technology did not benefit from the same support as the World War II campaign did and was left only in the hands of the feminist movement (LaTour, 2008);
- introducing court-ordered affirmative action programs when discrimination in hiring is demonstrated;
- for large national initiatives, focusing on sectors where there is job growth, where workers are likely to be more hospitable to women, who will have more opportunities and will meet less resistance: for example, among data-processing equipment repairers, in the construction trades (including road construction), and among mechanics, installers, and repairers, such as auto mechanics, transportation and material-moving machine and vehicle operators, and truck drivers (O’Farrell, 1999);
- targeting outreach and recruitment practices, so that women learn about job openings and requirements (Reskin, 1998); using more advertising, for instance, instead of informal referral; promoting internal mobility for women in mostly female jobs, with bridges connecting clerical jobs to skilled job ladders; using job fairs and popular magazines and associating with trades-women recruiters;
- targeting vocational training programs, so that more women enrol in mainly male programs; such a measure must be associated with severe enforcement of antidiscrimination rules during training; training instructors must be trained not to reinforce negative stereotypes about women’s inability to do men’s work; training material has to be elaborated to include women;
- eliminating unnecessary job requirements that most of all reflect the attributes of male incumbents rather than the requirements needed to perform the job and are based on bias (Chertos & Philips, 1989);
- eliminating tests that have been invalidated by the courts for lack of job-relatedness and for having a disparate impact on women, as well as on minority men (as when both are disproportionately screened out by body-size requirements);
- making a particular effort to avoid assigning women to work sites, departments, or shifts where there are no other women; their isolation is exacerbated in a hostile work environment where the men do not talk to them or cooperate with them (Eisenberg, 1998; Legault, 2003);
- providing proper tools, protective clothing that fits and is ergonomically sound, and access to bathroom and changing facilities that are safe; when needed, providing sleeping accommodations that are safe and secure (Robbins, 1997);

- taking antiharassment measures, with consequences and sanctions for hostile work environments, including sabotage, assaults, pornography, unwelcome sexual remarks, touching or asking for sex, and so forth; providing on-the-job mentoring programs and sexual harassment prevention programs and training sessions that can help improve men's behavior, if not necessarily their attitudes and beliefs, and can help women learn how to deal effectively with offensive behavior when it occurs. (Legault, 2003)

These interventions, however, all take strong leadership, time, effort, and resources on the part of employers and unions. Few undertake efforts voluntarily, despite the potential benefits, such as solving recruitment problems for employers and getting new members for unions. Affirmative action has, as we have seen, been under attack, first in the United States, then in Canada by ricochet. The outcome of the ongoing debate about affirmative action is likely to have a considerable effect on women's inroads into blue-collar jobs.

CONCLUSION

Despite widespread popular belief, the labour market is still deeply segregated by gender, and the material consequences of this segregation are most serious in occupations that require less education, occupations in which women pay dearly for the sexual division of labour. In contrast to occupations requiring higher qualifications, there is a very significant pay gap in men's favour in occupations requiring few qualifications, in which many jobs are either predominantly male or predominantly female. This pay gap to the disadvantage of women is seen very widely in occupations requiring a high school diploma or less. It has been narrowing only very slightly, whereas the gaps between men and women in jobs requiring a higher level of education have been shrinking considerably. The pay gap in occupations requiring few qualifications affects close to 500,000 of the 1.8 million women in the Quebec labour force, in other words, between a quarter and a third. The question of equitable access to work is all too often regarded as a problem that has already been solved, but that is far from being the case. Moreover, the market rarely works in ways that help poor workers to improve their lot; and employers rarely invest in on-the-job training in the occupational groups in which poorly educated women are concentrated, although the situation is very different for men with the same level of education.

Is it not likely that there will be a heavy price to pay for losing interest in this issue now, when the most-educated and most-qualified women have made great gains, often thanks to affirmative action measures, for instance, in the public services? It looks as though we have given up too early on employment equity programs, because in the least-skilled jobs, pay inequity is still deeply rooted in employment segregation.

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New Scholars

**DECENT WORK FOR THE STREET VENDORS
IN MUMBAI, INDIA—A DISTANT VISION!**

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ABSTRACT

This article explores the working conditions of the street vendors in Mumbai in relation to the concept of “decent work.” The study highlights the vendors’ working conditions, their social security, and the collective bargaining by membership-based organisations aiming to provide them with a decent working life. The present research is based on mixed methods. The study is exploratory in nature, showing that the street vendors depend on moneylenders especially for social security purposes but also for their economic activity. The study shows that they are forced to borrow money at an exorbitant rate of interest (amounting to 5–10% per month), which in turn leads them to fall into a “debt-trap” situation. The current working hours of the vendors and the safety and security conditions in their workplace, together with the illegal activities of local authorities, are contributing to a deteriorating working environment and the deprivation of the workers.

INTRODUCTION

The concept of “decent work” was introduced by the International Labour Organization (ILO) in 1999 in a report by its director-general to the 87th International Labour Conference. The main goal is to promote “opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity” (ILO, 1999: 3).

The four major pillars recommended by the ILO (1999) as essential to achieve the goal of decent work are opportunities for employment and income, respect for rights at work, social protection, and a strong social dialogue. Taking these four aims into consideration, ILO has defined decent work as

productive work in which rights are protected, which generates an adequate income, with adequate social protection. It also means sufficient work, in the sense that all should have full access to income-earning opportunities. It marks the high road to economic and social development, a road in which employment, income and social protection can be achieved without compromising workers' rights and social standards. Tripartism and social dialogue are both objectives in their own right, guaranteeing participation and democratic process, and a means of achieving all the other strategic objectives of the ILO. The evolving global economy offers opportunities from which all can gain, but these have to be grounded in participatory social institutions if they are to confer legitimacy and sustainability on economic and social policies. (ILO, 1999: 12)

From the definition given above, it can be seen, first, that decent work must ensure an adequate income. Second, workers have to have social protection coverage, which must be achieved without compromising workers' rights and social standards. Third, workers must have the right to work and rights at work. The fourth important dimension of decent work is a strong social dialogue, so that workers can raise their voices in collective bargaining. From the above definition, it could be extracted that tripartism and social dialogue can be examined at all levels with the social partners. ILO has suggested that it could be developed by strengthening representation between workers and employers, strengthening capacity and services to improve the quality of the services, and strengthening joint institutions of governance (ILO, 1999). Thus, decent work would ensure poverty reduction by increasing the work opportunities, the rights at work, the social protection, and the voice of the workers, which would result in an improvement in workers' capabilities and their overall well-being (Rodgers, 2001; Sen, 2000). The achievement of the goal of decent work is indeed an ambitious project. It is for all workers; not only for those who are in the formal sector, but also for the unregulated wage workers, the self-employed workers, and the home-based workers in the informal sector (ILO, 1999: 3–4).

The Indian labour market is dominated by the informal sector. In India, the terms 'formal sector' and 'informal sector' are used interchangeably as 'organised sector' and 'unorganised sector' respectively. A huge majority of members of the labour force, comprising around 92%, derives its livelihood from the informal sector. According to the most recent national sample survey, conducted in 2004–5, the informal sector workforce in India includes about 422 million workers, representing nearly 92% of the total workforce of about 457 million (National Commission for Enterprises in the Unorganised Sector [NCEUS], 2007). The informal sector is heterogeneous in nature. Owing to this nature of the informal

sector, the workers are broadly categorised into three groups, namely, wage workers in the informal sector, self-employed in the informal sector, and unprotected wage workers in the formal sector (Chen et al., 2002; NCEUS, 2007). Street vendors are identified as self-employed workers in the informal sector who offer their labour to sell goods and services on the street without having any permanent physical structure (Bhowmik, 2001). According to the Government of India, around 10 million people in India as a whole, including about 250,000 vendors in Mumbai, are dependent for their livelihood on street vending (National policy on urban street vendors [NPUSV], 2006). Interestingly, Mumbai contains the largest number of street vendors among all the major cities in India. This study estimates, from the records of various trade unions, that the total number of street vendors in Mumbai is actually around 350,000.

Street vendors play a very important role in the urban economy of India by providing employment and income and other items. They sell different kinds of goods such as clothes and hosiery, leather items, moulded plastic goods, and various household necessities, which are manufactured in small-scale or home-based industries where large numbers of workers are employed (Bhowmik, 2001). It would hardly be possible for the manufacturers to market their own products. Apart from nonagricultural products, street vendors also sell vegetables and fruits. Thus, they provide a market for both home-based manufacturing products and agricultural products, supporting small-scale and home-based workers as well as agricultural workers. Therefore, several sectors and types of labour are linked with the street vendors.

Street vendors also support the urban rich as well as the urban poor. They support the urban rich by providing daily requirements right on their doorsteps (Tiwari, 2000). Urban youth prefer to purchase clothes and accessories from street vendors, because the products the vendors sell are typically cheaper than those found in formal retail outlets. People from lower income groups also benefit from the vendors, spending a large portion of their income on purchases from street vendors because their goods are cheap and affordable. It has been estimated that around 30% of the Mumbai workforce buy at least one meal a day from vendors (Bhowmik, 2001). Thus, it can be said that they are in fact a solution to some of the problems of the poverty-stricken urban dwellers.

Productive work, adequate wages, and other pillars of the decent work concept relate more to workers who are employed. Therefore, by definition, it seems that the concept is more appropriate to wage workers in the formal as well as the informal sector. Nevertheless, the ILO is concerned with all workers, including self-employed workers. Therefore, the main purpose of this article is to conceptualise the decent work approach with regard to the self-employed street vendors and to grasp the meaning of decent work for these vendors in Mumbai.

The present article is organised as follows. First, it discusses the theoretical understanding of the informal sector and street vending. The rationale for the study and the objectives of the study are explained in the following section. Next,

the article discusses methodology. This study is mainly based on a primary survey, and therefore the sociodemographic and economic profiles of 200 individual street vendors are then discussed. Their social security condition is then explored. The indebtedness of the street vendors is analysed, and the role of membership-based organisations in Mumbai is discussed.

THE INFORMAL SECTOR AND STREET VENDING: THEORETICAL UNDERSTANDING

We need to understand the theoretical debate on the informal sector before looking for a theoretical approach to street vending within that sector. Many researchers have tried to define the term “informal sector.” In the most recent discussion of the term, it is said to comprise employment without labour protection or social protection, both inside and outside informal enterprises, including both self-employment in small unregistered enterprises and wage employment in unprotected jobs (Chen, 2007). Over the years, there has been continuous debate among three schools of thought about the informal sector: the dualist view, the structuralist view, and the legalist view. The term “informal sector” was actually introduced by famous social anthropologist Keith Hart in his article “Informal income opportunities and urban employment in Ghana” (1973). Hart’s study was based on self-employed workers in Ghana, who were outside the formal labour market and unable to search for jobs in the formal sector. Hart explained that price inflation, inadequate wages, and an increasing number of workers who were surplus to the requirements of the urban labour market had led to a high degree of informality in the income-generating activities of workers, which varied in terms of legality, official registration, skills required, and other factors (Hart, 1973). But Hart’s concept of the informal sector was based on income opportunities rather than sectors, and he simply defined “informality” as being based on self-employment. The approach to the informal sector first used by Hart and the ILO and later supported by Tokman (1978) is known as the dualist view. According to this view, the persistence of informal activities is due to the fact that not enough modern job opportunities have been created to absorb surplus labour, due to a slow rate of economic growth and a faster rate of population growth (Hart, 1973; ILO, 1972; Tokman, 1978).

In contrast to the dualist view, the structuralist school of thought, which was propounded by Moser and by Castells and Portes in the late 1970s and 1980s, states that the formal sector and the informal sector are interrelated, connected, and interdependent in terms of labour. Workers have been pushed out of the formal sector, where they enjoyed job security, and into the informal sector, where they have no security, due to large capitalist firms’ desire to reduce input and labour costs and increase their competitiveness (Castells & Portes, 1989; Moser, 1978).

The legalist view, propounded by Peruvian economist Hernando De Soto (1989), argued that informality is a response to bureaucratic obstacles. The

informal sector includes micro-entrepreneurs who prefer to operate informally in order to avoid the high costs, time, and effort involved in the formal registration associated with meeting the demands of state regulations (De Soto, 1989). According to De Soto, recognition of the importance of small enterprises and informal economic activity has been advocated by development agencies as a strategy for generating economic growth in developing countries and providing income for the poor. Micro-entrepreneurs will continue to produce informally as long as government producers are costly.

After considering the definition of street vendors and all the schools of thought on the informal sector, this study considers that street vending fits best into the legalist approach, since state bureaucracy, tax evasion, and rules and regulations for registration are highlighted in that approach. We will revisit and put forward the theoretical approach to street vending after analysing our data.

RATIONALE FOR THE STUDY AND OBJECTIVES OF THE STUDY

Rationale for the Study

The important goals for the urban poor in the Eleventh Plan in India are to provide them with affordable shelter and “decent living and working conditions”; to make adequate provision of land for the poor; to help in developing “self-employment enterprises” and creating jobs for wage earners; and to protect the economic interests and safety of women and other vulnerable sections of our society (Planning Commission, 2008: 406). This study attempts to reveal the working conditions of street vendors within the framework of “decent work,” since there has been no previous study based on decent work as it applies to street vendors. Moreover, there has been no study attempting to look at the working conditions of street vendors since a study conducted by Bhowmik in 2001. In the nine years since that study, globalisation, liberalisation, and privatisation have led to an enormous change in street vending. Hence, it is necessary to look at street vendors’ current working conditions in terms of income level, access to finance, working hours, safety in the workplace, necessary bribes, and leisure time.

Objectives of the Study

The overall objective of the study is to understand the working conditions of street vendors in Mumbai within the framework of decent work.

The specific objectives are as follows:

1. To understand the working conditions of the street vendors in terms of level of income, accessibility of finance, working hours, security of work, and safety in the workplace.

2. To understand issues relating to the social security of street vendors.
3. To understand the role of trade unions and other membership-based associations with regard to vendors' social security, access to credit for their economic activity, and other matters.

METHODOLOGY

The first pillar of decent work is employment and income opportunities. The indicators relating to employment and income opportunities are the ratification and observance of relevant conventions, the labour force participation rate, the employment-to-working-age-population ratio, the unemployment rate, the youth unemployment rate, the share of wage employment in the nonagricultural labour force, excessive working hours, the time-related underemployment rate, and job insecurity. Productive employment and decent living standards can improve social and economic development, which enhances the quality of life and leads to human development (Ahmed, 2003; Bescond, Chataignier, & Mehran, 2003; ILO, 1999).

The rights-at-work component of the decent work concept refers to freedom from child labour, forced labour, and discrimination in employment, and to freedom of association and collective bargaining, while discrimination at work is based on sex, language, political opinion, or social origin (Bescond et al., 2003; Ghai, 2003; ILO, 1999).

Indicators of social protection include the proportion of workers covered against major contingencies and receiving benefits in respect of sickness, unemployment, old age, maternity, disability, and so on; the adequacy of benefits received under these headings; public social security expenditure as a proportion of GDP; public expenditure on needs-based cash income support as a proportion of GDP; and levels of deprivation in specific areas such as nutrition, health, and education among vulnerable groups (Bescond et al., 2003; Ghai, 2003; ILO, 1999).

Indicators in terms of social dialogue include freedom of association and collective bargaining; the proportion of workers covered by collective bargaining agreements; participation in workplace decision making; and participation by workers, employers, and civil society in national policymaking bodies (Bescond et al., 2003; Ghai, 2003; ILO, 1999).

The present study considers that level of income corresponds to the decent work indicators of employment and income opportunities. In addition, working hours, safety in the workplace, and indebtedness with regard to business activity have also been considered. Access to social security and indebtedness correspond to the decent work indicators of social protection. Social security involves maternity benefits, access to medical facilities, children's education, and accidents. This study also highlights the role of membership-based organisations

with regard to social security, access to finance, and other issues in order to evaluate the potential of collective action for improving the decency of work. Collective action facilitates the decent work indicators of social dialogue.

The unit of analysis of the present study is street vendors in Mumbai. The static vendors, who have a specific space for their activity though the space is unregistered, are the participants in the present research. Mumbai was selected because of its diversity in terms of ethnicity and economic activities, and in addition because Mumbai has the largest number of vendors in India. A survey for the study was conducted from May 2008 to September 2009. Mixed methods (Creswell, 2009), with the quantitative method as the dominant method, were used to draw a sample from the population and to analyse the data. The sample was drawn with the help of the quantitative method while some of the individual cases were developed based on in-depth interviews and observations using a qualitative paradigm.

Data Collection Tools

Questionnaire

A semistructured questionnaire, based on the objectives of the study, was used (Bryman, 2009). Both closed and open-ended questions were included in the questionnaire. Since the study was exploratory in nature, open-ended questions were used to assist in exploring the current situation (Bryman, 2009).

Interview Methods

Personal interviews and group interviews were conducted (Bryman, 2009). Personal interviews with 200 individual street vendors were conducted. One group session was conducted with 10–15 vendors in each study area. These sessions helped in achieving an understanding of common issues. In-depth interviews were conducted with 10 individual street vendors in order to understand and explore the current situation. In-depth interviews were also organised with five key respondents. These five key respondents were involved in membership-based organisations, and they provided information on the role of these organisations with regard to collective action by street vendors in Mumbai. Such organisations are also in a position to make decisions for street vendors and represent them to higher authorities.

Process of Data Collection

Sampling Method

The three-stage sampling method, which uses combinations of various sampling techniques (Agresti & Finlay, 1997; Babbie, 2001; Murthy, 1967), was used to draw the sample. The sample size was 200.

First Stage

When a population is scattered over a region and complete lists of the total population are not available, “clustering” is of assistance in sampling (Murthy, 1967). For the purposes of the present study, five places were identified in Mumbai in terms of volume of street vendors and commercial areas from the records of the various trade unions.

Second Stage

Since total population of the each of the clusters was unknown, a ‘quota’ was fixed in order to draw the sample. In the second stage, a quota of size 40 was fixed from each of the five clusters (areas).

Third Stage

In the third stage, 40 respondents were randomly drawn from each cluster. Thus, the present study covers 200 sample respondents. The study only dealt with five types of vendors (vegetable vendors, fruit vendors, garment vendors, vendors selling electronics, and vendors selling leather items) because these five types have the largest share in the total vending process.

Personal interviews with the help of the semistructured questionnaire were conducted with these 200 individual street vendors. One group interview was organised in each study area. In addition, 10 street vendors were identified based on their experiences. Then, in-depth interviews were carried out with these 10 street vendors in order to develop cases.

Methods of Data Analysis

Descriptive analysis was used to analyse the primary data from the 200 individual sample using quantitative data. Six individual cases based upon responses from individual vendors were developed in order to explore the situation. Three individual cases were developed from five key respondents from membership-based organisations in order to gain an understanding of the role of membership-based organisations with regard to the street vendors. These nine cases were developed based on in-depth interviews and field observations.

SOCIODEMOGRAPHIC AND ECONOMIC PROFILE OF THE STREET VENDORS

The following sections show the possible outcomes of the present study and corresponding percentages for these outcomes, which are represented by values within parentheses. In the present section, the sociodemographic and economic profiles of the vendors based on primary data are explained.

Demographic and Social Profile

Street vending is a largely male occupation in Mumbai (Bhowmik, 2001), as confirmed by this study. The study demonstrates that around 77% of the vendors are men and about 23% are women (see Table 1). In terms of religion, about 59% of the total vendors are Hindu, around 33% are Muslims, 7% are Christian, and about 9% are Sikh (Table 1). The Constitution of India has recognised three broad communities among minority groups in the Indian population, namely, Scheduled Castes (SCs), Scheduled Tribes (STs), and Other Backward Classes (OBCs). As per Census 2001, around 16% of the population were SCs and 8% were STs, and these percentages have been growing steadily since independence in 1947. In terms of caste composition, in this present study, about 60% of the total vendors belong to general castes, 25% belong to the SC category, and 6% and 9% belong to the ST and OBC categories respectively (Table 1).

Educational Profile

The educational level among street vendors is generally low, as has been shown in Table 1. Out of the total, around 17% of vendors are illiterate, about 8.5% can only sign their names, and about 8.5% have only primary-level education. Vendors who were college graduates, about 1.5% of the total vendors, had come from the rural areas in search of better-paid jobs in the formal sector in Mumbai, but street vending is one of the easiest means of earning a living as it requires only a small financial input. Hence, these graduates have become street vendors.

Level of Income

The income of street vendors depends on the products they sell, and it varies from product to product, from location to location, the volume and terms of trade. The monthly income of the street vendors is given in Table 2 in U.S. dollars. Table 2 shows that a few vendors earn quite a high income, reflecting the type of business, the age of the business, the location, and the product they sell. Interestingly, the data show that the incomes of vendors of garments, fruit, and electronics items differ from the incomes of vegetable vendors and owners of small enterprises. But the profit margin of the vendors who sell raw materials, namely, vegetable vendors, fruit vendors, and food vendors, is quite impressive compared with that of other types of vendors. Raw material vendors earn about 50% to 60% profit on their daily sales. At the same time, the working conditions of these vendors, especially vegetable vendors, are miserable. The study shows that most of the vegetable vendors are women, since this type of vending requires a very low level of investment in comparison with other types. Vegetable vendors work from 5 o'clock in the morning to around 12 o'clock at night, and they work

Table 1. Sociodemographic Profile

Indicators	Possible Outcomes	Total Number of Cases (Percentage in parentheses)
Sex	Male	154 (77)
	Female	46 (23)
	Total	200 (100)
Religion	Hindu	118 (59.0)
	Muslim	66 (33.0)
	Christian	7 (3.5)
	Sikh	9 (4.5)
	Total	200 (100)
Caste	General	121 (60.5)
	SCs	49 (24.5)
	STs	12 (6.0)
	OBCs	18 (9.0)
	Total	200 (100)
Educational level	Illiterate	34 (17.0)
	Can sign name only	17 (8.5)
	Primary education	17 (8.5)
	Upper primary education	65 (32.5)
	Secondary education	48 (24.0)
	Higher secondary education	16 (8.0)
	College graduate	3 (1.5)
	Total	200 (100)

Note: N=200

every day in the year. A woman vegetable vendor, who is the sole breadwinner for her family, described her day:

I wake up around 4 o'clock in the morning and then I go to the wholesale market to collect the vegetables. I clean the vegetables for two to three hours and I keep the vegetables in the market where I sit. I come back home and cook for my children and then I go again to the market and start the activity. When I come back home, it is already 12 midnight. I work for the whole year. If I don't work for one day, my children will sleep without meals, since I am the only breadwinner in my family.

Despite the hard and useful work the vendors do, street vending is an illegal activity, and vendors are seen as eyesores. As a result, they face constant harassment by local police and municipal authorities in their workplace. They are forced

to pay bribes. It is calculated that each street vendor pays 15% to 20% of his or her daily income in bribes to local police and the BMC.

Table 2 shows that 46 street vendors (about 23% of the total respondents) are earning from \$63.82 to \$95.76 per month. It seems that this amount is adequate for the survival of an individual vendor, but considering the number of family members dependent on each vendor, the amount is abysmally low in terms of supporting the vendor's family. It is estimated from the primary data, taking into account the number of dependents each vendor has, that the per day, per capita income of those households is less than 20 rupees (less than 50 cents (U.S.) per day). The poverty line as given by the World Bank for developing countries, including India, is one U.S. dollar per day per person. Hence, 23% of the total sample population in this study are classified as "extremely poor," which is a matter of serious concern.

CONDITIONS OF SOCIAL SECURITY FOR STREET VENDORS IN MUMBAI

Social security covers medical care, sickness and maternity benefits, compensation for injury at work or inability to work, survivors' benefits, old age pensions, and so forth (ILO, 2000; Jhabvala, 2000). Social protection policies in developing countries like India are almost always concerned with reducing vulnerability and unacceptable levels of deprivation. Ahmad et al. (1991) have discussed two

Table 2. Monthly Earnings

Income Range (in U.S. Dollars)	Range Midpoint of Income (in U.S. Dollars)	Total Number of Vendors (Percentage in parentheses)
63.82–95.76	79.79	46 (23.0)
95.76–127.67	111.72	27 (13.5)
127.67–159.58	143.62	20 (10.0)
159.58–191.50	175.54	31 (15.5)
191.50–234.05	212.78	22 (11.0)
234.05–265.97	250.01	19 (9.5)
265.97–297.88	281.92	9 (4.5)
297.88–329.80	313.84	12 (6.0)
329.80–361.71	354.76	6 (3.0)
361.71–393.63	377.67	8 (4.0)

Note: N=200. The income of the street vendors is given in terms of the U.S. dollar. At the time of data collection, the exchange rate was 47 rupees to the U.S. dollar.

aspects of social security. They have described the use of social means to prevent deprivation and vulnerability to deprivation. The main aim in terms of social security is to enhance and protect people's ability to feed themselves adequately, and to avoid escapable morbidity and preventable mortality. The role of social security policies in developing countries must be extended to include the prevention of increases in deprivation and the promotion of better chances of individual development (Guhan, 1994). The social security programme in India can be divided into two parts. One consists of protective social security measures, largely applying to formal sector workers and covering medical care and benefits relating to sickness, maternity, old age, and so on. The other part of the programme, promotional social security, consists of security relating to self-employment and wage employment, and provision for basic needs such as food, health, and education, especially for workers in the unorganised sector. Thus, the social security programme should aim at the protection and promotion of both human and physical capital. The ILO estimates that half of the world's population has no social security coverage and only one-quarter of the world's population has adequate social security coverage (Ginneken, 2003). In India, however, only around 8% of the total number of workers are covered. This is because about 92% of the total workforce are employed informally. The Unorganised Sector Workers' Social Security Bill was passed in 2008. The bill covers the entire country and all workers in the unorganised sector. It covers self-employed workers, wage workers, home-based workers and informal workers in the organised sectors who have no social security coverage. It provides old age pension for workers, health insurance for self and family, maternity benefits for women workers or spouses of men workers, and insurance to cover accidental death and disability ("The Unorganised Workers' Social Security Bill," 2008).

Vending is full of insecurity and uncertainty, since vendors work at the roadside and accidents may occur at any time (see Anjaria, 2006; Bhowmik, 2006). Since as members of the informal sector they do not have access to any government-assisted social security, they have to manage their social security arrangements themselves. Therefore, this study attempts to try to detain the conditions of the social security of this group of workers in Mumbai. It is interestingly noticed from this study shows that around 88% of street vendors do not know even the term "social security."

Around 62.5% of vendors manage their social protection by saving in banks or cooperatives, whereas 36% of vendors manage their social protection by borrowing from various sources at an exorbitant rate of interest, around 3–10% per month (see Table 3). Some do both. Interestingly, 27 vendors (about 13.5% of the total) have life insurance policies for social protection purposes in terms of health care, medications, maternity expenses, accidents, children's education, and so on. Therefore, impressively, it can be admitted that some of the vendors (about 13.5 %) are aware of the importance of and need for social security.

Table 3. Access to Social Security

Access to Social Security	Total Number of Vendors (Percentage in parentheses)
Saving in banks and cooperatives	125 (62.5)
Insurance	27 (13.5)
Borrowing	72 (36.0)

Note: N=200.

INDEBTEDNESS OF STREET VENDORS

Street vendors' access to finance depends on their volume of trade and the types of product they sell. Vendors borrow money both for their economic activities and for social security purposes. Thus, they fall into a debt trap due to high indebtedness. They need to obtain credit for their economic activities, but, as part of the informal sector, they have no access to credit from formal financial institutions (Bhowmik, 2001, 2007; Jhabvala, 2000). In order to survive, they borrow money from various other sources. In the present study, out of the total sample (N=200), we see that 161 vendors borrow money from different sources for different purposes, namely, for their economic activity, for housing, for house rent, and especially for social security purposes. Around 44.72% of the vendors (72 out of 161) borrow money for social protection purposes in terms of health care, medications, maternity expenses, accidents, children's education, and so on, whereas 34.16% of the vendors borrow money for their economic activities. About 9% of the vendors borrow money to pay a deposit on house rent (see Table 4).

The present study found that the social security purposes served by borrowing are family health care and medications, maternity expenses, children's education, daughter's marriage, accidents, and purchase of insurance. Around 31% of vendors borrow money for family health care and medication purposes, while 25% vendors borrow money for their children's education (see Table 5). They encourage their children to continue their education. One of the vendors stated that

I don't want my children to become street vendors. This job has no dignity, no respect, and is full of uncertainty. I started because I had no option, to survive. If my children want to continue with higher education, I would support them; I would even borrow money for them.

Table 4. Purposes Served by Borrowing

Purposes Served by Borrowing	Total Number of Vendors (Percentage in parentheses)
Business	55 (34.16)
Housing	8 (4.97)
House rent (deposit)	15 (9.32)
Send money to village	11 (6.83)
Social security	72 (44.72)

Note: N=161.

Table 5. Social Security Purposes Served by Borrowing

Purposes	Total Number of Vendors (Percentage in parentheses)
Family health care and medications	22 (30.56)
Maternity expenses	5 (6.94)
Children's education	18 (25.00)
Daughter's marriage	7 (9.72)
Accidents	16 (22.22)
Insurance	4 (5.56)

Note: N=72.

Most of the vendors borrow money for school fees and to purchase computers for their children, because they prefer to send their children to English-medium schools. More than 50% of the total vendors borrow up to \$212.77 for their economic activities in a month, while around 50% of the total vendors borrow up to \$425.00 in a month for their medications, for health care, and for insurance purposes. They borrow either from moneylenders or from wholesalers. Some of the street vendors are very happy to borrow from the wholesalers since they don't charge monthly regular interest rate. But it is calculated in the present study that the vendors unknowingly pay around 25-35% more than the cost of their products to the wholesalers.

Table 6 shows that around 36% of the vendors have already paid in interest as much as they borrowed. Others have paid in interest two, three, or more times the amount they borrowed. One of the vendors in the study borrowed 10,000 rupees (\$212.77) for buying medicine 10 years ago, and he has been paying interest at a 5% rate ever since. Thus, it is estimated that he has paid in interest around 14 times the total amount that he borrowed. One of the vendors stated that “my father had taken money for this activity. After his death, I am still paying the rate of interest.”

ROLE OF MEMBERSHIP-BASED ORGANISATIONS

Membership-based organisations can be defined as “those in which the members elect their leaders and which operate on democratic principles that hold the elected officers accountable to the general membership” (Chen et al., 2007: 4). Trade unions, cooperatives, workers committees, savings and credit groups such as Self Help Groups (SHGs), producer groups and so on are categorised as membership-based organisations (Chen et al., 2007). This section of the article is based on in-depth interviews with five individuals who are actively involved in membership-based organisations and in a position to make decisions for the vendors. They are doing administrative work in their organisations, and they were also vendors. Key respondents, who were working as small vendors initially, have become small enterprise owner over the period of time and have appointed a number of wage workers for administrative work and other responsibilities in their respective organisations. According to them, it is very easy to work for the vendors as insiders. One of the key respondents stated that “our friends [the vendors] rely on and trust us because they think that we can understand the situation and represent their voice properly.”

Table 6. Total Interest Paid as a Multiple of the Principal

Multiple of the Principal	Total Number of Vendors (Percentage in parentheses)
1-Time	26 (36.11)
2-Times	28 (38.89)
3-Times	11 (15.28)
4-Times	4 (5.56)
6-Times	2 (2.78)
14-Times	1 (1.39)

Note: N=72.

Street vendors in Mumbai are continuously harassed by local police and the Bombay Municipal Corporation (BMC), since street vending is illegal and it is also the most visible component in the urban informal sector. Thus, some street vendors have organised themselves into unions or local associations that enable them to pursue their economic activities. These unions are mainly localized bodies and they are membership based. However, there are as yet very few such organisations in existence, whether in Mumbai or elsewhere in India. The organisations act as intermediaries between individual street traders and local authorities. Since the street vendors have no legal basis for their existence, the main role of the organisations is to negotiate with local authorities such as municipal corporations and local police forces for the right to occupy public space so that the vendors can carry on their trade. The organisations face many problems when they start to negotiate with the authorities about public space. One of the key respondents noted that

we are struggling for the rights for them [the vendors] and for their space on the road. We protest [against the authorities'] continuous harassment. Many times, we went to jail with the vendors to protest.

The organisations also are helping to set up a welfare board with the help of labour commission to enhance vendors' social security and cooperatives to provide them with access to credit for their economic activities and access to personal and educational loans.

Organising Social Security

Active membership-based organisations press for social security schemes that provide multiple benefits for those who are unionised. For instance, the social security scheme called 'Janshree Bima Yojana,' provided by the Life Insurance Corporation of India (LICI), is very successful scheme. But this scheme has implemented in a few places, one of which has been considered for the present study. The scheme includes insurance coverage for health issues, house and property, accidental and natural death, and permanent and partial disability. It is a group insurance scheme, for a minimum of 25 members. Members pay an annual premium. The annual premium for an individual vendor is 50 rupees (\$1.06), which is very affordable, even for the poorest. Under this scheme, each vendor can receive 15,000 to 75,000 rupees (\$319.15 to \$1595.74) in the case of an accident, and the vendor's family will receive 75,000 rupees (\$1595.74) after his/her death. Moreover, this scheme covers scholarships for the education of the vendor's children. A maximum of two children of the vendor can benefit, and each child can receive 1200 rupees (\$25.53) per year as a scholarship. One organisation has helped to arrange money for one vendor's son to pursue higher studies.

Toward Credit Accessibility for Street Vendors

A cooperative credit society has been registered under the state government to provide loans such as personal loans, educational loans, and loans for economic activity and the cooperative receives the money from the state government. The cooperative gives loans to the membership-based organisations. A cooperative cannot provide a direct loan for an individual vendor. Hence, membership-based organisations act as intermediaries between street vendors and a cooperative. Vendors must be members of an organisation to benefit from the cooperative. According to the rules and norms, a vendor can acquire a maximum of 30,000 rupees (\$638.30). Each vendor in the organisation gives money to the organisation according to the vendor's volume of trade (at a minimum of 10 rupees [\$0.02] per day) and the organisation thus accumulates money that is used as "working capital" Then, the vendor can take a loan from the "working capital" in the organisation at the nominal rate of interest. According to the five key respondents from membership-based organisations, this cooperative is very successful.

However, the problem is that overall very few street vendors are unionised in Mumbai. The study has shown that only around 2,500 vendors are involved in this cooperative and social security scheme in Mumbai, while Mumbai has 350,000 street vendors according to the records of most of the unions. According to all the key respondents, all the street vendors try to evade the necessary rules and regulations. They do not want to pay even the nominal minimum membership fees. Therefore, very few of the street vendors are registered members of the unions. One of the key respondents stated that "most of the vendors try to avoid all the rules and norms and hence they prefer private money lenders at a high rate of interest."

CONCLUDING REMARKS

In summary, a good deal of work has been done to analyse and define the informal sector. However, we are still a long way from really understanding this phenomenon, which is of such major economic, political, and social importance in all countries, developed as well as underdeveloped. Thus, it is also very difficult to theorise the street vendor workers within the informal sector context. However, from the present study, we can see that most of the street vendors are either inter-state or within-state migrants. Given this fact, we can perhaps support the dualist view of the informal sector, since adequate jobs are not available in the countryside and modern jobs are not in sufficient supply in the cities. Hence, the numbers of street vendors have been growing significantly over the decades. However, migration cannot be the only factor responsible for the growth in numbers.

The basic problem of street vendors is that of their right to exist in the urban informal sector, because their occupation is illegal. Hence, they do not have

dignity or rights at work. These are the first requirements in providing them with a decent working environment. Hence, government should provide the vendors with legal space for their activities. If government provides the vendors' basic need for space, the rules and regulations should not be complicated. The key respondents clearly stated that most of the vendors try to avoid formal rules and regulations. These can be very difficult for those with little education, and it has been noted that most of the vendors have only a low literacy level. From this point of view, the present study supports the legalist view, which relates to the problems of formal rules, regulations, and registration. If the rules and regulations are simple and the vendors are provided with space, this would provide the vendors with some dignity, which is an integral part of decent work.

From the present study it can be seen that street vendors play a very important role in the urban informal economy by generating employment (which is the first and the most important pillar of decent work; ILO, 1999) and by supporting the urban poor as well as the rich. Nonetheless, the study found that 23% of street vendors survive on 20 rupees (\$0.43) a day in Mumbai. The NCEUS report (2007) report categorised people with this daily income as "poor and vulnerable." Bhowmik's 2001 study showed that the daily income of male vendors was 70 rupees and that of women was 40 rupees.. In the present study, we find that over 40% of the population have an income of 20 to 35 rupees (\$0.43 to \$0.74). Therefore, the income level has not improved in the last eight years. One of the factors responsible for vendors' low income is the regular payment of bribes. Their income could be more decent if they did not have to pay these bribes. A vendor stated that "harassment, eviction, and the collection of bribes have been increasing in the last three to four years."

Another important finding of the study is that street vendors depend on moneylenders and wholesalers for access to credit as well as for social security purposes. The study also shows that vendors are often forced to pay exorbitant rates of interest. The main purposes of the borrowing are for their social security and for their business activity, as a result of which they often fall into a debt trap, which is a matter for grave concern. This study also reveals that 100% of the vendors need a means of achieving social security. They are surviving by means of their savings or borrowing at high interest rates. Thus, a basic need for the vendors is social security, which is supposed to be provided by the government. Group insurance could be a better solution to this problem. During this study, respondents said they were interested in this. Therefore, the government or any other stakeholders, especially trade unions, should come forward.

The study further reveals poor working conditions in terms of excessive working hours in a day, in addition to unhealthy and unsafe conditions in the workplace. Street vending is spreading dramatically. As a result, to compete with others and continue to exist in the local market, vendors increase their hours of work. This study reveals that working hours have increased by four to five hours a day since the study was carried out in 2001. Long-time street vendors

have also admitted that their working hours have increased. A 72-year-old vendor stated that

I have been doing this activity since I was a 12-year-old boy. I have spent 60 years in this area. We were only 10 on this road and now we are more than 1,000. Our total space is the same. Only our personal space has been reduced. I have noticed that the profit margin has decreased compared with before. Competition has increased over the period. I used to spend 5 hours in a day but now I spend 9–10 hrs to survive.

The ministry of urban development and poverty alleviation set up national policy goals and made many recommendations in 2006 (NPUSV, 2006). The national policy on urban street vendors was revised again by the ministry of housing and urban poverty alleviation, Government of India, in 2009 (NPUSV, 2009), though the new policy is much the same as the old. . Thus, government has already highlighted the important problems and provided very specific recommendations. The problem is that these recommendations still remain on paper only and have not been implemented in Mumbai so far. Mr. Arbind Singh, coordinator of National Associations for the Street Vendors in India (NASVI), commented on the revised policy as follows:

We want the government to stay with the earlier policy and work for its quick implementation rather than come up with another one. It is eventually the States and local bodies which have to implement the policy. Even five years after the first policy was adopted, only five States and about 15 cities have made attempts to implement it. The new policy would only provide further excuse for the States to delay the implementation and the vendors would suffer in the meanwhile. (Srivasthan, 2009)

Therefore, the state governments should take the initiative to fully implement the national policy, especially in Maharashtra, since the numbers of street vendors have been growing significantly in Mumbai.

According to the local authorities, the street vendors occupy public space illegally. The national policy (NPUSV, 2006) suggested that town vending committees (TVCs) should be made responsible for the allocation of space to street vendors. The functions of the TVCs recommended by the national policy are as follows: registering the street vendor and ensuring the issuance of an identity card to the vendor after it has been prepared by the municipal authority; monitoring the facilities to be provided to the street vendors by the municipal authority; identifying areas for vending with no restriction, areas with restrictions with regard to dates, days, and times, and areas that would be marked as no-vending zones; setting the terms and conditions for hawking; taking corrective action against defaulters; and collecting revenue. But the fees should be nominal or at least affordable for all street vendors. The committees may decide the amount the street vendors will be charged, considering the local conditions. Considering the functions of the TVCs recommended by national policy, it could be said that

TVCs would be the better solution to organise the vendors in the local level. Street vendors would prefer to pay fees legally to the government instead of paying bribes to the local police and the municipal corporation. One of the vendors stated that “we would like to pay the amount as taxes instead of bribes for our . . . space. We would even love to pay double the amount that we are paying now.”

Given the importance of street vendors in the urban informal sector, some nongovernmental organisations, cooperatives, and other groups are coming forward with initiatives for providing social security and many other basic requirements for street vendors, but these initiatives are few and far between. In view of the present economic situation, especially given the recent financial crisis and the large number of formal-sector jobs that have been lost, the informal sector will expand further in the years to come. Since street vending is one of the easiest ways to get into the urban informal sector, the number of street vendors is very likely to increase drastically in the near future. One of the major findings of this study is that in places where trade unions are performing efficiently and effectively, street vendors are found to be in a somewhat better position. Thus, trade unions or other membership-based organisations could be the best way to organise them. Vendors can achieve a reasonably decent working life or at least a better working environment with the help of trade unions. However, looking at the findings of the present study as a whole, it can be said that the empowerment of the lives of street vendors by transforming their work life into one of “decent work” is a distant dream.

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New Scholars

**PROMOTING THE UNDERLYING PRINCIPLE
OF ACCEPTANCE: THE EFFECTIVENESS OF
SEXUAL ORIENTATION EMPLOYMENT
ANTIDISCRIMINATION LEGISLATION**

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ABSTRACT

Although previous research finds less perceived sexual orientation discrimination in areas with employment antidiscrimination legislation than in areas without such legislation, it remains unclear whether such findings hold for (a) quantitative hiring evaluations made by organizational decision makers and (b) privately held attitudes of prejudice. In a between-subjects design, human resource professionals in locales with or without sexual orientation antidiscrimination laws evaluated matched resumes of openly gay or presumably non-gay male applicants. Without antidiscrimination laws, gay applicants were rated as less hireable than non-gay applicants; with antidiscrimination laws, gay and non-gay applicants were rated equivalently. Further, antidiscrimination legislation was found to be related to decreased prejudice toward gay men, even after controlling for factors previously shown to impact community adoption of legislation (e.g., political and religious views). Analyses of hireability ratings lacked sufficient statistical power to discern this effect.

Because of the long-established legal doctrine of employment at will, most employers in the United States may choose whom to hire, retain, and promote at their own discretion, even when these decisions are unmotivated by a concern for

employee merit or bottom-line profit. However, a patchwork of federal, state, and local legislation protects U.S. workers of some groups or classes from employment discrimination. While the discrimination protections provided by federal legislation must be adhered to in all states and localities within the United States, state or local legislation may provide additional protections that are not addressed in federal legislation.

Although U.S. federal legislation does provide national protection against employment discrimination on such bases as race, gender, and religion (i.e., under Title VII of the Civil Rights Act), national protection on the basis of sexual orientation is absent. However, despite the absence of national-level protection, 20 of the 50 states have outlawed sexual orientation employment discrimination, and some local jurisdictions offer legal protection within 15 of the 30 states without statewide protection.

Legislative efforts have sought to extend protection to the national level in the form of the proposed Employment Non-Discrimination Act (ENDA), which would protect gay, lesbian, bisexual, and transgendered individuals from employment discrimination with disparate treatment provisions similar to those found in Title VII of the Civil Rights Act. State and local governments have often served as “laboratories” for the evaluation of new policies before their implementation at the federal level (Inman & Rubinfeld, 1997), and sexual orientation antidiscrimination policy is no exception to this. Given the currently pending status of the national ENDA, we believe researchers have a unique and timely opportunity to compare the level of discrimination in areas with and without local protections, in order to begin to speak to the likely effectiveness of national legislation.

Empirical evidence for a relationship between state and local sexual orientation antidiscrimination laws and employment discrimination has thus far been limited to a single study of perceived workplace discrimination among employed gays and lesbians in the United States (Ragins & Cornwell, 2001). While this research showed a relationship between legislation and perceived discrimination even after controlling for coworker and supervisor sexual orientation and for organizational policies and practices, it may be limited by its analysis of differences in perception.

Research assessing perceptual differences rather than quantitative differences in workplace decisions leaves open the possibility that individuals in areas with and without antidiscrimination laws apply different standards in determining whether or not discrimination has occurred. Many gays and lesbians may be knowledgeable about their legal protections and view the lack of antidiscrimination law as indicative of a greater likelihood of discrimination. Interpersonal slights at work are often subtle and ambiguous (e.g., “Is my boss being rude because he found out I’m gay or because I botched a work assignment?”), and individuals may perceive discrimination more readily when they know there is no legal mandate preventing employers from discriminating. In order to build on previous research, the present study assesses discrimination

using a between-subjects design in which human resource managers evaluate job applicants matched on all qualifications and characteristics except for sexual orientation.

This study additionally provides the first empirical test of whether sexual orientation employment antidiscrimination law relates to the broader construct of prejudice. In providing this test, we aim to respond to legislators who have questioned the ability of legal mandates to promote broader principles of acceptance toward gay individuals. The 2002 Senate Committee testimony of Susan Collins (R-Maine), a moderate who may play a key role in the decision as to whether the national ENDA bill becomes law, best illustrates this (Committee on Health, Education, Labor, and Pensions, 2002):

To me, the key issue before us is how we can best promote acceptance, true acceptance, of the underlying principle . . . of nondiscrimination. . . . So the question to me and the question I want to ask all of you is if we impose a Federal law which some may view as an unwanted edict . . . is that really going to promote acceptance and compliance with the underlying principle that we all want to see?

Most importantly, the present study provides empirical evidence to suggest that antidiscrimination legislation *causes* decreased prejudice. That is, there may be less prejudice in locales that legislate against discrimination for two reasons: (a) areas that are more accepting of gays and lesbians may simply be more likely to enact antidiscrimination laws (reduced prejudice causes legislation); and/or (b) legislation causes a reduction in prejudice. By controlling for community factors shown in previous research to relate to the passage of such laws, we aim to better isolate the effect of antidiscrimination legislation on prejudice.

PROMOTING THE UNDERLYING PRINCIPLE OF ACCEPTANCE

Even absent any possibility of tangible punishment, legislation authoritatively describes moral rules of conduct (Robinson & Darley, 1995). As such, sexual orientation antidiscrimination legislation may create a clear social norm prescribing that gay individuals ought to be societally accepted. Thus, sexual orientation antidiscrimination legislation may alter underlying attitudes of prejudice because it changes views of the morality and social acceptability of mistreating gay individuals.

This is supported in broader research on attitude change and community norms. Simply learning the stance of one's community has been shown to impact the extent of prejudice one expresses, even when attitudes are indicated privately, absent any real possibility of conflict or criticism (Stangor, Sechrist, & Jost, 2001; Wittenbrink & Henly, 1996). This effect is strong enough that even

learning the opinion of a single community member (a stranger) has been shown to change a person's attitudes toward out-group members (Blanchard, Crandall, Brigham, & Vaughn, 1994; Blanchard, Lilly, & Vaughn, 1991; Monteith, Deneen, & Tooman, 1996; Zitek & Hebl, 2007). Further, resulting attitude change has been shown to last beyond the short term, outside the context in which the community norms were expressed (Stangor et al., 2001; Zitek & Hebl, 2007).

Notably, research suggests that given the lack of public consensus on the acceptability of homosexuality in the United States, sexual orientation antidiscrimination legislation may be particularly effective. The extent to which society accepts or rejects homosexuality remains unclear across much of the United States, with approximately 40% of the U.S. population being of the opinion that homosexuality should not be accepted by society (Pew Global Attitudes Project, 2007). In research that manipulates community attitudes of acceptance toward multiple groups, more attitude change has been shown toward gays than toward other groups: racists, for example, toward whom prejudice is more clearly socially accepted; or blacks, toward whom prejudice is more clearly unacceptable (Zitek & Hebl, 2007).

Additionally, to the extent that gay individuals are more likely to "come out" and disclose their sexual orientation if they perceive community acceptance, increased contact with individuals who are (known to be) gay has been shown to relate to decreases in sexual orientation prejudice (Smith, Axleton, & Saucier, 2009).

ISOLATING THE EFFECTS OF LEGISLATION ON PREJUDICE

Given that the adoption of local gay rights ordinances has been shown to relate positively to the presence of the gay and lesbian community and negatively to the presence of conservative political and religious groups (Haeberle, 1996; Wald, Button, & Rienzo, 1996), it is a fairly safe assumption that the level of prejudice is already lower in areas that adopt gay rights laws than in areas that do not adopt such laws—even before the laws take effect. However, this does not preclude the possibility that the legislation itself also has a major effect on prejudice reduction. This simply means that research on the efficacy of legislation has the difficult task of controlling for those factors that may impact both (a) the adoption of antidiscrimination legislation and (b) the extent of community prejudice at baseline. As such, in our present research we control for the substantive factors shown to relate to both (a) community adoption of sexual orientation employment antidiscrimination laws and (b) level of sexual orientation prejudice and discrimination: religious and political views, the presence of gays, and private organizational support for gays (Haeberle, 1996; Ragins & Cornwell, 2001; Wald et al., 1996).

Legal Awareness

For employment legislation to have an impact, at a minimum, individuals in organizations need to be aware of the existence of such legislation. While small business and line managers who make hiring (or wage) decisions may have less than uniform knowledge of such laws, this present study recruited human resource managers as participants, as these individuals are in a unique position, which requires that they educate themselves on employment antidiscrimination law as it applies to the local jurisdictions of their organization.

Disclosure

Put simply, employers cannot discriminate with regard to group membership that they do not know. Thus, unlike the visible stigmas of race and gender, for which anti-discrimination legislation has generally been accepted as having had an effect on discrimination reduction (Burstein, 1985; Donohue & Heckman, 1991; Gunderson, 1989), gays may have the option of hiding their sexual orientation from employers, at least during the initial application process. Nevertheless, many gay individuals may have worked or volunteered for gay-affiliated organizations. As such, a gay applicant may indirectly disclose his sexual orientation even during the initial application process by including on his resume substantial job-relevant experience of working or volunteering for an organization focused on gay issues. Not to do so may put the applicant at a disadvantage in other ways by omitting important job-relevant skills (e.g., graphic design and Web development skills gained through volunteering to create announcements for a local gay, lesbian, bisexual, and transgender [GLBT] group). Further, if an applicant has worked full-time for a gay-affiliated organization, omitting this information may leave gaps in employment history that reflect poorly on the applicant. Once the applicant is in the interviewing stage of the selection process, even if sexual orientation is never disclosed even indirectly, others are often able to accurately infer sexual orientation on the basis of brief exposure to cues such as body shape, movement, and other nonverbal behavior that may not be easily altered (Ambady, Hallahan, & Conner, 1999; Johnson et al., 2007; Rule et al., 2008). Thus, in this current research, a gay individual's sexual orientation is indirectly disclosed—in the same manner—to human resource professionals in areas with and without legal protection.

HYPOTHESES

The present study first addresses the possible limitations of previous survey research (Ragins & Cornwell, 2001) by assessing discrimination in locales with or without antidiscrimination laws using quantitative hiring evaluations made by organizational decision makers:

Hypothesis 1: The presence of sexual orientation antidiscrimination law has a negative relationship to discrimination toward gay men in the process of hiring.

We then provide the first empirical test of whether sexual orientation employment antidiscrimination law relates to the broader construct of prejudice, to address Senator Collins' question of whether antidiscrimination laws can promote the underlying principle of acceptance:

Hypothesis 2: The presence of sexual orientation antidiscrimination law has a negative relationship to prejudice toward gay men.

Most importantly, to test whether antidiscrimination laws can have an impact on prejudice, we control for those factors previously shown to relate to both the adoption of sexual orientation antidiscrimination law and community acceptance of gays:

Hypothesis 3: Sexual orientation antidiscrimination law has a negative relationship to prejudice toward gay men, even after controlling for the individual's sexual orientation, religious views, political views, and gay-friendly practices within the individual's organization.

METHOD

Data and Sample

Participants

Two hundred fifty-five human resource managers (mean age = 44.4 years; $SD = 10.5$; mean professional human resource experience = 14.4 years, $SD = 8.3$) volunteered to participate. Individuals were recruited online through their local chapters of a U.S. professional association, the Society for Human Resource Management (SHRM). Of the local chapters contacted, 22% agreed to distribute the study invitation to their members, with individuals from a total of 32 chapters in 28 states ultimately participating. The participants were relatively homogeneous in terms of gender (77.3% female), race (89.8% white), and sexual orientation (97.1% heterosexual), but they were diverse in terms of geographical region (44.3% South, 21.6% Northeast, 20.0% Midwest, and 14.1% West).

Context and Cover Story

So as not to create suspicions as to our true interest in prejudice and discrimination with regard to sexual orientation, the study was presented as an examination of differences in how human resource professionals and undergraduate students evaluate the work and academic experiences of job candidates. Human resource managers were presented with a total of four resumes, each

presenting the academic and work experiences of a hypothetical graduating college senior. Of these four resumes, only the second was of interest; the remaining three served to bolster the credibility of our cover story and to provide filler content before we presented questions about background values and beliefs.

After viewing each resume, human resource managers were asked to evaluate the applicant's suitability for a typical entry-level management position. Entry-level management positions were chosen because (a) most of the human resource professionals in our study had substantial experience in management themselves ($M = 11.1$ years of experience in a management position; $SD = 8.7$ years), and (b) the human resource professionals in our study worked in a wide range of organizational settings, and we sought to choose a job type that would have broad applicability across organizations. The resumes were designed to portray applicants who would be of moderate suitability for entry-level management positions. In the control condition, in which no information would give the impression that the second candidate was gay, mean hireability ratings were 4.6 ($SD = 1.2$) on a 7-point scale, with 4 as a midpoint.

Independent and Predictor Variables

Applicant Sexual Orientation

The independent variable of candidate sexual orientation was manipulated by presenting the candidate ("James Peterson") as either (a) recipient of the university's "Alumni Scholarship" and president of the "Student Activities Association" (control condition) or (b) recipient of the university's "Gay and Lesbian Alumni Scholarship" and president of the "GLBT Student Activities Association" (gay condition). This information was made highly salient by positioning it first under the "Management and Leadership" heading of the resume, directly following the section on educational experience. The described experiences as president of the GLBT Student Activities Association or as president of the Student Activities Association were identical (e.g., redesigned networking program to increase turnout at student-alumni events), and none were political or activist in nature. A similar manipulation of applicant sexual orientation was used previously (i.e., resume that did or did not include participation in the "Gay Men's Alliance"; Horvath & Ryan, 2003), although in that previous study, the hiring ratings were made by undergraduate students rather than by human resource professionals, for a position (i.e., technical writer) that may have had less broad applicability across organizations. The end of the survey included a manipulation check to identify participant recognition of applicant sexual orientation.

Legislation

Sexual orientation employment antidiscrimination legislation was coded by the researcher based on the local SHRM chapter to which each participant belonged.

Although participants were asked to provide both the city and state of their local SHRM branch, because many human resource professionals belong to SHRM branches that are outside the city or town limits in which they work (e.g., individuals who are members of the Dallas SHRM branch may work in Texas suburbs outside Dallas that, unlike Dallas, do not have city antidiscrimination laws), we did not believe it was reliable to assess the presence of city antidiscrimination legislation on the basis of the SHRM branch city. Because it would be extremely rare for SHRM members to attend meetings in a state other than that in which they worked, we coded for the presence or absence of state employment antidiscrimination legislation on the basis of the SHRM branch. This strategy has the additional advantage that state antidiscrimination laws are typically backed by more resources for enforcement than are city laws (Rubenstein, 2001), which may make legal awareness more likely. Of the 255 participants in our sample, 104 participants worked in a state with a sexual orientation employment antidiscrimination law covering both private and public employment; 98 participants worked in a state without legal protection for either public or private employment.

Dependent Measures

Hireability

We adapted an index of hireability used previously in resume studies of hiring discrimination (Rudman & Glick, 2001; $\alpha = .87$) to apply specifically to entry-level management positions ($\alpha = .85$). Participants indicated on three scales ranging from 1 (*not at all likely*) to 7 (*extremely likely*) the probability that (1) they would interview the applicant, (2) they would personally hire the applicant, and (3) the applicant would be hired.

Prejudice toward Gays

We used Herek's (1984, 1994, 1998) 10-item, 7-point Likert-type scale of Attitudes toward Gay men (ATG) ($\alpha = .94$). The statements tap affective responses to homosexuality and to gay men (e.g., "Homosexual behavior between two men is just plain wrong").

Control Variables

We additionally measured several variables that had been shown in previous research to relate to prejudice or discrimination toward gays and gay employees. Among these, sexual orientation, organizational support, and religious and political views were of the utmost importance because they had been shown to also relate to whether communities are likely to adopt sexual orientation antidiscrimination laws (Haeberle, 1996; Ragins & Cornwell, 2001; Wald et al., 1996).

Religious Beliefs

The community presence of Evangelical Protestants had previously been shown to be negatively related to the adoption of state and local sexual orientation antidiscrimination laws (Haerberle, 1996; Wald et al., 1996). Given the tendency of those who condemn homosexuality to cite biblical scripture, we used a measure of biblical belief culled from a previous large-scale national survey of U.S. religiosity (Baylor University, 2005). The participants were asked to indicate which one of four statements best described their personal beliefs about the Bible: (a) it means exactly what it says/should be taken literally; (b) it is perfectly true, should not be taken literally; (c) it contains some human error; or (d) it is an ancient book of history and legends. A fifth option, "don't know," was also available. Endorsement of the first two options has been shown to relate strongly to Evangelical identification (Baylor University, 2005). In subsequent analyses, we classified dichotomized participants' religious views based on whether they endorsed a belief in the Bible as perfect truth; 43.5% of our participants endorsed this belief.

Political Beliefs

Participants indicated one of seven degrees of political belief along a liberal-conservative spectrum, ranging from "very liberal" to "moderate" to "very conservative," or as "none, unaffiliated." In the analyses, political beliefs were collapsed into three categories: liberal (31.2%), moderate or no affiliation (33.0%), and conservative (35.8%).

Sexual Orientation

Participants indicated sexual orientation by choosing among four responses: heterosexual (97.1%), homosexual, bisexual, or other.

Organizational Support for Gay Employees

Ragins and Cornwell (2001) had found that the presence of community legislation was positively related to the presence of organizational antidiscrimination policies and same-sex partner benefits. Hence to help ensure that we were capturing the effects of legislation, we additionally controlled for these organizational policies and practices that were relevant to gay employees (Button, 2001; Griffith & Hebl, 2002; Ragins & Cornwell, 2001). After the resume ratings, we queried participants as to whether their organization offered (a) an official sexual orientation antidiscrimination company policy (79.3%), and (b) one or more same-sex partner benefits (health insurance, bereavement leave, sick care leave) (54.8%). These questions were embedded within questions asking about diversity training and company policy for numerous groups (race, religion, age, disability, etc.).

Additional Demographic Control Variables

We additionally measured participant gender and age. Though these have not been shown to relate to the adoption of antidiscrimination legislation, they have each been shown to relate to prejudice toward gay men (Herek & Glunt, 1993).

RESULTS**Manipulation Check**

At the conclusion of the study, following both the evaluation of the four resumes and the questions about participant demographics and background values and beliefs, participants were asked to indicate whether any of the four applicants were gay. To minimize demand characteristics, this question was embedded in a set of recognition questions about multiple, unrelated characteristics of the four applicants (were any of the applicants Jewish, Hispanic, gay, blind, deaf, named Natalie, named George, or none of the above?). Because we recognized that noticing the sexual orientation of an applicant was necessary for antidiscrimination legislation to impact hireability evaluations, we excluded from our analyses of hiring discrimination those participants (20.2%) who failed to identify the manipulated applicant sexual orientation.

Hiring Discrimination With and Without Antidiscrimination Legislation

Hypothesis 1 proposes that sexual orientation hiring discrimination is less in jurisdictions with relevant employment antidiscrimination legislation than in jurisdictions without such legislation. In confirmation of Hypothesis 1, we found a significant interaction effect [$F(1, 145) = 3.92, p < .05, \eta^2 = .03$], such that human resource managers in areas without antidiscrimination laws evaluated the applicant as less hireable when presented as gay relative to when he was presented as non-gay [$t(66) = 3.05, p < .01; d = .75$]; in contrast, no hireability differences between the gay and the non-gay applicant were found in areas with antidiscrimination laws [$t(79) = -0.40, ns; d = -.10$]. See Figure 1.

To control for demographic and organizational differences that had previously been shown to relate to prejudice and discrimination against gays, we used a linear regression model with hireability ratings as the dependent variable, and applicant sexual orientation and antidiscrimination law as predictors. In this model, an interaction effect between applicant sexual orientation and antidiscrimination law indicates reduced discrimination toward gay men in areas with antidiscrimination laws. Although the pattern of findings was not altered, after controlling for age, gender, political conservatism, biblical belief, organizational same-sex partner benefits, and company antidiscrimination policy, the evidence of less

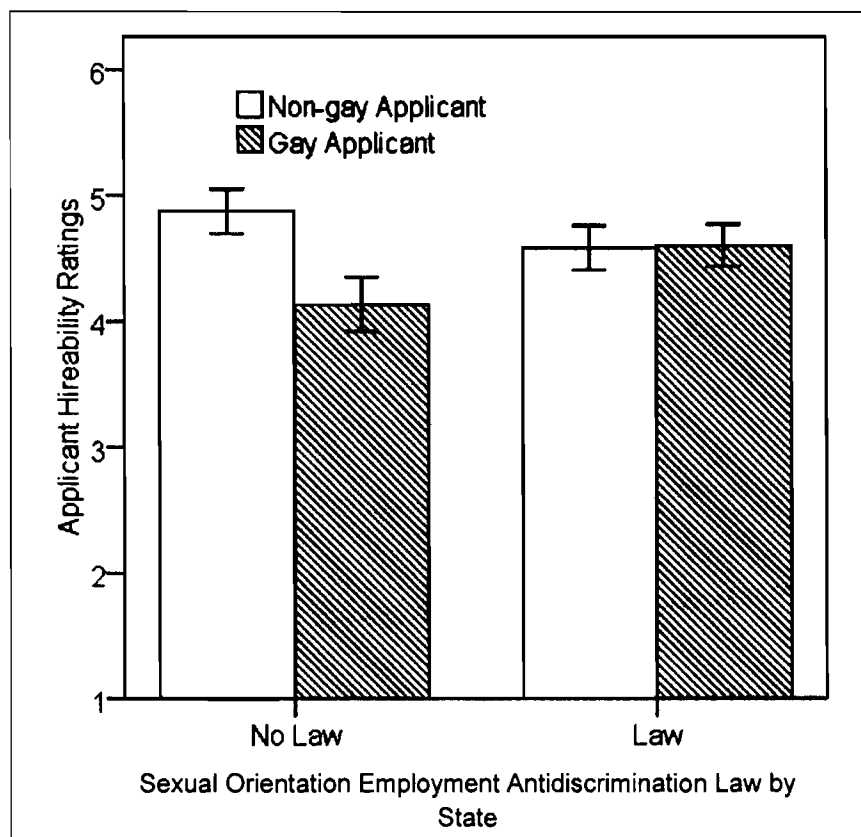


Figure 1. Mean hireability ratings (+SE) of gay and non-gay applicants, by human resource professionals in states with ($n = 81$) and without ($n = 68$) sexual orientation employment antidiscrimination legislation.

discrimination in areas with antidiscrimination employment legislation than in areas without was not statistically significant. See Table 1.

Broader Sexual Orientation Prejudice With and Without Antidiscrimination Legislation

Hypothesis 2 proposes that broader sexual orientation prejudice is less in areas with antidiscrimination laws than in those without such laws. While it is one thing for employment antidiscrimination laws to reduce the specific behavioral outcome that they impose penalties against (i.e., formal hiring discrimination), it is quite another for these laws to also cause a reduction in attitudes—which cannot

Table 1. Regression Analysis for Variables Predicting Hireability Ratings ($N = 118$)

Variable	B	SE B	β
Applicant sexual orientation	-.87	.33	-.35*
Antidiscrimination employment law	-.18	.31	-.08
Applicant sexual orientation \times law	.57	.46	.18
Gender	.17	.29	.06
Age	.00	.01	.02
Political conservatism	-.15	.15	-.11
Biblical belief	.01	.25	.01
Same-sex benefits	.22	.25	.09
Company antidiscrimination policy	-.43	.31	-.14

Note: Model $R^2 = .10$. Individuals who missed the manipulation check have been excluded. Applicant sexual orientation is coded 0 = non-gay, 1 = gay. Antidiscrimination law, company antidiscrimination policy, and same-sex partner benefits are coded 0 = absence, 1 = presence. Gender is coded 0 = male, 1 = female.

* $p < .05$

be legally mandated—particularly attitudes that do not pertain directly to the employment sphere. In support of Hypothesis 2, we indeed found that prejudice toward gay men was substantially lower in areas with antidiscrimination laws than in areas without them [$t(167) = 5.54, p < .001; d = .85$].

Hypothesis 3 proposes that sexual orientation prejudice is less in jurisdictions with relevant employment antidiscrimination legislation, even after controlling for one's sexual orientation, religious views, political views, and gay-friendly practices within one's organization. That is, we acknowledged that human resource professionals in areas without antidiscrimination laws tended to be more politically and religiously conservative, and were less likely to work for organizations with company antidiscrimination policies and same-sex partner benefits. To control for these demographic and organizational differences, we used a linear regression model, with gay prejudice as a dependent variable, and entered the presence or absence of employment antidiscrimination law, as well as age, gender, political conservatism, biblical belief, organizational same-sex partner benefits, and company antidiscrimination policy as predictors. In strong support of Hypothesis 3, even with over 40% of the variance in gay prejudice already explained, antidiscrimination legislation still explains additional incremental variance. While political conservatism [$\beta = .36, p < .001$] and biblical belief [$\beta = .37, p < .001$] contribute to the prediction of prejudice toward gays,

Table 2. Regression Analysis for Variables Predicting Prejudice toward Gay Men ($N = 150$)

Variable	B	SE B	β
Gender	-.12	.22	-.03
Age	.01	.01	.10
Political conservatism	.61	.11	.36*
Biblical belief	1.09	.19	.37*
Same-sex benefits	-.20	.19	-.07
Company antidiscrimination policy	-.33	.23	-.09
Antidiscrimination employment law	-.44	.19	-.15*

Note: Model $R^2 = .53$. Only heterosexual respondents are included. Antidiscrimination law, same-sex benefits, and company antidiscrimination policy are coded 0 = absence, 1 = presence. Gender is coded 0 = male, 1 = female.

* $p < .05$

antidiscrimination legislation contributes significantly to the prediction of gay prejudice beyond that explained by factors previously shown to relate to gay prejudice and community legal adoption alone [$\beta = -.15, p < .05$]. See Table 2. Hence, these findings offer initial support for the idea that sexual orientation antidiscrimination employment laws may in fact be successful in causing a reduction in broader attitudes of prejudice toward gays.

DISCUSSION

In this study we began by addressing the possible limitations of previous perceptual discrimination research (i.e., Ragins & Cornwell, 2001) by assessing the extent of discrimination using quantitative hiring evaluations made by organizational decision makers. Using a between-subjects design, human resource managers evaluated job applicants who were matched on all qualifications and characteristics except for sexual orientation. In so doing, we demonstrate that the relationship between sexual orientation employment antidiscrimination laws and employment discrimination is no mere perception. We find that gay applicants are in fact subject to less discrimination from hiring professionals in jurisdictions with antidiscrimination laws than in jurisdictions without legal protection, even when sexual orientation is systematically manipulated such that applicant qualifications and job type are held constant.

We additionally extend the literature by providing the first empirical test of whether sexual orientation employment antidiscrimination law relates to the

broader construct of prejudice. Our findings clearly show that antidiscrimination legislation relates to attitudes of prejudice. Further, and most importantly, in the present study we provide empirical evidence suggestive of causal effects of legislation on prejudice. We note that there may be less prejudice in locales that legislate against discrimination for two reasons: (a) areas that are more accepting of gays and lesbians are simply more likely to enact antidiscrimination laws (reduced prejudice causes legislation), and/or (b) legislation causes a reduction in prejudice. To offer preliminary support for the idea that employment laws may in fact have a causal impact, we controlled for variables previously shown to relate to the adoption of antidiscrimination laws (Haeberle, 1996; Ragins & Cornwell, 2001; Wald et al., 1996). If employment laws were related to lesser prejudice and discrimination even after controlling for (a) sexual orientation and the religious and political beliefs of those with hiring authority, and (b) organizational practices in support of gay employees, this would provide initial evidence in support of a causal impact of legislation.

Our data indeed provide strong support with regard to antidiscrimination law and corresponding prejudice. Antidiscrimination legislation was found to be substantially related to decreased prejudice toward gays, even after controlling for those factors previously shown to impact community adoption of legislation. That is, our findings suggest that employment antidiscrimination legislation goes beyond affecting the specific behaviors that are outlawed (i.e., hiring discrimination) to affecting the underlying principles of acceptance and tolerance toward gays that extend to domains outside the employment sphere. Even privately held attitudes of prejudice toward gays—which are not and cannot be legally enforced—appear to be affected by antidiscrimination legislation. This provides theoretical support for the idea that the effects of antidiscrimination legislation are not simply based on the tangible threat of lawsuits but are symbolic, authoritatively prescribing societal norms of acceptance.

Limitations and Future Research Directions

Though antidiscrimination laws were shown to correspond to decreased attitudes of prejudice after controlling for all variables previously shown to relate to the adoption of legislation, we did not show this same finding with regard to discrimination. That is, the relationship between antidiscrimination legislation and discrimination did not reach levels of statistical significance after we had controlled for religious beliefs. A larger sample size might have led to similar results for both prejudice and discrimination. The sample size was limited by the focus on human resource managers, and it would be interesting to replicate the study at a future date with other managers who make hiring decisions. In testing for hiring discrimination, in contrast to our testing for prejudice, we needed to test for an interaction effect. That is, we did not simply compare the hireability

of a gay candidate in areas with and without legislation. Doing so might have wrongly capitalized on any number of judgments that vary regionally yet are unrelated to sexual orientation (e.g., regional differences in the reputation of the college and past employers of our applicant). Instead, we compared the extent of preference toward a gay applicant versus preference toward a non-gay applicant who was matched in all other respects, in areas with and without legislation. This requirement of four conditions rather than two lowered our statistical power to detect an effect. Additionally, although we recruited participants apt to be knowledgeable about antidiscrimination legislation, it is possible that even some human resource managers are unaware of sexual orientation employment legislation. Future research ought to measure knowledge of legislation directly.

Beyond this, state and local sexual orientation laws continue to spread to new jurisdictions. Research designs that use pre- and posttest designs, such as those used in the 1960s to document the efficacy of Title VII of the Civil Rights Act in reducing employment discrimination toward Southern blacks (e.g., Heckman & Payner, 1989), could further examine the effects of sexual orientation antidiscrimination legislation. In particular, the combination of experimental control and greater ecological validity afforded by resume correspondence testing in the real-world labor market (e.g., Adams, 1981; Weichselbaumer, 2003) ought to be extended to comparisons of jurisdictions with and without sexual orientation antidiscrimination legislation.

CONCLUSION

Given the currently pending status of the national Employment Non-Discrimination Act (ENDA), we have a unique and timely opportunity to test the effectiveness of state and local legislation. In comparing the level of discrimination in areas with and without local protections under controlled conditions, we can begin to speak to the likely effectiveness of national legislation. This is particularly important given that some politicians who will likely play a key role in whether ENDA becomes law (e.g., moderate Republican Senator Collins) attempt to oppose sexual orientation antidiscrimination legislation by characterizing the likely efficacy of such legislation as questionable.

Clearly, as researchers we do not have the power to experimentally manipulate the presence or absence of legislation in a given community. However, this study goes far in statistically controlling for those factors previously shown to influence whether legislation is adopted in a given community, so as to otherwise equalize jurisdictions. As such, this study goes a long way toward responding to Senator Collins' claims that employment sexual orientation antidiscrimination laws may not "promote true acceptance, of the underlying principle" of nondiscrimination. Our findings provide evidence that such laws do reduce

true, underlying principles of prejudice, even principles extending outside the sphere of work.

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