Promoting Racial and Ethnic Inclusion in Employment

Through Regulatory Mandates and Incentives

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Executive Summary

Fifty years after the Civil Rights Act of 1964 first prohibited racial and ethnic discrimination in employment, more remains to be done to fulfill the act's promise of integration. Discrimination continues to be a consistent feature of American labor markets. Disparities in access to education, skills, training, networks and mentoring contribute to inequalities and occupational segregation. At the same time, changes in labor markets and unionization are altering wages, conditions, and availability of employment generally, with distinct effects on workers of color. These changes blunt many of the traditional tools for addressing racial and ethnic inequality. This paper argues that while litigation remains an important part of an effective inclusionary regime, jurisprudential and enforcement limitations, as well as the complex challenges facing lower-wage workers, require additional regulatory solutions. The paper calls for affirmative regulatory mandates to spur inclusion using government spending, procurement, licensing, zoning, and labor agreements. In particular, the paper builds on existing community-benefits agreements and "first source" hiring requirements to describe a model of localist regulatory innovation targeted at integrating entry-level work in growth industries. This regime would include "hard" regulatory tools such as mandated hiring, as well as "soft" tools such as incentives to link community-based credentialing and training institutions to employers with capacity to hire workers.

Introduction

This paper details legal and regulatory strategies for promoting racial and ethnic inclusion and integration in employment. The paper recommends moving beyond the prohibitory, individualist framework of current antidiscrimination law and encouraging federal, state and local regulatory design of affirmative rules to further inclusion. More specifically, the paper recommends the development of a richer local or regionalregime of implementation. This framework would engage local regulatory tools such as negotiated labor agreements, zoning, tax, and licensing power to require inclusion. This framework would also use soft forms of regulation that involve industry, government, labor, community groups, and credentialing and training institutions such as colleges, high schools, nonprofits, and unions. This model emphasizes entry and training. This approach recognizes that workers are embedded in a local and regional context. It connects strategies for addressing racial and ethnic inclusion to workforce development programs and engages a broader set of actors than those who work for inclusion using a rights-based approach. .

The first section of this paper frames the problems of racial and ethnic inclusion in employment. The next section summarizes current legal and regulatory tools for promoting inclusion and desegregation, and details barriers to their success. The third section offers a framework for improving enforcement of these legal and regulatory approaches. The final section presents a model for an expanded local/regional inclusion regime.

Discrimination and Segregation

This section investigates the problem of racial and ethnic disparities in employment. Such disparities can encourage occupational segregation, and can be caused by discrimination, workplace organization, and differences in education, skills, and social capital networks and resources. "Occupational segregation" is a fluid term but here refers to the concentration of members of particular racial or ethnic groups in the lowest levels of employment at a single workplace, or the exclusion of particular groups from certain sectors or industries. Examples include the underrepresentation of minorities as waiters in high-end restaurants versus their representation in higher numbers as fast-food workers or in "back of the house" positions, and the relegation of minorities to unskilled positions in the building industry versus their limited representation in semi-skilled or skilled positions. Despite progress since the passage of the Civil Rights Act of 1964, there is considerable evidence of continued occupational segregation on the basis of race and ethnicity across many sectors (Hellerstein and David Neumark 2008; Stainback and Tomaskovic-Devey 2013).

There is evidence, too, that racial and ethnic discrimination in employment markets is a persistent and continuing problem. Such evidence explains at least some of the persistent occupational segregation as well as current racial and ethnic disparities in employment outcomes (Fryer 2009; Pager, Western and Bonikowski 2009; Stainback and Tomaskovic-Devey 2013). Each year, individuals and groups file thousands of complaints or lawsuits claiming discrimination in employment practices and conditions. Audit studies consistently reveal discrimination against African Americans and Latinos in hiring and pre-employment practices (Pager, Western, and Bonikowsi, 2009; Restaurant Opportunities Center of NY United & N.Y.C. Restaurant Industry Coalition 2009; Bendick, Jackson, and Reynoso 1994). Systemic employment discrimination litigation often targets occupational segregation. Recent examples include a settlement against the New York City Board of Education for hiring practices that restricted African Americans, Latinos, Asian Americans, and women to temporary custodial positions and excluded them from permanent custodial positions[1]; and a settlement against the New York City Department of Parks and Recreation for pay and promotion practices that restricted African Americans to lower-level positions.[2]

The mechanisms leading to employment disparities include employer-based practices of discrimination (through which employers treat similarly-situated individuals differently), and also the interaction between employment practices, workplace conditions, and the skills required of workers and job applicants (Sturm 2001). As a result, promoting integration and remedying occupational segregation requires more than eliminating discrimination from employer hiring practices. It also requires addressing disparities in skills across racial lines, and providing equitable access to training opportunities and to those networks that enable hiring. In this paper, I focus on opportunities for access to training and entry-level positions, which will allow workers of color to gain access to medium-wage or skilled jobs in sectors or categories in which they are underrepresented.

[1] See United States of America v. New York City Board of Education, Case No. 96-0374 (E.D.N.Y. 11/13/13).
[2] See, e.g., Wright v. Stern, 553 F. Supp. 2d 337 (S.D.N.Y. 2008)

Existing Framework and Barriers to Implementation

This section maps the existing legal and regulatory framework for promoting racial and ethnic inclusion. Understanding the existing framework, its critical components, and its limitations is an important starting point for developing new models. The existing framework relies on: (1) legal and regulatory penalties ("sticks") for combatting discrimination and; (2) regulatory requirements for affirmative, proactive action by employees.

A. Title VII - Litigation and Regulatory Framework

1. Litigation

Title VII of the 1964 Civil Rights Act is the central legal enforcement tool for promoting workplace inclusion.[3] Title VII prohibits discrimination in hiring, steering, promotion, termination, training, and workplace conditions. Remedies may include injunctive relief (for instance, ordering the reinstatement of employees, or implementing changes in hiring practices), back pay, and compensatory and punitive damages. In addition to forbidding disparate treatment by employers, the statute allows claims based on practices that have an unjustified disparate impact on particular racial and ethnic groups.

After claims have been exhausted with the Equal Employment Opportunity Commission (EEOC), Title VII permits those affected by discrimination to bring private actions in state and federal courts. The statute allows claims brought by individuals as well as groups of employees, through "pattern and practice" litigation and class actions. While most Title VII litigation is brought by private, nongovernmental lawyers, Title VII also grants the EEOC powers to initiate litigation on behalf of individuals or groups of employees.[4] For employees in low-wage or entry-level jobs, whose cases may involve lower damages and therefore be less attractive to private lawyers, administrative enforcement may offer a significant remedy. Administrative enforcement allows systemic relief without having to meet the increasingly stringent court requirements required in private litigation.

Evidence shows that Title VII litigation can promote compliance with nondiscriminatory practices and spur racial and ethnic inclusion. Vigorous litigation can create significant penalties for noncompliant employers—thus prompting the targets of the litigation to comply—as well as creating incentives for other employers to abide by legal norms. Successful litigation can lead employers to adopt inclusive practices—such as affirmative action or inclusive employment practices—to avoid litigation.

2. Regulation

[3] Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge an individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]" 42 U.S.C. §2000e-2(a). The act also makes it unlawful for an employer "to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." Id.

[4] See 42 U.S.C. § 2000e-5(b) (outlining EEOC commissioner's charges procedure).

Title VII also provides important regulatory tools for promoting nondiscrimination and inclusion. The act gives the EEOC the power to issue procedural regulations enforcing Title VII, and the authority to provide informal guidance on the act's substantive provisions. The now-codified disparate impact standard began as guidance by the EEOC to employers on the use of tests for hiring and promotion. More recently, the EEOC issued guidance to employers clarifying that Title VII, in some instances, prohibits an employer's use of an individual's criminal history in making employment decisions, and providing examples of best practices for employers in this area.[5] Critically, the EEOC's Title VII guidance is not binding for employers, and courts do not give sufficient deference to the EEOC's interpretation of Title VII. Still, accounts show that employers—particularly highly-structured businesses with formalized hiring mechanisms—incorporate EEOC guidance into their employment practices (Stainback & Donald Tomaskovic-Devey, 2013). The EEOC also has power to conduct investigations and hold hearings, which can help further the act's antidiscrimination goals.

B. Affirmative Action

Another key tool in promoting racial and ethnic inclusion is affirmative action. The term is capacious and definitions vary, but I use it to refer to an employer's use of race- and ethnicity-conscious practices to promote inclusion or advancement in the workplace. These can include practices such as conducting outreach to increase hiring for particular racial or ethnic groups; setting numerical goals or targets for hiring or promotion; and providing training opportunities for underrepresented minorities. Employers' affirmative action efforts are most often voluntary, and typically not mandated by a court or a government agency. Affirmative action can also be a requirement of federal, state or local contracting. For instance, a federal executive order might ban discrimination by federal contractors and subcontractors, and require them to ensure employment opportunities for minorities, women, people with disabilities, and other groups of protected workers.[6] Employers must analyze their own equal opportunity practices, and the Department of Labor's (DOL) Office of Federal Contract Compliance Programs conducts systemic reviews and investigations. Contractors in violation of the equal opportunity order may have their contracts canceled, terminated, or suspended.[7] In recent years, the DOL has identified pay and promotion discrimination by federal contractors and brokered remedial settlements. Many states have similar requirements for state contractors. However, some states and localities prohibit race- or gender-conscious affirmative action in public contracting and employment.

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[5] See "EEOC Enforcement Guidance No. 915.002, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Acts of 1964 (2012)," available at http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf. NOT SURE IF PARENTHETICAL HERE OR ABOVE IS NECESSARY; also, this is currently functions as a footnote rather than a citation; if it should be a citation, then it should read:

U.S. Equal Employment Opportunity Commission. 2012. "EEOC Enforcement Guidance No. 915.002, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Acts of 1964." Retrieval date. (http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf)

[6] U.S. Department of Labor. N.d. "Office of Federal Contract Compliance Programs: Executive Order 11246, As Amended." Retrieved April 14, 2015 (http://www.dol.gov/ofccp/regs/statutes/eo11246.htm).

[7] See United States Department of Labor, Office of Federal Contract Compliance Programs (OFCCP); Facts on Exec. Ord. 11246-Affirmative Action (2002); http://www.dol.gov/ofccp/regs/compliance/aa.htm.

C. State and local antidiscrimination legal and regulatory structures

States have structures for implementing the federal prohibitions against discrimination. In theory, state agencies should be more likely to be in contact with or accessible to workers or groups representing workers, as well as knowledgeable about local conditions. Some states and localities have antidiscrimination protections that are broader than those in federal law, which can be helpful for addressing forms of discrimination that are not easy to challenge under the existing federal legal framework. For example, several states and localities have laws that prohibit discrimination based on criminal records or credit history.[8]

D. Limitations

A range of factors limit implementation or hamper the abilities of the current regime to address the exclusion of workers of color.

1. Weak Implementation

Numerous problems thwart the effective implementation of the antidiscrimination regime. First and foremost, certain court decisions and standards have prevented a more inclusionary regime. Legal scholars and lawyers have documented the difficulty of winning racial and ethnic discrimination cases in courts, as well as the high standards that courts ask plaintiffs to meet in order to prove disparate treatment and impact. Decisions by the Supreme Court have also limited the ability to implement race-conscious practices as remedies for past discrimination or as efforts to promote integration. And recent Supreme Court cases involving procedural rules—most specifically in the area of pleading and certifying class actions—create practical impediments to bringing individual and group-based employment discrimination claims.

Second, public and private enforcement efforts are also constrained. At the federal level, enforcement varies with the politics of who controls the EEOC and the DOL, which are responsible for implementation of affirmative action and other inclusionary directives. Gains were made during periods of strong implementation in the 1970s, and some accounts attribute the drop in gains for African-American workers during the 1980s to decreases in federal enforcement efforts (Stainback and Tomaskovic-Devey 2013). State agencies or attorneys general might compensate for these federal failures, but many state agencies are weak and underfunded, or do little work in this area.

Lastly, there is evidence of diminished private litigation of the type most applicable to low-wage workers. The private bar's appetite for employment discrimination cases is likely affected by legal trends showing that those cases are hard to win and harder to certify, which affects damage recovery. While the litigation of low-wage cases may be hard to quantify, studies since the late 1980s have observed a shift in Title VII cases away from cases involving hiring to cases involving firing or promotion (Donohue and Siegelman 1991), a trend which continues today. This pattern may reflect

[8] THIS IS ANOTHER REFERENCE, NOT A CITATION; SHOULD IE BE PREFACED WITH "SEE," OR SHOULD IT INCLUDE CITATION? Nat'l See, e.g., Emp't L. Proj., Ban the Box: Major U.S. Cities and Counties Adopt Fair Hiring Policies to Remove Unfair Barriers to Employment of People With Criminal Records (2012), available at http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf ; Amy Traub, Ending Unjust Employment Credit Checks, Demos, Demos, Feb. 7, 2012, http://www.demos.org/publication/ending-unjust-employment-credit-. NOT SURE ABOUT PARENTHETICALS IN FOOTNOTES

lower incidences of hiring discrimination, but it is also likely to result from a decreased ability to detect such discrimination and weaker incentives by the private bar to bring such cases.

2. Limits of Antidiscrimination Framework

Another, perhaps more fundamental, problem is that the classic antidiscrimination approach is not well-suited to remedying many of the contemporary barriers to racial and ethnic inclusion. As researchers have noted, Title VII's framework is often ill-suited to addressing subtle bias and complex barriers to inclusion (such as networks, workplace culture, etc.) that are not explained by explicit bias. (Sturm, 2001).

Some researchers argue that lack of education and skills (or skills that don't correlate with available jobs) are more important factors in explaining racial disparities in employment than discrimination (Fryer 2010; Loury 1998). Affirmative action programs typically take workers as they find them, and fail to address insufficient training or other barriers to inclusion, such as transportation or childcare. Additionally, changes in labor and employment markets during the past three decades—including the decline of manufacturing in the U.S., the rise of very low-skilled service jobs and high-skilled jobs in particular sectors and regions, and the decline of unions—have affected the relevance of antidiscrimination remedies. Many low-wage workers are employed in service sector jobs that are characterized by low pay, weak regulations, and informal hiring and promotion practices.

Effective Title VII remedies depend on jobs that offer advancement ladders and formalized hiring and promotion practices. However, such market changes weaken the footholds on which such remedies stand. In addition, these decades-long changes in the employment landscape may make antidiscrimination law seem less instrumental to improving the plight of workers of color. Job availability and conditions—such as living wage and sick leave—may seem more important from the perspective of advocates and workers, which potentially hampers mobilization around racial and ethnic inclusion.

Enhancing Enforcement

This section offers a first set of recommendations aimed at improving implementation of the existing framework. The final section offers a model that builds on this strengthened enforcement framework, and offers more enhanced use of local and regional incentive structures.

1. Improving Litigation Enforcement

Stronger litigation enforcement will depend on enhanced litigation by the EEOC. Public enforcement seems particularly necessary, given the barriers that recent procedural doctrine place on private enforcement. The EEOC can continue to increase its capacity to perform systemic litigation, which is the type of litigation that is most likely to have an effect on low- and medium-wage workers. A systemic employment discrimination initiative is currently underway at the EEOC. According to the agency, that initiative has increased pattern and practice litigation and recoveries since 2012. The initiative has had mixed success in courts; more work likely needs to be

done to frame cases so that they will succeed in the current judicial climate. Still, the systemic discrimination initiative is an important step in moving the EEOC away from simply responding to complaints.

Relatedly, the EEOC should increase litigation of cases involving discriminatory hiring and training practices. As mentioned above, private lawyers may have fewer incentives to bring hiring cases, and identification of hiring discrimination is often challenging. With explicit authority and funding, the EEOC could conduct audits to help identify hiring discrimination. Additionally, the EEOC could collaborate with community-based groups to undertake audits. Other strategies for increasing hiring discrimination cases include: partnering with community groups to help identify hiring discrimination, and making better use of EEOC data (specifically EEO-1 reports) to identify potentially discriminatory hiring in particular industries. Such work may require increased funding for the EEOC, and the advocacy necessary to boost funding could generate political support for the work of the agency.

Private and nonprofit lawyers should direct more support to litigation that targets low-wage and entry-level employees. Currently, much of this litigation is undertaken by nonprofit organizations. Greater foundation funding could strengthen this work. Furthermore, litigation might also be supported through private sector-nonprofit collaborative models. Such models, funded in part by plaintiff-side lawyers, could develop more regional impact funds that target systemic litigation. These impact funds could target particular industries or employment practices .

Additionally, private and nonprofit lawyers can play a critical role at the state and local levels by litigating against expansive use of criminal background or credit checks in hiring (in instances where such practices are not job-related).

Finally, there is much evidence that private lawyers have shifted their focus from antidiscrimination cases to cases that enforce wage and hour statutes, such as the Fair Labor Standards Act. In those instances in which cases involve workers of color, private lawyers mightuse these cases to identify patterns of discrimination in particular industries. Where appropriate, settlements in these cases might be leveraged to help promote inclusive hiring practices.

2. Regulatory and Legislative Enforcement.

The EEOC and the DOL should make broader use of regulatory and programmatic tools to promote enforcement. For instance, both agenciescan make greater use of their "soft" regulatory power by analyzing employment outcomes, promoting best practices, and helping to promote general and targeted compliance with inclusionary goals. This might be achieved by focusing the EEOC away from processing thousands of individual complaints (for instance, by removing the statutory requirement of administrative exhaustion). In addition to conducting systemic litigation, the EEOC should more effectively collaborate with DOL and other agencies and private actors to analyze national and regional hiring patterns and practices, and work with industry, labor, and advocates to develop, publicize, and replicate innovative models for racial, ethnic, and gender inclusion.

The EEOC has recently announced an emphasis on preventing employment discrimination through education and outreach, including partnerships with community groups to focus on the most disadvantaged workers and underserved communities. There are, however, more far-reaching suggestions in this vein. Rethinking the boundaries between the EEOC and the DOL would allow them to to better integrate their investigations as well as guidance, and compliance activity. Such cooperation could also extend the DOL's enforcement and regulatory power beyond the complaint-driven approach of the EEOC, and connect the regulation of workplace conditions with antidiscrimination and inclusionary goals.[9][10]

At the state and local levels, organizations can do more to advance nonlitigation strategies for promoting racial and ethnic inclusion. This might involve enacting legislative protections to address current barriers facing low-wage workers that have a disparate impact on racial and ethnic minorities. Such efforts have already succeeded in expanding the number of jurisdictions that ban criminal or credit background checks in hiring. It might also include working to enforce those efforts by documenting patterns of exclusion, organizing workers and community groups, and implementing remedial strategies. Audit studies by local groups can play a role in unmasking patterns of discrimination and helping to bring key players to the table to devise solutions. More strategically, audit testing could focus on federal contractors or subcontractors to prompt enforcement activity by federal and state regulatory agencies.

Localist Regulation For Inclusion

1. Overview

The model I propose builds on the strengthened litigation, regulatory enforcement, and incentive structure described in the previous section, and suggests an enhanced strategy at the local or regional level for hiring and training traditionally excluded workers. The components of this model are regulatory requirements and incentives for hiring and training minority and traditionally excluded workers, and enhanced linkages between employers and credentialing institutions (such as high schools, trade schools, community-based organizations, and community colleges). Community groups would play a vital role in this model by advocating for agreements and regulatory action; documenting discrimination, disparities and exclusion; monitoring hiring and retention; and training and linking workers to employers and placement organizations.

This model relies on what might be called "hard" and "soft" regulation. Hard regulations, like requirements and mandates, can achieve more measurable results, and they acknowledge the reality that some employers will undertake little to no action without such requirements in place. Softer forms of regulation, such as incentives and encouragement, recognize that employers, unions, and other actors may desire inclusion but are uncertain of best strategies for achieving

[9] Piore, Michael J. 2014, "Labor Standards and Work Organization Strategy." Retrieval date. (http://economics.mit.edu/files/10273)
[10] Johnson, Olatunde C.A. 2012. "Beyond the Private Attorney General: Equality Directives in American Law." New York University Law Review 87 (5): 1339-1413.

those goals. These soft forms of regulation also allow more flexibility, which makes employers less legally vulnerable, and can produce more buy-in by regulated actors.

This model also proposes linking those entities that engage in developing employee skills with those entities that hire workers. This aspect of the model draws on existing knowledge about best practices in skill and workforce development and brings that knowledge to bear on questions of racial and ethnic inclusion. In this respect, the model acknowledges that access to a changing workplace environment depends on the development of skills that some groups cannot obtain because of discrimination and structural exclusion. The link between training and workforce development is also important for the politics of implementation: This approach connects community stakeholders traditionally focused on minority rights with those engaged with issues of access, training, education and workplace conditions.

Finally, this model emphasizes implementation at the local or regional levels. In part, this emphasis is strategic: it allows for the leveraging not just of federal incentives that currently exist but a broader set of local and regional incentives. Localizing solutions allows local community members and governments to identify the barriers to inclusion in specificcommunities and industries, and invests a broader set of stakeholders in implementing solutions. It also connects conversations about hiring minority workers to discussions of expanding jobs and current strategies for community revitalization. At the same time, the model depends on the development of networks for sharing expertise, best practices, and implementation strategies across local/regional communities.

Below, I describe the model via examples, and delineate some of the challenges to implementation, as well as potential ways to overcome these challenges.

2. Examples

One such example takes its lead from an agreement involving the Port of Oakland, and a labor agreement between a union and a regional transportation authority. In this example, the transportation authority is undertaking a multi-year, multi-billion-dollar capital improvement project in a revitalizing city where a significant minority population has traditionally been excluded from medium-wage construction jobs.[11] The transportation authority and the union include in their collective bargaining agreement (or pre-hire collective bargaining agreement) a workplace equity and inclusion component that requires the hiring and training of workers from low-income, traditionally excluded groups.

Effective mandates would include requirements for hiring a certain percentage of local workers on a craft-by-craft basis and for hiring apprentices. The hiring percentages and the boundaries of the "local" hiring requirement (i.e., which neighborhoods or communities to include) could be defined with reference to the particular context of the city or region. These requirements could also mandate race-, ethnicity-, or gender-related hiring goals as allowed by law and by local conditions.

[11] Parkin, Jason. 2004. "Constructing Meaningful Access to Work: Lessons from the Port of Oakland Project Labor Agreement." Columbia Human Rights Law Review 35: 375-414.

Under these agreements, industrieshire workers in collaboration with specific community groups engaged in providing worker training and support such as basic remedial education, language education, skill development, and support services (such as transportation assistance and childcare). The agreement would include built-in monitoring mechanisms—not simply the numerical monitoring featured in many affirmative action plans, but monitoring for qualitative information about access and implementation barriers. Funding for training and monitoring could also be built into the agreement, and would likely come from the transportation authority's investment in the overall project.

The model also includes incentives for various stakeholders. Unions might seek to enhance their membership and power (recognizing changing demographics) and to limit the expansion of non-union labor. Unions are often repeat players with cities or regions, so they have incentives to meaningfully implement inclusionary goals in bargaining agreements. Cities or regions have an interest in adopting these plans to achieve more meaningful community revitalization; to leverage bond, state or federal money to train and develop the local workforce; and to mollify community groups. The plan requires a legal or regulatory structure (i.e., local governments or regional authorities with legal authority to negotiate and require these mandates) and will depend on local politics (i.e., local governments that have political motivations or inclinations to implement such requirements).

The above example involves mandates, and builds on the structures already in place in many state and local affirmative action plans. A public project and a contractual agreement with a union allows for relatively straightforward identification of potential leverage points (public funding, a labor agreement), training structure (provided by the union, and structured by its job classifications), and the political economy incentives for the major stakeholders.

Legal and regulatory structures for private sector workplaces without government contracts are more challenging, particularly if those workplaces require high levels of skill or training. Consider, for example, a technology or health services company that seeks to expand or relocate to a city neighborhood. If such a company sought to move to an industrial area, and if such a move required land-use rezoning, then perhaps the rezoning could carry requirements for equitable hiring, training, or workforce investment. Such a requirement might compel a company to work with community or technical colleges that engage in industry-specific training programs (many of which have improved during the last decade as a result of federal, state and private-sector grants).

In this scenario, community benefits agreements (CBAs) might also advance inclusion. A CBA is, in essence, a contract between community groups and a large institution (business or nonprofit) that can include requirements for hiring, training, promotion, and monitoring (Parks & Warren, 2009). CBAs can be implemented where employers face community pressure, pressure by politicians, or seek benefits or changes from local or regional governments such as rezoning. Tax incentives might also encourage employers to cooperate with community colleges or workforce development programs.

A limitation in this scenario might be that an employer is only weakly committed to inclusion. Such an employer might wish to relocate or expand in a particular area for reasons unrelated to workforce development or inclusion, and make only symbolic efforts to achieve such goals. Or, such an employer might require substantial monitoring and technical assistance from outside groups to achieve those goals. However, it's equally important to remember that employers may want to actively change their hiring practices and benefit from workforce development and training programs. Such companies may consider training skilled workers as important to their future growth, or they may be responding to pressure from public officials and community and rights groups to diversify their workforce, or they may want to advance a corporate image that is consistent with diversity and inclusion.

Another example consistent with this model would involve partnerships that include unions as well as employers and training institutions. For instance, a pre-apprenticeship program in New York works with high schools and technical schools to help train and place youth, most all of whom are members of minority groups, into middle-class construction jobs, most of which are unionized.[12] Cities and public officials could play a role in convening stakeholders, placing political and moral pressure on constituents to come to the table, and providing a framework for pooling public and private resources and expertise more effectively.

3. Components

In this section, I delineate the key components of my proposed model.

Hiring and Training Requirements. Cities, counties, and regional authorities could use their contracting and regulatory authority to mandate certain hiring goals. By law, procurement agreements (competitive bids) and agreements with labor organizations may include explicit considerations for gender, race and ethnicity. Requirements could also explicitly incorporate local hiring preferences, but these pose legal challenges: some jurisdictions forbid localities from imposing local hiring preferences, and poorly framed agreements can violate federal law. In addition, local hiring preferences are often too broadly defined to help workers of color in particular. To avoid political and legal challenges, this paper suggests targeting requirements to specific neighborhoods or communities, or to graduates of particular institutions such as high schools, community-based training programs, or community colleges. Employers, unions, or committees featuring representatives from both could then be involved in creating meaningful training and placement opportunities with these institutions. This approach builds on community benefits agreement models that require targeted hiring of job applicants from "first sources" such as community-based training programs (Parks and Warren, 2009).

Leveraging Local Power.Collective bargaining agreements, procurement policies, registration requirements, tax incentives, zoning (for redevelopment and density), and political pressure

[12] Fuchs, Ester R., Dorian Warren, and Kimberly Bayer. 2014. Expanding Opportunity For Middle Class Jobs in New York City; Minority Youth Employment in the Building and Construction Trades (Case Study: Edward J. Malloy Construction Skills Pre-Apprenticeship Program). New York: Columbia School of International Affairs. MISSING SOME CITATION MATERIALS?

present opportunities for encouraging inclusive practices. Agreements might also be gained by leveraging the power of community groups to establish community benefits agreements between nonprofits and large private or nongovernmental employers. Community organizations offer resources such as training, childcare, and transportation assistance that employers, unions, and local governments may want to leverage.

There are many challenges that influence the choice of incentives, and some incentive structures might require legal changes. For instance, local procurement laws often require awarding contracts to the lowest bidder. Some localities do not have power to change the laws governing procurement at the local level. Tax incentives raise an additional set of challenges because they must be calibrated to avoid giving away more to employers than they return to communities (in terms of tax revenue, economic development, etc.). Additionally, any hiring mandates or requirements attached to these incentives may discourage businesses. And, given the competition among jurisdictions, incentives that operate more like penalties may encourage businesses to relocate to jurisdictions with fewer regulations. These concerns are not fatal to the framework, but they do mean that the precise structure will differ among regions. In general, the model will be most applicable in those locations that are otherwise attractive to employers and industry, such as major metropolitan areas.

Linking Training and Credentialing Institutions with Unions and Employers. A key component of the model is linking training institutions such as community colleges, high schools, and credentialing institutions to unions and employers. The New York program that successfully placed mostly minority high-school graduates into skilled, unionized jobs in the construction trades recognized the institution-union partnership as critical to its success. The program guaranteed that graduates who met the requirements would be placed in a union apprenticeship, which calibrated the recruitment of workers with market demand. In addition, the program operated within a career and technical school run by the city's department of education, and leveraged the skills and career preparation provided by that institution (Fuchs and Warren, 2014).

Monitoring, Enforcement and Participatory Governance. Structures for monitoring and enforcement are critical to the success of the proposed model. At minimum, monitoring should entail the traditional mechanisms of self-evaluation (by unions or employers), data keeping and reporting, review by the enforcement authority, and penalties or rewards according to compliance. More involved forms of monitoring and governance would require collecting qualitative data in addition to numerical data (i.e., by conducting surveys) and involve a broad range of institutions (such as community groups and training institutions) in monitoring compliance, setting goals, and implementing proposed solutions. The model envisions greater monitoring and self-assessment, as well as a mechanism so that localities/regions can learn from each other. It also includes strategic partnerships with philanthropic organizations and universities to advance broader dissemination of best practices.

Enforcement poses a related set of challenges. Weak monitoring often means ineffective enforcement of agreements, and some agreements may lack meaningful consequences for noncompliance. For instance, some community benefits agreements are not enforceable by courts. This paper does not intend to prescribe a specific solution to this challenging problem except to

conclude that monitoring, data collection, and participation must be built into both soft and hard forms of this model at the front end. Built-in monitoring will provide a mechanism for accountability that extends beyond government officials. By some accounts, incorporating meaningful monitoring and participation has a greater likelihood of encouraging buy-in by the employers or unions subject to the agreements (Parkin 2004).

Implementation Politics. This model provides an avenue for engaging a broad range of actors who may share goals of training traditionally excluded workers, but their goals will depend on the involvement of those who may have political or reputational incentives. For nongovernmental organizations, this model puts the existing and expanded infrastructure of workforce development groups in closer conversation with lawyers and advocates who support racial, ethnic, and gender inclusion. This is a strength of the model: it expands the base of political support for implementation of the framework. Yet, it also means that effective coordination relies on groups such as philanthropic organizations, governments, and other well-networked entities that can bring groups to the table and spur collaboration. Funding streams may be necessary to create impetus for action. Though this program is local and regional in focus, existing federal funds, particularly in the area of workforce development, might be channeled or pooled to support these initiatives.

General Limitations of the Model. I have outlined many of the limitations to specific aspects of this model above. It is worth highlighting that this model is unlikely to address the problems of racial and ethnic inclusion in all industries. It works best for industries that are expanding. In some regions, these industries are health care, retail, information technology, and construction. Relatedly, the model may be less effective in regions or localities that have little draw for employers.

Despite these limitations, many of the general aspects of this model are useful across a range of contexts: the use of regulatory and political mechanisms for encouraging inclusion; monitoring and accountability (which can also be performed by nongovernmental organizations, philanthropic and educational institutions); building relationships between training and workforce development institutions; using hard and soft models for mandating or incentivizing inclusion; and monitoring through the use of audits, data gathering, mapping and report writing.

Conclusion

The ultimate question for any proposal is why the proposal has not already been adopted. One answer is that aspects of this model already exist in project labor agreements, community benefits agreements, and procurement policies that reward hiring local or traditionally excluded workers. My intervention is to argue for an increased emphasis on this approach by those interested in equity and rights enforcement. Existing efforts and programs are not all sufficiently attentive to questions of racial, gender, or ethnic inclusion in their design, or to questions of monitoring, enforcement, and accountability. The paper also encourages reliance on hard and soft regulatory forms into use in advancing inclusion. My hope is that understanding these efforts and proposed expansions as a distinct model will encourage collaboration and information-sharing across regions to advance knowledge and best practices.

In the end, one cannot escape the conclusion that a different politics is essential to the success of this model. One value of the localist inclusionary framework is that it can build on networked, local, community-based organizing and mobilization that seeks to increase wages, advance fair and inclusive leave policies, and address workplace conditions.