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FIFTY YEARS LATER: THE LEGACY OF THE CIVIL RIGHTS ACT OF 1964

Joni Hersch and Jennifer Bennett Shinall

Abstract

This paper assesses the legacy of the Civil Rights Act over the past 50 years, reviewing its history, scope, and impact on wage, employment, and segregation outcomes of the Act’s five protected classes. In addition to improving outcomes for protected classes, the Act launched a period of expanded civil rights legislation and established a framework that allows expansion of coverage through judicial interpretation without requiring passage of new laws. Applications include prohibiting sexual harassment as a form of sex discrimination and protection against color discrimination separately from race discrimination, which may be increasingly salient with increased immigration and with a multirace population. © 2015 by the Association for Public Policy Analysis and Management.

INTRODUCTION

A half-century after the passage of the landmark Civil Rights Act of 1964, public opinion regarding the Act remains overwhelmingly positive. Indeed, during his commemorative address marking the 50th anniversary of the Act’s signing, President Barack Obama made the following statement:

Because of the Civil Rights movement, because of the laws President Johnson signed, new doors of opportunity and education swung open for everybody—not all at once, but they swung open. . . . Half a century later, the laws LBJ passed are now as fundamental to our conception of ourselves and our democracy as the Constitution and the Bill of Rights. They are foundational; an essential piece of the American character (2014).
This article critically reviews the scholarly accounts—both positive and negative—in order to assess the legacy of the Act. As we document, although not all of the 11 separate titles that form the Civil Rights Act were successful in achieving the stated goals, the Act was largely successful in improving opportunities for underserved groups. By banning discrimination in places of public accommodation, the Act changed the face of everyday life, particularly in the South. By banning discrimination in employment and providing discrimination victims an outlet through which they could air grievances against their employers, the Act changed the face of employment. Furthermore, by including other categories besides race within the ambit of its protections, the Act provided a vehicle for other underserved groups to seek relief for discriminatory practices. With its passage, the Civil Rights Act set a new norm for the treatment of underserved groups in public, in the workplace, and beyond, and it paved the way for future antidiscrimination legislation.

**A BRIEF HISTORY OF THE CIVIL RIGHTS ACT OF 1964**

Several extensive legislative histories of the 1964 Civil Rights Act have already been written, including Loevy (1990), Whalen and Whalen (1985), and Rodriguez and Weingast (2003). Because it would be impossible to recount every detail of the Act’s legislative history in this review article, we focus on the most salient issues, including what the Act did, why the Act passed when it did (as opposed to earlier or later in the civil rights movement), and why the Act took the form that it did (with five protected classes, multiple titles, and an enforcement commission). We review these aspects of the Act’s history below.

**What Did the Civil Rights Act of 1964 Do?**

In 11 titles, the Civil Rights Act of 1964 sought to improve access to voting, public accommodations, and employment as well as improve the overall status of individuals discriminated against on the basis of race, color, religion, sex, and national origin. Of the 11 titles, the most well known is Title VII, which prohibits employment discrimination on the basis of membership in one of the five protected classes listed above. We summarize the purpose of all 11 titles in Table 1, and we describe each title in more detail below.

Title I relates to voting rights; it bans the use of literacy tests, the inconsistent application of voting requirements, and the use of immaterial errors and omissions to disenfranchise eligible voters. Although Title I appeared to be an encouraging step in the protection of voting rights, according to Sudeep (2013), Title I “failed to create long-term change; barring certain types of discriminatory voting practices simply led to a modification of methods—Southern voting officials would do everything from ignore court orders to freeze voting rolls by closing registration offices” (p. 271). The failure of Title I to bring about meaningful change in Southern voting practices led Congress to pass the Voting Rights Act of 1965.

Title II bans discrimination on the basis of race, color, religion, or national origin by businesses that provide public accommodations, including, but not limited to, hotels, restaurants, and theaters. Title II exempts businesses not engaged in interstate commerce as well as private clubs. Private business owners immediately challenged the constitutionality of Title II, but the Supreme Court found Title II within Congress’ regulatory power under the Interstate Commerce Clause (U.S. Constitution, article I, § 8, cl. 3) in the companion cases *Heart of Atlanta Motel, Inc. v. United States* (1964) and *Katzenbach v. McClung* (1964).

Title III prohibits states, counties, and municipalities from denying individuals access to public facilities based on their race, color, religion, or national origin.
Interestingly, Title III has been an important statute in the reform of state prisons and jails. As early as 1969, the Department of Justice began filing lawsuits, not only to desegregate jails and prisons, but also to improve their conditions. By 1980, the Department had participated in four prison desegregation cases, at least six more prison condition cases, and many more jail condition cases (Schlanger, 1999, 2006).

Title IV was intended to accelerate the process of desegregating public schools, which was much needed given the lack of progress in the decade that had passed since Brown v. Board of Education (1954). Considering that school desegregation efforts continued into the 1990s, Title IV was obviously ineffective in bringing about swift desegregation (Reardon et al., 2012). Moreover, Title IV was virtually ignored beginning in the 1970s when busing became a predominant method of desegregating public schools. The Title contains explicit antibusing language, as it states that desegregation “shall not mean the assignment of students to public schools in order to overcome racial imbalance” (§ b). Cases that have brought legal challenges to busing under the desegregation language of Title IV, such as Swann v. Charlotte-Mecklenburg Board of Education (1971) and Keyes v. School District No. 1 (1973), have been wholly unsuccessful. Between Title IV’s failure to accomplish its original intent and its subsequent treatment by the Supreme Court, Title IV’s legacy has not been a positive one (Hardaway, 2013).

Title V expanded the U.S. Commission on Civil Rights, a commission established in 1957 to advise the federal government on civil rights policy. Congress has subsequently reauthorized the Commission several times, and it still exists today as a research and advisory agency.

Title VI prohibits discriminatory practices on the basis of race, color, or national origin by any program receiving federal financial assistance. A wide range of services and activities such as health and child care provision and maintenance of roads and parks are provided through state, local, and nongovernmental organizations that receive federal assistance. Examples of violations of Title VI could involve differential

### Table 1. Outline of the titles in the Civil Rights Act of 1964.

<table>
<thead>
<tr>
<th>Title</th>
<th>Protected classes</th>
<th>Protections extended</th>
</tr>
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<tbody>
<tr>
<td>I</td>
<td></td>
<td>Prohibits certain techniques commonly used to disenfranchise voters</td>
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<tr>
<td>II</td>
<td>Race, color, national origin, religion</td>
<td>Bans discrimination in public accommodations</td>
</tr>
<tr>
<td>III</td>
<td>Race, color, national origin, religion</td>
<td>Bans states and their subsidiaries from denying access to public facilities</td>
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<tr>
<td>IV</td>
<td>Race, color, national origin, religion</td>
<td>Extends school desegregation efforts</td>
</tr>
<tr>
<td>V</td>
<td>Race, color, national origin, religion</td>
<td>Expands U.S. Commission on Civil Rights</td>
</tr>
<tr>
<td>VI</td>
<td>Race, color, national origin</td>
<td>Prohibits discrimination by programs receiving federal funding</td>
</tr>
<tr>
<td>VII</td>
<td>Race, color, national origin, religion, sex</td>
<td>Prohibits employment discrimination</td>
</tr>
<tr>
<td>VIII</td>
<td>Race, color, national origin</td>
<td>Requires the compilation of voter records</td>
</tr>
<tr>
<td>IX</td>
<td>Race, color, national origin, religion</td>
<td>Allows parties to appeal failed removals from state courts to federal courts</td>
</tr>
<tr>
<td>X</td>
<td>Race, color, national origin</td>
<td>Establishes the Community Relations Service</td>
</tr>
<tr>
<td>XI</td>
<td>Race, color, national origin</td>
<td>Provides right to jury trial for Titles II–VII criminal contempt proceedings</td>
</tr>
</tbody>
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*Journal of Policy Analysis and Management*  DOI: 10.1002/pam  
Published on behalf of the Association for Public Policy Analysis and Management
provision of services to minority neighborhoods or failure to provide services to those of limited English proficiency. Violations are investigated by the Department of Justice, who strives for voluntary compliance. Although rarely invoked, the penalties for violation of Title VI are quite severe, as the Title allows the granting federal agency to terminate its assistance upon discovery of a discriminatory practice in a funded program.

Title VII makes it illegal to discriminate in hiring, firing, or otherwise discriminating with respect to compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin. Title VII applies to employers, unions, and employment agencies. Firms with 25 or more employees were covered by the 1964 Act and coverage was extended to firms with 15 or more employees by the Equal Employment Opportunity Act of 1972, which amended Title VII. In addition, Title VII established the Equal Employment Opportunity Commission (EEOC). The EEOC established by the 1964 Act was more limited than the agency we know today. The 1964 Act did not allow the agency to litigate on an injured employee’s behalf, rather, the Act merely allowed the EEOC to pursue “informal methods of conference, conciliation, and persuasion” (§ 706) upon finding that an employee’s complaint had reasonable cause. The EEOC achieved the right to litigate on behalf of injured employees with the Equal Employment Opportunity Act of 1972. Title VII was structured under a private attorney general model of enforcement, which allows litigation by individuals or classes of individuals in order to create incentives for compliance and to vindicate the public interest (Johnson, 2012).

Title VIII required the Secretary of Commerce to compile voter registration and voting data in the geographic areas specified by the Commission on Civil Rights. This survey was taken in conjunction with the 1970 Census.\(^1\)

Title IX allows parties to appeal failed removals from state courts to federal courts, with the intent of providing minority claimants additional procedural protections against the segregationist judges and all-white juries that, at the time, were often present in Southern state courts.\(^2\) The Title also allows the Attorney General to intervene in federal civil rights cases of “general public importance” (§ 902).

Title X establishes the Community Relations Service, a branch of the Department of Justice organized to offer mediation and training programs in order to prevent and resolve local conflicts based on race, color, and national origin. The Service still exists today, and in 2005, played a critical part in resolving the community conflicts that arose during the Federal Emergency Management Agency’s recovery efforts after Hurricane Katrina (Baron, 2008).

Title XI provides the right to a jury trial for criminal contempt proceedings under Titles II through VII. Title XI also makes clear that the 1964 Civil Rights Act preempts all less-protective state laws.

As this brief review of each title has indicated, the Civil Rights Act addresses a broad range of discriminatory practices. Keeping the broad scope of the Act in mind, we turn now to examine why the Act passed in 1964, rather than before or after.

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1 Title VIII of the Civil Rights Act of 1964 is sometimes confused with Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act), even in the scholarly literature. In fact, Bradford (1990) notes that even federal circuit courts have erroneously stated in published opinions that the Fair Housing Act is Title VIII of the Civil Rights Act of 1964.

2 Title IX of the Civil Rights Act of 1964 is also sometimes confused in the scholarly literature with a different Title IX, specifically Title IX of the Education Amendments Act of 1972. For an example of this confusion, see Choper and Yoo (2006).
The Legacy of the Civil Rights Act of 1964

Why Did the Civil Rights Act Pass in 1964?

The Civil Rights Act of 1964 represented the culmination of many years of congressional efforts to pass a sweeping civil rights bill over the objections, interference, and other impediments created by Southern Democrats. As a result, the 1964 Act came fairly late in the U.S. civil rights movement. By 1964, more than 50 years had passed since the creation of the National Association for the Advancement of Colored People (NAACP), and 10 years had passed since the Supreme Court’s Brown v. Board of Education (1954) decision. Rosa Parks had refused to give up her seat on a Montgomery bus almost a decade before, and Martin Luther King, Jr.’s Southern Christian Leadership Conference (SCLC) had already been engaging in its campaigns of nonviolent resistance for over five years. Although Congress had passed two other civil rights bills in 1957 and 1960, both bills had been stripped of their enforcement provisions in order to get the bills past the Southern Democrats in the Senate (Loevy, 1997). The prior inability of Congress to pass a broad civil rights bill then raises the question: What was different about 1964?

Perhaps the biggest difference in the political landscape between 1964 and earlier years was the change in presidential leadership. The previous 1957 and 1960 civil rights bills had passed during the Eisenhower administration. Eisenhower, while supportive of civil rights, also believed that “certain things . . . are not best handled by punitive or compulsory Federal law.” Thus, while he was willing to support a civil rights bill, he was not willing to support one at the expense of his relationship with Southern Democrats (Finley, 2008). Eisenhower’s successor, John F. Kennedy, had advocated for broad civil rights legislation during his election campaign, but once in office, he too found himself constrained by the prospect of isolating the Southern members of his party (Zietlow, 2005).

The events in the spring of 1963 emboldened Kennedy, convincing him that broad civil rights legislation might be feasible even with a regionally divided Democratic Party. In April and May of 1963, the SCLC organized the Birmingham campaign, a series of nonviolent boycotts, sit-ins, and marches in Birmingham aimed at pressuring local leaders to desegregate public accommodations and provide equal employment opportunities for African Americans. The Birmingham police did not respond kindly to the campaign; police dogs and high-pressure water hoses were aimed at the peaceful protestors. The news media captured the police department’s response, and the horrifying images provoked outrage across the country (Garrow, 1986). On June 11, 1963, President Kennedy signed a proclamation ordering the “Governor of the State of Alabama and all other persons engaged . . . in unlawful . . . domestic violence in that State to cease and desist therefrom” (1963b). In conjunction with the proclamation, he gave a television address to the American public calling for a civil rights act “giving all Americans the right to be served in facilities which are open to the public—hotels, restaurants, theaters, retail stores, and similar establishments” (Kennedy, 1963a). Eight days later, the Kennedy administration sent a draft bill to Congress (Loevy, 1990).

Several key events—both hopeful and tragic—helped the bill gain momentum in the second half of 1963. The famous March on Washington was held in front of the Lincoln Memorial on August 28, 1963. After the event, King and other civil rights leaders met with President Kennedy to discuss the proposed legislation. This event

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3 Eisenhower made this statement while explaining to reporters his unwillingness to support a 1954 equal employment opportunity bill (which ultimately failed) (Eisenhower, 1954).
4 Part of Eisenhower’s reticence was likely due to the fact that he had witnessed his predecessor, Harry S. Truman, ruin his relationship with the Southern Democrats by supporting an expansion of civil rights (Finley, 2008).
The Legacy of the Civil Rights Act of 1964 strengthened the commitment to the bill of several members of the House Judiciary Committee. On the heels of this monumental event came heartbreak throughout the civil rights movement and beyond. Ku Klux Klan members bombed the 16th Street Baptist Church, an African American church in Birmingham, Alabama, on September 15, 1963, killing four teenage girls and injuring 22 others. This event stirred the emotions of enough House Judiciary Committee members to lead to the adoption of the Act’s more controversial amendments, including the Act’s most famous provision, Title VII (Zietlow, 2005).

Although these two events certainly improved the bill’s chances of passing, scholars like Zietlow (2005), Stewart (1997a), and Klinkner and Smith (1999) all agree that the event that most strengthened the commitment of both elected officials and the public to this bill was the assassination of President Kennedy on November 22, 1963. In part, Kennedy’s assassination had such a profound effect on attitudes toward the bill because of the actions taken by Kennedy’s successor, Lyndon B. Johnson, immediately upon assuming office. In his first speech to a joint session of Congress—only five days after Kennedy’s death—Johnson emphasized, “No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long.” According to Stewart (1997a), Kennedy’s assassination “also seemed to mute overt criticism of the bill’s more controversial parts by some persons, especially during its debate in the House of Representatives” (p. 323). Even though the events of 1963 played a critical role in the success of the Civil Rights Act, the bill underwent a great deal of modification, amending, and other legislative wrangling before its ultimate passage. We turn now to describe the legislative wrangling that was necessary in order to pass the Act and to point out how this wrangling shaped the Act we know today.

How Did the Act Assume its Final Form?

As demonstrated above, the struggle of African Americans for equality largely motivated the inception of the 1964 Act. However, the Act’s coverage expands well beyond African Americans. The Act protects anyone discriminated against on the basis of their race, color, national origin, religion, or sex (in employment only). Moreover, we know that the EEOC envisioned by the 1964 Act was a weaker version of the agency that exists today. This section explores these features of the Act, with an eye toward the historical events and figures responsible for their inclusion.

The addition of color, national origin, and religion largely came about because they were “part of the ‘boilerplate’ statutory language of fair employment in executive orders and legislation preceding the Civil Rights Act of 1964” (Perea, 1994, p. 807). The only successful civil rights initiative that had passed Congress during the first half of the 20th century was the Nineteenth Amendment, which granted women the right to vote. Thus, in the absence of any major civil rights legislation, presidential executive orders had served as the exclusive venue for the expansion of civil rights on the national level during this period (although this expansion had been limited to federal employees and employees of federal contractors). For instance, Executive Order 8802, signed by President Franklin D. Roosevelt in 1941, had prohibited discrimination on the basis of race, creed, color, or national origin by federal contractors. Executive Order 9981, signed by President Harry S. Truman in 1948, had ordered “equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin.” President Kennedy had continued this expansion of rights on the basis of “race, creed, color, or national origin” with the signing of Executive Order 10925 in 1961,
which mandated that federal contractors “take affirmative action” to ensure these disadvantaged groups received equal employment opportunities.

The prior history of including color, religion, and national origin combined with the paucity of legislative debate surrounding the meaning of these terms in the 1964 Act has led to a general agreement among legal scholars that Congress thought very little about the addition of these three protected classes. The entire legislative history of the 1964 Act contains just a few lines regarding the concern over color, “shade discrimination,” and the refusal of light-skinned African Americans to hire dark-skinned African Americans (Jones, 2000). The limited discussion on religion centered on proposed (but failed) amendments that would have allowed religiously affiliated businesses to be exempt from the Act and that would have allowed employers to discriminate against atheists (Post, 1997). Most of the discussion regarding national origin focused on whether ethnicity could ever be a bona fide occupational qualification—specifically, whether a restaurant could favor an Italian chef over a non-Italian chef to make a “pizza pie” (Perea, 1994).

In contrast to the addition of color, national origin, and religion—which seemed to come into the Act from the default language of prior civil rights initiatives—the stories surrounding the addition of sex and the limitations placed on the EEOC in the 1964 Act are a bit more complicated. These aspects of the Act came from the compromises necessary to assemble the broad base of support required for passage. Because the 1964 Act was championed by Democratic presidents Kennedy and Johnson but was sure to encounter fierce opposition from the Southern Democrats in Congress, the Act required a partnership between non-Southern Democrats and Republicans in order to pass. This partnership was particularly necessary because in the House, two-thirds of the representatives would have to support the Act in order to overcome any roadblocks created by the Southerners on the Rules Committee (Loevy, 1990). In the Senate, Southerners were certain to filibuster any act that came before the floor, which made supermajority support in the Senate equally crucial (Stewart, 1997b).

Much of the historical narrative surrounding the Act’s passage in the House has focused on Howard W. Smith, a Democrat from Virginia who was the chairman of the Rules Committee and a vocal opponent to civil rights legislation for African Americans. A popular legend has developed around Smith, claiming that he schemed to divide the growing bipartisan coalition that supported civil rights by adding a one-word amendment to Title VII: sex. Smith’s famous amendment led to a lighthearted debate on the House floor, sarcastically labeled, “Ladies Day in the House” (Freeman, 1990, p. 163). As legend has it, Smith’s scheme “to load up the bill with objectionable features that might split the coalition supporting it” backfired when the bill passed the House in spite of the sex amendment (Orfield, 1975, p. 299). Work by Brauer (1983) and Freeman (1990) has discredited this legend, demonstrating that Smith—in spite of his feelings about African Americans—had close ties to the National Woman’s Party (NWP). Smith had previously sponsored efforts to pass an Equal Rights Amendment (ERA) for women and had advocated for a sex amendment to the 1957 Civil Rights Act. Although the NWP preferred a constitutional amendment, the party’s lobbying efforts had been unsuccessful for almost two decades (the proposed ERA never made it out of committee until 1946, when the first failed floor vote occurred). From the perspective of NWP leaders, the 1964 Act presented an opportunity to gain at least some ground for women and “to educate Congress on the need for the ERA” (Freeman, 1990, p. 172).

The key figure in the historical narrative surrounding the Act’s passage in the Senate is Everett Dirksen, a conservative Republican senator from Illinois and the Senate Minority Leader. According to Zietlow (2005), Dirksen was “widely respected and could bring enough votes” (p. 969) to end a Southern filibuster, but Dirksen was also publicly opposed to Titles II and VII. As a result, President Johnson and Senate
Majority Leader Whip Hubert H. Humphrey targeted Dirksen; they believed that the bill would never pass the Senate without Dirksen’s support (Whalen & Whalen, 1985). In order to gain his support, Humphrey and the other non-Southern members of Congress supported several of Dirksen’s amendments that substantially weakened Title VII, particularly with respect to the EEOC.

In the original bill, the EEOC had been designed to function in a manner similar to the National Labor Relations Board, a quasi-judicial agency with rulemaking and prosecutorial powers. But after Dirksen’s amendments, the EEOC possessed neither of these powers; indeed, it was a mere shadow of the agency initially envisioned by Title VII’s drafters. For example, in the amended Act, only the Attorney General (and not the EEOC) could sue on behalf of the United States for a violation of the Act, and public interest groups like the NAACP could no longer sue on behalf of an aggrieved worker. Even if the Attorney General agreed to bring suit, the Act required the Attorney General to prove a pattern or practice of discrimination (as opposed to a single, isolated incident). The amended Act also required individuals bringing suit under Title VII first to exhaust administrative remedies under state and local employment laws. Finally, the amended version of Title VII exempted employers whose employees worked less than 20 weeks per year and exempted seniority systems, upon which unionized jobs heavily relied (Rodriguez & Weingast, 2003).

With Dirksen’s support for the amended bill, the 1964 Civil Rights Act passed the Senate on June 19, 1964. The House concurred on the Senate version on July 2, 1964, and President Johnson signed the bill on the same day. Although the impact of Titles II and III—which banned discriminatory practices in places of public accommodation—may have received the most immediate attention after passage of the 1964 Act, in the long run, the attention has primarily focused on the impact of Title VII. Consequently, we turn first to examining the long-run impact of this section of the 1964 Act.

THE EFFECTS OF TITLE VII ON LABOR MARKET OUTCOMES

Much of the research examining whether Title VII had a direct influence on improving labor market outcomes for those covered by the law was conducted in the 1970s and 1980s, and there are excellent articles by economists that review this body of literature (e.g., Brown, 1982; Donohue & Heckman, 1991). In this section, we highlight theoretical and methodological issues that make it difficult to conclusively identify whether Title VII has been effective in reducing employment discrimination and describe how research has addressed these methodological challenges. We also review applications of Title VII that arose in the 1980s and later, notably with respect to color discrimination and sexual harassment.

Theoretically, Title VII’s requirement of nondiscriminatory treatment in both pay and hiring exerts opposing influences on workers in the protected classes, making predictions about the net effect of Title VII on wages and employment uncertain. Consider protection of workers on the basis of race. Nondiscrimination in hiring would tend to lead to greater hiring of minority workers relative to white workers. But by requiring nondiscriminatory wages, firms that would only hire minority workers at a discount relative to white workers will tend to hire fewer minority workers, even though wages will rise for the employed minority workers.

Furthermore, firms that wish to continue discriminating against workers in protected classes may endogenously respond to possible EEOC enforcement in several ways. Economists have posited that firms may choose, for instance, to reduce the firm size to below the coverage threshold, to migrate to locations with weaker enforcement of the laws or with a smaller minority population so their mostly white
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workforce is representative of their local labor market, or to change the skill-mix of the production process in a way to favor the skills of white workers.

Even if Title VII is successful in reducing employment discrimination in pay, if employment of minority workers in the covered sector falls and minority workers spill over to the uncovered sector, wages in the uncovered sector will be depressed and the black to white wage gap would become larger. Alternatively, if minority workers are drawn into the covered sector in order for firms to comply with Title VII, wages in the uncovered sector may rise, leading to an underestimate of the wage effects of Title VII as the gap between wages of workers in the covered sector and the uncovered sector is reduced.

And, in addition to demand-side responses to Title VII, the War on Poverty programs of the 1960s may have influenced labor supply and drawn low earners away from the labor market, as suggested by Butler and Heckman (1977). Exits of low-earning black workers would also cause a rise in relative black earnings even in the absence of an effect of Title VII, adding another source of difficulty in empirically isolating any direct impact of the Act.

Thus, even with perfect data, assessing the effect of Title VII on outcomes for workers in protected classes is a challenge. And available data were (and continue to be) far from perfect. The empirical challenge in identifying whether Title VII has improved labor market outcomes for those covered by the law is in separating the effect of legislation and litigation from overall social trends. The ideal empirical framework would be to compare black to white (or female to male) wage and employment gaps before and after Title VII, where the comparison is between groups that are covered by Title VII relative to groups that are not covered by Title VII. But because Title VII is a federal law that covers a large share of the potential workforce, it is difficult to identify a comparison group. Although gains in employment and earnings for African Americans relative to white males are well documented, whether these gains reflect a continuation of trends such as improved educational opportunities and migration, as argued by Smith and Welch (1989), or derive from federal antidiscrimination programs including Title VII and affirmative action policies, as argued by Heckman and Payner (1989), Donohue and Heckman (1991), Bound and Freeman (1992), and others, is difficult to resolve empirically. In addition, the limited direct EEOC enforcement of Title VII raises questions about the mechanism through which the law improves labor market outcomes for covered workers. The threat of private lawsuits should provide incentives for compliance under Title VII, but most lawsuits are resolved without a trial, involve confidential settlements, and thus, may not send a strong signal to firms about the costs of potential litigation.

Furthermore, at the time the Civil Rights Act of 1964 was passed, data limitations were severe, making it more challenging to isolate the specific impact of Title VII relative to societal trends of reduced discriminatory attitudes and improvements in individual characteristics, such as educational level and quality. Large micro-level survey data such as the Panel Study of Income Dynamics and the National Longitudinal Surveys, which would allow examination of the role of highly detailed individual characteristics in influencing labor market outcomes were initiated after 1964 so they could not be used to make a before-and-after comparison of whether the Act changed employment prospects for individuals with specific characteristics. Aggregate Current Population Survey (CPS) data have been available since 1948, but micro-CPS data did not become available until 1963. Because Title VII applied only to firms with a minimum number of employees, an attractive approach to examining the efficacy of Title VII would be to compare the race and sex composition of firms above and below the threshold level of employment for coverage. However, data on the race and sex composition of firms have never been generally available.
Early studies designed to identify the roles of legislation versus trends in improving labor market outcomes for minorities therefore relied on aggregate CPS time series data and did not take into account state-based variation in fair employment laws that predated Title VII. These studies regressed a measure of earnings or employment of members of the protected groups relative to the majority group on a time trend and an indicator for post-1964 denoting the effective year of Title VII. A positive and statistically significant effect of the indicator for post-1964 would suggest a break in the underlying trend and indicate improvement for members of the protected class. Freeman (1973) and Vroman (1974) are two of the earliest studies that followed this methodology and they find significant improvements in black male earnings following Title VII.

As summarized by Brown (1982) and others, these time series studies on the whole support progress in the labor market status of African Americans relative to whites, at least through the mid-1970s. However, determining how much progress, as well as whether this progress is a result of Title VII, is more difficult to identify. In part, different choices of comparison groups or outcome measures may yield different conclusions about the extent of progress. For example, most studies examine relative black to white earnings among those individuals with positive earnings. But restrictions to those employed conflate individual labor supply decisions with labor demand decisions, and labor demand may reflect discrimination. If low earners who are disproportionately African American men withdraw from the labor market, relative black to white median earnings will rise. In fact, Brown (1984) provides evidence that the labor force participation rate of black males declined at the same time that federal antidiscrimination efforts were initiated, although the effect of Title VII on relative black to white earnings remains positive with correction for censoring in median earnings introduced by labor market dropouts. Darity (1980) shows far less progress in black to white earnings after taking into account the larger share of blacks without earnings. Heckman (1989) likewise emphasizes that because a larger share of blacks are not employed or are marginal workers and therefore are not included in wage and salary statistics the exclusion of these low-wage workers in the analyzed samples exaggerates the actual progress of blacks through the 1960s and 1970s.

Work by Couch and Daly (2002, 2003) casts doubt on the importance of exits of lower qualified blacks in inflating the progress of relative black to white pay by examining trends in black to white pay over the boom period of the 1990s. If marginally qualified black workers are drawn into the labor market during a period of low unemployment, relative wage progress should fall. However, it did not, despite increased wage inequality over this period that lowered relative wages of low-skilled workers and slowed the improvement in wage convergence. Furthermore, Couch and Fairlie (2010) show that observable individual characteristics explain little of the racial differences in labor market transitions among men from 1989 through 2004, which suggests that the relative black to white wage gains of the 1990s are not caused by exits from employment of lower skilled black men.

Alternative explanations of black to white progress after Title VII have focused on the role of human capital investments instead of legislation. For example, Smith and Welch (1989) find that migration and improvements in education explain much of the progress of African Americans following Title VII. Card and Krueger (1992) also find that part of the narrowing of the racial wage differential during the 1960s and 1970s can be explained by improvements in the quality of schooling for black students. Lazear (1979) argues that, although the racial wage differential narrowed, lower human capital investments (especially on-the-job training) for blacks resulted in lower wage growth. He finds that by considering future earnings, blacks made less progress in narrowing the racial earnings gap.
While none of these studies fully explains away post-Title VII improvements for African Americans, the varying results and explanations illustrate part of the difficulty of making inferences from these time series studies. Perhaps unsurprisingly, Brown (1982) concludes that evidence of the efficacy of Title VII, as opposed to continuation of underlying trends in raising relative African American earnings, is mixed.

Of course, inferences of the efficacy of Title VII based only on time series trends are tenuous. With the advent of more detailed data and longer elapsed time, the focus for analyzing the impact of Title VII turned to comparison between a treatment group that is subject to Title VII and a control group not affected by law. Because the scope of Title VII expanded with the Equal Employment Opportunity Act of 1972, comparisons over time also became feasible. The Equal Employment Opportunity Act of 1972 expanded Title VII to include coverage of government employers and educational institutions, facilitated class actions, authorized public actions by the EEOC, lengthened the statute of limitations for bringing claims, and reduced the floor for coverage of private employers from those with at least 25 employees to those with at least 15 employees.

The role of firm size differences in Title VII coverage has been examined in notable papers by Chay (1998) and Carrington, McCue, and Pierce (2000). The idea is to compare relative black to white earnings, or relative black to white employment, in firms with fewer than 25 employees to firms with 25 or more employees. The expectation would be that relative gains for African American workers are larger in firms with 25 or more employees than in firms with fewer than 25 employees. Additionally, the 1972 amendment provides an opportunity to use employees of firms with 15 to 24 employees as a control for the 1965 to 1972 period, as well as to examine relative gains for employees of firms with 15 to 24 employees before and after 1972. While conceptually straightforward, and subject only to the general requirement for a valid difference-in-differences analysis (specifically, the control group and treatment group would have fared the same over the comparison period in the absence of legal change), data limitations required creative approaches to carry out this test.\footnote{Larger firms and federal contractors are required to report the race and sex composition of their workforce in broad occupational categories in EEO-1 reports if the firm has at least 100 employees or is a federal contractor with at least $50,000 in contracts and at least 50 employees (with the reporting requirements for federal contractors corresponding to coverage under affirmative action plans). The grouped data by occupation have been used to examine occupational segregation and occupational advancement of protected groups (e.g., Tomaskovic-Devey & Stainback, 2007). But the EEO-1 reports do not include any information on the characteristics of individual workers, so there is no way to identify whether, for instance, relative to white workers with comparable measurable characteristics, African American workers within a seemingly integrated firm are concentrated in low-paying occupations within a broad occupation group, or are paid less than similar white workers in the same specific occupation.}

Chay (1998) and Carrington, McCue, and Pierce (2000) use the difference in coverage by firm size to analyze relative gains in African American employment (Chay, 1998) and in African American and female employment (Carrington, McCue, & Pierce, 2000). Chay additionally compares states in which laws were initially weaker before Title VII. The idea is that African American and female workers should migrate to larger firms that are covered, and to states in which firms within an industry are larger. Because states in the North had strong fair employment practices (FEP) laws prior to 1964, the largest expected gains for covered workers should be in the South. Both analyses use CPS data on individual workers. Carrington, McCue, and Pierce use County Business Pattern data that report establishment size by state and industry matched to workers in the CPS. Chay uses data from May 1979 in which respondents report the number of employees in their establishment and the number
of employees at all locations of the firm to identify industries in which firms are typically above or below the coverage threshold.

Both studies find some support for improved outcomes for African American workers as a result of the enhanced coverage of Title VII. Chay (1998) finds that relative African American employment strongly increased, and relative wages narrowed, in the industries predicted to be most affected by the 1972 Act. Carrington, McCue, and Pierce (2000) calculate that the movement to larger firms of black employees accounted for approximately 15 percent of the black/white wage convergence over the 1965 to 1980 period. Despite the crudeness of the measures of firm size and employee composition as well as the possibility that firm size is endogenously determined for firms at the margin for coverage, these findings provide a strong indication that Title VII had an important role in improving labor market outcomes for black workers.

The potential costs associated with noncompliance might provide the most direct influence on firms’ decisions to comply with Title VII. Firms that are more likely to be sanctioned or sued would have incentive to comply with Title VII if the costs of compliance are less than the expected costs arising from lawsuits or reputational harm if the firm is found in violation of antidiscrimination law. Beller (1978) finds that increased probability that firms would face EEOC enforcement at the state level (measured by the number of EEOC charges in the state divided by the number of covered employees in the state) affects black employment and relative wages in opposing directions, with enforcement of the employment provision increasing black employment but enforcement of the wage provision decreasing black employment. Beller (1978) concludes that on net the wage effect was dominant and enforcement of Title VII did not improve labor market outcomes for black workers through the 1970s. Leonard (1984) conducts an analysis in which the measure of litigation risk is the number of class action suits per corporation within a state and industry, and finds positive (albeit small) improvements in employment of black workers, with the largest gains in professional and managerial occupations, suggesting that promotion prospects for black workers improved as a consequence of Title VII litigation.

Hersch (1991) takes a different but related approach to analyzing the effect of antidiscrimination litigation by estimating the stock market reaction to firms that were found guilty of violations of antidiscrimination law between 1964 and 1986. Litigation activity increased along with the EEOC’s right to bring lawsuits in the 1970s. Lawsuits, decisions, and settlements have a substantial negative impact on the value of firms, with the drop in firm value far greater than average direct costs of settling the case. Because the outcome of employment discrimination litigation often includes injunctions against further discrimination and implementation of affirmative action programs in addition to any compensation paid to victims, the stock market penalty in excess of direct costs reflects the likelihood that the firm will be required to make costly changes to employment practices. This in turn indicates that a discriminatory environment was in place prior to litigation. Thus, Hersch’s evidence suggests that Title VII had a genuine effect on causing changes to employment practices, at least among firms engaged in employment discrimination litigation.

Given the challenges of identifying whether a federal law was effective in improving employment outcomes for protected workers, useful information may be gleaned from examining the efficacy of laws in which coverage varied. Many states had laws protecting workers from employment discrimination before passage of the 1964 Act. The strength of these state laws varied considerably and they were passed at different times. Collins (2003) and Neumark and Stock (2006) consider state FEP laws that were passed at different times to form a natural experiment. Both papers use individual-level Census data for 1940, 1950, and 1960 to perform a triple difference-in-differences analysis, with the three differences being black
versus white (or female vs. male), states with and without FEP law in the specified year, and changes in state FEP law over time.

The strength of state laws that were passed before Title VII varied, and often, these laws could only influence outcomes via public embarrassment of offending employers and through cease and desist power. Nonetheless, these studies, as well as an earlier cross-sectional study by Landes (1968) using aggregate state-level data, find some modest support for a causal effect of state FEP laws on improving outcomes for black workers in earnings.

Color Discrimination Claims under Title VII

Discrimination in employment on the basis of color is one of the original five types of discrimination prohibited by the Title VII of the Civil Rights Act of 1964. For the most part, color has been conflated with race, and EEOC charge filings and litigation over race discrimination, as well as private lawsuits, far outnumber color discrimination filings and litigation. However, color discrimination is distinct from race; in contrast to race discrimination, which traditionally involves those of different races, color discrimination can occur between people of the same race or ethnicity but of different skin tones as well as between people of different races or ethnicities. In fact, because most people of Latino or Hispanic origin identify as racially white regardless of their skin tone, and those of Middle Eastern or North African background are classified as white under the U.S. Census definition, race discrimination claims may be less successful than color discrimination claims for individuals in these populations. Although not addressed in the language of Title VII, courts have established that within-race color discrimination claims are legally valid.

Unlike other protected classes such as race or sex in which evidence of discrimination can be derived by comparing outcomes between groups that can be placed into stratified categories, individuals cannot easily be stratified into groups based on color, as skin color varies along a continuum from very light to very dark. Race and ethnicity have specific Census-based definitions; skin color does not, although the EEOC states that “courts and the Commission read ‘color’ to have its commonly understood meaning – pigmentation, complexion, or skin shade or tone” (U.S. Equal Employment Opportunity Commission “Facts”). Race is reported in all U.S. data sets used to analyze economic outcomes, but individual color is only rarely available in data sets. When available, how skin color is recorded differs between surveys, and skin color is rarely recorded for respondents who are racially identified as any race other than black or African American.

It is difficult to identify whether Title VII has been effective in reducing color discrimination for society as a whole. The only available evidence on the presence and magnitude of differential treatment in employment on the basis of color within groups of workers (as opposed to legal cases that are typically between two individuals) is based on earnings regressions that include a measure of skin color in addition to other work-relevant individual characteristics. Studies in economics and sociology indicate discrimination in employment against African Americans and Latinos/Hispanics with darker skin tone relative to their counterparts with lighter skin tone. But because there is little data on skin color and different surveys record

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color differently, it is difficult to identify whether there has been a change over time in the penalty for darker skin color.

There are two large data sets based on a national sampling frame that report skin color for African Americans as well as information on earnings and employment characteristics: the National Survey of Black Americans, 1979–1980 (NSBA), which reports color in five categories, and the Multi-City Study of Urban Inequality, 1992–1994 (MCSUI), which reports color in three categories. In addition, the New Immigrant Survey 2003 (NIS) reports skin color corresponding to a color chart with 10 categories for a representative sample of new legal immigrants to the United States. A number of papers using the NSBA, such as Hughes and Hertel (1990) and Keith and Herring (1991), as well as papers using both the NSBA and MCSUI, such as Hersch (2006) and Goldsmith, Hamilton, and Darity (2006, 2007), find a pay penalty to darker skin color among African American males.

Studies similarly find a penalty to darker skin color among Latinos using data from the 1979 National Chicano Survey and the 1990 Latino National Political Survey (e.g., Espino & Franz, 2002; Mason, 2004), although the evidence tends to be less consistent than for African Americans. Hersch (2008, 2011b) finds a large penalty to darker skin color among legal immigrants to the United States surveyed in the NIS.

Because we cannot draw on empirical evidence that Title VII has been effective in reducing color discrimination in employment by, for instance, demonstrating a declining penalty to darker color, another approach to examine success may be to look at trends in color discrimination charges filed with the EEOC or the state’s corresponding Fair Employment Practices Agency. As we report in Appendix Table A1, color discrimination charges have increased considerably, from 374 in 1992 to 3,146 in 2013. But whether this is a sign of failure of Title VII is unclear, and instead may even be a sign of success if the increase in charges reflects greater public awareness of the unlawfulness of color discrimination, especially following the EEOC’s 2007 launch of the E-RACE Initiative to combat color discrimination (U.S. Equal Employment Opportunity Commission “E-RACE”).

Furthermore, it may be more important now and in the future that Title VII recognizes color as a form of discrimination distinct from race discrimination given changes in U.S. demographics. While previously unusual, more children are now born to parents of different races, which is accompanied by greater variation in skin color. In fact, the Census no longer assumes that the race of the child follows the race of the mother in forecasting population trends (U.S. Census Bureau, 2008). Since the 2000 Census, individuals can report multiple races, an option taken by about 2.9 percent of the population in 2010 (Jones & Bullock, 2012).

Immigration likewise leads to greater variation in skin color within the United States, and legal cases have involved litigants of the same national origin but of different skin tone (Banks, 2000; Nance, 2005). Given changes in demographics and the prospect of increased opportunities for discrimination on the basis of skin color in the future, the Civil Rights Act seems prescient by proactively prohibiting color discrimination.

Sexual Harassment Claims under Title VII

Sexual harassment is neither defined nor specifically covered under Title VII. The interpretation of sexual harassment as a form of sex discrimination that is prohibited

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7 All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.
under Title VII developed over time as a series of cases made their way through the courts. Despite the relatively late recognition of sexual harassment as a form of sex discrimination under Title VII, sexual harassment has emerged as a major form of discrimination, with one-third to one-half of sex-based employment discrimination charges filed with the EEOC alleging sexual harassment (U.S. Equal Employment Opportunity Commission “Sexual”).

The term “sexual harassment” came into use in the 1970s, and the early definitions of sexual harassment emphasized the power relationship of men relative to women: men in power (such as a supervisor) could extract sexual favors from women with the threat of job loss and denial of employment benefits such as raises and promotions. This type of harassment is referred to as *quid pro quo* harassment, and all cases filed in federal courts before 1981 alleging sex discrimination on the basis of sexual harassment were *quid pro quo* cases.

In early cases, judges decided against the plaintiffs because they did not find that the defendant’s behavior, such as failing to promote, was on the basis of sex as required under Title VII. To understand their reasoning, consider *Barnes v. Train* (1974), which is the first sexual harassment case filed under Title VII and decided in federal court. In this case, Michelle Barnes claimed that her supervisor retaliated against her by eliminating her job when she refused to have sex with him. The 1974 district court judge did not find this to be sex discrimination; instead of being eligible for protection against sex discrimination on the basis of sex by being in the protected class of “women,” Barnes was instead considered to be a member of the class of “persons who refuse to engage in a sexual affair with her/his supervisor”—which is not a protected class under Title VII. The judge’s interpretation in this case is that the conflict between Barnes and her supervisor was personal, and that when a sexual advance is rebuffed, sometimes the rebuffed party will seek revenge. On appeal, in *Barnes v. Costle* (1977), the D.C. Circuit judge in 1977 found that the behavior in question was indeed conduct that the supervisor imposed upon Barnes because she was female, and would not have imposed on a male employee, thereby making the behavior a violation of Title VII as discrimination on the basis of sex.

Early sexual harassment cases were understood to be based on sexual desire and were often interpreted as personal conflicts or misunderstandings. In an influential book published in 1979, *Sexual Harassment of Working Women*, Catharine MacKinnon defined sexual harassment as unwanted sexual attention that arises from the unequal power relation between men and women, and characterized hostile work environment sexual harassment as a second type of harassment in addition to *quid pro quo* harassment. The argument for including sexual harassment as a form of discrimination under Title VII is that sexual harassment alters the “terms, conditions or privileges of employment.” The productivity and pay of victims of sexual harassment and coworkers may be lower if sexual harassment induces inefficient turnover, increases absenteeism, and generally wastes work time as workers attempt to avoid interactions with harassers (although proof of such outcomes is not required to state a viable sexual harassment claim).

In 1980, the EEOC issued “Guidelines on Discrimination Because of Sex.” These guidelines designated sexual harassment as a violation of Title VII and, following MacKinnon, defined the two recognized categories of sexual harassment, *quid pro quo* (also referred to as harassment involving a tangible employment benefit) and hostile work environment. The specific language is as follows:

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8 See, for example, Siegel (2003) and Crouch (2001) for overviews of the evolution of the interpretation of sexual harassment as a form of sex discrimination.
Harassment on the basis of sex is a violation of Sec. 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive environment.

Quid pro quo harassment occurs when a supervisor engages in activities that fall into the first two categories. Hostile work environment harassment by coworkers, supervisors, or others that does not involve tangible employment actions falls into the third category. Examples include coworkers who tell obscene jokes, make sexual suggestions or requests for sex, or routinely make demeaning comments about women’s ability to perform jobs because of their sex. Both quid pro quo and hostile work environment claims are actionable under Title VII, although proof standards vary based upon the identity of the alleged harasser and the nature of the harassing behavior. For example, courts will hold employers strictly liable for harassment by supervisors that results in a “tangible employment action” under the 1998 Supreme Court decisions, Burlington Industries, Inc. v. Ellerth and Faragher v. City of Boca Raton. In supervisor harassment cases that do not involve a tangible employment action, courts will allow employers the opportunity to defeat liability under Title VII through an affirmative defense, which requires employers to show both that they exercised reasonable care to prevent harassment and that the employee unreasonably failed to take advantage of any preventative or corrective opportunities. On the other hand, in harassment cases involving coworkers or clients, courts require negligent behavior on the part of employers before holding them liable for harassment.

In contrast to hiring, pay, and promotion disparities that may affect an entire protected class with impacts that are amenable to statistical analysis, for the most part sexual harassment is a personal and hard-to-quantify behavior. It is not obvious that Title VII has been effective in reducing sexual harassment in the workplace. The trend in charges filed with the EEOC seems to be downward, with 15,889 charges filed in FY 1997 and 11,364 in FY 2011, although charge filings will likely be subject to fluctuation with the general economy (U.S. Equal Employment Opportunity Commission “Sexual”). In addition to Title VII’s role in constraining sexual harassment, the fact that the practice is indeed unlawful provides a basis for the compensating differential for exposure to risk of sexual harassment found by Hersch (2011a), averaging 25 cents per hour for women and 50 cents per hour for men. However, because charges of sexual harassment continue to be filed, the magnitude of the pay premium for workplace exposure to this despised working condition may be too small to provide sufficient incentive to firms to monitor and eliminate all sexually harassing workplace behavior, leaving an important role for Title VII in reducing the occurrence of workplace sexual harassment.

THE LEGACY OF THE CIVIL RIGHTS ACT OF 1964

As President Obama declared, the Civil Rights Act is “an essential piece of the American character” (Obama, 2014). And as we discuss in this section, the impact of the Act extends beyond the labor market outcomes that have been the subject of much of the economic analysis. The Act changed the rules for the provision

9 Selmi (2005) lists nine firms that have been defendants in class action sexual harassment cases. One of these cases, against Eveleth Mines, is the subject of the 2005 movie, North Country.
of public accommodations, particularly those accommodations furnished by the private sector. On the employment front, the Act offered legal protection to at least one group (women) who had been previously unsuccessful in gaining such protection on their own, and it provided an outlet for a wide range of discrimination victims to air their grievances. The Act also opened the door for future legislation as well as judicial interpretation, which in many cases, both broadened the protections available for the original five protected classes and incorporated new protected classes into U.S. antidiscrimination law. For these reasons, we argue that the most positive effects of the Act may be the ones that have been overlooked by much of the economics literature, and we suggest that shifting the focus to other aspects of the Act may be a fruitful area for future research.

The Impact on Public Accommodations

The Civil Rights Act of 1964 immediately changed the face of public accommodations in the South. Not only did the Act ban segregation in state and local facilities (Title III), but it also banned segregation in private facilities that were engaged in interstate commerce and open to the public (Title II). Because Title II placed restrictions on private business owners, this section was the more controversial of the two and, as a result, the subject of immediate legal challenges. Yet swift enforcement by federal courts, and particularly, the U.S. Supreme Court, ensured that segregation in virtually all public accommodations had ended by the beginning of 1965.

Two hours and 10 minutes after President Johnson signed the Act into law on July 2, 1964, the owner of the Heart of Atlanta Motel—self-proclaimed as the most luxurious accommodation between New York and Miami (Martin, 1987)—filed suit against the United States, asking for the court to enjoin Attorney General Robert F. Kennedy from enforcing Title II desegregation and for $11 million in damages for denial of liberty and property rights. Not long after, the owner of Ollie’s Barbecue in Birmingham, Alabama, followed suit, asking for a similar injunction against desegregation enforcement by the Attorney General.10 Although cases can often take years to reach the Supreme Court, by August, the Court had agreed to hear both cases in an accelerated time frame, scheduling the cases for the opening day of oral arguments on October 5, 1964.11

Two months later, on December 14, 1964, the Supreme Court unanimously shut down both challenges to the Act through a broad reading of the Interstate Commerce Clause. Congress, the Court found, could regulate the Heart of Atlanta Motel via this clause because approximately three-quarters of their guests came from out-of-state. Similarly, regulation of Ollie’s Barbecue was appropriate since about half of the food supplies used by the restaurant came from out-of-state.12 With these decisions, it became clear that all three branches of the federal government would throw their weight behind Title II of the 1964 Act. Public reactions reflected this sentiment. Two days after the decisions, one headline proclaimed, “Southerners Gloomily Agree that Segregation is a Lost Cause” (1964). In the article, the owner of a segregated Virginia diner was quoted as saying, “There’s no question we’re finished.” Even the Heart of Atlanta Motel owner called the decisions “the end of the line” (“Southerners Gloomily Agree,” 1964). Public reactions also indicated that many Southerners had

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10 Not all segregationists in the Deep South pursued legal action; some pursued a different method of protesting the Act. For example, the Robert E. Lee Hotel in Jackson, Mississippi shut down in order to avoid serving African American customers. See “Atlanta Motel Sues in Major Test of Rights Act” (1964) and “Ollie Can’t Jimcrow His Barbecue, U.S. Asserts” (1964).


not waited for the Supreme Court’s decisions to begin complying with Title II. A Washington Post article noted that “[f]ew Southerners were surprised by [the decisions]. Many eating establishments already had complied with the law without awaiting the outcome of the court test” (“Few Surprised,” 1964). Even President Johnson noted,

There already has been encouraging widespread compliance with the act in the five months it has been law. Now that the Supreme court [sic] also has ruled, I think we all join in the hope and the resolution that this kind of reasonable and responsible acceptance of law will continue and increase (“Rights Act Survives Test,” 1964).

As evidenced by the total lack of segregated facilities today, Southerners did accept the law of Title II. Yet quantifying how much Title II improved the welfare of African Americans (economic and otherwise) is quite difficult given the data limitations. Even if we could cleverly devise a method for estimating the impact of improved access to restaurants, theaters, restrooms, and other facilities on the lives of African Americans, data from the 1960s on such public accommodations is challenging to find. Chay, Guryan, and Mazumder (2009) successfully found a way around these data limitations in their study of access to hospitals and health care facilities. Specifically, the authors demonstrated that improvements in the gap between African American and white achievement (measured in terms of education and test scores) closely tracked improvements in health care access for African Americans. Even after controlling for educational attainment, African Americans born after hospital desegregation, who had access to better health care from birth, as a teenager scored 0.75 to 0.95 standard deviations higher on the Armed Forces Qualification Test than African Americans born into the previously segregated health care system. From these data, the authors concluded that the impact of hospital desegregation on African Americans had been long lasting and extended well beyond improvement in health outcomes. Chay, Guryan, and Mazumder’s evidence serves as a reminder that, even though we may currently take the absence of segregation in public accommodations for granted, it undoubtedly remains one of the most significant and positive contributions of the 1964 Act.

The Impact on Employment Discrimination Victims

In addition to improving labor market outcomes—such as employment and wage rates—for members of underserved populations, members of these groups have benefited from Title VII in less tangible ways. One of the most important benefits of Title VII that has been emphasized by courts is its policy of encouraging discrimination victims to air their grievances against their employers. Of course, Title VII provides a formal procedure through which discrimination victims can seek a remedy for adverse employment actions that occurred due to their protected status. But more fundamentally, Title VII provides a manner through which victims can tell someone about the adverse employment action, have someone else listen to them, and perhaps convince someone else to assist them in seeking a remedy.13

Through the EEOC, Title VII provided discrimination victims with the first federal-level forum to air grievances against their employers. Today, employees who believe that their employer has discriminated against them on the basis of their membership in a Title VII protected class have 180 days to file a charge with either

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13 An excellent history of the EEOC, which includes information on its enforcement and litigation strategies over time, is available at U.S. Equal Employment Opportunity Commission “History.”
the EEOC or a state-level fair employment practices agency (FEPA). An EEOC charge is a simple form that asks the employee to provide basic facts about their employer (name, address, number of total employees), the alleged basis for discrimination (race, sex, etc.), and a brief summary of the issues and events surrounding the alleged discrimination. Upon filing a charge, the EEOC begins its investigation, relying both on the information provided by the parties and on the information the agency gathers independently. The EEOC’s information-gathering process may include onsite visits to the employer and interviews with other employees. The EEOC strives to complete this investigation within 180 days, but—depending on the caseload of the local EEOC branch—can require a year or more. During the investigation period, the EEOC also asks the employer and employee to participate in its mediation program.

Once the investigation has reached the 180-day mark, the employee may request a Notice of Right to Sue (NRTS) letter from the EEOC at any time, regardless of whether the agency has completed its investigation. The NRTS letter enables employees to file a lawsuit against their employers for workplace discrimination. If mediation fails, and the employee waits to request an NRTS letter until the completion of the EEOC’s investigation, the EEOC will issue a cause determination once it has fully considered the employee’s allegations. If the EEOC finds reasonable cause, the case will move into the conciliation phase, in which the agency “endeavor[s] to eliminate any such unlawful employment practice by informal methods of conference, conciliation, and persuasion” (42 U.S.C. § 2000e-5[b]). The EEOC will attempt to settle the matter between the employer and employee during conciliation, but if the parties cannot reach an agreement, the next step is the court system. Either the EEOC will decide to litigate the case on behalf of the public interest (usually reserved for cases with potentially far-reaching effects) or the agency will issue an NRTS letter to the employee. Even if the EEOC does not find reasonable cause after completing its initial investigation, an employee still has the right to request an NRTS letter and file a lawsuit against her employer, as she has fully exhausted her administrative remedies with the EEOC.

The importance of providing this federal forum for airing employment grievances, when nothing like it had been available previously, cannot be overstated. Federal courts have repeatedly emphasized this important role of Title VII, noting that, “Title VII evinces a strong policy in favor of airing employment discrimination grievances,” (Woods v. Safeway Stores, Inc., 1976) and that Title VII creates a right for “employee[s] to express [their] grievances and promote [their] own welfare.” As Smith and Hansen (2008) point out, “Even to the civil rights plaintiff who loses his case, there is a cathartic value in airing his grievances before a neutral decision-maker. The plaintiff can move on [knowing] that his voice was heard.”

Of course, the provision of a federal forum for the airing of grievances is only beneficial if affected employees are taking advantage of it. From looking at the number of EEOC charges, it certainly appears that individuals are taking advantage of the opportunity to file a charge. For the majority of the EEOC’s history, the EEOC has received more than 50,000 charges a year. In the early 1990s, that number of charges filed rose to 75,000 and the number of EEOC charges approached 100,000 in FY 2009 to FY 2012. Figure 1, taken from Burbank, Farhang, and Kritzer (2011, 2014),

14 In states with a FEPA that also has a work-share agreement with the EEOC, employees have 300 days to file a charge.
15 Although the EEOC offered mediation in some offices as early as 1991, the formal EEOC mediation program did not begin until 1999 (U.S. Equal Employment Opportunity Commission 2014b).
The Legacy of the Civil Rights Act of 1964


Figure 1. EEOC Charges and Employment Discrimination Suits FY 1970 to FY 2010.

illustrates the trends in total EEOC charges filed yearly since 1970. Figure 1 includes total charges filed with the EEOC under all statutes; note, however, that charges filed under Title VII have followed a similar trend. Moreover, Title VII charges have consistently made up over 60 percent of the total charges filed following 1978, when the EEOC began administering Age Discrimination in Employment Act (ADEA) charges, and even after 1992, when the EEOC began administering Americans with Disabilities Act (ADA) charges (Burbank, Farhang, & Kritzer 2011, 2014).

Appendix Table A1 lists the number of employment discrimination charges filed under Title VII with the EEOC from FY 1992 through FY 2013 by charge basis. (Because an individual may have several bases for a discrimination charge, the columns do not sum to the total number of individuals who make any charge under Title VII.) Figure 2, which displays the Title VII charge-filing trends graphically, demonstrates that race, sex, and retaliation charges under Title VII far outnumber national origin, religion, and color charges. But in recent years, the growth rate for

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17 All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.

18 Title VII retaliation occurs when an employer takes an adverse action against an employee after that employee engages in participation or opposition conduct protected under Title VII. Participation conduct includes filing a charge with the EEOC, assisting an EEOC investigation, and testifying in support of an EEOC charge-filing party. Opposition conduct includes filing an in-house complaint about discriminatory
The Legacy of the Civil Rights Act of 1964


Figure 2. Title VII Charges Filed with the EEOC, FY 1992 through FY 2013.

religion and color charges has outpaced the growth rate for other types of charges. Race claims have risen 12 percent since 1992. In contrast, religion claims have increased by 168 percent in the last 22 years, and color claims have increased by 741 percent. Regardless of the differences in levels and growth rates of Title VII charge types, both Appendix Table A1 and Figure 2 make clear that tens of thousands of people consistently take advantage of the EEOC process each year—a process that would not have been available but for the 1964 Civil Rights Act.

While many employment discrimination charges are resolved during EEOC investigation and conciliation, thousands of employment discrimination cases are filed in federal court each year. Figure 1 also illustrates the number of private and public lawsuits filed since 1970. Currently, approximately 15,000 federal employment discrimination lawsuits are filed privately in federal court each year. The number of private lawsuits filed seems to have peaked in the mid-1990s, approaching 25,000 a year.19 Recall that Figure 1 includes all lawsuits brought under all statutes with an EEOC filing requirement, not just lawsuits brought under Title VII.

Since the Equal Employment Opportunity Act of 1972, the EEOC has had the right to litigate charges on behalf of the public interest, in response to charges filed by injured employees.20 The EEOC does not litigate every case in which it finds behavior with an employer (outside the EEOC process), notifying the press about an employer’s discriminatory conduct, and participating in an employer-initiated investigation of discriminatory activity. Retaliation is prohibited by 42 U.S.C. § 2000e-3(a).19 Burbank, Farhang, and Kritzer (2011, 2014) collected these data from the Federal Court Cases: Integrated Data Base and Judicial Business of U.S. Courts reports.

20 Traditionally, the EEOC only litigated cases in which the employer refused to give in to the agency’s demands during the conciliation phase. Nonetheless, in a growing number of cases, the EEOC stands
reasonable cause; instead, it reserves this power for cases that affect a large number of employees, concern a statute that the agency wants clarified by the courts, or involve particularly grave allegations. As seen in Figure 1, the number of lawsuits filed by the EEOC has always remained relatively small (less than 500 lawsuits per year) compared to the number of private lawsuits filed. Appendix Table A2 reports the precise number of EEOC lawsuits filed annually since FY 1992, and Figure 3 displays EEOC lawsuit filing trends graphically. Consistently, more than 50 percent of the suits brought by the EEOC are Title VII suits. Moreover, trends in Title VII filings by the EEOC appear to mirror filings by the EEOC generally, both took substantial declines in FY 1996 through FY 1997 and in FY 2012 through FY 2013.

The decline in lawsuits filed in FY 1996 and FY 1997 was part of an internal agency reform process guided by EEOC Chair Gilbert F. Casellas. Casellas’ strategy was to redirect resources away from public lawsuits toward both eliminating the backlog of charges needing investigation and encouraging voluntary compliance by employers. As a result of his more “selective use of litigation,” Casellas’ administration boasted that it had “filed half the number of lawsuits as in the previous year, but obtained
twice the monetary relief” (Casellas, 2012). Nonetheless, the number of EEOC law-
suits quickly returned to their former levels after Casellas resigned in December
1997. The second, more recent downturn in EEOC filings in FY 2012 and FY 2013
has been the result of severe budget constraints. Facing fewer resources, the EEOC
had already decided as part of its FY 2012 strategic plan to shift resources away
from litigating low-impact cases and toward eliminating the backlog of charges to
be investigated and educating employers. This policy change was exacerbated by
the 2013 federal government sequestration, which resulted in further budget cuts to
the EEOC as well as a 40-hour furlough of all the agency’s employees (EEOC, 2013).

The Impact on Women

As discussed earlier, the primary impetus behind the 1964 Act was the struggle
for African American civil rights. The original drafters did not craft the bill with
women in mind; rather, women were added to Title VII through a House amendment
introduced by Representative Smith. Despite the late addition of women to the Act,
women’s groups, and particularly the NWP, had advocated for legislative protections
for women for decades. Since 1923, the NWP had been advocating for the ERA
to the U.S. Constitution, which would have included the language: “Equality of
rights under the law shall not be denied or abridged by the United States or by any
state on account of sex.” But this advocacy proved unsuccessful. Despite multiple
introductions of the ERA before Congress over a five-decade period, the ERA never
passed (and often never made it out of committee for a formal vote). When the
ERA finally passed Congress in 1972, an insufficient number of states ratified the
amendment, killing it once again (Francis, 2007).

Because proposals for Constitutional-based protections of women had repeatedly
failed, the 1964 Civil Rights Act presented an ideal opportunity to gain some ground
for women. Through the successful lobbying efforts of NWP members and other
advocates for women’s rights, the addition of sex to Title VII dramatically expanded
the protections available to women in the labor market. Prior to the 1964 Act, many
states had equal pay laws, but only Hawaii and Wisconsin had protections similar
to Title VII that banned all sex-based discrimination in the workplace (Neumark &
Stock, 2006). Equal pay laws proved insufficient to protect women in the labor mar-
ket, since employers could still lawfully discriminate against women by confining
them to “women’s jobs.” Moreover, as Neumark and Stock (2006) demonstrate,
female employment actually declined after the passage of a state equal pay law since
the law raised the relative price of female labor without penalizing employers who
refused to hire women altogether.

After the 1964 Act, many states followed suit with the federal law and passed their
own general prohibitions on sex-based discrimination in the workplace (Neumark &
Stock, 2006). The new general prohibitions against sex-based discrimination in the
workplace also opened the door to later recognition by courts of sexual harassment
claims, which, as detailed earlier, now constitute up to half of all Title VII sex-
based claims. In the prior regime of only equal pay laws—and in the absence of
general protections against sex discrimination in the workplace—victims may never
have been able to obtain relief after enduring sexual harassment in the workplace.
Women witnessed a rapid expansion of the legal protections available to them in the
workplace once sex was incorporated into Title VII. Considering that the ERA never

22 Further exacerbating the penalty that women experience by confinement to a traditionally female job,
a recent survey-based study by Stier and Yaish (2014) found that female-dominated occupations are less
flexible and more stressful than nonfemale-dominated jobs.
passed, it is unclear when (if ever) women would have enjoyed such an expansion of workplace protections without the 1964 Civil Rights Act.

The Impact on Future Disadvantaged Groups

In the same way that the 1964 Civil Rights Act opened the door for the protection of women in the labor market, the Act also opened the door for future disadvantaged groups. Regardless of whether these groups were incorporated into the federal employment discrimination regime through the language of the original Act, or through the language of a future civil rights act, they have the 1964 Act to thank for establishing what Morgan and Zietlow (2005) have called “rights of belonging.” This term signifies the creation of a legislative norm that “promote[s] a more inclusive vision of who belongs to the national community and that facilitate[s] equal membership in that community” (Morgan & Zietlow, 2005, p. 1348). As Zietlow (2005) has pointed out,

[W]hen the legislative branch creates rights of belonging, it represents a decision within the community to effectuate a more inclusive vision of that community. The 1964 Act... represents a significant moment in constitutional history when our majoritarian political branches, not just the judiciary, embraced the cause of protecting minorities (p. 946).

Nowhere can this point better be seen than in a comparison of the civil rights legislation that occurred before and after the 1964 Civil Rights Act. In Appendix Table A3, we list the major civil rights legislation and constitutional amendments in U.S. history. 23 As seen in Appendix Table A3, virtually all of the civil rights legislation passed during the previous two centuries of the country’s existence was related to the end of slavery in the Civil War and Reconstruction periods. During the 80 years following the end of Reconstruction, the only successful federal civil rights legislation was the Nineteenth Amendment, which granted women the right to vote in 1920. Congress did nothing else to expand the civil rights of disadvantaged groups until the acts of 1957 and 1960, which, as discussed previously, had proven extremely difficult to pass. Even when the Civil Rights Acts of 1957 and 1960 did pass, all that remained was a stripped down version of the original bill that did very little for the underserved groups they were supposed to protect.24 In contrast, the 50 years since the passage of the 1964 Act have witnessed a host of federal civil rights legislation, such as the Age Discrimination in Employment Act of 1967, the Pregnancy Discrimination Act of 1978, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Genetic Information Nondiscrimination Act of 2008.

This civil rights activity has not been limited to Congress. The last 50 years have seen a dramatic expansion of rights granted to federal employees and employees of federal contractors through presidential executive orders. The most important of these orders include Executive Order 11246, signed by President Johnson in 1965 to expand dramatically the affirmative action requirements for federal contractors; Executive Order 13087, signed by President William J. Clinton in 1998 to end sexual-orientation discrimination against federal civilian employees; and Executive Order 13672, signed by President Barack Obama in the summer of 2014 to end gender discrimination.

23 All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.

24 The climate for federal civil rights legislation was so poor before the 1964 Act that the 1952 Michigan Law Review featured an article by Eugene Gressman entitled, “The Unhappy History of Civil Rights Legislation.”
identity and sexual-orientation discrimination against employees of federal contractors and federal civilian employees. In addition, the last 50 years have seen an abundance of civil rights legislation at the state and local levels that often provides more extensive protections than federal law.\(^{25}\) Perhaps the best known group that has achieved protected status in employment in many states and localities, but has not been entirely successful at the federal level, is the lesbian, gay, bisexual, and transgendered (LGBT) community.\(^{26}\)

The 1964 Act may have ushered in an era of increased civil rights protections, but the Act’s importance does not solely derive from the follow-up acts it has fostered over the past 50 years. Although the focus both in courtrooms and in the scholarly literature has been on race and sex claims under Title VII, the 1964 Act was written expansively enough that it has likely not reached its full potential. For instance, several legal scholars have argued that Title VI has been underused since the passage of the 1964 Act but may present a legal solution toremedying current problems, such as environmental injustice for minorities\(^{27}\) (Colopy, 1994; Hammer, 1996; Touche & Rogers, 2005) and inequality in indigent counsel for criminal defendants (Iyengar, 2007). Moreover, several aspects of Title VII appear to have been underused during the first 50 years of its existence. Recall that color, religion, and national origin claims came into Title VII as “boilerplate” language from prior executive orders (Perea, 1994). The lack of discussion in Congress about these three terms during the legislative debate was indicative of the lack of concern about these types of discrimination in 1964. Fifty years later, discrimination on the basis of color, national origin, and religion appears increasingly significant.

As seen in Appendix Table A1, all three types of claims are on the rise, with national origin claims almost doubling, religion claims more than doubling, and color claims more than quadrupling in less than two decades.\(^{28}\) Empirical studies identify pay gaps on the basis of national origin, religion, and color. With regard to religion, recent empirical work by Beck (2013) and Chiswick and Huang (2008) examines whether individuals of certain faiths encounter a religious pay penalty. With regard to national origin, an extensive literature in economics studies immigration (e.g., Borjas, 1994; Card, 2009). With regard to color, Jones (2000), Banks (2000), and Nance (2005) have all noted the burgeoning of color-based claims under Title VII and attribute at least some of this rise to the declining tendency of individuals to identify with only one race. And, as mentioned previously, the EEOC also made color-based claims an agency priority in 2007 through the E-RACE Initiative, a program targeted at eliminating race and color-based discrimination in the workplace. But whether Title VII has been effective in reducing average societal discrimination on these bases has generally not been studied. Clearly empirical work will be subject to the same types of challenges faced in studies of the efficacy of Title VII on improving labor outcomes for minorities, as well as additional challenges such as classification of individuals on the basis of color, as discussed previously.

Despite these challenges, examining the effect of Title VII on these types of claims presents a ripe area for future research since recent state laws suggest that discrimination on the basis of national origin and color, in particular, may be on the rise.

\(^{25}\) For examples of such legislation, see Shinall (2014).
\(^{26}\) Currently, 21 states and the District of Columbia prohibit employment discrimination on the basis of sexual orientation; 18 states and the District of Columbia prohibit employment discrimination on the basis of gender identity (American Civil Liberties Union “State by State”).
\(^{27}\) For a discussion of the environmental inequities faced by racial minorities, see Ringquist (2005).
\(^{28}\) All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.
Since 2010, Arizona, Alabama, Georgia, Indiana, South Carolina, and Utah have all passed anti-immigration laws, which require police to determine the immigration status of anyone arrested or detained if the police have reasonable suspicion that the individual is not a legal immigrant. As shown in Hersch (2008), legal immigrants to the United States on average have darker skin tone than white U.S. natives. Hersch (2012) reports that nearly one-third of EEOC charges of color discrimination also report discrimination on the basis of national origin. The strong association of immigrant status with darker skin color makes it almost certain that, besides proficiency in the English language, skin color plays a critical role in creating reasonable suspicion in the police of these six states. Moreover, the public sentiment leading to the passage of these six laws is likely indicative of growing hostility toward individuals with darker skin color who were born outside the United States.

Because the reach of Title VII has grown substantially since its passage in 1964, calls to extend Title VII’s protections even further continue as a way to remedy current social issues. For example, the EEOC has recently taken the position that Title VII covers gender identity and sex stereotyping employment discrimination claims (EEOC, 2014a). Although many LGBT plaintiffs have attempted to bring Title VII cases, they have achieved only limited success in convincing courts that employment discrimination on the basis of sexual orientation or gender identity constitutes employment discrimination because of sex (with gender identity cases having greater success in courts). The Supreme Court has yet to consider the EEOC’s position, but two Supreme Court decisions related to this issue provide a basis for judicial interpretation of gender identity discrimination as a form of Title VII sex discrimination (and perhaps, as an extension, sexual orientation discrimination as a form of Title VII sex discrimination). Specifically, Oncale v. Sundowner Offshore Services, 523 U.S. 75 (1998) holds that same-sex sexual harassment claims are cognizable under Title VII, and Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) holds that sex-stereotyping claims are cognizable under Title VII. The conservative majority currently serving on the Supreme Court has signaled through its recent decisions that it is unlikely to judicially extend the reach of Title VII—or any employment discrimination statute—in the near future. Nonetheless, in the same way that a previous, more liberal Court once broadened the definition of sex discrimination to include sexual harassment in response to supportive EEOC guidelines, it is possible that a future, more liberal Supreme Court may do the same with regard to sexual orientation and gender identity.

A second social issue that both the EEOC and some members of the public wish to remedy through the protections of Title VII are employer practices that disproportionately exclude black and Hispanic male applicants during the hiring process. The EEOC takes the position that requiring job applicants to report convictions and requiring criminal background checks are violations of Title VII because these facially neutral practices have disparate impact on the basis of race and national origin (EEOC, 2012). Through measures known as “ban the box,” 13 states and over

29 Attempts by LGBT activists to pass comprehensive federal legislation prohibiting sexual orientation and gender identity discrimination in employment have proven unsuccessful. Beginning in 1994, the Employment Non-Discrimination Act has been introduced in virtually every session of Congress. Despite passing the House in 2009, and passing the Senate in 2013, the Act has never passed both houses in the same session.

30 All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.

31 All appendices are available at the end of this article as it appears in JPAM online. Go to the publisher’s Web site and use the search engine to locate the article at http://www3.interscience.wiley.com/cgi-bin/jhome/34787.
70 cities and counties have passed laws restricting employers from asking questions about arrests and convictions on initial job applications, with coverage most often limited to government employees (National Employment Law Project, 2014). Despite the position of the EEOC, so far courts have not been supportive of claims of discrimination based on job applications that require reports of criminal history, finding that these application requirements are job related and a business necessity (which defeats employer liability for disparate impact under Title VII). Still, the rise in state and local ban-the-box laws, as well as private compliance (notably, in 2013, Target voluntarily opted to ban the box) suggests that society is moving in the direction of considering criminal background checks as a form of employment discrimination.

CONCLUSION

Our review of the literature evaluating the effects of the Civil Rights Act of 1964 has centered on Title VII, finding some evidence that this title has improved wage and employment outcomes for African Americans and women in the labor market. At the same time, we acknowledge the limitations inherent in assessing the true impact of Title VII given the data constraints. The passage of Title VII fundamentally altered the at-will employment scheme that otherwise governed the U.S. labor market, and so the scholarly focus on this one title—while virtually ignoring the other 10 titles in the 1964 Act—is understandable. Nonetheless, the latter part of our article has suggested that the Act had other, less-studied effects that have brought about positive change over the past 50 years. Certainly, the most striking of these effects was the admission of African Americans (and other disadvantaged groups) into public accommodations and the end of the dual facilities and double spending that came with the separate but equal regime. More subtly, the Act changed the legal norm from one of exclusivity to one of inclusivity, which can be seen in the abundance of antidiscrimination acts that have been passed since 1964. The 1964 Act has altered the legal environment so dramatically since its passage that even Epstein (1992), who has controversially argued for the repeal of the 1964 Act, admits,

So great were the abuses of political power before 1964 that, knowing what I know today, if given an all-or-nothing choice, I should still have voted in favor of the Civil Rights Act in order to allow federal power to break the stranglehold of local government on race relations. History often leaves us with only second-best devices to combat evils that are in principle better controlled by other means.

Epstein himself acknowledges that the counterfactual is a challenging one: The repercussions of the 1964 Act have been so great over the past 50 years that it is difficult to imagine what the United States would look like in its absence. Perhaps this shift in our political, social, and legal treatment of the disadvantaged over the last half-century is the 1964 Civil Rights Act’s best legacy.

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ACKNOWLEDGMENTS

We thank Blair Druhan Bullock, Deborah A. Widess, and participants at the War on Poverty and Civil Rights Act Roundtable at APPAM 2014 for valuable comments.
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Journal of Policy Analysis and Management DOI: 10.1002/pam
Published on behalf of the Association for Public Policy Analysis and Management


Southerners gloomily agree segregation is a lost cause. (1964, December 16). Chicago Defender, 12.


The Legacy of the Civil Rights Act of 1964

U.S. Constitution, article I, § 8, cl. 3.


Journal of Policy Analysis and Management DOI: 10.1002/pam
Published on behalf of the Association for Public Policy Analysis and Management
Table A1. Number of EEOC charges filed under Title VII by type, FY 1992 to FY 2013.

<table>
<thead>
<tr>
<th>Year</th>
<th>Race</th>
<th>Sex</th>
<th>National origin</th>
<th>Religion</th>
<th>Color</th>
<th>Retaliation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>29,548</td>
<td>21,796</td>
<td>7,434</td>
<td>1,388</td>
<td>374</td>
<td>10,499</td>
</tr>
<tr>
<td>1993</td>
<td>31,695</td>
<td>23,919</td>
<td>7,454</td>
<td>1,449</td>
<td>461</td>
<td>12,644</td>
</tr>
<tr>
<td>1994</td>
<td>31,656</td>
<td>25,860</td>
<td>7,414</td>
<td>1,546</td>
<td>413</td>
<td>14,415</td>
</tr>
<tr>
<td>1995</td>
<td>29,986</td>
<td>26,181</td>
<td>7,035</td>
<td>1,581</td>
<td>700</td>
<td>15,342</td>
</tr>
<tr>
<td>1996</td>
<td>26,287</td>
<td>23,813</td>
<td>6,687</td>
<td>1,564</td>
<td>832</td>
<td>14,412</td>
</tr>
<tr>
<td>1997</td>
<td>29,199</td>
<td>24,728</td>
<td>6,712</td>
<td>1,709</td>
<td>762</td>
<td>16,394</td>
</tr>
<tr>
<td>1998</td>
<td>28,820</td>
<td>24,454</td>
<td>6,778</td>
<td>1,786</td>
<td>965</td>
<td>17,246</td>
</tr>
<tr>
<td>1999</td>
<td>28,819</td>
<td>23,907</td>
<td>7,108</td>
<td>1,811</td>
<td>1,303</td>
<td>17,883</td>
</tr>
<tr>
<td>2000</td>
<td>28,945</td>
<td>25,194</td>
<td>7,792</td>
<td>1,939</td>
<td>1,290</td>
<td>19,753</td>
</tr>
<tr>
<td>2001</td>
<td>28,912</td>
<td>25,140</td>
<td>8,025</td>
<td>2,127</td>
<td>1,135</td>
<td>20,407</td>
</tr>
<tr>
<td>2002</td>
<td>29,910</td>
<td>25,536</td>
<td>9,046</td>
<td>2,572</td>
<td>1,381</td>
<td>20,814</td>
</tr>
<tr>
<td>2003</td>
<td>28,526</td>
<td>24,362</td>
<td>8,450</td>
<td>2,532</td>
<td>1,550</td>
<td>20,615</td>
</tr>
<tr>
<td>2004</td>
<td>27,696</td>
<td>24,249</td>
<td>8,361</td>
<td>2,466</td>
<td>930</td>
<td>20,240</td>
</tr>
<tr>
<td>2005</td>
<td>26,740</td>
<td>23,094</td>
<td>8,035</td>
<td>2,340</td>
<td>1,069</td>
<td>19,429</td>
</tr>
<tr>
<td>2006</td>
<td>27,238</td>
<td>23,247</td>
<td>8,327</td>
<td>2,541</td>
<td>1,241</td>
<td>19,560</td>
</tr>
<tr>
<td>2007</td>
<td>30,510</td>
<td>24,826</td>
<td>9,396</td>
<td>2,880</td>
<td>1,735</td>
<td>23,371</td>
</tr>
<tr>
<td>2008</td>
<td>33,937</td>
<td>28,372</td>
<td>10,601</td>
<td>3,273</td>
<td>2,698</td>
<td>28,698</td>
</tr>
<tr>
<td>2009</td>
<td>33,579</td>
<td>28,028</td>
<td>11,134</td>
<td>3,386</td>
<td>2,943</td>
<td>28,948</td>
</tr>
<tr>
<td>2010</td>
<td>35,890</td>
<td>29,029</td>
<td>11,304</td>
<td>3,790</td>
<td>2,780</td>
<td>30,948</td>
</tr>
<tr>
<td>2011</td>
<td>35,395</td>
<td>28,534</td>
<td>11,833</td>
<td>4,151</td>
<td>2,832</td>
<td>31,429</td>
</tr>
<tr>
<td>2012</td>
<td>33,512</td>
<td>30,356</td>
<td>10,883</td>
<td>3,811</td>
<td>2,662</td>
<td>31,208</td>
</tr>
<tr>
<td>2013</td>
<td>33,068</td>
<td>27,687</td>
<td>10,642</td>
<td>3,721</td>
<td>3,146</td>
<td>31,478</td>
</tr>
</tbody>
</table>

### Table A2. Number of EEOC lawsuits filed FY 1992 to FY 2013

<table>
<thead>
<tr>
<th>Year</th>
<th>All lawsuits</th>
<th>Title VII lawsuits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>450</td>
<td>265</td>
</tr>
<tr>
<td>1993</td>
<td>478</td>
<td>295</td>
</tr>
<tr>
<td>1994</td>
<td>425</td>
<td>261</td>
</tr>
<tr>
<td>1995</td>
<td>354</td>
<td>201</td>
</tr>
<tr>
<td>1996</td>
<td>183</td>
<td>108</td>
</tr>
<tr>
<td>1997</td>
<td>332</td>
<td>182</td>
</tr>
<tr>
<td>1998</td>
<td>414</td>
<td>254</td>
</tr>
<tr>
<td>1999</td>
<td>465</td>
<td>341</td>
</tr>
<tr>
<td>2000</td>
<td>329</td>
<td>236</td>
</tr>
<tr>
<td>2001</td>
<td>428</td>
<td>289</td>
</tr>
<tr>
<td>2002</td>
<td>370</td>
<td>268</td>
</tr>
<tr>
<td>2003</td>
<td>400</td>
<td>298</td>
</tr>
<tr>
<td>2004</td>
<td>421</td>
<td>297</td>
</tr>
<tr>
<td>2005</td>
<td>416</td>
<td>295</td>
</tr>
<tr>
<td>2006</td>
<td>403</td>
<td>294</td>
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<tr>
<td>2007</td>
<td>362</td>
<td>268</td>
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<tr>
<td>2008</td>
<td>325</td>
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</tr>
<tr>
<td>2009</td>
<td>314</td>
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<tr>
<td>2010</td>
<td>271</td>
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<tr>
<td>2011</td>
<td>300</td>
<td>162</td>
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<tr>
<td>2012</td>
<td>155</td>
<td>66</td>
</tr>
<tr>
<td>2013</td>
<td>148</td>
<td>78</td>
</tr>
</tbody>
</table>

### Table A3. Major civil rights legislation and constitutional amendments in United States history

<table>
<thead>
<tr>
<th>Name of legislation/amendment</th>
<th>Statutes at large</th>
<th>Date passed/ratified</th>
<th>Purpose</th>
<th>Subsequent history</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thirteenth Amendment</td>
<td>13 Stat. 567, 774–75</td>
<td>December 13, 1865</td>
<td>Abolishes slavery and involuntary servitude</td>
<td>Infrequently used until <em>Jones v. Alfred H. Mayer Co.</em>, 392 U.S. 409 (1968), which interpreted the law as covering both public and private actors; used frequently today for discrimination claims</td>
</tr>
<tr>
<td>Civil Rights Act of 1866</td>
<td>14 Stat. 27–30</td>
<td>April 9, 1866</td>
<td>Protects the right to make and enforce contracts and to hold property on the basis of race, color, and ethnicity</td>
<td></td>
</tr>
<tr>
<td>Fourteenth Amendment</td>
<td>14 Stat. 358–59, 15 Stat. 706–07</td>
<td>July 20, 1868</td>
<td>Defines citizenship; prohibits states from denying individuals due process and equal protection</td>
<td></td>
</tr>
<tr>
<td>Fifteenth Amendment</td>
<td>15 Stat. 346, 1131–32</td>
<td>March 30, 1870</td>
<td>Prohibits states from abridging voting rights based on race, color, or previous servitude</td>
<td></td>
</tr>
<tr>
<td>First Ku Klux Klan Act</td>
<td>16 Stat. 140–46</td>
<td>May 31, 1870</td>
<td>Establishes penalties and enforcement powers for upholding the Fifteenth Amendment</td>
<td></td>
</tr>
<tr>
<td>Second Ku Klux Klan Act</td>
<td>16 Stat. 433–40</td>
<td>February 28, 1871</td>
<td>Provides for federal supervision of elections</td>
<td></td>
</tr>
<tr>
<td>Third Ku Klux Klan Act</td>
<td>17 Stat. 13–15</td>
<td>April 20, 1871</td>
<td>Provides penalties for conspiring to interfere with civil rights; provides relief for the denial of rights by state actors</td>
<td>Used frequently today for discrimination claims against state actors</td>
</tr>
</tbody>
</table>
Table A3. Continued

<table>
<thead>
<tr>
<th>Name of legislation/amendment</th>
<th>Statutes at large</th>
<th>Date passed/ratified</th>
<th>Purpose</th>
<th>Subsequent history</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Rights Act of 1875</td>
<td>18 Stat. 335–37</td>
<td>March 1, 1875</td>
<td>Prohibits discrimination in public accommodations</td>
<td>Declared unconstitutional by <em>United States v. Stanley</em>, 109 U.S. 3 (1883) and companion cases</td>
</tr>
<tr>
<td>Nineteenth Amendment</td>
<td>41 Stat. 362, 1823</td>
<td>August 26, 1920</td>
<td>Guarantees women the right to vote</td>
<td></td>
</tr>
<tr>
<td>Civil Rights Act of 1957</td>
<td>71 Stat. 634–38</td>
<td>September 9, 1957</td>
<td>Provides additional penalties for interfering with voting rights; establishes U.S. Commission on Civil Rights</td>
<td></td>
</tr>
<tr>
<td>Civil Rights Act of 1960</td>
<td>74 Stat. 86–92</td>
<td>May 6, 1960</td>
<td>Provides criminal penalties for obstruction of court orders; permits federal inspection of voting</td>
<td></td>
</tr>
<tr>
<td>Equal Pay Act</td>
<td>77 Stat. 56–57</td>
<td>June 10, 1963</td>
<td>Requires equal pay for equal work, regardless of sex</td>
<td>Covered occupations expanded by the 1972 Education Amendments; statute of limitations for bringing suit expanded by 2009 Lilly Ledbetter Fair Pay Act</td>
</tr>
<tr>
<td>Name of legislation/amendment</td>
<td>Statutes at large</td>
<td>Date passed/ratified</td>
<td>Purpose</td>
<td>Subsequent history</td>
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<tr>
<td>Age Discrimination in Employment Act</td>
<td>81 Stat. 602–08</td>
<td>December 15, 1967</td>
<td>Prohibits employment discrimination against individuals ages 40 to 65</td>
<td>1978 Amendment expands coverage to individuals ages 66 to 70; 1986 amendment removes upper age limit</td>
</tr>
<tr>
<td>Fair Housing Act</td>
<td>82 Stat. 73–92</td>
<td>April 11, 1968</td>
<td>Provides equal housing opportunities on the basis of race, color, religion, and national origin</td>
<td>Federal enforcement powers strengthened by 1988 Fair Housing Act Amendments</td>
</tr>
<tr>
<td>Equal Employment Opportunity Act</td>
<td>86 Stat. 103–13</td>
<td>March 24, 1972</td>
<td>Expands enforcement powers of Equal Employment Opportunity Commission; expands Title VII coverage to firms with 15 or more employees</td>
<td></td>
</tr>
<tr>
<td>Education Amendments, Title IX</td>
<td>86 Stat. 235–381</td>
<td>June 23, 1972</td>
<td>Prohibits discrimination on the basis of sex by federally funded educational institutions</td>
<td></td>
</tr>
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<td>Name of legislation/amendment</td>
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<tr>
<td>Civil Rights Restoration Act</td>
<td>102 Stat. 28–32</td>
<td>March 22, 1988</td>
<td>Amends Title IX, the Rehabilitation Act, the Age Discrimination in Employment Act, and the 1964 Civil Rights Act to make an entire institution subject to federal regulation, even if only one program or activity receives federal funding; legislatively overrules <em>Grove City College v. Bell</em>, 465 U.S. 555 (1984)</td>
<td></td>
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<tr>
<td>Americans with Disabilities Act</td>
<td>104 Stat. 327–78</td>
<td>July 26, 1990</td>
<td>Requires accessibility for the disabled in places of public accommodation; extends the employment protections of the Rehabilitation Act to the private sector</td>
<td>Covered individuals expanded by 2008 Americans with Disabilities Act Amendments Act</td>
</tr>
<tr>
<td>Genetic Information Nondiscrimi-ation Act</td>
<td>122 Stat. 881–922</td>
<td>May 21, 2008</td>
<td>Prohibits employers from using genetic information in making employment decisions; prohibits insurers from using genetic information to set insurance premiums</td>
<td></td>
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</tbody>
</table>