

Marc Bendick, Jr

Mary Lou Egan

Bendick and Egan Economic Consultants, Inc.
Washington, DC, USA

USING INFORMATION REGULATION TO ENHANCE WORKPLACE DIVERSITY, INCLUSION, AND FAIRNESS*

Abstract

In the U.S., traditional means of promoting improved employment practices – such as public regulation, union pressure, litigation, and long-term employment relationships – have weakened, increasing the power imbalance between employers and their workers and contributing to increased economic inequality in American society. Management theory and empirical evidence suggest that “information regulation” (IR) can significantly affect employer behaviour and contribute to countering these trends. This paper explores development of a large-scale “data utility” in which objective information on the employment practices and employment outcomes of individual employers are collected, curated, made accessible on-line, and actively marketed to a range of stakeholders. The goal is to muster information to empower these stakeholders – from individual workers and their advocates to employers’ key business partners – to reward good employer behaviour and sanction bad behaviour, thereby moving employers toward “high road” practices concerning, among other things, workplace diversity, inclusion, and fairness.

Keywords: information regulation, workforce diversity, workplace inclusion, employment discrimination, affirmative action.

* An earlier version of this paper was presented at the 13th International Human Resource Management Conference, Kraków, Poland, June 2014.

1. Introduction

A dangerous and growing inequality and lack of upward mobility has jeopardised middle class America's basic bargain – that if you work hard, you have a chance to get ahead. I believe this is the defining challenge of our times.

President Barack Obama
(Obama 2013)

Despite the United States' long-standing reputation as a land of opportunity, research on socio-economic trends provides extensive support for the concern that President Obama is expressing. For instance:

- in 2012, the top 10% of wage earners received more than half of the US's total income; the year saw the highest level of inequality ever recorded, resembling that of the “Gilded Age” preceding the Great Depression of the 1930s (Atkinson, Pikety & Saez 2011);
- as the US economy slowly recovered from the Great Recession during 2009–14, the incomes of the top 1% of earners grew 31.4%, while that of the bottom 99% grew only 0.4% (Saez 2013);
- the likelihood of intergenerational economic mobility – the chance that US children from lower-income families will achieve higher earnings than their parents – is substantially lower today than 40 years ago (Chetty *et al.* 2014);
- closure of long-standing US earnings gaps – for example, between women compared to men and people of colour compared to whites – has slowed and may even have reversed (Blau & Kahn 2006, Rodgers III & Holmes 2004).

Among the many causes of this growing inequality, this paper focuses on a parallel increase in inequality of power between employers and their workers. These developments are rooted in the long-standing legal doctrine of “employment at will”, under which American employers, with limited exceptions, enjoy wide discretion to hire and fire employees without cause as they choose. But recent developments have significantly tipped the balance further towards employers. In particular:

- stable, long-term, full-time career employment has been increasingly replaced with temporary, part-time, contract, or other “contingent” work arrangements in which employers readily replace, rather than retain and develop, their workers. As one indication, for men employed in the private sector, the average number of years working with the same employer declined 25% between 1973 and 2006 (Farber 2008);

- unions are decreasingly available to advocate for and bargain for American workers. Between 1983 and 2012, union membership in the US declined from 20.1% of the total workforce to only 6.6% of private sector workers (US Bureau of Labor Statistics 2013);

- class action lawsuits addressing race and gender employment discrimination are dwindling in number and impact. Prior to 2012, more than 25 major suits were filled in a typical year. Since recent Supreme Court rulings have made successful litigation more problematic, that number has fallen to less than a dozen annually. In 2010, the ten largest litigation settlements generated USD 346 million in damages, but by 2012, that number had fallen by nearly 90%, to USD 45 million (allgov.com 2013);

- unravelling public and private safety nets have increased the financial consequences of job loss, reducing many workers' willingness to stand up to their employers or bargain hard for their compensation. For example, Unemployment Insurance payments currently cushion the income losses of only 25% of unemployed persons, the lowest proportion since records began in 1946 (Stone & Chen 2013). In the recent Great Recession, unemployment increasingly triggered home mortgage defaults, costing many US workers their most significant lifetime chance for accumulating personal assets (Gyourko & Tracy 2014);

- increasing concentration of firms has increased the monopsony bargaining power of employers compared to job seekers and employees. Between 1992 and 2007, the proportion of department store retailing controlled by the four largest firms rose from 47% to 73% (the "Wal-Mart Effect"); between 1995 and 2006, the financial assets controlled by the six largest US banks rose from 17% of US GDP to 55% (the "Too Big to Fail" Effect); and between 1982 and 2007, the number of US manufacturing sectors in which the four largest firms controlled more than 50% of their markets nearly doubled, from 98 to 185 (Foster, McChesney & Jonnas 2014);

- global wage competition. Initially in manufacturing, and now increasingly in services, advances in transportation and information technology have enabled US employers to shift production from the US to locations in Asia and elsewhere. For example, the US share of the low-skill labour embodied in US manufactured products fell from 33% in 1995 to 23% in 2009, while the US share of high skilled labour embodied in world manufactured products fell from 17% to 9% (Houseman 2014). Concurrently, average wages for the majority of US workers have stagnated in nominal terms and, through inflation, have steadily declined in real purchasing power;

– political stalemate. With US elected officials sharply divided along partisan lines, both legislative and executive branch actions to protect workers have continued to erode. In terms of statutory protections, for example, the federal minimum wage today stands at only 37% of the average worker's wage, nearly the lowest level in 47 years (Mishel 2013). At the same time, under political pressure from a divided Congress, federal regulators are increasingly unaggressive in enforcing federal employment statutes such as those covering employment discrimination, wages and hours, and occupational health and safety (NELP 2014).

Together, such developments constitute a substantial shift in the balance of power between employers and their employees. It is now more difficult for individual Americans to defend their basic employment rights, let alone seek collective advancement or improvement in their employment situations. Concurrently, as is discussed below, employers have become increasingly immune from pressures to maintain and improve the fairness and progressiveness of their employment practices. The consequences include the growing socio-economic inequality and decreasing economic mobility described at the beginning of this paper as the “defining challenge of our times”.

2. An Innovative Response

In seeking ways to counter these adverse developments, one approach would be to seek stronger laws on employment rights, enhanced budgets for government enforcement agencies, and court rulings expansively interpreting existing laws. However, the political climate in the US over an extended period – from the explicitly conservative administrations of Presidents Ronald Reagan and George W. Bush through the moderate administrations of Presidents Bill Clinton and Barack Obama – suggests that such efforts are unlikely to succeed. Accordingly, this paper explores a different, non-governmental strategy, focusing on the revolutionary force of information technology that is affecting all aspects of life in the US today.

Consider the following scenarios:

– A female graduating university student, considering a job offer from Example Corporation, is concerned that her salary offer and promotional opportunities may not be the same as for her male counterparts. Reading blogs and tweeting her friends, she finds only rumours and contradictory opinions. How can she make an informed decision?

– An Example Corporation employee was called a racially-offensive name in the locker room at the plant where he works. If the problem is local, he prefers to address this incident quietly, through his plant's Human Resources office. But if other employees throughout the company have had similar experiences, perhaps he needs to complain to the government equal employment opportunity enforcement agency or get a lawyer to file private litigation. How can he determine if the problem he encountered is isolated or widespread?

– A reporter is reading a press release announcing that Example Corporation has been named its industry's Employer of the Year. In reporting this story, should the reporter adopt the positive language of the press release? Or is this award a public relations effort to distract attention from recurrent violations of laws governing treatment of unions, for which this company is being investigated? Facing a tight deadline, where can the reporter get factual background fast?

– An analyst working for a "social responsibility" mutual fund is considering whether to purchase Example Corporation stock for the fund's investment portfolio. Responding to a questionnaire from the fund, the company has reported six workplace safety violations in the past three years. How can the analyst "benchmark" this number to determine if it is high or low compared to other firms engaged in similar lines of work?

– A manufacturing company's corporate policy forbids procurement from employers that do not pay all employees the "living wage" mandated in the jurisdictions where the company operates. Does this policy preclude Example Corporation from bidding for an upcoming procurement? Without a long, expensive investigation, how can the company's purchasing agent determine if Example Corporation meets her firm's social responsibility guidelines?

– An insurance company has been invited to offer Example Corporation a multi-million dollar employment practices liability policy. Does Example Corporation have effective procedures for controlling workplace sexual harassment, so that the insurance company can offer a low premium and still make a profit? Or is Example Corporation the sort of employer where sexual harassment suits are very likely, and only a high premium should be bid? Where can the insurance company's underwriters find detailed data on which to base their pricing?

– A union has heard rumours that Example Corporation is cheating its immigrant employees on the hourly pay they are entitled to under the Fair Labor Standards Act. Do these rumours reflect an important problem on

which the union can build a successful organising effort, or should the union put its organising resources elsewhere? Must the union make this decision based on rumours alone?

– The Chief Diversity Officer of Example Corporation wants to convince her senior management that, to stay competitive for talent, the company needs to offer partner fringe benefits to employees in same-sex couples. She has the impression that many of the company's competitors do that, but where can she find systematic information that her bosses will find persuasive?

The individuals and institutions in these scenarios – from Example Corporation's employees, job applicants, and their advocates to the company's customers, suppliers, and investors – can make better decisions if they have information at their fingertips. However, the goal of the approach considered in this paper is not limited to improved employment outcomes for information-empowered individuals. Rather, it is the more ambitious social change goal of improving employer treatment of all their employees. This goal requires mobilising information to empower these multiple stakeholders of Example Corporation to pressure it to be a better employer. How this might occur is discussed in the next section.

3. What Motivates Employers to Take the "High Road?"

What motivates an employer to follow the letter of the law on discrimination, wages and hours, health and safety, and other aspects of employee treatment? What motivates employers to go beyond legally-mandated minimums – for example, to extend fringe benefits to same-sex partners, offer paid parental leave when only unpaid leave is mandated, or proactively address issues of discrimination and harassment before they arise? What motives employers to adopt "high road" employment practices, such as investing in long-term employee development and offering employees opportunities to influence work processes?

Traditionally, the US has relied on three forces to promote these outcomes. The first force is employers' sense of "corporate social responsibility" under which they feel morally obliged "(...) to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom". In this approach, high employment standards depend on each private firm's voluntarily meeting or exceeding its ethical, legal, commercial, and public expectations (Friedman 1970, Porter & Kramer 2006).

A second force is employers' self-interest. Here, the assumption is that employers will treat employees well because, through mechanisms such as improved employee recruitment, lower employee turnover, and enhanced employee engagement, these employment practices support the employers' own goals such as productivity, growth, and profitability (Macey *et al.* 2010, Bendick *et al.* 2010). However, a major limitation of this approach is that employers differ in their perceptions of the relationship between employment practices and profitability. Some employers deliberately adopt "low road" employment strategies, believing that their business goals are best advanced by keeping labour costs down, expecting only limited contributions from a work force whose members are readily replaced, and flaunting employment laws if the expected costs of being penalised are sufficiently low (Cascio 2006).

The third force is statutes and their enforcement by public agencies. In the US, a multiplicity of such laws protect women, race / ethnic minorities, older workers, persons with disabilities, and others from discriminatory or harassing behaviour; establish minimum wage rates and maximum work hours; govern relationships between employers and unions; regulate workplace health and safety hazards; and supervise employer-based pensions and other fringe benefits. These statutes are enforced by a range of Federal and state agencies.

Since the 1930s, and especially since the US's Civil Rights Movement of the 1960s, these three forces have combined to generate major improvement in employee treatment, with consequent expansion of the American middle class and broadening of its demographic composition. However, decades after the passage of many of these laws and changes in societal attitudes underlying their passage, substantial problems remain. For example:

- violations of wages and hours laws remain widespread, especially for vulnerable workers such as undocumented immigrants. In 2010–2011, the US Department of Labor investigated more than 256,000 complaints for violations of wages and hours laws and collected USD 225 million in back wages. Industries targeted for heightened enforcement attention include restaurants / hotels / tourism, construction, agriculture, garment manufacturing, and health care (Weil 2010);

- high rates of work-related diseases and injury remain in selected workplaces. During 2012, more than 2.9 million reportable accidents or illnesses occurred in the US private sector, including more than 4,000 fatalities. Sectors with particularly high incidence include nursing homes,

heavy construction, air transportation, courier services, and warehousing (US Bureau of Labor Statistics 2014);

– major demographic groups continue to be severely under-represented in many desirable occupations and continue to experience workplace discrimination, both conscious and unconscious. For example, recent research has documented substantial under-representation, under-compensation, under-promotion, and / or harassment of women, minorities, older workers, persons with disabilities, or other groups in industries ranging from construction and high-tech manufacturing to financial services, legal services, restaurants, and advertising (e.g. Bendick *et al.* 2008, Bendick & Egan 2011, Bendick *et al.* 2010, Bendick, Egan & Lanier 2010).

Moreover, as this paper has emphasised, the power of these three forces has eroded in recent years, in many circumstances triggering parallel erosion of decades of progress. A fresh approach is called for.

4. Information Regulation

Underlying all three forces discussed in the previous section is the implicit assumption that employers are primarily autonomous decision-makers, reviewing the opportunities and risks in their operating environment and making their own strategic decisions, including those concerning employment practices. Information regulation derives from the alternative – in many ways more realistic – perspective of social network theory. In this perspective, employers are thought of as embedded in a web of relationships with many different stakeholders. Their decisions are seen as reflecting the firms' position, interaction, and reward structure within those relationships, and their policies and practices are thought of as continually influenced by those stakeholders (Bundy & Bucholz 2013, Granovetter 1985, Rowley 1997, Andriof & Waddock 2002, Fung, Graham & Weil 2007, Tapscott & Ticoll 2003).

Information regulation (IR) is a social change strategy building on these networks. It is defined (Kleindorfer & Orts 1998) as:

(...) any regulation which provides to third parties information on company operations (...) Informational disclosure opens up the traditional bilateral relationship between the regulator and regulated to include other social institutions, most importantly, economic markets and public opinion.

In other words, IR relies on stakeholders to employ market pressure, litigation, moral suasion, or other means to influence firms to comply with laws and conform to societal standards of behaviour. It supplements

employers' internal judgments and traditional regulatory enforcement with the action of multiple "private attorneys general" operating through powerful, decentralised scrutiny.

5. Circumstance Facilitating Information Regulation

For stakeholders to function in this way, they need to be empowered by information about the target firm's current employment practices and their alternatives. Information needs to be effectively mobilised – collected, analysed, presented in a readily accessible and understandable format, and its availability made known to potential users. Although IR has always been feasible in principle, only in the early 21st century have emerging technology and other circumstances made it likely to be effective in practice.

The most obvious facilitating circumstance is today's computer, communications, and information revolution, which has created essentially universal, inexpensive access across the US to the vast information resources of the internet and decentralised the data processing power needed to receive, manipulate, and interpret this information. Potential "private attorneys general" who can be empowered by IR data are now essentially as widespread as every personal computer, tablet, or smartphone.

These technological developments, in turn, have spawned a US culture in which individuals and organisations routinely expect to have information at their fingertips to use in daily decision-making, whether it is trivial (what restaurant to choose for dinner) or major (what career to prepare for). Government-mandated ratings (e.g. the US Environmental Protection Agency's "miles per gallon" fuel efficiency stickers on new cars or the US Department of Agriculture's nutrition content labels on boxes of breakfast cereal) reflect this development. So too does proliferation of voluntary, private ratings such as Trip Advisor's rating of hotels or the Motion Picture Association of America's "age suitability" designation for films. Such a culture is well prepared to make information-based decisions about employers if information is readily available.

A second facilitating circumstance is increasing transparency by US government agencies. Legal requirements to open most government meetings to the public or to publicly list financial contributors to political campaigns have been expanding for several decades. The federal Freedom of Information Act, granting all persons the right to access most federal agency records, was enacted in 1966. However, the trend significantly accelerated under the Obama Administration, which symbolised its

commitment to transparent government by issuing three memoranda on the subject on its first day in office in 2008. This commitment has translated into, among other things, a mandate that all federal agencies make as much of their data publicly available as possible through the internet, especially via a centralised web site, www.data.gov. That website currently provides links to around 85,000 federally-collected or federally-produced data sets of all kinds (Ginsberg 2011).

The following are examples of federal employment-focused data sources that are currently publicly available. However, the availability of this data is not widely marketed, so it is primarily used by professional specialists rather than the general public. Moreover, even professional specialists often find the data presented in formats that are obscure or awkward. For example:

- the US Equal Employment Opportunity Commission (EEOC) publicly releases lists of anti-discrimination litigation it has brought against employers. However, the lists are organised by time period, the employment practice challenged (e.g. hiring), and the demographic group involved (e.g. women). Before a comprehensive picture emerges concerning the employment practices of a specific employer, the information has to be laboriously re-sorted;
- the US Department of Labor has the authority to debar companies from receiving federal contracts based on an employers' violation of federal anti-discrimination or affirmative action regulations. However, the firms to whom debarment has been applied can only be found by applying a special "Exclusions Extract Data Package" to SAM (System for Award Management), the on-line procurement system covering several hundred thousand federal contractors;
- the US Department of Labor offers an on-line data base of establishment-specific occupational illness and injury rates. Although data are available for all years since 1996, they are downloadable only for individual establishments and the current year, making analyses of company-wide, long-term behaviour awkward and time-consuming;
- private employers file about 800,000 "Form 5500" annual reports on their employee pension plans, health insurance, and other fringe benefits. Data from these reports are publicly available on a website of the US Department of Labor, but only in "raw" form that requires organisation and comparison to make them interpretable.

The third circumstance is increasing transparency about employment practices voluntarily practised by employers themselves. In particular:

– the Global Reporting Initiative (GRI) is a leading organisation encouraging and assisting companies world-wide to publicly release standardised information on their activities related to sustainable development, which includes employment practices. For example, the 2013 GRI-listed sustainability report of the large US retailer Best Buy included data on: the representation of African Americans, Hispanics, and women in the company's overall workforce and among its executives; the amount of training provided per employee; results from the company's survey of employee engagement; and rates of employee turnover (Best Buy Corporation 2013). Currently, 368 US employers, from Abbot Laboratories to Xerox, participate in voluntary reporting coordinated by GRI (www.globalreporting.org);

– more than 25 large employers – including Citigroup, Coca-Cola, Nike, Hewlett Packard, Intel, IBM, Merck, Goldman Sachs, MetLife, and Wal-Mart – now publicly release their annual “EEO-1” reports providing the race and gender profile of their staff, either publishing their data on-line or providing them to investors upon request. Demands for this data are often championed by large investors such as the public employee pension funds of California and New York City, and shareholder resolutions mandating release are regularly submitted at stockholder meetings of many publicly-traded firms (Shadowitz 2006).

A fourth circumstance favouring IR is the increasing extent to which reporting on employment practices is legally mandated. Since the 1930s, the US Securities and Exchange Commission has required publicly-traded corporations to publish annual reports which, while focusing on financial results and business strategy issues, include some employment-related information. For example, the 2012 Form 10-K Annual Report filed with the SEC by Microsoft Corporation (at www.sec.gov/archives/edgar) reveals the identity (and thus the demographic characteristics) of the firm's board of directors and senior executives; their compensation; any employment-related litigation that might prove financially significant; and the rules of stock-based employee bonuses and stock purchase plans. In response to the recent US financial crisis and Great Recession, additional laws and regulations are coming into force. In particular, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, federally-regulated financial institutions are about to be required to publicly release annual reports on the demographic composition of their workforce and their programmes for enhancing employee diversity and inclusion.

Further expansions of federally-mandated reporting, potentially including public disclosure, are currently under discussion within the federal government. The US Department of Labor is considering expanding its annual EEO-1 reporting requirements for federal contractors to include data comparing average employee pay for gender and race / ethnicity groups (National Academy of Sciences 2012). The US Securities and Exchange Commission is being urged to expand corporations' annual mandatory reports to include demographic data on employment and pay (Eardley & Mehri 2013).

6. Empirical Evidence that Information Regulation Works

Because the longest-running applications of IR have been in environmental management, many of the empirical studies of the IR's effectiveness examine firms' environmental practices (Esty 2004, Stephan 2002, Potoski & Prakash 2005, Renshaw 2006, Tietenberg & Wheeler 2001, Dranove & Ginger 2010). These studies generally conclude that both mandatory and voluntary public disclosure of information have triggered positive changes in corporate behaviour through a variety of mechanisms. For example, one study applying social network theory to public disclosure of pollution release data concluded that the information triggered greater self-confidence for advocacy groups, increased demands for corporate accountability, promoted new forms of engagement among stakeholders, and resulted in social learning by government and industry (Gouldson 2004).

Research has reached similar conclusions with respect to the influence of stakeholders on employment practices. Most prominently, studies have documented that:

- law firms' clients have played a leading role in getting more women promoted to partnerships in the law firms that serve as their outside counsel (Beckman & Phillips 2005);
- activist stakeholders have changed the demographic composition of corporate boards of directors (Rose & Bielby 2011, Hillman, Shropshire & Cannella 2007) and other employment practices (David, Bloom & Hillman 2007);
- investors' willingness to hold stock has reflected information about employment practices (Richardson & Welker 2001, Wright *et al.* 1995);
- corporate employment practices have been influenced by the news media (Bednar 2012);

- substantial increases in worker training have been triggered by mandatory corporate sustainability reporting (Iannou & Serafeim 2012);
- positive employment effects in France have been associated with requirements that corporations publicly report their “triple bottom line” – that is, socio-economic and environmental results, not just financial ones (Egan, Bendick *et al.* 2009).

7. The Proposed Design for an Information Regulation Initiative

Suppose that the developments described in this paper were translated into a large employment-focused “data utility” in the US to provide stakeholder-empowering information. The theory and empirical evidence reviewed in this paper suggest eight principles concerning how this institution should be shaped:

Organise Data in Terms of Individual Employers. There is no shortage of research and data on broad trends in the US labour market or in individual occupations. But such information is of limited use to the individuals and organisations discussed in this paper, whose decisions require information about individual employers. While broad data may bring societal attention to bear on problems within the labour market, they only identify villainy but not the villain, and therefore do not create pressure on specific employers whose behaviour needs to change. An effective IR-empowering data utility will create something not currently available by collecting and disseminating information on individual employers.

Include Broad Data. To provide a balanced profile of each employer, data is needed on a broad range of employment practices and employment outcomes. This data should include indicators of excellent performance as well as deficiencies. Cumulatively, a comprehensive range of employment-related information would communicate an accurate sense of employers’ employment culture.

Interpret Data and Benchmark Employers against Peers. Many pieces of employment data are not immediately interpretable in isolation. That is, it is often not possible to tell if a particular numerical result is good or bad until it is compared against some standard or yardstick of how other, equivalent employers perform (Bendick 2012, Hays-Thomas & Bendick 2013). An effective data utility must place information on firms into comparative contexts so that their meaning is clear.

Curate Data. In the US, the realm of employment practices is replete with so-called information about employers that is unreliable, biased, or both. Particular scepticism is appropriate for “best employer” lists – such as “Best Hourly Employer for Working Mothers” or “Best Employer in Polk County” – which are often based on little systematic information and sometimes reflect the financial support the named companies provide to the list’s publisher. In contrast, other “best employer” ratings are thoroughly researched and contain very valuable information; leading examples include the Corporate Equality Index on LGBT-related employment practices released annually by the Human Rights Campaign (www.hrc.org) and the “Diversity Top 50” published annually by www.diversity.com. In response to this variation in quality, data must be rigorously curated to exclude misleading information and to explicitly report the credibility of underlying data sources.

Tailor to Users. A wide net needs to be cast for information users. That process should begin with identifying a broad range of potential users, such as those illustrated earlier in this paper. Then, information needs to be assembled in packages tailored to different end-users, so that the information of greatest salience to each type of user is readily available to each and is not lost in an avalanche of irrelevant information. Thus, a different information package should be crafted for, for example, an individual worker concerned about being refused a job based on sexual orientation, a different worker concerned about workplace safety, a reporter writing about the gender pay gap, and a social responsibility mutual fund seeking an employment practices ranking for a company.

Operate a “One-stop Shop”. Data should be provided to users in highly convenient formats. In particular, the data utility should provide actual data on employers rather than send the reader to seek this data via hyperlinks to other websites. In a similar spirit, the utility should present data in formats that are easy to understand, including summary figures and graphical presentations as appropriate.

Invest in Marketing. The availability of information needs to be effectively marketed in ways adapted different target markets. For example, “professional” users such as insurance companies or investment funds might be most effectively reached via articles in trade publications or presentations at professional conferences, whereas “individual” users such as workers or job seekers might be more readily reached through on-line viral marketing.

Achieve Financial Self-sufficiency. Development of a large-scale “data utility” would require initial financial support from philanthropic or

government sources. However, it has the potential eventually to generate revenue to support itself.

To assist individual workers and their advocates, it is essential that core information on employers be available at no cost to such users. However, other users – such as large, well-established law firms, insurance companies, investors, and news media – have considerable ability to pay and willingness to pay for information. Following the precedent of many information-providing websites (e.g. www.hoovers.com), this result can be achieved by offering basic information for free but offering “premium” levels of service (such as more detailed data or more complex analyses) only to users paying an annual subscription. Thus, for example, an individual job seeker could without cost obtain summary comparisons of employment practices for employers from whom she/he is considering job offers, but a billion dollar employment practices insurance company could be asked to purchase a subscription to obtain a list of all employment practice lawsuits against an employer for the past ten years.

Continue to Evolve. Last but not least, a useful information utility must engage in continual improvement to match changing circumstances. In the fast-moving world of on-line information, both data availability and user needs are not static. An effective system will need to include mechanisms for continually measuring data usage, recurrently obtaining user feedback, and eventually formally evaluating the impact of the data on users and, ultimately, on employers.

8. Conclusion

In the US in the early 21st century, many long-standing issues of workplace diversity, inclusion, and fairness remain. The approach to solving these problems which has dominated US public policy for many decades has largely run its course, and the time is ripe to move boldly in a different direction. Information regulation – the use of information by stakeholders to influence public policy as well as corporate behaviour – offers a promising new approach to help shift the balance of power between employees and employers and affect employer behaviour. Empirical studies conclude that both mandatory and voluntary disclosure of information can empower stakeholders involved in employment-related relationships, through mechanisms such as enhanced confidence for advocacy groups, increased demand for corporate accountability, new forms of engagement among stakeholders and social learning by government and industry. Relying

on empirical findings about IR, we present a design for a stakeholder-empowering “information utility” based on eight principles. Implementation of such a utility would allow stakeholders to benefit from increased transparency and power, provide greater accuracy and trust in information through curated data, and offer wider data access to a variety of stakeholders through a less expensive channel. The result would allow good employers to make their cases known, employees to select those employers who meet their needs, and “bad” employers to face social and economic pressures to change. IR offers a needed bold new approach to restore reality to the United States’ self-proclaimed status as the land of economic opportunity for all people.

Bibliography

- Allgov.com (2013) “Wal-Mart Supreme Court Case Cited in 1,200 Decisions in 2 Years”, www.allgov.com, date of access: 24 January 2013.
- Andriof, J. and Waddock, S. (2002) “Unfolding Stakeholder Engagement” in S. Rahman *et al.* (eds) *Unfolding Stakeholder Thinking*. Sheffield, UK: Greenleaf Publishing.
- Atkinson, A., Piketty, T., and Saez, E. (2011) “Top Incomes in the Long Run of History”. *Journal of Economic Literature* 49: 3–71, <http://dx.doi.org/10.1257/jel.49.1.3>.
- Beckman, C. and Phillips, D. (2005) “Interorganizational Determinants of Promotion: Client Leadership, and the Attainment of Women Attorneys”. *American Sociological Review* 70: 678–701, <http://dx.doi.org/10.1177/000312240507000407>.
- Bednar, M. (2012) “Watchdog or Lapdog? A Behavioral View of the Media as a Corporate Governance Mechanism”. *Academy of Management Journal* 55: 131–50, <http://dx.doi.org/10.5465/amj.2009.0862>.
- Bendick, Jr., M. (2012) “Setting Industry-level Priorities for EEOC Enforcement”. *Testimony, Equal Employment Opportunity Commission Hearings on the Strategic Enforcement Plan*.
- Bendick, Jr., M. *et al.* (2008) “Enhancing Women’s Inclusion in Firefighting in the USA”. *International Journal of Diversity in Communities, Organizations, and Nations* 8: 189–208.
- Bendick, Jr., M. *et al.* (2010) “Employment Discrimination in Upscale Restaurants: Evidence from Paired Comparison Testing”. *Social Science Journal* 47: 802–18, <http://dx.doi.org/10.1016/j.soscij.2010.04.001>.
- Bendick, Jr., M., Egan, M. L. *et al.* (2011) *The Availability of Women, Racial Minorities, and Hispanics for On-site Construction Employment*. Washington: US Department of Labor.
- Bendick, Jr., M., Egan, M. L. and Lanier, L. (2010) “The Business Case for Diversity and the Perverse Practice of Matching Employees to Customers”. *Personnel Review* 39: 468–86, <http://dx.doi.org/10.1108/00483481011045425>.
- Best Buy Corporation (2013) “Corporate Responsibility and Sustainability Report, Fiscal Year 2013”, www.globalreporting.org, date of access: 25 February 2014.

- Blau, F. and Kahn, L. (2006) "The U.S. Gender Pay Gap in the 1990s: Slowing Convergence". *Industrial and Labor Relations Review* 60: 1–22.
- Bundy, J. and Bucholz, A. (2013) "Strategic Cognitions and Issue Salience: Toward an Explanation of Firm Responsiveness to Stakeholder Concerns". *Academy of Management Review* 38: 352–75.
- Cascio, W. (2006) "The High Cost of Low Wages". *Harvard Business Review*, <https://hbr.org/2006/12/the-high-cost-of-low-wages>, date of access: 13 February 2015.
- Chetty, R. et al. (2014) *Is the United States Still a Land of Opportunity? Recent Trends in Intergenerational Mobility*. Boston: National Bureau of Economic Research.
- David, P., Bloom, M. and Hillman, A. (2007) "Investor Activism, Managerial Responsiveness and Corporate Social Performance". *Strategic Management Journal* 28: 91–100.
- Dranove, D. and Ginger, Jr., G. (2010) "Quality Disclosure and Certification: Theory and Practice". *Journal of Economic Literature* 48: 935–63.
- Eardley, E. and Mehri, C. (2013) *Toward a More Perfect Union: A Progressive Blueprint for the Second Term*. Washington: American Constitution Society.
- Egan, M. L., Bendick, Jr., M. et al. (2009) "France's Mandatory 'Triple Bottom Line' Reporting: Promoting Sustainable Development through Informational Regulation". *International Journal of Environmental, Cultural, Economic, and Social Sustainability* 7: 27–47.
- Esty, D. (2004) "Environmental Protection in the Information Age". *New York University Law Review* 79: 115–211, <http://dx.doi.org/10.2139/ssrn.429580>.
- Farber, H. (2008) *Job Loss and the Decline in Job Security in the United States*. Princeton: Princeton University Center for Economic Policy Studies.
- Foster, J., McChesney, R. and Jonnas, R. (2014) "Monopoly and Competition in Twenty-first Century Capitalism", www.monthlyreview.org, date of access: 24 January 2014.
- Friedman, J. (1970) "The Social Responsibility Is to Increase Profits". *The New York Times* 32: 122–6.
- Fung, A., Graham, M. and Weil, D. (2007) *Full Disclosure: The Perils and Promise of Transparency*. Cambridge, UK: Cambridge University Press.
- Ginsberg, W. (2011) "The Obama Administration's Open Government Initiative: Issues for Congress". Report 7-5700. Washington: Congressional Research Service.
- Gouldson, A. (2004) "Risk, Regulation and the Right to Know: Exploring the Impacts of Access to Information on the Governance of Environmental Risk". *Sustainable Development* 12: 136–49, <http://dx.doi.org/10.1002/sd.237>.
- Granovetter, M. (1985) "Economic Action and Social Structure: The Problem of Embeddedness". *American Journal of Sociology* 91: 481–510, <http://dx.doi.org/10.1086/228311>.
- Gyourko, J. and Tracy, J. (2014) "Reconciling Theory and Empirics in the Role of Unemployment in Mortgage Defaults". *Journal of Urban Economics* 80: 87–96, <http://dx.doi.org/10.1016/j.jue.2013.10.005>.
- Hays-Thomas, R. and Bendick, Jr., M. (2013) "Professionalizing Diversity and Inclusion Practice: Should Voluntary Standards be the Chicken or the Egg?". *Industrial and Organizational Psychology: Perspectives on Science and Practice* 6: 193–205, <http://dx.doi.org/10.1111/iops.12033>.

- Hillman, A., Shropshire, C. and Cannella, A. (2007) "Organizational Predictors of Women on Corporate Boards". *Academy of Management Journal* 50: 941-52, <http://dx.doi.org/10.5465/amj.2007.26279222>.
- Houseman, S. (2014) "Trade, Competitiveness, and Employment in the Global Economy". Upjohn Institute for Employment Research. *Employment Research* 21 (1): [1]-4, [http://dx.doi.org/10.17848/1075-8445.21\(1\)-1](http://dx.doi.org/10.17848/1075-8445.21(1)-1).
- Iannou, I. and Serafeim, G. (2012) "The Consequences of Mandatory Corporate Sustainability Reporting". Working Paper 11-100. Cambridge: Harvard Business School.
- Kleindorfer, P. and Orts, E. (1998) "Informational Regulation of Environmental Risks". *Risk Analysis: An International Journal* 18: 155-70, <http://dx.doi.org/10.1111/j.1539-6924.1998.tb00927.x>.
- Macey, W. et al. (2009). *Employee Engagement*. London: Blackwell.
- Mishel, L. (2013) "Declining Value of the Federal Minimum Wage is a Major Factor Driving Inequality". Economic Policy Institute, www.epi.org, date of access: 18 February 2014.
- National Academy of Sciences (2012) *Collecting Compensation Data from Employers*. Washington: National Academies Press.
- NELP (2014) "Enforcement of Workplace Standards". National Employment Law Project, <http://www.nelp.org>, date of access: 18 January 2014.
- Obama, B. (2013) "Remarks by the President on Economic Mobility". Washington: White House Press Release, 4 December.
- Porter, M. and Kramer, M. (2006) "Strategy and Society: The Link between Competitive Advantage and Corporate Social Responsibility". *Harvard Business Review* 84.
- Potoski, M. and Prakash, A. (2005) "Covenants with Weak Swords: ISO 14001 and Facilities' Environmental Performance". *Journal of Policy Analysis and Management* 24: 745-69, <http://dx.doi.org/10.1002/pam.20136>.
- Renshaw, K. (2006) "Sounding Alarms: Does Informational Regulation Help or Hinder Environmentalism?". *NYU Environmental Law Journal* 15: 655-95.
- Richardson, A. and Welker, W. (2001) "Social Disclosure, Financial Disclosure, and the Cost of Capital". *Accounting, Organizations and Society* 26: 597-616, [http://dx.doi.org/10.1016/s0361-3682\(01\)00025-3](http://dx.doi.org/10.1016/s0361-3682(01)00025-3).
- Rodgers III, W. and Holmes, J. (2004) "New Estimates of Within-occupation African American-White Wage Gaps". *Review of Black Political Economy* 31: 69-88, <http://dx.doi.org/10.1007/s12114-004-1011-5>.
- Rose, C. and Bielby, W. (2011) "Race at the Top, How Companies Shape the Inclusion of African Americans on Their Boards in Response to Institutional Pressure". *Social Science Research* 40: 841-59, <http://dx.doi.org/10.1016/j.ssresearch.2010.10.007>.
- Rowley, T. (1997) "Moving beyond Dyadic Ties: A Network Theory of Stakeholder Influences". *Academy of Management Review* 22: 887-910, <http://dx.doi.org/10.5465/amr.1997.9711022107>.
- Saez, E. (2013) *Striking it Richer, The Evolution of Top Incomes in the United States*. Berkeley: University of California.
- Shadowitz, D. (2006) "Going Public with EEO-1 Data". Human Resource Executive.
- Stephan, M. (2002) "Environmental Information Disclosure Programs: They Work, but Why?". *Social Science Quarterly* 83: 190-205, <http://dx.doi.org/10.1111/1540-6237.00078>.

- Stone, C. and Chen, W. (2013) *Introduction to Unemployment Insurance*. Washington: Center for Budget and Policy Priorities.
- Tapscott, D. and Ticoll, D. (2003) *The Naked Corporation: How the Age of Transparency Will Revolutionize Business*. New York: Free Press.
- Tietenberg, T. and Wheeler, D. (2001) "Empowering the Community: Information Strategies for Pollution Control" in H. Folmer *et al.* (eds) *Frontiers of Environmental Economics*. Cheltenham, UK: Edward Elgar.
- US Bureau of Labor Statistics (2013) "Union Members – 2012". News Release USDL-13-0105. Washington: US Department of Labor.
- US Bureau of Labor Statistics (2014) "Injuries, Illnesses, and Fatalities", <http://www.bls.gov/iff/>, date of access: 24 February 2014.
- US Securities and Exchange Commission (2012) "10-K Report for Microsoft Corporation". Commission File 0-14278, www.sec.gov/archives/edgar, date of access: 2 February 2014.
- Weil, D. (2010) *Improving Workforce Conditions through Strategic Enforcement*. Boston: Boston University.
- Wright, P. *et al.* (1995) "Competitiveness through Management of Diversity: Effects on Stock Market Valuation". *Academy of Management Journal* 38: 272–84.

Abstract

Regulowanie przepływu informacji w zwiększaniu różnorodności, inkluzji oraz sprawiedliwości w miejscu pracy

Tradycyjne rozumienie awansu w Stanach Zjednoczonych jako doskonalenia stosowanych praktyk w zakresie zatrudniania, wynikających z regulacji publicznych, presji związków zawodowych, sporów sądowych czy długoterminowych stosunków pracy, osłabło w ostatnim czasie, nadwyrężając siłę nierówności pomiędzy pracodawcami a ich pracownikami oraz przyczyniając się do wzrostu nierówności w amerykańskim społeczeństwie. Teorie zarządzania oraz dane empiryczne wskazują na to, że regulowanie przepływu informacji (IR) w znacznym stopniu może wpłynąć na zachowania pracowników i przyczynić się do przeciwdziałania tym trendom. Artykuł poświęcony jest rozwojowi na dużą skalę „danych użytkowych”, które zawierają rzeczywiste informacje na temat praktyk zatrudniania czy wyników indywidualnych pracowników, pozwalają na ich gromadzenie, wprowadzanie w trybie *on-line* oraz przesyłanie do szerokiego grona interesariuszy. Celem tych działań jest gromadzenie informacji dla uprawnionych interesariuszy – od indywidualnych pracowników i ich orędowników po kluczowych dla organizacji partnerów biznesowych – aby nagrodzić pożądane zachowania pracowników oraz sankcjonować zachowania niepożądane, a tym samym zachęcać ich do pożądanych praktyk, między innymi z zakresu różnorodności, inkluzji oraz sprawiedliwości.

Słowa kluczowe: regulowanie przepływu informacji, różnorodność zatrudnienia, inkluzja pracownicza, dyskryminacja pracownicza, działania afirmatywne.