Diversity Rhetoric and the Managerialization of Law

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This article examines the rise of diversity rhetoric in U.S. management and how that rhetoric reframes ideas inherent in civil rights law. Quantitative and qualitative content analyses of the professional management literature (mid-1980s–mid-1990s) illustrate a managerialization of law, a process by which legal ideas are refigured by managerial ways of thinking as they flow across the boundaries of legal fields and into managerial and organizational fields. The managerial conception of diversity adds a variety of nonlegal dimensions of diversity (e.g., personality traits) to the legally protected categories like race and sex, and it disassociates diversity from civil rights law.

INTRODUCTION

Diversity rhetoric is quite common in contemporary organizational management. Talk of diversity pervades management periodicals, human re-

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source networks, and business education. In each of these settings, diversity rhetoric extols the virtues of a diverse workforce and advocates “managing diversity” and “valuing diversity.” The message of management professionals is that organizations must embrace diversity in order to thrive in the modern world; this requires a new management style that is respectful of the varying cultural styles and backgrounds and the diverse abilities, aspirations, and attitudes of a modern workforce. In contrast to old management styles, which were developed to deal with a homogenous workforce, new management styles must be flexible, willing to defer to the interests of individuals, able to resolve new types of conflicts that arise from varying cultural backgrounds, supportive of varying lifestyles, able to match different types of people to appropriate jobs, and accommodating of different methods of getting work done and different ways of evaluating people.

Organizations appear to be embracing the message: a 1991 survey of 406 organizations showed that 63% of those organizations provided diversity training for managers; 39% provided diversity training for employees; 50% provided a statement on diversity from top management; and 31% had a diversity task force (Winterle 1992). Another study found diversity initiatives such as diversity action plans, endorsements of diversity in mission statements, and diversity career development and planning to be quite common (Wheeler 1995). As diversity rhetoric and action become more common in American management, a word that once had connotations of stock portfolios now conjures up pictures of a colorful and varied workforce and of civil rights goals achieved.

The rise in managerial rhetoric about diversity is particularly interesting because it occurs at a time when support for civil rights appears to be waning and rules banning affirmative action are gaining legitimacy. Like the rhetoric and ideals of the civil rights movement, diversity rhetoric decries discrimination and extols inclusiveness. It condemns arbitrariness and supports fairness, discredits segregation and celebrates integration. Indeed, Kelly and Dobbin (1998) argue that diversity is simply “old wine in new wineskins”; in other words, that diversity practices are essentially the same as affirmative action practices.

There is a curious paradox, however, in how diversity rhetoric in management carries forth the civil rights legacy: diversity rhetoric in fact expands the conception of diversity so that it includes a wide array of characteristics not explicitly covered by any law. Diversity of thought,

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2 Examples of anti-civil rights action include Proposition 209, passed by the California voters in 1996; Initiative 200, passed by Washington state voters in 1998; and the Texas v. Hopwood case (78 F.3d 932), issued by the Fifth Circuit Court of Appeals in 1996.
lifestyle, culture, dress, and numerous other attributes appear on a par with diversity of sex and race. Further, key proponents of the new managerial model—managers and management consultants—explicitly disassociate their efforts from civil rights law, arguing that diversity is directly valuable to organizational efficiency and important in its own right rather than because it might promote legal ideals.

This paradox suggests that managerial rhetorics, especially when they concern law or issues central to law, may have the potential to transform how managers think about law and ultimately how law is implemented in organizational settings. Managerial constructions of law may, for example, affect the representation and distribution of women, minorities, and other legally protected groups; thus managerial rhetoric about diversity can have critical implications for the realization of civil rights in the employment context. Scholars have focused on the import of managerial rhetorics for shaping management styles generally (Bendix 1956; Barley and Kunda 1992; Guillen 1994; Abrahamson 1991, 1996, 1997) but there has been virtually no attention to how managerial rhetorics may reframe understandings of law.

This article examines the managerial rhetoric of “diversity” as a means of determining how managerial rhetorics may appropriate and transform legal ideals. Of course, diversity rhetoric represents only a portion of all managerial talk about civil rights; there is, after all, much discussion and writing about civil rights generally, and in particular about affirmative action (AA) and equal employment opportunity (EEO). However, whereas those earlier writings were explicitly about law, compliance, or the problems associated with legal compliance, diversity rhetoric—which begins to appear only in the mid-1980s—portrays itself as quite distinct from civil rights law. Rather, diversity rhetoric envisions a style of management that will promote harmony and productivity in a changing world. We assert, however, that in spite of rhetorical claims to the contrary, both diversity and civil rights concern an important legal principle: the fair treatment of employees with different attributes.

That managerial rhetorics may have the potential to transform legal ideals even when they explicitly disassociate themselves from the law is precisely what makes the study of those rhetorics sociologically interesting. By studying how diversity rhetoric constructs and transforms the legal ideals underlying civil rights law, we can begin to formulate a general theory of how managerial rhetorics influence the construction and implementation of law within organizations. Thus, we focus on rhetoric specifically about diversity in management and seek to understand how, and to what extent, diversity rhetoric embraces and yet transfigures the legal ideals embodied in civil rights law. After discussing the rise of diversity rhetoric, the key question we address concerns how managerial
rhetoric about diversity constructs both the notion of diversity itself and its relation to civil rights law. Specifically, we examine the extent to which—and how—diversity rhetoric conceptualizes diversity as a managerial as opposed to a legal issue. We also examine how constructions of diversity change over time within diversity rhetoric, and we assess what factors predict managerial (as opposed to legal) conceptions of diversity.

We use the example of diversity rhetoric to articulate a theory of the *managerialization of law*, or the process by which conceptions of law may become progressively infused with managerial values as legal ideas move into managerial and organizational arenas. The managerialization of law occurs as management consultants rhetorically refashion legal ideas that challenge traditional managerial prerogatives and suggest new ideas, which they claim are more innovative, more rational, and more progressive (cf. Abrahamson 1996; Abrahamson and Fairchild 1999). We suggest that the managerialization of law has the potential to undermine legal ideals as managers shift the focus of attention from law to management. But at the same time, the managerialization of law has the potential to legalize organizations by reframing the law in ways that make it appear more consistent with traditional managerial prerogatives.

Because we are interested in the production and development of managerial ideas about law, we focus on how diversity is conceptualized in the professional management literature rather than on how it is implemented in organizations. Managerial rhetorics are important because they provide both the locale and rationale for trends in organizational management; evidence suggests that managerial rhetorics usually precede or develop along with the implementation of ideas by firms (Guillen 1994; Abrahamson 1997).

In the next section, we discuss two literatures that help to frame our inquiry into diversity rhetoric: the managerial models literature and the institutional law and organizations literature. Following that, we offer a theoretical model of the managerialization of law, which draws upon both these literatures and goes significantly beyond them. Our objective is not to test these theories; rather we wish to show how the two may be profitably combined to offer a more elegant explanation of how managerial rhetorics reconceptualize law. Next, turning to the diversity example, we discuss our methodology for studying diversity rhetoric. Our results are presented in three sections: (1) a description of the rise and progression of diversity rhetoric and its relation to managerial rhetoric about civil rights generally; (2) a qualitative analysis of the content of diversity rhetoric; and (3) a quantitative analysis of factors that predict the managerialization of law. Finally, we draw on the diversity example to offer insights into the managerialization of law more generally, arguing that
managerial rhetorics about law may arise as ideas flow across the interstitial areas where legal, managerial, and organizational fields overlap.

TWO SOCIOLOGICAL FRAMES

Two diverse sociological literatures inform our analysis of managerial attention to diversity. These literatures offer complementary explanations for change in managerial patterns and rhetoric that, when taken together, suggest a new theoretical perspective on how law may be transformed in organizational settings. First, the literature on managerial models addresses questions about why and under what conditions managers promote new sets of ideas (Bendix 1956; Barley and Kunda 1992; Guillen 1994; Abrahamson 1991, 1996, 1997) and thus provides a context for understanding the rise of managerial attention to diversity. Second, theories of law and organizations, which derive from neoinstitutional organization theory, more explicitly address the role of the professions in diffusing and institutionalizing responses to law (Edelman 1990, 1992; Edelman, Abraham, and Erlanger 1992; Edelman, Erlanger, and Lande 1993; Dobbin, Sutton, Meyer, and Scott 1993; Sutton, Dobbin, Meyer, and Scott 1994; Edelman, Uggen, and Erlanger 1999; for neoinstitutional theory, see Meyer and Rowan [1977], DiMaggio and Powell [1983], and Powell and DiMaggio [1991]). We discuss each of these literatures below.

Managerial Models

Various terms are used to describe managerial models: Bendix (1956) discusses “managerial ideologies”; Barley and Kunda (1992) analyze “managerial rhetorics”; Guillen (1994) discusses “managerial paradigms” and Abrahamson (1991, 1996, 1997) writes about “managerial fashions” and “managerial rhetorics.” Although there are minor differences in connotations, all of these authors are referring to models of management such as scientific management, human relations, and more recently, total quality management. We use the term “managerial models” to refer broadly to both managerial practices and ideas (thus, this term would encompass ideologies, paradigms, fashions, and rhetorics). Following Barley and Kunda (1992, p. 363), we define “managerial rhetorics” as “a stream of discourse that promulgates, however unwittingly, a set of assumptions about [managerial practices].” Thus, managerial rhetorics would include

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1 Abrahamson (1991, p. 259), citing Barley and Kunda (1992), defines rhetoric as a “spoken and written discourse that justifies the use of a set of techniques for managing organizations or their employees.”
spoken and written ideas that describe, promote, and rationalize managerial practices.

Theorists have advanced a variety of explanations for the rise of new models of management. Some look to specific institutional contexts, such as levels of labor activity (Jacoby 1985) or “performance gaps”—that is, significant discrepancies between managerial aspirations and achievements (Abrahamson 1997; Abrahamson and Fairchild 1999). Abrahamson and Fairchild (1999) point to the conjunction of three conditions that give rise to new managerial models: the collapse of a previous fashion, a widespread performance gap, and new rhetoric that emphasizes the performance gap. Others point to a progression of phases from more coercive to more bureaucratic designed to legitimate shop-floor practices (Bendix 1956; Edwards 1979). And still others posit a cyclical pattern between more rational and more normative rhetorics (Barley and Kunda 1992; Guillen 1994). Abrahamson (1997) shows that both the cyclical and the performance gap theories have validity and in fact work in concert. Theorists broadly agree, however, that specific managerial rhetorics generally arise in response to identifiable ideological or technical management problems (ranging from labor union activity to poor performance to the international competitive environment).

The literature on managerial models emphasizes the role of the management profession, and in particular management consultants, in constructing new managerial rhetorics. Abrahamson (1996) argues that management consultants act as “fashion setters,” who actively shape beliefs within the management community about the value of new managerial models. Drawing on the institutional organizations literature, Abrahamson suggests that management consultants, business schools, and business-press organizations are particularly important fashion setters; these actors both supply and actively promote new rhetorics that rationalize and institutionalize new managerial practices.

Managerial rhetorics thrive where they offer models that appear to enhance organizational rationality and further organizational progress (Abrahamson 1996; Meyer and Rowan 1977). Thus, fashion setters market new ideas through rhetorics that construct the novelty and rationality of new models. To construct the novelty of new models, fashion setters may emphasize the failures of previous models, pointing to their lack of fit with current organizational goals or with societal norms. To construct the rationality of new models, fashion setters use rhetorics that underscore why it is critical that managers change their procedures and why the proffered solution is the most efficient (Abrahamson 1996; cf. Edelman et al. 1992). Rhetorics that describe the actions of “successful” companies or provide quasi-theoretical statements about how new models will address critical problems are especially common ways of constructing ra-
tionality (Abrahamson 1996). Academics may participate by conducting studies that further validate the claims of management consultants and others (Edelman et al. 1992; Abrahamson 1996). Managerial rhetorics, then, are cultural phenomena: they draw their legitimacy from their cultural environments and at the same time help to shape and to construct their cultural environments. Managerial fashion setters use rhetoric not only to construct the cultural problems that require attention but also the solutions that will solve those problems. Managerial rhetorics make new managerial models seem like the most rational—and natural—way to proceed.

The case that we focus on—managerial rhetoric about diversity—differs somewhat from the models addressed in the literature on managerial models. Whereas the managerial models literature tends to address models that offer systemic approaches to the management of employees, the diversity paradigm is more narrowly related to the management of employees from different racial, cultural, and other social groups. Since this is an issue is also central to civil rights law, we turn to theories of law and organizations for further insights on managerial rhetoric that is related to law.

Theories of Law and Organizations

Institutional theories of law and organizations emphasize organizational responsiveness to the legal environment (Edelman 1990, 1992; Sutton et al. 1994; Dobbin et al. 1993). In contrast to earlier rational perspectives on law that emphasize organizational responsiveness to internal technical demands (Scott 1987), institutional perspectives suggest that organizations adopt a variety of legal structures in response to "institutionalized rules" or normative ideas or practices that have become widely accepted. These institutionalized rules, in turn, flow freely among "organizational fields." Organizational fields refer to the immediate environments of organizations, or "those organizations that, in the aggregate, constitute a recognized area of institutional life: key suppliers, resource and product consumers, regulatory agencies, and other organizations that produce similar services or products" (DiMaggio and Powell 1983, p. 143). The connectedness of organizational fields allows for the free flow—and hence the institutionalization—of ideas about law. These fields thus become the key source of ideas about how organizations ought to look, how they ought to behave, and even what elements of the environment are important and which ones constitute threats.

Institutional theory posits that the professions are key carriers of ideas among and across organizational fields (DiMaggio and Powell 1983) and that the personnel, managerial, and legal professions are particularly im-
important carriers of ideas about law (Jacoby 1985; Baron, Dobbin, and Jennings 1986; Edelman et al. 1993; Abzug and Mezias 1993; Edelman et al. 1999). Professionals carry ideas as they move among organizations, and through participation in professional networks: conferences, workshops, and the professional personnel literature all offer forums for the exposition and diffusion of new ideas within professions. Ideas are transferred among professions in part through the use of consultants. Both legal professionals and management consultants are often hired as consultants to organizations and thus their worlds intersect with the worlds of personnel officials within organizations. Professions, then, are a source of "normative isomorphism" within and across organizational fields: certain ideas, practices, routines, and scripts become institutionalized as the professions offer normative solutions to perceived managerial problem (DiMaggio and Powell 1983).

A number of empirical studies have elaborated the role of the managerial professions in constructing the meaning of law (Edelman 1990, 1992; Edelman, Petterson, Chambliss, and Erlanger 1991; Edelman et al. 1992; Edelman et al. 1993; Edelman et al. 1999). These studies suggest that legal ambiguity amplifies the opportunities for professionals to identify management problems and to propose new ideas to remedy those problems. Because law is broad and ambiguous and is rarely read directly by employers, most organizational actors rely at least indirectly on the legal profession for information about legal requirements. Lawyers often run workshops for personnel professionals or write for their professional periodicals, and personnel professionals in turn communicate the law to their employers and others who make organizational policy. As law is communicated by and among professions, it is filtered through a variety of lenses, and colored by different professional backgrounds, training, and interests.

For example, an analysis of wrongful discharge law (a common law doctrine that allows employees to sue their employers when they are fired, under a limited set of conditions), shows that the personnel and legal professions greatly inflated the threat that the doctrine posed to employers (Edelman et al. 1992). By repeatedly citing a few extreme jury verdicts in states most favorable to the doctrine, legal and personnel professionals created the impression that virtually all cases were won, with large awards, by employees. In fact, however, employers won the vast majority of these cases. But in part to inflate their own status within organizations and to expand the markets for their services, the professions created the impression of a much greater threat than wrongful discharge doctrine actually posed.

Another study, which analyzed organizational complaint handlers' ideologies about discrimination disputes, showed that complaint handlers
tended to recast discrimination complaints as managerial or interpersonal problems, thus deemphasizing the legal aspects of these claims (Edelman et al. 1993). In a third study, the personnel profession was shown to have promulgated the notion that internal grievance procedures offered organizations substantial protection from discrimination lawsuits (Edelman et al. 1999). Even though there is little hard evidence to support the idea that grievance procedures offer protection from liability, that idea has become widely accepted in organizational fields and has institutionalized the internal grievance procedure as a form of compliance with civil rights law.

Theories of law and organizations, then, suggest that professionals play an important role in constructing ambiguous legal mandates and, further, that professionals tend to interject their own interests and training into how they understand law. The precise impact of the professions varies, however. For example, whereas the wrongful discharge study found that the personnel profession amplified the threat of law, the complaint handlers’ study found that the personnel profession transformed legal threats into nonlegal problems. And the grievance procedure study found that personnel professionals constructed the nature of the response rather than the legal threat itself. But all the studies suggest that ideas about law and compliance that originate with the professions tend to become institutionalized in organizational fields and, over time, generate a diffusion of new organizational practices. Although managerial attention to diversity is not explicitly an effort to comply with civil rights law, it does emphasize some of the same ideals: in particular, inclusion and fair treatment. Thus, theories of law and organizations suggest the importance of understanding diversity in the context of managerial efforts to comply with and to interpret ambiguous law.

THE MANAGERIALIZATION OF LAW

We draw on both the managerial models and the law and organizations literatures to formulate a theory of how rhetorics may introduce managerial ways of thinking into the construction of law and legal ideas, thus managerializing the law. In most cases, the perspectives are complementary rather than competing; however, we point out one instance in which the two lead to slightly different predictions. We elaborate both perspectives by suggesting that managerial rhetorics have the potential to reframe understandings of law and legal constructs even when they claim to discuss a phenomenon different from law. Indeed, managerial rhetorics not explicitly about law may be especially powerful in shaping conceptions of law and the legal environment precisely because their relation to law...
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is veiled. This is an issue that has not been explored either by the managerial models literature, which addresses shifts in general styles of management, or by the law and organizations literature, which focuses on organizations’ direct responses to law or legal environments.

The potential of managerial rhetorics to reframe legal ideas derives from the ambiguity of law (Edelman 1992). This same study has shown that civil rights law offers employers only broad and general ideas about what employment policies ought to be, leaving wide latitude for managers to construct the meaning of law and the forms of compliance. Few employers read statute books or judicial interpretations of those statutes. Even if they were to spend their time reading law on the books, that law is too vague to offer specific directives about what compliance entails.

Employers, then, depend on a variety of professionals to interpret legal directives and to implement them within the firm. Managers (especially personnel managers and managers with compliance-related positions such as affirmative action officers), management consultants, and legal professionals are the key interpreters of civil rights laws (Edelman et al. 1992). Lawyers, either within the firm or working on retainer, may also write or review policies designed to implement civil rights laws and may serve as consultants on issues that are recognized as potentially involving legal liability. But managers and management consultants are more involved in the routine activities that are the object of civil rights laws: hiring, firing, promotion, determining the rules of work, setting tasks, and so on. Although lawyers may influence what managers know and understand about law, law in organizations is ultimately no more and no less than managerial understandings of law.

Understandings of law among management professionals, moreover, are likely to be somewhat different from understandings of law among legal professionals. In part, this is because law is peripheral rather than central to the job of management; in part, these differences stem from divergent professional backgrounds and training. Managers are chiefly interested in how to process and to govern employees in a way that, in the end, will increase organizational efficiency and productivity and, for private firms, profit. Law is an important constraint but not necessarily an important objective. Managers seek to achieve efficiency in ways that will not incur lawsuits or the ire of regulators, but they are not primarily concerned with the principles of law. Thus, managers tend to understand law—and the legal environment more broadly—as a set of constraints upon the range of possible management styles that will achieve organi-

* Top managers may function more like employers in that they are more likely to receive interpretations from the personnel managers and compliance officers below them than to produce those interpretations.
zational goals. Legal rules tend to be filtered through a set of managerial lenses chiefly designed to encourage smooth employment relations and high productivity. Thus, as legal ideas move into managerial and organizational arenas, law tends to become “managerialized,” or progressively infused with managerial values.

We now formulate four hypotheses about factors that produce a managerialization of law. Based on the managerial models and law and organizations literatures, we identify four factors that are important: the passage of time, the professions of actors who carry rhetorical messages, the emphasis on profit as a rationale for the new model (rationality), and the disassociation of the new model from law (novelty). With respect to the idea of diversity specifically, we will argue that these factors predict a construction of diversity that moves away from the ideas of formal civil rights law and toward a much broader understanding of diversity, which conforms to managerial ways of thinking.

Time

Both the managerial models and the law and organizations literatures would suggest that the managerialization of law is an institutional process—a process that occurs over time as new ideas become widely accepted and taken for granted (cf. Meyer and Rowan 1977; DiMaggio and Powell 1983). The managerial models and law and organizations literatures, however, suggest slightly different accounts of how this institutionalization process may work.

The managerial models literature does not speak directly to the managerialization of law (i.e., the infusion of law with managerial values); instead, it discusses the typical shape of managerial rhetorics themselves (i.e., the rise and fall of discourses about management practices). With respect to the latter, the managerial models literature suggests that new rhetorics become institutionalized as fashion setters establish the advantages of new managerial models and others jump on the bandwagon. After a latency period, there is a sharp rise and then a gradual decline (Abrahamson and Fairchild 1999). The managerial models literature suggests a number of possible reasons for the decline of a rhetoric (and the model that rhetoric describes): the crisis that gave rise to the rhetoric may be surmounted or may disappear, competing rhetorical claims may appear and take precedence, or the rhetoric itself may come under criticism for lack of internal consistency or empirical validity (Abrahamson 1991, 1996, 1997; Abrahamson and Fairchild 1999). However, this literature addresses the rise and fall of managerial models and rhetorics themselves, and not how those rhetorics construct law and legal ideals. Therefore, it is not
clear whether managerialized understandings of law will decline along with the decline of the rhetoric itself.

The law and organizations literature does address the construction of law and legal ideals per se but has not to date focused on the role of managerial rhetorics. Most of the research in this area has focused on the institutionalization of structural responses to civil rights law. These responses tend to be fairly long lasting because structural responses to law tend to involve staffs who develop agendas of their own and become internal advocates for legal ideals (Edelman 1992; Edelman et al. 1993; Chambliss 1996; Edelman and Petterson 1999). This literature suggests that once organizational professionals adopt a construction of law, that construction is likely to become part of the organizational culture. Moreover, recent work on the endogeneity of law suggests that lawyers and judges may embrace managerial rhetorics, lending them legal legitimacy (Edelman et al. 1999; Edelman, in press).

Because the managerial models literature deals with the rise and fall of rhetorical fashions themselves, and the law and organizations literature addresses the construction of law outside of managerial rhetorics, neither literature provides direct predictions about how the managerialization of law may progress over time. However, one may draw slightly different inferences from the two literatures. From the managerial models literature, if we assume that the managerialization of law follows the same trajectory as managerial rhetorics themselves, one may infer that the managerialization of law may rise and then decline within the lifespan of a rhetoric. Alternatively, since the law and organizations literature suggests that organizational responses to law are likely to become institutionalized over time, one may infer that managerialized conceptions of law would remain prevalent even as the rhetoric begins to decline. The only difference between the two predictions, then, is whether or not the managerialized construction of law will decline as the rhetoric itself declines.

We suspect that the managerial rhetorics are simply vehicles that carry new constructions of law. Once those new constructions of law are in place, they are likely to become institutionalized and to have a lasting impact on how managers think about the law. This is especially likely where managerial constructions of legal ideas resonate with the broader political and legal culture. Thus, following the institutional law and organizations literature, we predict that managerialized conceptions of law will become institutionalized; that is, that they will remain stable even as a managerial rhetoric itself declines.

**Hypothesis 1.**—*The managerialization of law will increase over time and will then level off.*
Diversity Rhetoric

Profession
Managers (especially personnel managers and compliance officers) and management consultants are likely to be the key promulgators of managerialized understandings of law. As the key fashion setters and participants in managerial rhetorics generally, managers and management consultants have the opportunity subtly to shape or reshape ideas about the nature of the legal environment and appropriate responses to that environment. When these professionals frame a new managerial model as consistent with the law, as different from the law, as irrelevant to the law, or as better than the law, they shape public understandings not only of how to manage but also about the meaning and requirements of law itself. When professionals frame problems as managerial rather than legal—or when they frame solutions to those problems as therapeutic or pragmatic rather than punitive—they shape understandings of law (Edelman et al. 1993). Thus, the media of managerial rhetoric, which includes professional periodicals, meetings, workshops, and electronic listserves, become powerful forums for the construction and transformation of ideas about law even when their discussions are not explicitly about law (Jacoby 1985; Baron et al. 1986; Edelman et al. 1992; Guillen 1994; Abrahamson 1996; Edelman et al. 1999).5

HYPOTHESIS 2.—Managers and managerial consultants will contribute to the managerialization of law more than will other professionals.

Rationality
Managerial rhetoric about the rationality of a new managerial model will contribute to the managerialization of law. As discussed earlier, the managerial models literature suggests that managerial rhetorics seek to establish the rationality of a new managerial model by portraying the model as beneficial to organizational goals (Abrahamson 1996). Usually, this takes the form of statements about how the new model will increase organizational efficiency, and ultimately, profit. We extend this idea by looking at the effects that rhetorics about the rationality of a new managerial model may have on the managerialization of law. As the rhetoric focuses on the benefits of the new managerial model for organizational

5 Although legal professionals are active participants in explicit constructions of law within organizations and in the construction of forms of compliance, they are far less likely than management professionals to participate in the managerialization of law. Legal professionals, even when they work within or around organizations, have different professional backgrounds and networks and are less susceptible to managerialized understandings of law (see Edelman et al. [1992], which shows that lawyers are less likely than personnel professionals to inflate the threat of wrongful discharge).
profit, it becomes easier for managers to lose sight of the law and to adopt more managerial constructions of law and legal ideas. The focus on profit as a key reason for adopting a new managerial model tends to shift attention away legal ideals and, therefore, away from the categories of persons specifically protected by the law. Instead, managers think in terms of broad managerial goals such as consistent treatment of all employees. The law is thus reshaped in ways that fit traditional managerial goals and ways of thinking.

HYPOTHESIS 3.—The greater the occurrence of managerial rhetoric about the rationality of a new model, the greater the managerialization of law.

Novelty

Managerial rhetoric about the novelty of a new managerial model will contribute to the managerialization of law. The managerial models literature asserts that fashion setters construct the novelty of new managerial models by differentiating them from previous models and by establishing the need for the new model (Abrahamson 1996; Abrahamson and Fairchild 1999). To encourage attention to the new models, managerial rhetorics emphasize the failure of previous models. As with rationality, we extend the managerial models literature by asserting that rhetoric about the novelty of a new managerial model will have effects on the managerialization of law. Where previous managerial models are related to law, rhetoric about the novelty of new managerial models may delegitimize the law by suggesting previous models are no longer necessary or are inconsistent with the current political environment. To the extent that managerial rhetoric successfully portrays a law-related managerial model negatively or as outmoded, it will allow managers to appropriate and transform legal ideals in ways that are more compatible with managerial interests.

HYPOTHESIS 4.—The greater the occurrence of managerial rhetoric about the novelty of a new model, the greater the managerialization of law.

In sum, legal ambiguity leaves legal constructs open to influence by managerial rhetorics. Although managerial rhetorics serve chiefly to promote new managerial models, we argue that they also tend to infuse conceptions of law with managerial values.

We now turn to an empirical examination of a particular managerial rhetoric—diversity rhetoric—as a means of exploring these hypotheses. After discussing our methodology for studying diversity rhetoric, we present our results in three sections. First, we describe the rise and progression of diversity rhetoric, showing how it generally fits the pattern of other
managerial rhetorics. Second, we provide a qualitative analysis of the content of diversity rhetoric, which illustrates the managerial influence on the construction of diversity as well as how managers construct both the rationality and novelty of diversity. Finally, we turn to a quantitative analysis of factors within diversity rhetoric that engender a managerialization of law.

METHODOLOGY

In order to examine diversity rhetoric, we analyzed the professional management literature on diversity. The professional management literature provides a rich source of data on both the timing of managerial rhetorics and the transformation of ideas over time, and it has provided data for numerous studies of management ideology and management rhetorics (Edelman et al. 1992; Edelman et al. 1999; Barley and Kunda 1992; Abzug and Mezias 1993; Guillen 1994; Abrahamson 1997). Not only does this literature reflect managerial ideals; it also constitutes one of the key forums through which ideas are introduced and disseminated to other managers and organizational actors (DiMaggio and Powell 1983; Jacoby 1985; Baron et al. 1986).

It is important to reiterate that the professional management literature captures managerial rhetoric about diversity, but it does not necessarily capture what organizations are doing in the diversity realm. There is evidence that the two are correlated: Abrahamson (1997) reports that surveys carried out by the National Industrial Conference Board (NICB) reveal that the creation of personnel departments rises at times when there are higher percentages of articles advocating human relations techniques. Other theorists, however, suggest that managerial rhetorics reflect the practices only of the largest or most innovative firms (Brody 1968; Edwards 1979). We follow Barley and Kunda (1992) and others (Guillem 1994, Abrahamson 1996), however, in suggesting that—irrespective of their relation to organizational practice—managerial rhetorics are important phenomena for study in and of themselves because they represent the culture of business and the discourse of management fashion setters. Further, our data represent what organizations are hearing about through the professional literature on management. Not only are managers and human relations professionals the intended audience for these publications, but it is our strong impression that these articles reflect the content of diversity training seminars that many of these managers attend.
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Sample

To select a sample of professional management periodicals, we began with a list of all English-language publications listed under five headings in *Business Information Sources* (Daniells 1993): business and economics, management, organizational behavior, human resources and personnel, and training and development. We excluded publications that were primarily academic journals. We also excluded those with circulation under 20,000 or those published outside the United States, except in the case of human resources and personnel publications, since those were most central to the phenomenon under study. This left us with 18 professional management periodicals.

We used these journals to construct two separate data sets. The first data set—the diversity data set—is the focus of our study. This data set contains all of the articles that refer to diversity (some of which also refer to civil rights, including EEO or AA). This data set allows us to examine our key research questions concerning diversity rhetoric and the managerialization of law. The second data set—the civil rights data set—allows us to place the diversity data set in historical context. The civil rights data set comprises articles that address civil rights (including EEO or AA) but that do not address diversity. We discuss these two data sets separately below.

To construct the diversity data set, we used the ABI/Inform (1975–96) database to search the 18 journals from 1975 to 1996 for all articles with the keyword “diversity.” All articles that used the keyword “diversity” were included (some of which also discussed civil rights, EEO, or AA). We then excluded three types of articles: (1) those that were about types of diversity other than workforce diversity (e.g., stock portfolio diversity), (2) those that focused on issues exclusively related to globalization and multinational corporations in other countries, and (3) those that were fewer than 200 words in length. Omitting very short articles makes sense in a project that uses content coding, since space limitations rather than an author’s perspective may preclude mentioning an issue that the coding scheme aims to capture. We also excluded three early articles that used the term “diversity” in the lay sense rather than in reference to a style of management and that were isolated in time (two in 1976 and one in 1982). These three articles precede the apparent inception of diversity rhetoric, which (as we argue below), began in earnest in 1987. Our final diversity data set, then, consists of 286 diversity articles across 17 publications (one publication contained no articles on workforce diversity), which were

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* Keywords in the ABI/Inform database may appear in the title, subject terms, subject categories, or abstract of a citation.
published between December 1987 and December 1996. Appendix table A1 shows statistics on our sample of periodicals and on the articles on diversity published during the sample period.

To construct the civil rights data set, we searched the same 18 journals for articles that included the keywords “EEO” or “equal employment” or “equal employment opportunity” or “civil rights act” or “affirmative action.” For this search, we excluded articles that also included the keyword “diversity,” since all articles that discuss diversity (including those that also discuss civil rights) are included in the initial diversity data set. We use the civil rights data set to document the pattern of broader civil rights rhetoric and therefore to place the rise and progression of diversity rhetoric in historical context.

Coding

We content coded only the diversity data set. We coded only explicit statements. Our coding scheme was conservative in that coders were instructed not to extrapolate from suggestive or ambiguous statements. The coding scheme was developed by all three authors and revised several times during the early part of the coding process. After each revision, any articles that had already been coded were recoded to account for the revisions. The third author coded 75% of the articles and closely supervised a graduate student who coded the other 25%. If any questions arose during the coding, the two coders decided together how to code the article or, if necessary, brought it to the attention of the other authors.

Measures

Table 1 shows the variables we coded in the diversity data set. In order to operationalize the managerialization of law, we coded authors’ constructions of diversity. Specifically, we coded the extent to which authors discussed diversity along dimensions protected by law (race, color, sex, religion, national origin, disability status, pregnancy, age, veteran status, and sexual orientation) and along other, nonlegal, dimensions (such as

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7 Often, articles contained clear definitions of diversity so that coding the author’s conception of diversity was straightforward. At other times, constructions of diversity were taken from explicit illustrations peppered throughout an article. But only explicit statements were coded. Coders were instructed not to infer constructions of diversity from the overall tone of the article.

8 Because the coders worked closely, we are confident that there were no systematic differences between their coding and therefore did not calculate intercoder reliability.

9 All of these categories except sexual orientation are protected by federal law. Sexual orientation is protected under some state and local laws.
### TABLE 1
**Variables**

<table>
<thead>
<tr>
<th>Description (Range/Value)</th>
<th>Mean</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>$N$ of nonlegal constructions of diversity (0–8)</td>
<td>1.60</td>
<td>1.63</td>
</tr>
<tr>
<td>$N$ of legal constructions of diversity (0–7)</td>
<td>3.20</td>
<td>1.92</td>
</tr>
<tr>
<td>$N$ of months since diversity rhetoric originated (0 –108)</td>
<td>72.86</td>
<td>22.21</td>
</tr>
<tr>
<td>(N of months since diversity rhetoric originated)$^*$</td>
<td>5,799.8</td>
<td>2,958.6</td>
</tr>
<tr>
<td>Published before 1989 (yes = 1)</td>
<td>.021</td>
<td>.144</td>
</tr>
<tr>
<td>ln $N$ of pages (actual range = 1–31; log range = 0–3.43)</td>
<td>4.67</td>
<td>4.47</td>
</tr>
<tr>
<td>Mentions civil rights law, EEO, etc. (yes = 1)</td>
<td>.483</td>
<td>.501</td>
</tr>
<tr>
<td>Judges EEO law negatively (yes = 1)</td>
<td>.150</td>
<td>.358</td>
</tr>
<tr>
<td>Will increase profit (yes = 1)</td>
<td>.476</td>
<td>.500</td>
</tr>
<tr>
<td>Demographic change makes diversity desirable/necessary (yes = 1)</td>
<td>.420</td>
<td>.494</td>
</tr>
<tr>
<td>Related to obeying the law (yes = 1)</td>
<td>.192</td>
<td>.395</td>
</tr>
<tr>
<td>The fair or right thing to do (yes = 1)</td>
<td>.301</td>
<td>.459</td>
</tr>
<tr>
<td>Customer/client diversity necessitates workforce diversity (yes = 1)</td>
<td>.294</td>
<td>.456</td>
</tr>
<tr>
<td>(Yes = 1)</td>
<td>.078</td>
<td>.269</td>
</tr>
<tr>
<td>Staff writer</td>
<td>.301</td>
<td>.460</td>
</tr>
<tr>
<td>Freelance writer</td>
<td>.124</td>
<td>.330</td>
</tr>
<tr>
<td>Other author</td>
<td>.071</td>
<td>.257</td>
</tr>
</tbody>
</table>

**NOTE.** $N$ is from 281 to 268, depending on the variable.

$^*$ Negative civil rights judgment is a composite dummy variable that equals “1” if civil rights is judged negatively, compared unfavorably to diversity, or considered outdated, and is not explicitly considered as a paradigm that can or should coexist alongside diversity.
culture, geographic location, dress style, lifestyle). Table 2 shows all of the specific constructions of diversity that we found. The legal and nonlegal categories shown in table 1 are composites of the constructions shown in table 2; that is, the nonlegal categories variable is operationalized as the number of constructions that are not explicitly consistent with law, and the legal categories variable is operationalized as the number of constructions that are explicitly consistent with law. Therefore, we operationalized the managerialization of law as the number of nonlegal categories. We also included the number of legal categories as a control variable, since some authors were more verbose about the construction of diversity. A related control variable was article length, measured as the natural log of the number of pages.

In order to analyze time trends in the construction of diversity, we coted the date of the article. Time is measured as the number of months since the inception of diversity rhetoric, which (as we argue below) was December 1987. We also calculated the square of time to check for a nonlinear relationship and included a flag for articles published during the first year after the inception of diversity rhetoric.

To measure the effect of different fashion setters, we coded the profession of each author. Where there were multiple authors, we coded the profession of the first author. The categories of author were executive or manager, management consultant, management academic, editor, staff writer, freelance writer, and other. Interestingly, only three of the authors listed their profession as “lawyer,” thus lawyers are included in the “other” category.

In order to examine authors’ efforts to construct the rationality of diversity, we coded each of the reasons that authors gave for promoting diversity, using a separate dummy variable for each reason. These reasons fell into five categories: profit, demographics (or demographic change), law, fairness, and a diverse customer base. We operationalized rationality with a dummy variable coded “1” if the author used profit as a reason for supporting diversity and “0” if he or she did not.

Finally, we coded two variables that measure different dimensions of authors’ efforts to construct the novelty of the diversity model. Authors

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10 There is one exception to this categorization. We include “diversity as including whites or males” in nonlegal constructions even though race and sex are formally covered by federal law because this construction of diversity tends to be used in a way that seems inconsistent with the law, that is, to suggest that white males are excluded by the current political climate.

11 Some of the articles discussed demographics and diverse customer bases as market-based rationales for diversity. However, these dimensions were also discussed in the context of fairness-based rationales for diversity. Thus, we use profit as the clearest exemplar of attention to rationality in market terms.
### Table 2
Constructions of Diversity

<table>
<thead>
<tr>
<th>Construction</th>
<th>Articles Using Construction (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Legal:</strong></td>
<td></td>
</tr>
<tr>
<td>Race or ethnicity</td>
<td>85.0</td>
</tr>
<tr>
<td>Sex</td>
<td>77.7</td>
</tr>
<tr>
<td>Age</td>
<td>40.2</td>
</tr>
<tr>
<td>Disability</td>
<td>28.7</td>
</tr>
<tr>
<td>National origin</td>
<td>35.3</td>
</tr>
<tr>
<td>Other legislation (e.g., religion)</td>
<td>24.5</td>
</tr>
<tr>
<td>Gay/lesbian*</td>
<td>28.3</td>
</tr>
<tr>
<td>Mean (SD)</td>
<td>3.2 (1.9)</td>
</tr>
<tr>
<td><strong>Nonlegal:</strong></td>
<td></td>
</tr>
<tr>
<td>Cultural</td>
<td>43.4</td>
</tr>
<tr>
<td>Geographical</td>
<td>9.8</td>
</tr>
<tr>
<td>Level/rank within organization</td>
<td>9.8</td>
</tr>
<tr>
<td>Training</td>
<td>11.9</td>
</tr>
<tr>
<td>Communication style</td>
<td>10.9</td>
</tr>
<tr>
<td>Problem-solving style</td>
<td>8.0</td>
</tr>
<tr>
<td>Prior work experience</td>
<td>10.1</td>
</tr>
<tr>
<td>Attitude, lifestyle, behavior*</td>
<td>22.7</td>
</tr>
<tr>
<td>Diversity of employee benefits</td>
<td>12.9</td>
</tr>
<tr>
<td>Diversity of customer/client base</td>
<td>8.0</td>
</tr>
<tr>
<td>Diversity in services and products</td>
<td>1.0</td>
</tr>
<tr>
<td>Diversity includes white men</td>
<td>11.2</td>
</tr>
<tr>
<td>Mean (SD)</td>
<td>1.6 (1.6)</td>
</tr>
</tbody>
</table>

**Note:** $N = 286$.

* Some state and local level employment discrimination laws prohibit discrimination based on sexual preference.

† Excludes lifestyle based on legally protected categories (e.g., religion and sexual preference), which would be coded under the relevant legal construction variable.

seeking to establish the novelty of the diversity model might do so either by neglecting civil rights entirely, or by referring to civil rights negatively or as outmoded. Thus, we include two measures of novelty: (1) a dummy variable measuring whether authors explicitly mentioned civil rights, and (2) a dummy variable measuring whether those authors who do mention civil rights portray civil rights negatively or as outmoded. The second variable was coded “1” if the author stated that the diversity paradigm is better than civil rights or if the author evinced a negative or hostile attitude toward civil rights, and, additionally, if the author did not state that the two paradigms can coexist within an organization or are both necessary.\(^{12}\) No author portrayed civil rights as preferable to diversity.

\(^{12}\) We also coded a more liberal construction of this variable in which we dropped the constraint that to be coded “1,” the article must not state that the civil rights and diversity paradigms could coexist. The results did not differ substantially.
METHOD OF ANALYSIS

We analyzed the data both qualitatively and quantitatively. Our qualitative analyses were designed to locate and document themes regarding constructions of diversity. Quantitative analyses included descriptive statistics and ordinary least squares (OLS) regression using Stata software.

THE RISE AND PROGRESSION OF DIVERSITY RHETORIC

In this section, we describe the rise and progression of diversity rhetoric, showing how it generally fits the pattern of other managerial rhetorics. Further, we compare the rise and progression of diversity rhetoric to managerial rhetoric about civil rights more generally in order to show that diversity rhetoric appears to have displaced a great deal of the civil rights rhetoric.

The managerial models literature suggests that new managerial models—and rhetorics—tend to arise as managerial fashion setters devise novel solutions to apparent market-related crises. As managers jump on the bandwagon, rhetorics may become institutionalized and quickly gain acceptance. But managerial rhetorics tend to be short-lived because the status of managers depends on the production of novel ideas. Thus, new rhetorics and models (deriving from new crises) tend to engender the decline of previous ones (Guillen 1994; Barley and Kunda 1992; Abrahamson 1996, 1997; Abrahamson and Fairchild 1999).

The rise and progression of diversity rhetoric is fairly consistent with this pattern (although we will argue that the crisis spawning attention to diversity comes more from the legal and demographic environments of organizations than from market-related sources). Figure 1 places diversity rhetoric in historical context, showing the rise and progression of diversity rhetoric relative to civil rights rhetoric. The white line represents diversity rhetoric; it includes all articles that use the keyword “diversity,” including those that also mention civil rights. The black line represents all pure civil rights rhetoric, that is, articles that address civil rights generally or address EEO, or AA, but do not address diversity. The dotted line is a subset of the black line: it includes articles on civil rights generally and on EEO, but excludes articles on AA and on diversity. Thus, the white line includes all cases in the diversity data set, whereas the black line includes all cases in the civil rights data set.

Figure 1 shows that attention to diversity in the professional management literature (white line) began in earnest in 1987, rose sharply through
1993, and then declined somewhat between 1993 and 1996.\textsuperscript{13} Comparing the diversity data set (white line) to the civil rights data set (black line), figure 1 shows that diversity rhetoric rose during a period of relatively low attention to civil rights in the professional management literature, indicative of an opening for the evolution of a new managerial rhetoric. By 1993, the number of articles discussing diversity exceeded the number that discussed only civil rights. Figure 1 shows, then, that diversity rhetoric is not just a "drop in the bucket" of all managerial rhetoric about

\textsuperscript{13} The inception of diversity rhetoric is apparent in management textbooks as well as in the professional personnel literature. We reviewed management textbooks back to 1976 and found no references to diversity prior to 1988; in fact the word "diversity" cannot even be found in the indexes of these texts (e.g., Daft 1983; Dunham 1984; Filley, House, and Kerr 1976; French 1987; Haimann and Hilgert 1987; Haimann, Scott, and Conner 1985). In contrast, it is common in management texts from the 1990s to emphasize diversity and to offer advice for dealing with the "new workforce" (e.g., Robbins 1993; Schermerhorn, Hunt, and Osborn 1997). Treatment of this diversity in these later texts is generally given at least several pages, titles of chapters dealing with individual characteristics frequently include "diversity," and entire chapters are devoted to "managing diverse employees" (e.g., Daft 1995; Moorhead and Griffin 1998).
civil rights but rather was as prevalent at its peak as was civil rights rhetoric at its peak.

Further, comparing the civil rights line that includes both EEO and AA (black line) to the civil rights line that excludes AA (dotted line) reveals a sharp increase in articles discussing affirmative action during the late 1970s and early 1980s, a time when civil rights enforcement was at its strongest and organizational attention to and support for civil rights law was relatively high (Edelman 1992). A second peak in civil rights rhetoric in the mid-1990s, which coincides with the peak in diversity rhetoric, may reflect a backlash against affirmative action and civil rights law generally (Stryker, Scarpellino, and Holtzman 1999).

The rise of diversity rhetoric, then, appears to have come at a time of considerable legal ambiguity and controversy over affirmative action. The 1980s saw a fair amount of opposition to affirmative action from the Reagan administration (Skrentny 1996) and from an increasingly conservative Supreme Court (Freeman 1990). While both political commentators (Bennett, Chavez, Cohen, and Decter 1988) and scholarly evaluations (Skrentny 1996) conclude that President Reagan did not accomplish the dismantling of affirmative action that he promised during his first candidacy, the Reagan administration did instill a belief that it would curtail government involvement in affirmative action programs. Indeed, during Reagan’s second term, Executive Order 11246 (which mandates affirmative action among government agencies and contractors) was almost replaced by language forbidding preferences. The budgets of the U.S. Equal Employment Opportunity Commission (EEOC) and Office of Federal Contract Compliance Programs (OFCCP) were significantly reduced in the 1980s as well (DiPrete and Grusky 1990). Further, Reagan’s selection of socially conservative judicial and nonjudicial appointees signaled a sharp ideological shift in federal support for affirmative action. The appointment of Justice Scalia to the Supreme Court and the elevation of Justice Rehnquist to Chief Justice created the potential for long-term change in legal policy, while the appointments of conservatives Clarence Thomas (to head the EEOC) and Bradford Reynolds (as Assistant Attorney General for Civil Rights) threatened short-term strategies and newly secured benefits. At the same time, court decisions such as the 1984 Firefighters Local Union no. 1784 v. Stotts (467 U.S. 561), which held that layoffs according to seniority systems are valid even if they compromise a consent decree reached to remedy discrimination, created considerable ambiguity for employers concerning what types of remedial practices were legal.

Figure 1 illustrates the fact that managerial rhetoric about civil rights declined in the early 1980s and had reached new lows by 1987, concurrent with the new legal environment. Personnel managers and affirmative
action compliance officers needed a new managerial model to replace the emphasis on civil rights law (and possibly to preserve their jobs, many of which had been organized around civil rights compliance). Against this environment, *Workforce 2000: Work and Workers for the 21st Century* (Johnston and Packer 1987) appeared in 1987 and predicted dramatic changes in the composition of the American workforce. This publication seems to have provided the perceived crisis that gave rise to new ideas about "managing diversity" and a rhetoric that supported and rationalized those ideas. *Workforce 2000* suggested that the American workforce was in the process of undergoing a dramatic change in composition, becoming more diverse on attributes such as sex, race, ethnicity, and national origin. While its analysis of the workforce covered multiple topics, the most dramatic prediction of *Workforce 2000*, and the one most frequently cited in the professional personnel literature, was that by the year 2000, only 15% of new entrants to the American workforce would be American-born white males, while the remaining 85% of first-time job seekers would be women, minorities, and foreign-born U.S. residents. Based on this demographic shift, the report forecasted an impending economic crisis, which would result from the grave skill mismatch between jobs and people. There would be a tight labor pool for the highly educated, skilled, and talented, and a glut of marginally functional (illiterate) unskilled workers.

These claims appear to have been largely erroneous. The Bureau of Labor Statistics (BLS) reported that although growth rates for blacks, Hispanics, and Asians would be slightly higher than those for whites during the 1994–2005 period, whites would remain a majority of the civilian labor force (Fullerton 1997). The large discrepancy between predictions by *Workforce 2000* and the BLS can be explained by a simple error in the former: Parker and Johnson confuse "new entrants to the workforce" with "net additions to the workforce." In "Myths about Diversity," Friedman and DiTomaso (1996) resolve the confusion: whereas new entrants mean people entering the labor force for the first time, net additions refers to the subset of new entrants who are not simply replacing someone else leaving the workforce. Friedman and DiTomaso showed

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14 The authors consistently acknowledge that their immigration projections are highly contingent upon unpredictable changes in the world and domestic political economies.

15 *Workforce 2000* also predicted that a changing age composition would produce a more rigid workforce that might be reluctant to relocate and would involve high health care costs. The rise in women's labor force participation would be accompanied by costly social and business supports for working mothers and dual-earner families, such as day care, part-time work, and revised tax structures. And an increase in dual-earner families would augment the rigidity of the labor force by making relocation even more difficult.
that although non-Hispanic white males would constitute about a third of new entrants to the workforce, they would constitute only about 13% of net additions to the workforce between 1994 and 2005. Net additions, however, is small relative to the number in the total labor force and thus would have a relatively small impact on the composition of the total labor force. Thus, the proportion of non-Hispanic white males is decreasing slightly because a larger portion of new entrants are minorities or women, but the workforce as a whole would not change dramatically.\textsuperscript{16} Today, even the Hudson Institute has acknowledged that its predictions were incorrect. In \textit{Workforce 2020}, published 10 years later (Judy and D'Amico 1997), the authors in fact recant the earlier predictions and offer numbers similar to those of Friedman and DiTomaso, suggesting that the U.S. labor force continues to become more ethnically diverse albeit at a fairly slow pace.

The claims of \textit{Workforce 2000} also fly in the face of work by economists on the impact of civil rights law. Economists who study the impact of Title VII have found that the act had a small but statistically significant impact on the workforce share of black males and white women, especially in firms that are government contractors. But economists find that the impact of civil rights laws has neither been dramatic, nor has it produced a very diverse workforce (Leonard 1984, 1986; Heckman and Payner 1989; Blumrosen 1993).

Despite its inaccuracy, \textit{Workforce 2000} appears to have been the catalyst that precipitated diversity rhetoric. As shown in figure 1, the surge in diversity rhetoric appeared shortly after the publication of \textit{Workforce 2000}. Within a few years after the publication of \textit{Workforce 2000}, diversity had become a buzzword in management circles. Numerous books and articles about management echoed and uncritically accepted the claims of \textit{Workforce 2000}, many explicitly mentioning that source. These publications rehearsed and elaborated the nature of the threat, outlining an education gap between workers and organizational needs due to the influx of unskilled immigrants, older workers, workers with disabilities, two-career and commuting couples, and others who would need various accommodations. The articles did not merely discuss diversity along ethnic and

\textsuperscript{16}Friedman and DiTomaso note that this is part of a very long term change in the percentage of white males, from 69% of the labor force in 1940 to 46% in 1994, to a projected 44% in the year 2005. They point out, further, that the trend toward a smaller proportion of white males has in fact been slowing in recent years. They suggest that the increase in gender diversity is essentially over and that future increases in racial diversity will come primarily from immigration. And although net additions to the workforce may be largely comprised of immigrants, especially Hispanics, the relatively small initial numbers of these employees means that the overall impact of this change will be small.
socioeconomic lines, however. Rather, diversity proponents added a twist to these predictions that \textit{Workforce 2000} had not explicitly suggested: noting that women, minorities, and the foreign-born are \textit{culturally} different from the traditional workforce, proponents began to emphasize the need for a new managerial model that was far more cognizant of different belief systems, cognitive and interactive styles, and career goals. The diversity model embraces a style of management designed to be inclusive, to recognize multiple cultures, to encourage communication among employees with different cultural backgrounds, and to take advantage of the creativity that flows from a diverse workforce. To establish the import of the proposed managerial model, the publications tie "managing diversity" not to law but rather to organizational survival.\textsuperscript{17}

It is now a fact that by the year 2000, the workforce will be dominated by groups, such as women and minorities, which traditionally have been discriminated against. . . . The bottom line lesson is straightforward: those organizations seen as hostile to (or perhaps merely not supportive of) disenfranchised groups simply will not be able to acquire the competent workforce they need to do successful work in the business arena in the next century. (Jackson et al. 1993, p. 23)

"Managing diversity" is fast becoming the corporate watchword of the decade—not because corporations are becoming kinder and gentler toward culturally diverse groups but because they want to survive. (Henderson 1994, p. 3)

While society has not succeeded in producing a true melting pot, employers have no choice [but to do so]. It is not a question of political correctness; it is a matter of survival. \textit{Workforce 2000} is here. Simply put, there are not enough white males to fill all of the jobs available in the American economy. (Segal 1995, p. 31)

Thus, \textit{Workforce 2000} appears to have spawned diversity rhetoric by constructing a threat regarding a major change in the demographics of the workforce. The professional management literature picked up that (largely erroneous) threat and made it into a full-blown crisis with rhetoric that justified and necessitated a major change in management style (cf. Abrahamson and Fairchild 1999).

\textsuperscript{17}Diversity rhetoric is similar in management textbooks, as the following quote illustrates: "Workforce diversity is increasing in both the United States and Canada, as it is in much of the rest of the world. For example, in the United States, figures indicate that between 1990 and 2005, about 50% of the new entrants to the labor force will be women and such racial and ethnic groups as African Americans, Latinos, and Asians. At the same time, those 55 and older are projected to make up nearly 15% of the labor force. All of this is in sharp contrast to the traditional, younger, mostly white American male, labor force" (Schermernhorn et al. 1997, p. 42).
In sum, the events that surround the rise of diversity rhetoric are consistent with arguments in the managerial models literature, which emphasize the role of crises in motivating new managerial rhetorics. The crisis motivating diversity rhetoric grows out of legal ambiguity, political controversy, and demographic threats that would aggravate both. Further, in this case, the crisis appears to be largely socially constructed by management consultants who use erroneous statistics to portray the demographic environment as far more threatening than it is (Edelman et al. 1992; Edelman et al. 1999).

Moreover, the general progression of diversity rhetoric follows the pattern suggested by the managerial models literature in that there is a gradual increase in attention to diversity (which at its peak exceeds attention to civil rights), followed by a decline as the diversity "fashion" declines.\(^8\) Given that diversity rhetoric appears to have displaced quite a bit of managerial attention to civil rights during its duration, it becomes extremely important to look at the meaning of "diversity" and its relation to civil rights.

THE CONTENT OF DIVERSITY RHETORIC

We present, in three sections, qualitative analyses and descriptive statistics to portray the content of articles on diversity in the professional management literature. In the first section, we describe how managers construct the meaning of diversity, producing a "managerialization of law." In the second and third sections, respectively, we describe how the literature emphasizes the rationality and novelty of the diversity model.

Diversity as Managerialization of Law

We begin by elaborating an understanding of "diversity" derived from the statutory language of civil rights law as a kind of ideal-type. We then show how managerial rhetoric expands upon the ideal-type by framing diversity in ways that reflect managerial interests and ideals.

The formal legal model.—Title VII of the 1964 Civil Rights Act protects employees from discrimination on the basis of race, color, sex, national

\(^8\) Since our focus is on how diversity rhetoric constructs the meaning of law rather than on the reasons for the decline of the diversity rhetoric, an explanation for the decline of diversity rhetoric is beyond the scope of this paper. The managerial models literature, however, suggests several possible reasons for this decline: the crisis that gave rise to the rhetoric may have dissipated; the rhetoric may have come under attack for lack of internal consistency or empirical validity; or other rhetorical claims may have begun to compete (Abrahamson 1991, 1996, 1997).
origin, and religion. Other civil rights statutes protect employees from discrimination on the basis of age, veteran status, pregnancy, and disability status, and a few jurisdictions offer protection against sexual orientation discrimination. The categories that Congress chose to protect in enacting civil rights legislation are generally based on an understanding of the historical discrimination and disenfranchisement experienced by these groups. There has of course been considerable debate among legislators, political activists, lawyers, and judges about the intended meaning of civil rights law and about the coverage of the categories of employees that law protects. Thus, it would be wrong to suggest that there is a unitary or coherent understanding of diversity in the legal realm. Nonetheless, it is possible articulate a vision of diversity based on a literal reading of the statutory language of civil rights law. This “formal legal model,” in which diversity is understood as representation along the categories explicitly designated by statutes, is assumed by many legal actors and is well represented in court cases addressing civil rights issues. The formal legal model is not a random list of attributes; rather, it embraces a moral ideal that groups of citizens who have been subject to past discrimination are now entitled to special protection against any further discrimination and to fair opportunity in employment. For now, we treat the formal legal model as an ideal-type against which to compare the managerial conception of diversity. Later, we show that the legal field in fact shares some elements of the managerial understanding of diversity. Thus, although the formal legal model describes a central conception of diversity in the legal field, it is not the only conception.

*The managerial conception.*—Our examination of the diversity rhetoric shows that managerial conceptions of diversity include, but expand significantly upon, the formal legal model. Virtually all the articles do mention at least one legally protected dimension along which diversity is important (usually race or sex). But in addition, the professional literature emphasizes the importance of diverse attitudes, work styles, communication skills, and cultural competence. And some articles advocate diversity on dimensions that seem even further from the formal legal model such as rank or function in the organization, educational background, and even characteristics that might seem trivial, like chattiness or thinking style. As the following examples illustrate, the managerial conception of diversity significantly expands upon the formal legal model and emphasizes nonlegal dimensions.

Although race and gender issues are given top priority in much current valuing diversity work, the concept of valuing diversity applies equally to issues of religious and regional differences, class, age, disability, veteran status, sexual orientation, and lifestyle. Many of the conflicts that multi-
cultural trainers address also occur across educational lines (for example, employees with MBAs versus those without college degrees), function (creative, marketing [types] versus engineers), or position (line versus staff). . . . Indeed, "culture" is a word that can be applied to any group. There certainly are regional, professional, class, and lifestyle cultures. (Copeland 1988, p. 49)

PG&E defines diversity as any difference in race, gender, age, language, physical characteristics, disability, sexual orientation, economic status, parental status, education, geographic origin, profession, lifestyle, religion, or position within the hierarchy of the organization. (Johnson and O'Mara 1992, pp. 51–52)

At Hallmark, diversity includes, but is not limited to: ethnic origin, religion, gender, age, sexual orientation, disability, lifestyle, economic background, regional geography, employment status, and thinking style. (Flynn 1996, p. 52)

[At Westinghouse we] value diverse opinions, diverse skills, and diverse personalities all working in harmony in a team. Diverse people each bring their special skills and the ability to see a problem from a different angle, and that's important . . . We look for people from all different social and academic backgrounds and try to mix quiet with talky people, electrical engineers with software and quality-assurance engineers. (Altany 1992, pp. 32–33)

Table 2, which shows the various constructions of diversity that we found, helps to put these examples in perspective. Almost all of the articles (91%) explicitly mentioned at least one of the legally protected categories, in particular diversity on the basis of race or ethnicity (85%) or sex (78%). But the construction of diversity goes far beyond legally protected categories. The most commonly mentioned nonlegal construction of diversity is "cultural diversity," which was mentioned by nearly half (43%) of the articles. While this might seem like another word for national origin, ethnic, or even for racial diversity, a close reading of the articles suggests that cultural diversity is meant to include but to be far broader than the legal categories. Further, many of the constructions of diversity have nothing apparent to do with legally protected categories. Articles discuss, for example, diversity on the basis of geography (10%), level or function within the organization (10%), training or educational background (12%), communication style (11%), problem-solving abilities or styles (8%), experience (10%), attitude (23%), employee benefits (13%), customers (8%), and services (1%). And, interestingly, over 10% of the articles offered a construction of diversity that explicitly mentioned inclusion of or attention to whites and males.

Table 2 together with the qualitative examples show that the managerial
construction of diversity goes well beyond the original legal categories to include nonlegal categories. The presence of nonlegal categories in constructions of diversity suggests that managers have supplemented the purely legal categories protected by civil rights law with many new dimensions of diversity. The nonlegal categories, moreover, reflect traditional areas of managerial concerns.

Thus, diversity rhetoric is not simply a grafting of a new name onto an old model, as Kelly and Dobbin (1998) suggest. Rather diversity rhetoric represents a managerialization of law; that is, it supplants legal categories of thinking about employee differences with a new schema that equates dimensions based on historical disenfranchisement with those based on managerial ideas about how to produce an effective and creative workforce.

Rationality—Diversity as a Resource

One of the most prominent themes in the diversity literature is the idea that diversity management (including the idea of "valuing diversity") is not only necessary given a changing workforce, it is also a profitable resource for organizations. Diversity rhetoric asserts that different types of employees increase productivity and effectiveness because people with different characteristics have different attitudes, work styles, and cultural knowledge, which makes them assets to corporations in a changing world. Blacks, women, and older people differ from whites, males, and younger people because they have different cultural backgrounds, live in different geographical areas, walk in different circles, live different lifestyles, and have different worldviews. But people with different dress styles, tastes, lifestyles, and geographic backgrounds also bring variety in expertise and ideas. For that reason, these people can bring a variety of solutions to organizations that white males alone could not. The articles emphasize that innovative responses to challenges in the workplace flow largely from the associations that employees make between the problem at hand and the knowledge and experience they hold in their heads. Therefore, to obtain a variety of methods for attacking a problem, it is valuable to recruit participants with diverse backgrounds to contribute the components of a solution, to see the value in each type of employees, and to view their differences as a resource for the firm.

Diversity rhetoric, then, encourages managers to view diversity as a resource that could aid in a firm's movement into the "new economy"; that is, an economy based upon globalization and heightened competition. The firm well situated in this new economy is one that exemplifies creativity, multicultural competence, and an internal flexibility that mandates nonhierarchical organization and personal empowerment. Diversity is
Diversity Rhetoric

constructed as integral to both individual and workgroup productivity and to matters of hiring and retention. The message is that firms with environments inhospitable to any particular group of employees in the impending tight labor market (for skilled workers) will lose on all counts. Discrimination and exclusion become problematic under this view, not because they are unjust or illegal, but because they inhibit the firm’s ability to profit in a global and more diverse world. Moreover, the focus on creativity and flexibility (as opposed to fairness and morality) appears to engender a managerial conceptualization of diversity that expands upon the formal legal model.

The idea of diversity as a resource looks beyond the essential categories of race, gender, national origin and the like to the reasons for valuing those people. The following excerpts exemplify the idea of diversity as a resource, and in particular the link between diversity and profit.19

Consider the following strategic business advantages to managing diversity: a richer variety of ideas, greater creativity, a better and more flexible understanding of diverse markets, and an improved ability to go global. (McNerney 1994, p. 22)

Academic studies confirm that heterogeneous work groups create solutions to work and business problems that are more innovative and more effective than those developed by homogenous groups. (Jenner 1994, p. 11)

In recent years, diversity as an issue has taken on a new face in business, one not involving morals and laws, but one with potential consequences for business’s bottom line. (Jackson et al. 1993, p. 23)

Profit is in fact the most frequently cited reason offered by the articles in support of organizational diversity: nearly 50% of all articles refer to its value for organizational profit. In contrast, only 19% of the articles mention law as a reason for supporting diversity and only 30% mention fairness. The emphasis on profit in the diversity rhetoric, then, appears to be a means of rationalizing the need for management techniques that incorporate workforce diversity.

19 Again, management textbooks make similar statements: “Valuing diversity is not only the right thing to do, it’s the right business thing to do. Companies that do a good job of valuing and effectively managing diversity in the 1990s will have a competitive advantage over the ones that don’t. Paying attention to the diverse work force has become an economic imperative. There is no question that the work force is changing and U.S. organizations have to change to reflect the new work force composition” (Daft 1995, p. 362).
Novelty—Diversity as Different from Civil Rights

Another prominent theme in the diversity literature is that diversity is novel. One of the ways in which diversity rhetoric establishes the novelty of diversity management is to distinguish it from civil rights, either by omitting any mention of civil rights or by explicitly differentiating the two. Slightly fewer than half the articles that we coded (48%) even mentioned civil rights. Of those that did mention civil rights, most did so in a rather perfunctory manner.

Further, many of those articles draw explicit distinctions between civil rights law and the notion of diversity, and quite a few articles portray law as external, imposed, and in general a negative force on the organization while portraying diversity as good for employee morale, harmonious employment relations, and profit. Specifically, 40 articles (29% of those mentioning civil rights) made statements to the effect that civil rights was passé while diversity was newer and better suited to today’s society. Many of the articles were explicitly negative about civil rights. Only 14 (10% of those mentioning civil rights) had anything positive to say, while 34 (24% of those mentioning civil rights) made negative or hostile statements and another 18 (13% of those mentioning civil rights) contained ambiguous evaluative statements. When comparing civil rights to diversity, no articles said that civil rights was better than diversity, while 55 articles (35% of those mentioning civil rights) made statements indicating that diversity was preferable to civil rights. Combining these dimensions, 67 articles (49% of those mentioning civil rights) made negative judgments about civil rights (either by saying that the notion of civil rights is passé or that diversity is superior to civil rights).²⁰

One of the more common forms of comparison was to note the artificial (imposed) nature of legal mandates in comparison to the natural character of the new diversity. The language of artificiality associated with the law appears to derive from the familiar conservative critique that civil rights law involves quotas and lowered standards and thus produces economic inefficiencies. Consider the following examples:

Compliance implies a mandate. And conformity is exactly the opposite of what diversity is all about. Instead, your objective should be a culture that breeds harmony and rapport, which in turn provide creativity, effective decision making and better teamwork. (Thomas 1994, p. 62)

²⁰Using a more conservative measure that does not count articles that, despite their negative judgments about civil rights, also say that civil rights and diversity can coexist, 43 articles (31% of those mentioning civil rights) are explicitly negative about civil rights and imply that the two cannot coexist. We use the more conservative measure in our multiple regression analyses.
Diversity Rhetoric

[Managing diversity is] not a problem to be solved, not the excesses of legal recourse, nor, by extension, the extremes of the thought police or politically correct enforcers. Using diversity as a process to be managed unleashes performance energy that was previously wasted in fighting discrimination. (Vroman 1994, p. 107)

While the doors of opportunity were opened to many who were previously excluded, new hurdles were created by the unnatural focus on special target groups in organizations, the perception by white managers that standards were being lowered to accommodate minorities and women, and the perception that EEO and AA programs were artificial methods forced upon organizations and their managers to pay for the historical sins of U.S. society. (Torres and Bruxelles 1992, p. 31)

Managing or valuing diversity differs from the conventional approach to equal opportunities in that it seeks to create a climate whereby those involved want to move beyond the achievement of [a] mere statistical goal. (Greenslade 1991, p. 28)

These excerpts illustrate the role of diversity rhetoric in disassociating the new managerial model, managing diversity, from compliance with civil rights law. Whereas legal compliance is portrayed as coerced, unnatural, and divisive, managing diversity is portrayed as voluntary, sensible, and good for rapport.

Our qualitative analyses of diversity rhetoric, then, show that like other managerial rhetorics, diversity rhetoric emphasizes the rationality and novelty of a new model of management. But, perhaps more important, diversity rhetoric subtly alters formal legal ideas of diversity by advocating diversity on a variety of dimensions that go well beyond those specified by civil rights law. We now turn to an analysis of the factors that predict a managerialized conceptualization of diversity.

FACTORS THAT PREDICT THE MANAGERIALIZATION OF LAW

We argued earlier that the managerialization of law is an institutional process in which legal ideas become infused with managerial values. In

Management textbooks also suggest that diversity is better than civil rights: “Sometimes managing diversity is confused with affirmative action or other laws directed toward those with certain characteristics. Actually, the two concepts are quite different. Affirmative action emphasizes achieving equality of opportunity in the work setting through the changing of organizational demographics—gender, age, racial and ethnic mixes, and the like. It is legally driven. . . . Managing diversity, in contrast, emphasizes appreciation of differences in creating a setting in which everyone feels valued and accepted. . . . Managing diversity assumes that groups will retain their own characteristics and will shape the firm as well as be shaped by it, creating a common set of values” (Schmerhorn et al. 1997, pp. 42–43).
the context of diversity rhetoric, the managerialization of law occurs when diversity is conceptualized not simply in terms of the representation of legally protected categories of employees, but more broadly in terms of difference itself. In this section, we model the managerialization of law in the diversity context by examining the effects of time, author’s profession, the emphasis on rationality (the focus on profit as the motivation for diversity), and the emphasis on novelty (the lack of references to civil rights law or the negative characterization of civil rights law) on an expanded, nonlegal, construction of diversity.

Table 3 shows five OLS regressions predicting the managerialization of law, as measured by the number of nonlegal constructions of diversity. We control for the number of legal constructions of diversity since some authors emphasize the construction of diversity more than others; thus, the dependent variable should be understood as nonlegal constructions of diversity relative to legal constructions of diversity. We also control for article length.

Model 1 provides a test of hypothesis 1, which predicted an increase over time in the number of nonlegal constructions of diversity and then a leveling off. Three variables are relevant to Hypothesis 1: time (the number of months since the inception of diversity), time squared, and date flag (the dummy variable indicating that an article was published during the first year after the inception of diversity).

Model 1 shows that date flag, time, and time squared all have statistically significant effects on the number of nonlegal constructions of diversity. These results suggest an initial surge of attention to the managerial construction of diversity, followed by a sustained institutionalization of that conception through the height of diversity rhetoric, and then a leveling off beginning in November 1993. This pattern is consistent with the prediction we derived from the law and organizations literature. However, because diversity rhetoric has not yet disappeared, we do not know whether the managerialization of law will remain at its current level or will eventually decline. Thus, although the data appear to support the law and organizations literature, we cannot definitively rule out the idea (consistent with the managerial models literature) that the managerialization of law will decline.

Model 2 adds the author variable and thus provides a test of hypothesis 2, which predicted that managers and management consultants would be most likely to adopt the managerial conception of diversity. “Management consultant” is the omitted category. The results show that management academics, staff writers, and editors are significantly less likely than are management consultants to employ nonlegal conceptions of diversity. Executives and managers do not differ significantly from management consultants. Consistent with this finding, our qualitative reading of the lit-
erature shows few differences between management consultants and managers. Thus, management consultants appear to be fueling the non-legal conception of diversity, to some extent in concert with managers within organizations.

In our discussion of the content of diversity rhetoric, we showed how authors emphasized the rationality of the diversity model by claiming that it had value for organizational profit. Hypothesis 3 predicted that authors' emphases on rationality would, in turn, affect the managerialization of law. Model 3, then, adds the reasons that authors cite when supporting diversity to the basic model. The omitted category is specifying no reason for diversity. The profit variable is statistically significant, suggesting that where authors rhetorically construct diversity as good for profit, they are also more likely to adopt managerial (nonlegal) conceptions of diversity.22

Similarly, we showed that authors emphasize the novelty of the diversity model by explicitly distinguishing the ideas underlying the diversity model from those underlying civil rights law and by negatively characterizing civil rights law. Model 4 shows two measures of novelty (references to civil rights and negative judgements about civil rights) and thus provides a test of hypothesis 4, which predicts that portrayals of the novelty of diversity will contribute to the nonlegal constructions of diversity. Both measures have statistically significant coefficients, suggesting that where authors do not refer to civil rights and where authors have strongly negative views of civil rights, they are more likely to adopt a managerial conception of diversity.23 As model 4 shows, this finding holds even where author's profession is included in the model.24

22 Of course, regression cannot test causation explicitly, and to some extent, the causation is probably bidirectional: managerialized constructions of diversity may give rise to new arguments about the rationality of diversity management. However, our qualitative data suggest that the primary direction of causation is from rhetorical efforts to construct the rationality of diversity management (including "valuing diversity") to how managers construct the meaning of diversity.

23 Appendix table B1 shows a year-by-year breakdown of the number of articles in the diversity data set that do and do not refer to civil rights and of the average percentage of the total constructions of diversity that are nonlegal. From 1987 to 1990, when there are very few articles on diversity overall, articles that refer to civil rights appear more likely than those that do not to use nonlegal constructions of diversity. During the early phase of diversity rhetoric, it makes sense that authors would seek explicitly to distinguish the two (emphasizing the novelty of the diversity model) and to embrace the new, nonlegal, construction of diversity. From 1991 to 1996, however, articles that do not mention civil rights at all are more likely to use nonlegal constructions of diversity (the greater number of articles in these years is consistent with the negative effect of referring to civil rights on nonlegal constructions of diversity shown in table 3). Again this is not surprising; as diversity rhetoric becomes more institutionalized, authors construct the novelty of diversity by omitting references to civil rights altogether, and this is associated with a greater likelihood of constructing diversity non-legally. Note that the table in app. B does not control for whether references to civil
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**TABLE 3**

**DETERMINANTS OF NUMBER OF NONLEGAL CATEGORIES**
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<tr>
<th>Author:</th>
<th>Management consultant</th>
<th>Executive/manager</th>
<th>Management academic</th>
<th>Editor</th>
<th>Staff writer</th>
<th>Freelance writer</th>
<th>Other</th>
<th>$R^2$</th>
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<td>-0.606</td>
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<td>0.328</td>
<td>0.000</td>
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Note. — OLS coefficients are shown with SEs and $P$ values. For models 1 and 3, $N = 285$; for models 2, 4, and 5, $N = 281$. 

1625
Model 5 includes all the variables. Because reasons for supporting diversity are related to an authors’ stance on civil rights and to an author’s profession, the profit variable is no longer statistically significant in model 5.

Summary.—Taking our qualitative and quantitative analyses together, our findings are consistent with previous studies of managerial rhetorics in a number of ways. Diversity rhetoric is a form of managerial rhetoric, which appears to have arisen in response to the decline of political support for affirmative action and civil rights law generally, as reflected by the decline in managerial rhetoric on EEO and AA shown in figure 1 (cf. Stryker et al. 1999). Workforce 2000 apparently served as the catalyst for the inception of diversity rhetoric by suggesting that a dramatic change in the workforce was on the horizon. Diversity rhetoric enjoyed considerable renown during the early 1990s, but like other managerial fashions, appears to have entered a period of decline.

Our study differs from previous work, however, by showing how managerial rhetorics about law have the potential to transform legal ideas. Diversity rhetoric, which tends to equate differences based on geography or taste in sports or dress style with differences based on race or sex, offers a conception of equal employment opportunity that is quite different from that embodied in the statutory language of Title VII or other civil rights laws. Diversity rhetoric replaced the legal vision of diversity, which is grounded in moral efforts to right historical wrongs, with a managerial vision of diversity, which is grounded in the notion that organizations must adapt to their environments in order to profit. More generally, our analyses of diversity rhetoric provide support for the argument that managerial rhetoric that is related to law may produce a managerialization of law, or the infusion of managerial values and understandings into legal ideas.

The impact of managerial rhetorics on constructions of law and legal ideas, moreover, is probably part of a broader story about the blurring of organizational fields. To address that story, we add a twist to relationship between the formal legal model of diversity and the managerial construction of diversity. As we noted earlier, the legal ideal of diversity is itself not as simple as what might be found on the pages of a statute.

rights are negative, a factor that is taken into account in the regression analyses shown in table 3.

24 As with the construction of rationality, the relationship between rhetorical constructions of the novelty of diversity management and how managers conceptualize diversity is likely to be, to some extent, bidirectional: managers' conceptualization of diversity may encourage an emphasis on how managing diversity differs from compliance with law. Nonetheless, our qualitative results support the idea that efforts to construct the novelty of managerial models encourage a managerialized conception of diversity.
Diversity Rhetoric

While we used statutory language as an ideal -type for the purpose of analyzing the managerialization of law, we now offer some theoretical ideas about the more complicated interplay between managerial and legal ideas.

MANAGERIAL RHETORIES AND BLURRING OF FIELDS

Managerial rhetorics do not evolve in a vacuum. And in particular, law-related managerial rhetorics do not evolve independently of legal environments. We refine our discussion by suggesting that diversity rhetoric had some roots both in judicial doctrine and in preexisting managerial discourse. We discuss these possible origins of managerial thinking about diversity and suggest that they may have implications for theories of organizational fields.

The idea that a heterogeneous workforce can be a resource for organizations is in fact similar to a logic that has appeared in at least three legal arenas: cases dealing with juries, educational institutions, and broadcasting. Moreover, in some of these areas, courts have implied that diversity goes beyond categories—such as race, sex, age, and disability status—that are explicitly protected by law. In decisions concerning these social institutions, judges construe diversity as valuable for its democracy-enhancing, or difference-valuing, capacities; it brings together people with different attitudes and cultural competencies, thus creating better juries, better educational institutions, and better broadcasting. In the famed *Bakke* case, for example, Justice Powell explicitly distinguished diversity from legally protected categories, stating that race is only one of many factors that should be considered in pursuit of diversity in higher education (428 U.S. 265 at 314 [1978]). In *Metro Broadcasting*, the Supreme Court held that programs increasing minority representation were substantially related to the broader goal of “broadcast diversity” or diversity of viewpoints (110 S.Ct. 2997 at 3008 [1990]). And the Fifth Circuit Court of Appeals in *Hopwood* (78 F.3d 932 at 941-948 [1996]) clearly distinguished racial diversity from a broader conception of diversity when it held that diversity was not a sufficiently compelling rationale to justify race-conscious admissions at the University of Texas Law School. In these

and related decisions, diversity is associated with the ideals of justice, community, and democracy. Although this logic is not identical to the notion of diversity as valuable for profit and industrial harmony, it is a parallel logic, one that employs similar ways of thinking and values in a different context.

The idea of diversity as a resource is not completely new in management either. The idea that teams or groups in organizations benefit from "diverse" membership has been supported in the management literature for decades, although it was usually called "group member heterogeneity." The logic behind this construct was that most group activities require a variety of abilities, skills, and information and therefore a heterogeneous group will be more effective (Shaw 1976). Early work examined heterogeneity along a number of dimensions including personality, sex, race, and conceptual systems (e.g., Hoffman and Maier 1961; Schutz 1955). The effect of group composition on performance has continued to be an important aspect of group problem solving (Aldag and Fuller 1993). Recent work has supported the notion that heterogeneity in groups is generally an advantage and that it may offer opportunities for competitive advantage and increased creativity (Milliken and Martins 1996; Watson, Kumar, and Michaelsen 1993) but suggests that the positive effects may only occur in some situations. Whether a heterogeneous group is better depends, for example, on factors such as time constraints, type of group, type of problem, and stage of group development (Watson, Johnson, and Merritt 1998). The diversity as a resource idea follows from the older ideas about group heterogeneity.

Further, one of the key ideas in diversity rhetoric is that employees will perform better if managers value their diverse backgrounds and styles (referred to throughout the management literature as "valuing diversity"). This idea has its roots in the human relations school, which originated in the 1920s (Bendix 1956; Barley and Kunda 1992). The notion that managers can enhance firms' competitiveness through attentiveness to employees' cultural needs is in fact a form of cultural logic that has resurfaced on numerous occasions in managerial rhetoric; Barley and Kunda suggest that the most recent wave of cultural logic (which includes "total quality management" and "world class engineering") blossomed in the early 1980s. They also suggest that management academia has fed the cultural movement in management by engaging in studies of organizational culture (e.g., Deal and Kennedy 1982; Donnelly 1984; Schein 1985; Van Maanen and Kunda 1989). Although we do not posit a strong link between the diversity rhetoric and other cultural rhetorics, the cultural logic that was prevalent in management in the 1980s may have played a role in the development of diversity rhetoric.

Consciously or not, fashion setters who promulgated diversity rhetoric
Diversity Rhetoric

were probably influenced, at least indirectly, by ideas about diversity that existed previously in both the legal and managerial arenas. Of course, few managers follow legal developments or read law cases closely enough to discover judicial rationales. Nonetheless, professional networks provide ways for flows of (filtered) information from legal fields to enter into managerial consciousness. Lawyers sometimes write manuals or articles that appear in the professional personnel literature and influence managerial thinking. Lawyer-dominated organizations like the Bureau of National Affairs run workshops for managers on law-related issues. Some law firms offer websites with information on human resource practices. Employment lawyers participate in the same market of business ideas as do managerial consultants. When lawyers write for managerial audiences or try to sell their own ideas to employers, they are likely to frame both legal problems and their solutions in ways that make sense to managers. Ideas may flow from legal to managerial arenas in more diffuse ways as well. Since Bakke, for example, talk of diversity has become commonplace on university campuses. Virtually all managers have spent a good deal of time on college campuses while getting their bachelor’s and master of business administration degrees and have therefore had some exposure to the concept of diversity, even if they did not consider it seriously.

That the roots of diversity rhetoric may be found in law or in older managerial ideas has implications for the way that organization theorists think about the “fields” in which organizations operate. Most organization theorists lump all aspects of organizations’ environments into organizational fields: they include not only similar organizations, their suppliers, and their customers but also regulatory organizations that influence the field and professionals that operate within and around organizations (DiMaggio and Powell 1983). Although the construct of a singular organizational field has had a very useful place in organization theory, we suggest that it may oversimplify the nature of organizational environments. In particular, we suggest that the idea that organizations exist in a unitary field obscures areas of ambiguity and confusion that are critical sources of new managerial rhetorics—and eventually—of new institutional models.

Thus, it may be useful to consider the multiple and overlapping fields in which organizations operate (Stryker 2000). We continue to envision organizational fields as the primary environments of organizations, consisting of the other organizations with which a focal organization regularly interacts or to which it compares itself as well as the flows of communication, logic, and ideas that evolve within that field. But at least for

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26 One example we viewed on April 8, 2000, was the website of Epstein, Becker, and Green (http://www.ebglaw.com).
the purposes of understanding how managers shape organizational understandings of law, we suggest that it is useful to distinguish at least two other fields that overlap substantially with organizational fields: legal fields and managerial fields. By legal fields, we mean the environments surrounding courts, including legislatures, administrative agencies, lawyers and litigants as well as legislation and legal logics regarding the form and content of justice that surround these actors (Edelman, in press). Managerial fields include business schools and their faculty, management consultants, and the management professions within organizations as well as the various logics about good management. Other somewhat more distant fields overlap with organizational fields as well. For example, educational fields, which would include all schools and universities, train and socialize most organizational actors and, largely through those actors, provide or refine much of the knowledge that is used in organizational fields. Or scientific-technical fields can compete with legal fields in influencing organizations (Stryker 1994, 2000). And even various activist academic fields, such as difference feminism or identity politics (e.g., Gilligan 1982; Williams 1991), produce actors and ideas that influence organizations. The list is probably endless and, of course, varies for different organizational fields. For now, we confine our discussion to organizational, legal, and managerial fields.

Although there is significant overlap between organizational, legal, and managerial fields, each field in fact has its own institutional logic and hence its own institutionalized models (cf. Stryker 1994, 2000). The legal field, for example, is characterized principally by "liberal legal logic" or the ideal that laws are reasoned and apply impartially and universally to all actors and groups. But other logics also develop in legal fields, such as "alternative dispute resolution," which advocates less formal and more participatory modes of settling disputes (Edelman, in press). The management field is organized around the production and sale of new ideas about governance to employers. It is characterized by the logic of capitalism so that managers can appeal to employers: the logics of control over employees, profit, and legitimacy play key roles.

New ideas evolve in the interstitial spaces at the boundaries of these fields, where the different logics of each field meet, intersect, and become intertwined, encouraging cross-fertilization of rhetorics and ideas (Edelman, in press; Stryker 2000). Interstitial spaces create the arena for the production of new ideas by providing a locale for the comparison, exchange, and influence of institutional logics. There are many of these interstitial spaces where fields overlap, but a few are probably of key importance. For example, regulation is a key point of overlap between legal and organizational fields: as regulators grapple with how to implement the law in organizational settings and how to respond to organi-
Diversity Rhetoric

izational lobbying and the presentation of organizational problems, organizational practices are bound to influence regulators’ ideas about compliance. Since organizational practices are themselves largely the product of managerial ideas, regulation also provides a vehicle for importing logic from managerial fields. Similarly, managerial consultants are a key point of overlap between organizational and managerial fields. Organizations regularly seek out the advice of managerial consultants and internal managers regularly interact with managerial consultants through professional networks, thus providing for the intermingling of ideas from organizational and managerial fields. And since managerial consultants often read works written by lawyers, they also constitute a key point of overlap between legal and managerial fields. In some cases, parallel ideas may develop separately in two or more fields, influencing one another only indirectly through exposure in the interstices. In other cases, models institutionalized in one field may be transformed substantially as they are carried across field boundaries.

Managerial rhetoric, understood as both a reflection and a producer of organizational culture, constitutes a key vehicle for the flow of norms, scripts, and models of management across field boundaries (Fuller, Edelman, and Matusik 2000). Managerial rhetorics about law import legal norms and legal scripts into managerial fields, instill them with managerial logic, and promulgate them throughout organizational fields. But because organizational fields overlap with legal fields, managerial rhetorics also influence ideas in legal fields (Edelman, in press; Edelman et al. 1999; cf. Stryker 2000).

Diversity rhetoric illustrates the flow of ideas and logics across multiple fields. The idea of diversity as a resource had surfaced in subtle ways in both the legal and managerial fields prior to Workforce 2000. But Workforce 2000 appears to have served as a catalyst for the institutionalization of diversity rhetoric—and for the managerialization of law—by helping to create a dilemma that managerial consultants could play upon to promote their “new” ideas. The idea of diversity as a resource justified and legitimated an expanded nonlegal conception of diversity that found support in the logics of heterogeneous groups in managerial fields and in judicial ideas regarding the enhancement of democracy in legal fields. Given a legal environment in which the meaning of civil rights law was becoming increasingly contested, the managerial conception of diversity appealed to actors throughout managerial fields and quickly gained widespread acceptance.
CONCLUSION

Our analysis shows that managerial rhetoric may help transform law even when it explicitly seeks to disassociate managerial models from law. Diversity rhetoric replaces the formal legal model (which privileges race, sex, religion, national origin, age, veteran status and disability status) with a managerial model that renders categories that are not legally relevant (such as geographic location, organizational rank, dress style, communication style, and attitudes) equally important. The managerial conception of diversity de-emphasizes the law’s focus on discrimination, injustice, and historical disenfranchisement and supplants it with a conception of diversity grounded in organizational success.

The managerialization of law has both costs and benefits for legal ideals. The costs come from the potential of the managerial vision to undermine law’s moral commitment to redressing historical wrongs. In elaborating the idea of diversity as a resource for organizational competitiveness, managerial rhetoric about diversity tends to deflect attention from the societal and historical practices that disenfranchised particular groups and instead emphasizes the value of recognizing all forms of difference. If the white farm boy from Idaho is considered as important to firm diversity as the black inner-city kid from Los Angeles on the basis of geographic diversity, then diversity can more easily be used to justify a workforce that is primarily white or male (but is diverse on other dimensions). This broad understanding of diversity is more consistent with older ideas about team heterogeneity and it is less threatening to managerial interests in competitiveness, but it tends to divest law of its moral component. Diversity becomes conditional upon serving corporate interests rather than grounded in social justice.

Nonetheless, the managerialized form of law may have a greater capacity than the legal form to institutionalize legal values within organizations. Diversity rhetoric may represent a weakened ideal of civil rights, but it has the potential to have a broad impact on the daily lives of employees. Managers naturally resist law that seeks to constrain traditional managerial prerogatives (Edelman 1992). And while civil rights law offers the ideal that lawsuits would eradicate discrimination, it in fact never provided a panacea for women, minorities, and other disenfranchised groups. Barriers to mobilization (Bumiller 1987, 1988), cooling out by organizational complaint handlers (Edelman et al. 1993), and conservative interpretations of law (Schultz 1990; Crenshaw 1988; Freeman 1990) all serve as important obstacles to the realization of civil rights. But precisely because diversity rhetoric constructs diversity as consonant with managerial interests and values, it may overcome much of the managerial resistance to nontraditional workers by transforming the notion
of "difference" from one of legal imposition to one of business advantage. Thus, the managerialization of law can evoke a legalization of organizations: as legal ideas are recast in managerial terms, they may be weakened but they are nonetheless more easily incorporated into organizational routines.

The managerialization of law is not limited to the diversity context, nor is it limited to managerial rhetoric. Several studies, although not originally labeled as such, reflect a managerialization of law in managerial practices or rhetoric. Discrimination complaint handlers' recasting of discrimination complaints as interpersonal or managerial problems (Edelman et al. 1993), managers' inflation of wrongful discharge claims (Edelman et al. 1992), and managers' claims about the value of discrimination grievance procedures (Edelman et al. 1999) are all examples of the managerialization of law. There are no doubt other examples in the context of workers' compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act, and other types of law in which managers play a major interpretive role. Also, private police forces that focus on activities that are managerially rather than legally threatening and structure their enforcement efforts more to minimize disruption of the corporation than to maximize public safety are another (Edelman and Suchman 1999). And Suchman's work on the collaboration of managers and lawyers in Silicon Valley might exemplify a related form of the managerialization of law (Suchman 1994; Suchman and Cahill 1996).

This article illustrates the potential for fruitful linkages between the literature on managerial rhetorics and models and the literature on law and organizations. More study of managerial rhetorics about law and their potential to transform law would help to strengthen organizational theory in both areas. Clearly, future scholarship should address the relation between managerial rhetorics about law and organizational practices. In the diversity context, for example, future research should address how managerial constructions of diversity relate to the operation of diversity councils, diversity training, and diversity offices in organizations. We have suggested that, although diversity rhetoric may undermine the legal rights of women and minorities, it may also promote the institutionalization of legal ideas in organizations. Only empirical studies of organizational practices can reveal whether diversity is ultimately harmful or helpful to previously disenfranchised groups. And since there is likely to be substantial variation in the extent to which diversity programs embrace (or neglect) civil rights law, the sources of that variation ought to be studied.

Our study also calls attention to the blurring of boundaries between legal, managerial, and organizational fields. The import of these overlapping fields is that the potential for organizations to influence the law that
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regulates them may be substantially greater than previously demonstrated by studies of regulatory capture or organizational compliance. But because ideas flow across field boundaries in multiple directions, law may also influence organizations as managers appropriate and transform legal principles, leading to the institutionalization of (metamorphosed) legal ideas in organizational fields.
# APPENDIX A

## TABLE A1
**Descriptive Information about Periodicals and Articles in Data Set**

<table>
<thead>
<tr>
<th>Periodical Title</th>
<th>CIRC.</th>
<th>TYPE</th>
<th>N</th>
<th>%</th>
<th>Mean Length</th>
<th>Managers, Executives</th>
<th>Management Consultants</th>
<th>Management Academics</th>
<th>Editors, Freelance, Staff</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Academy of Management Executive</td>
<td>35</td>
<td>M</td>
<td>7</td>
<td>2.5</td>
<td>5.6</td>
<td>14.3</td>
<td>0</td>
<td>57.1</td>
<td>14.3</td>
<td>14.3</td>
</tr>
<tr>
<td>Across the Board</td>
<td>35</td>
<td>B &amp; E</td>
<td>13</td>
<td>4.5</td>
<td>2.2</td>
<td>23.1</td>
<td>0</td>
<td>7.7</td>
<td>38.5</td>
<td>23.1</td>
</tr>
<tr>
<td>Business Week</td>
<td>911</td>
<td>B &amp; E</td>
<td>12</td>
<td>4.2</td>
<td>2.7</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>Fortune</td>
<td>870</td>
<td>B &amp; E</td>
<td>7</td>
<td>2.4</td>
<td>5.6</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>Harvard Business Review</td>
<td>209</td>
<td>M</td>
<td>8</td>
<td>2.8</td>
<td>5.8</td>
<td>0</td>
<td>12.5</td>
<td>12.5</td>
<td>62.5</td>
<td>12.5</td>
</tr>
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<td>HR Focus</td>
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<td>HR/P</td>
<td>24</td>
<td>8.4</td>
<td>1.5</td>
<td>4.2</td>
<td>16.7</td>
<td>8.3</td>
<td>62.5</td>
<td>8.3</td>
</tr>
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<td>HR Magazine</td>
<td>56</td>
<td>HR/P</td>
<td>38</td>
<td>13.3</td>
<td>4.4</td>
<td>7.9</td>
<td>23.7</td>
<td>15.8</td>
<td>42.1</td>
<td>10.5</td>
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<tr>
<td>Human Resource Management</td>
<td>N.A.</td>
<td>HR/P</td>
<td>4</td>
<td>1.4</td>
<td>21.3</td>
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<td>100.0</td>
<td>0</td>
<td>0</td>
</tr>
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<td>Human Resource Planning</td>
<td>2</td>
<td>HR/P</td>
<td>7</td>
<td>2.4</td>
<td>9.3</td>
<td>16.7</td>
<td>33.3</td>
<td>50.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Industry Week</td>
<td>288</td>
<td>B &amp; E</td>
<td>6</td>
<td>2.1</td>
<td>4.3</td>
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<tr>
<td>Management Review</td>
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<td>M</td>
<td>17</td>
<td>5.9</td>
<td>3.3</td>
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<td>0</td>
<td>12.5</td>
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<tr>
<td>Nation's Business</td>
<td>860</td>
<td>B &amp; E</td>
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<td>2.1</td>
<td>4.7</td>
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<td>0</td>
<td>100.0</td>
<td>0</td>
</tr>
<tr>
<td>Organizational Dynamics</td>
<td>6</td>
<td>ORG</td>
<td>6</td>
<td>2.1</td>
<td>9.7</td>
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<td>20.0</td>
<td>80.0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Personnel Journal</td>
<td>30</td>
<td>HR/P</td>
<td>50</td>
<td>17.5</td>
<td>5.1</td>
<td>8.0</td>
<td>10.0</td>
<td>0</td>
<td>82.0</td>
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<td>HR/P</td>
<td>23</td>
<td>8.0</td>
<td>2.5</td>
<td>9.1</td>
<td>40.9</td>
<td>0</td>
<td>45.5</td>
<td>4.6</td>
</tr>
<tr>
<td>Public Personnel Management</td>
<td>10</td>
<td>HR/P</td>
<td>10</td>
<td>3.5</td>
<td>11.9</td>
<td>0</td>
<td>20.0</td>
<td>20.0</td>
<td>40.0</td>
<td>20.0</td>
</tr>
<tr>
<td>Training and Development</td>
<td>30</td>
<td>T &amp; D</td>
<td>48</td>
<td>16.8</td>
<td>4.1</td>
<td>14.6</td>
<td>22.9</td>
<td>2.1</td>
<td>52.1</td>
<td>8.3</td>
</tr>
</tbody>
</table>

* Self-reported author profession was usually found in the article. A subset of author professions were ascertained with additional library database research. First affiliation listed in the biographical sketch was coded in instances where there was more than one profession (5% of the articles).

In some cases, publication names changed during the sample period; we used the 1993 names. Note that Personnel Management is published in London. All others are U.S. publications.

1 1994 circulation statistics were taken from Ulrich (1994) and are rounded to the nearest thousand.

Mean article length is N of pages and was computed using only articles in the dataset.

1 Periodical types were taken from Daniels (1993). M = management; B & E = business and economics; HR/P = human resources/personnel; ORG = organizational behavior; T & D = training and development.
APPENDIX B

TABLE B1
PROPORTION OF CONSTRUCTIONS OF DIVERSITY THAT ARE NONLEGAL (ARTICLES IN THE DIVERSITY DATA SET)

<table>
<thead>
<tr>
<th>Year</th>
<th>Diversity Only</th>
<th>Diversity with Civil Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>n/a</td>
<td>.60</td>
</tr>
<tr>
<td>1988:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.36</td>
<td>.49</td>
</tr>
<tr>
<td>1989:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.8</td>
<td>.19</td>
</tr>
<tr>
<td>1990:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>2</td>
<td>6</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.17</td>
<td>.19</td>
</tr>
<tr>
<td>1991:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.30</td>
<td>.26</td>
</tr>
<tr>
<td>1992:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>13</td>
<td>9</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.40</td>
<td>.31</td>
</tr>
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<td>1993:</td>
<td></td>
<td></td>
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<tr>
<td>N of cases</td>
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<td>27</td>
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<tr>
<td>Nonlegal constructions</td>
<td>.30</td>
<td>.28</td>
</tr>
<tr>
<td>1994:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>34</td>
<td>20</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.41</td>
<td>.42</td>
</tr>
<tr>
<td>1995:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>N of cases</td>
<td>21</td>
<td>28</td>
</tr>
<tr>
<td>Nonlegal constructions</td>
<td>.32</td>
<td>.25</td>
</tr>
<tr>
<td>1996:</td>
<td></td>
<td></td>
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<tr>
<td>N of cases</td>
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<td>25</td>
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<tr>
<td>Nonlegal constructions</td>
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<td>.16</td>
</tr>
<tr>
<td>Total:</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>132</td>
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<tr>
<td>Nonlegal constructions</td>
<td>.33</td>
<td>.28</td>
</tr>
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</table>
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