

Diversity Management in America and the Affirmative Action Debate in France

Introduction

At a time when affirmative action in the United States faces an uncertain future, diversity management has emerged as the new human resources buzzword in corporate America, touted by many businesses as the latest “best practice” to eradicate discrimination at work. Its basic premise is that since women and ethnic minorities represent around two-thirds of new entrants in the workforce today, taking proactive measures to integrate minorities should no longer be seen as a moral obligation, but as an economic opportunity.

That the corporate world upholds minority integration is nothing new. Ever since the Civil Rights decade, most large American businesses have been showing active support to integration programs, mostly to buy social peace and avoid litigation. Likewise, most businesses were hostile to the passing of Proposition 209 in California in 1997, and over a hundred large corporations signed *amicus briefs* supporting affirmative action at the University of Michigan when the Supreme Court decided on the fate of these programs in higher education in 2003 (*Gratz v. Bollinger/ Grutter v. Bollinger*).

Yet, businesses have always seen things from a practical perspective. It is not so much affirmative action *per se* that they uphold, as the most efficient, least troublesome way of dealing with minority integration.

As they now embrace the “business case for diversity” mantra, which capitalizes on the increased opportunities brought about by a multicultural workforce, we should not be ingenuous about this shift. While this new integration rationale has the advantage of turning the light away from the much inflamed affirmative action debate, we shall see that diluting the focus on race and shifting the justification for integration from a moral to an economic perspective is also a means, as John Wrench puts it, “of evading hard choices about equality and justice at work”¹. Discrimination at work is still an everyday reality, in spite of a glossy discourse that would have us believe otherwise.

¹ Wrench, John. “Diversity Management can be bad for you”, *Race & Class*, Institute of Race Relations, vol.46, 3, 2005.

This paper will present DM as it now stands in the United States and enlarge to the current affirmative action debate now taking place in France. Although this research is focused on the private sector, the present researcher hopes its conclusions will be of some interest for scholars studying more precisely the impact of Proposition 209 on the public sector in California.

Minority integration: where does the business world stand?

Before we examine more thoroughly the business imperatives and the current motivations of large corporations for upholding the diversity rationale, it is necessary to take a few steps back in time to understand the position of corporate America on the question of minority integration.

Contrary to a commonly held misperception, large businesses have never been especially hostile to the adoption of affirmative action measures. Even before the Civil Rights Act was voted in 1964, President Kennedy, who felt that the situation was getting out of hand, had met with management officials to incite them to hire more Black workers. On July 11th 1963, he convened with the Business Council, an organization of some 70 top managers, and tried to convince them to set up a form of affirmative action policy. His message was taken seriously. California's Standard Oil, for instance, started hiring Black employees with a prison record to work the pumps in its gas stations. Ford Motor Cie and 17 other companies from Detroit promised thousands of jobs to youth from inner-cities, actually hiring 55, 000.

The mobilisation of large corporations was of course in their best interest. They figured that staying put was simply likely to lead to increased federal or state intervention, something which the business world would rather avoid : “It is thought that if business does not take the lead, then the government and civil rights groups will be able to place restrictions on business policy that business will never be able to remove”².

Today, it is also common practice for employers to engage in voluntary affirmative action practices.

² George Strauss, “How Management Views Its Race Relations Responsibilities”, in *Employment, Race and Poverty*, edited by Arthur M. Ross & Herbert Hill, NY: Harcourt, Brace & World, 1967, p. 274

Yet what businesses really uphold is not affirmative action *per se*, as the following example will show, but mainly the most practical and effective means of integrating minority employees, the one that will be the most likely to reconcile financial imperatives, do no harm to their image and keep them away from the courtroom.

In 2003, as the University of Michigan's preferential admissions policy was challenged in the Supreme Court, sixty-five leading American organisations brought *amicus briefs* before the Court in support of the University. GM, Boeing, 3M, Nike, Sara Lee, Intel, Microsoft, Lucent Technologies, Texaco, Dow Chemicals, Coca-Cola, American Airlines, Eastman Kodak, etc., argued that "only a well-educated, diverse workforce can maintain America's competitiveness in the increasingly diverse and interconnected world economy³".

Yet, what did these corporations really uphold? Two passages from the *amicus brief* are particularly significant :

"*whatever methodology* is employed to select those who will be afforded the opportunity to obtain the best education and training available in America today, that methodology must operate in such a way that students of all races, cultures and ethnic backgrounds are in fact meaningfully included (8)" (italics mine).

And further down: "*Amici* are not in a position to evaluate the propriety or efficacy of any particular admissions program (9)"...

By insisting on the final result – achieving diversity on campus—without taking any clear position as to which method should be used to obtain this diversity (should they endorse the University of Michigan's admissions point scale which attributed 20 points to students from an underrepresented minority group — or advocate color-blind methods such as the percentage plans upheld by opponents, whereby a fixed percentage of top students from all the high schools in the state are guaranteed a slot in one of the state's public universities ?), corporate America carried out the feat of carving out a perfectly neutral discourse which,

³ "Brief for Amici Curiae 65, Leading American Businesses in Support of Respondents *Grutter v. Bollinger*," 123 S. Ct. 2325 (2003) (Nos. 02-241 and 02-516), 19 pages, available at http://supreme.lp.findlaw.com/supreme_court/briefs/02-241/02-241_mer.ami.sixtyfive.pdf.

ironically, never at any one point made it specifically clear businesses were upholding U. of Michigan's affirmative action policies, yet which was interpreted as such. Because the *amicus brief* remained vague and consensual, it was perceived as minority-friendly, whereas President Bush's own *amicus brief*, which argued for a similar result to be achieved but was clearer as to which method should be used, was perceived as hostile. Corporations had well understood the need to communicate on the issue, yet wisely remained evasive enough so that their position would be perceived favorably by affirmative action advocates and would hopefully boost a rather damaged image in the wake of the recent Enron and WorldCom scandals. Any move depicting the corporate world as a committed actor, aware of its social responsibilities, was likely to be well interpreted by society at large.

Frederick Lynch, one of the staunchest opponents to affirmative action, highlighted the importance of this positioning for companies:

"I think many corporations are afraid not to sign on, that they see this as a huge, you know, freight train coming down the line, and that if you don't agree that diversity is our strength, and that diversity is good for business, you're going to be regarded as suspect, possibly racist"⁴.

Thomas Sowell, also famous for his anti-affirmative action positions, likewise retorted:

"Take away the legal protection of affirmative action and businesses can be sued by blacks if they are 'under-represented' and by whites if blacks get hired with lower qualifications to make the numbers look good. It would be a lawyer's heaven and a corporate CEO's hell. Money that might otherwise go to the stockholders or into reinvestment in the business would instead end up in the pockets of trial lawyers. Trying to steer a course between statistical 'under-representation' and 'reverse discrimination' would be a task that would be as interminable as it is impossible"⁵.

Hence the concern of businesses, eager to make sure the status quo remained in place in higher education, and more generally, their insistence on avoiding to rock the boat whenever possible.

⁴ Lynch, Frederick R., audio interview on Minnesota Public Radio, Marketplace.org February 14 2003. http://www.marketplace.org/shows/2003/02/14_mpp.html

⁵ Sowell Thomas, "Why does Big Business Back Affirmative Action", *Human Events*, April 7th 2003.

EEO & Affirmative action : the limits of the anti-discrimination legislation

Fact 1: women and ethnic minorities are still widely crowded in the lowest ranks of management jobs. Twelve years ago, in 1995, the *Glass Ceiling Commission* had already established that only 5 to 6 % of women held a senior executive position. Black and Hispanic underrepresentation was even worse, 2 to 3%. And not much has changed today. In 2001, only 12.4 % of executive board members of the *Fortune 500* were female, (from 11.2 % in 1999) while only 41 % of *Fortune 1000* companies had a Black executive board member, a percentage unchanged since 1999. The situation is even worse for other minorities: only 14 % had at least one Hispanic executive board member at that date, 11 % an Asian. In 2001, there were only 3 Black CEOs heading a *Fortune 500* company (Franklin Raines at Fannie Mae, A. Barry Rand at Avis, and Ken Chenault at Amex). Female *Fortune 500* CEOs doubled between 2000 and 2001, yet only increasing from a measly two...to four (Carly S. Fiorina at Hewlett-Packard, Andrea Jung at Avon Products, Cinda A. Hallman at Spherion Corp. and Marion O. Sandler at Golden West Financial Corp.)⁶.

Fact 2: during the nineties, whereas the number of complaints about discrimination in hiring filed by women and minority Americans with the EEOC fell 20 percent, as minorities gained entry to the companies that once spurned them, charges of racial harassment on the job almost doubled, to 6,249 from 3,272 in 1990. In four years alone, from 1996 to 2000, the number of such lawsuits brought against corporations by the EEOC quadrupled⁷.

Fact 3: between 1992 and 1997, according to the 2002 *Economic Census*, the number of new companies created by women and ethnic minorities was four times higher than for white males (+30%, vs 7%). While discrimination is obviously not the only reason (the importance of set-asides, together with the role played by the *Small Business Administration* to help minority business creation also explains the trend), these figures are nonetheless daunting.

⁶ Research by Zweigenhaft & Domhoff is also interesting. In their book *Diversity in the Power Elite. Have Women and Minorities reached the Top?* New Haven: Yale University Press, 1998, they show that minorities stand a better chance of climbing up the corporate ladder if they can duplicate those at the top. Lighter-skinned minorities thus have more chances to reach top jobs than others.

⁷ Figures from the EEOC reported in *The New York Times*, November 11 2000.

Clearly, prejudice and discrimination have not disappeared from corporate America. They have merely shifted from the hiring stage to the post-hiring stage, and the higher you climb, the more subtle and diffuse they become⁸.

Roosevelt R. Thomas, who founded the *American Institute for Managing Diversity* in 1984 and specializes in diversity issues inside organizations, comes to the following conclusion: “*affirmative action* gets the new fuel into the tank, the new people through the front door. Something else will have to get them into the driver’s seat”⁹.

Thomas is one of the leading spokespersons for a movement that was born some twenty years ago, and which seeks to bring a new perspective on race relations at work, focused on valuing diversity and celebrating differences in view of the disappointing results brought about both by EEO legislation and affirmative action policies.

In 1987, the *Workforce 2000* report conducted by the Hudson Institute for the Department of Labor popularized the concept of ‘diversity management’ which can be defined as follows: “the goal of managing diversity is to maximize the ability of all employees to contribute to organizational goals and to achieve their full potential unhindered by group identities such as gender, race, nationality, age and departmental affiliation”¹⁰.

From affirmative action to diversity: the new rationale

Researcher John Wrench from Denmark University, who is to date one of the sharpest observers of this new practice both in the USA and in Europe and has published an extensive body of literature on the topic, encapsulates how diversity management differs from traditional approaches to minority integration by getting rid of the stigma attached to current anti-discrimination policies: “diversity management differs from previous employment equity approaches directed at under-represented minority ethnic groups, such as anti-discrimination, equal opportunity and affirmative action approaches, because of its primary emphasis on

⁸ Subtle barriers, including lower expectations and self-censoring attitudes, are erected between those who master the soft skills, and those who don’t (Thomas R., 1990 ; Wentling, 1992 ; Morrison, 1992).

⁹ Thomas, Roosevelt R. “From Affirmative Action to Affirming Diversity”. *Harvard Business Review*, vol.68 n° 2, March-April 1990.

¹⁰ Cox, Taylor. *Cultural Diversity in Organizations*. San Francisco: Berrett-Koehler, 1993, p.11.

business benefits, organisational efficiency and market performance”¹¹. Diversity management praises diversity because it makes good business sense, and it presents minority integration in a positive light. Market forces are heralded as the best anti-discrimination tool.

Interestingly, this link between economic efficiency and social integration echoes the former thesis of scholars like Nathan Glazer, who forcefully rejected affirmative action thirty years ago (he has since changed his perspective) on the ground that such moralizing measures slapped upon businesses from the outside by public authorities, and which focused on compensation and the need to repair past injustice were too guilt-ridden to ever work and would never help forward the African-American cause. Let the market rule.

Between 1990 and 1996, the number of companies offering consulting services on the topic literally skyrocketed, a fivefold increase according to the *American Society for Training and Development*. Today, this has become a multi-billion dollar industry. In 1991, these consultants put together *Annual National Diversity Conferences* to publicize and explain these new managing techniques. As early as 1993-94, guidebooks and brochures to help HR managers were released by the *Conference Board* and the *Society for Human Resource Management (SHRM)*, cultural audits were held inside corporations to identify insidious discriminatory practices and bias (Meyerson & Fletcher 2000), mentoring programs and career guidance were made available to minority employees. Training sessions and workshops started taking place inside firms, while task forces, each representing a different minority group, were set up: in 1995 for instance, IBM set up eight such task forces, and the following year, acknowledging the needs of its gay employees, it extended its health coverage to same-sex partners.

Outreach measures were also implemented or extended: establishing partnerships with underprivileged schools, offering scholarships and internships for young people from disadvantaged backgrounds, sponsoring cultural events, mentoring minority associations,

¹¹ Wrench, John. “Diversity Management can be bad for you”, op.cit.

reinforcing contacts with minority suppliers¹². One of the aims of diversity management is to present businesses as caring structures, concerned about local community issues¹³.

Communicating on this evolution is of course essential, both to highlight companies' minority-friendliness, and to erase the disastrous image projected by the class-action lawsuits held in the past decade against major corporations such as Denny's, Texaco, and Coca-Cola for race discrimination (all three ended up with compensation charges amounting to several million dollars to be paid to minority employees -- Denny's : \$54 million, Texaco: \$174, Coca-Cola : \$192). Businesses tried to make *Fortune's* "best companies to work for" list, or to get a *Corporate Conscience Diversity Award* from the *Council on Economic Priorities*. One such award was handed in 2000 to the Advantica group, owner of the previously infamous Denny's chain. And in 2002, Denny's had managed to reach 3rd rank on *Fortune's* list of "50 most minority-friendly companies", while Coca-Cola, which made the list in 2001, swiftly moved from the 49th rank to the 32nd in 2002¹⁴....

Throughout the country, large businesses have all jumped on the diversity management bandwagon: Avon, Corning, Digital, Honeywell, Hughes, Merck, Procter & Gamble, Sara Lee, Motorola, Xerox, PriceWaterhouseCoopers, New York Life Insurance, Goldman Sachs, etc¹⁵.

Yet diversity management is no miracle cure to eradicate race discrimination at work and is no substitute for a strong legal and institutional framework, as we shall see now.

Several levels of objection can be identified, from practical problems to more fundamental critiques expressed generally by civil rights activists and labor unions.

¹² "Inroads", which places young interns from ethnic minority backgrounds inside businesses is one of the best known. Hewlett-Packard, Procter & Gamble, Bank of America, UPS, Verizon and Xerox are some of the partner firms.

¹³ Through its *Opportunity Investment Fund*, AOL-Time Warner earmarked \$100 million to media or communication businesses headed by women or ethnic minorities. This is called "*diversity-related investing*".

¹⁴ Cosmetics giant Avon, one of the pioneers in terms of diversity management, is one of the best examples of this trend. The company started diversifying its workforce in the early eighties and now has some 12 % of black employees and one-third of female executive managers. The diversity rationale is also a way for companies to appeal to as many clients as possible. Faced with increasingly fickle customers who have less and less brand loyalty, this strategy is commonly found among companies working in the media, cultural, cosmetics or apparel industries.

¹⁵ The EEOC also published reports praising the efforts of these responsible businesses (*EEOC Best Practices Report* 35-151, 259-264, 1997)

Why Diversity Management is not a miracle cure

The main argument put forward by DM advocates is that diversity is good for business and enhances creativity. But several researchers have come to quite opposite conclusions (Williams & O'Reilly 1998; Wise & Tschirhart 2000; Audretsch & Thurik 2000), establishing that some branches have nothing to gain from hiring a diversified workforce, which can even be detrimental to the company's performance and jeopardize group functioning. Diversity management today is too often presented as a one-size-fits-all solution, regardless of the company size, its branch of activity, and how the policy should be applied over time.

The ambivalence of business motivations is also an issue, as Elaine Yakura points out: "at this point in time, managing diversity is largely at the stage of idealism. It holds out the promise of a workplace where each individual, including members of historically privileged groups, realizes his or her potential. As in the case of EEO, however, the precise nature of that realization remains ambiguous"¹⁶.

Setting up a real full-blown DM policy can also be quite costly. As of today, no real empirical studies have managed to establish for a fact that diversity enhances business performance, or boosts its financial results.

Thomas A. Kochan from the MIT's Sloan school of management, one of the most respected human resources management scholars in the country and whose extensive 2002 research project on the issue is to date the best resource on the topic declares simply: "The diversity industry is built on sand. The business case rhetoric for diversity is simply naive and overdone. There are no strong positive or negative effects of gender or racial diversity on business performance"¹⁷. Of the 20 large corporations with well-established diversity programs that Kochan initially contacted for his study, none had ever conducted a systematic examination of the effects of their diversity efforts on bottom-line performance measures.

The undeniable ROI is elsewhere. What many businesses call today *diversity management* is very often nothing more than a wise management strategy coupled with a well-crafted

¹⁶ Yakura, Elaine. *Managing Diversity. Human Resources Strategies for Transforming the Workplace*. Ellen Ernst Kossek, Sharon A. Lobel (eds), Cambridge, Mass: Blackwell Business, 1996, 43.

¹⁷ Kochan, Thomas, et al. "The Effects of Diversity on Business Performance: Report of the Feasibility Study of the Diversity Research Network." February 2002.

communication tool implemented less to forward the cause of minority employees than to avoid litigation, polish the company's image, and stifle labor disputes: "DM still appears to be, and largely is, a human resource ghetto for victim-mongering blacks and women, humored and patronized by savvy CEOs who were obviously using diversity training as a talisman against discrimination lawsuits"(Lynch 172).

Some DM actions remain merely anecdotal and oversimplify ethnicity as, for instance, the insistence on celebrating all religious holidays (Christmas, Ramadan, Hannukah, Kwanzaa...), Heritage months, or on having a multicultural calendar pinned on every office wall. As for the diversity training workshops, they have been known to lapse into caricature and perpetuate the view of a reified ethnicity (with such stereotypes as : Hispanics are family-oriented, Asians are shy, Blacks are athletic...). They are also often much too short – a couple of days on average – to arouse a deep long-term wish to change among the personnel. In some cases, they may even activate, rather than reduce bias. Discrimination issues are trivialized.

To be effective, a real diversity management policy takes a long-term commitment from all, and yields results only after years of practice (Thomas R. 1991). The fact that diversity training consultants in many cases happen to be female or from a minority group also unfortunately tends to perpetuate the notion that these sessions are little more than platforms for minority employees to vent their disagreements (Karp & Sutton 1994). In companies that do take DM seriously, management sends strong signals and holds top executives accountable: their annual bonuses, even their pay raises, are indexed to the increase of minority employees in top management jobs.

One of the biggest problems with DM is that it is caught in a double bind when it comes to defining what diversity really means: on the one hand, diversity is simply a politically correct way of speaking of women and ethnic minority issues, in which case DM falls back upon the "us vs. them" dilemma (Hemphill & Haines 1997). Or, diversity is taken to be all-inclusive, encompassing all employees regardless of gender or skin color, in which case no difference is made between minorities and white males, in the name of an artificial and misleading egalitarian logic (Wentling & Palma-Rivas 1997). In that case, if DM does distance itself from the affirmative action dilemma and avoids the polarization trap linked to racial and sexual identity, meanwhile it also dilutes this identity issue. For example, Federated Department Stores, the parent group of Macy's and Bloomingdales, offers a training session targeted to 26 different personnel categories, including, alongside women and ethnic

minorities, disabled employees, gays, seniors, as well as atheists, religious believers and singles....

This frenzied need to celebrate differences no matter what can sometimes lead to preposterous situations. At large companies like AT&T or Motorola, white male employees were becoming so distressed by the recruiting of women and ethnic minorities, or by the diversity training workshops that special seminars had to be held to help them cope with their anxiety and convince them they had not lost all control. At AT&T, this class was called: "White Males: the Label, the Dilemma" (Kauffmann, 1995). But creating a task force in charge of the interests of white males is symptomatic of the confusion between equality (i.e. all employees have the right to a similar representation within the firm) and equity (pretending white male employees face the same kind of work-related problems as women or ethnic minority employees is totally disingenuous). Defining diversity as a catch-all notion, as "everything that makes an individual different from another" is merely a way of drowning the very specific issues faced by women and ethnic minorities inside a huge multicultural grab bag and of marginalizing their claims (Grossman 2000). In a 1995 survey, authors Kelly & Dobbin showed that broader diversity policies were much less effective than measures which target specifically women and minority groups.

With this all-inclusive definition, DM is obviously more consensual and a better "sell" than the controversial affirmative action policy ever was¹⁸. But whether it really helps minority employees is another matter entirely (Berg & Hapnes 2001).

In a sharp piece published in *The American Prospect* in 2006, author Walter Benn Michaels ironically dismisses the current commitment to diversity as, at best a distraction, and at worst an essentially reactionary position that prevents from putting economic equality at the center of the national agenda :

¹⁸ The reader can also refer to studies carried out in 1993 and 1993 and carrying very similar conclusions : in 1993, the *SHRH* pointed out that less than 30 % of the firms having such training courses believed them to be either largely successful (3%), or at best rather successful (30%). Conversely, close to 50% believed they made little difference and 20% even thought they had done more harm than good. Three years later, a similar study published in the *Harvard Business Review* was even more explicit and concluded that most training sessions were overall quite disappointing (Thomas & Ely, 1996).

“Microsoft, for example, is very ingenious indeed. Almost every company has the standard racial and sexual “employee relations groups,” just as every college has the standard student groups: African American, Black and Latino Brotherhood, Alliance of South Asians, Chinese Adopted Sibs (this one's pretty cutting-edge) and the standard GLBTQ (the Q is for *Questioning*) support center. But (as reported in a 2003 article in *Workforce Management*) Microsoft also includes groups for “single parents, dads, Singaporean, Malaysian, Hellenic, and Brazilian employees, and one for those with attention deficit disorder.” And the same article goes on to quote Patricia Pope, CEO of a diversity management firm in Cincinnati, describing companies that “tackle other differences” like “diversity of birth order” and, most impressive of all, “diversity of thought.” If it's a little hard to imagine the diversity of birth order workshops (all the oldest siblings trying to take care of each other, all the youngest competing to be the baby), it's harder still to imagine how the diversity of thought workshops go”¹⁹.

Among some of the other objections raised against the practice is the way businesses instrumentalize it in order to weaken the traditional labor representation inside firms. DM is thus used as a “soft” union busting process. For labor representatives, diversity management is objectionable per se, since it gives businesses latitude to bypass legal obligations and has few real proven effects on minority integration (Konrad & Linnehan 1995). For example, firms sell their ethnic diversity pitch by promoting Blacks and Latinos to executive jobs in which their only contacts are with minority customers or employees (*Affirmative Action Officer, Diversity Manager, Community Relations Officer*), or gives them tasks related to their ethnic background²⁰. From the outside, companies appear diverse and minority-friendly. From the inside, such employees are in fact pigeon-holed into specific sectors from which it is difficult to exit. This is a form of exclusion, and ethnic minorities still remain notoriously underrepresented inside the decision-making departments such as sales or production. A similar observation can be made about the female workforce. Businesses agree to their flexibility requirements so that women workers can reconcile work and family obligations, but meanwhile downgrade them to less challenging positions. The *Mommy track* is a well-documented phenomenon.

¹⁹ Michaels Walter Benn, “The Trouble With Diversity”, *The American Prospect*, August 13 2006.

²⁰ Thomas and Ely (*HBR*, 1996) thus talk about the existence of multiple “consumer niches” which companies stand a better chance of penetrating if their workforce is more diverse.

In so doing, DM is indeed a formidable integration tool for businesses as it enables to silence dissent by defusing confrontation (Kersten 2000). This “soft” method is a way of maintaining the corporate culture intact and of perpetuating the inequality structure while pretending to take action to do otherwise by taking advantage of the “opportunistic coincidence of organisational needs of business and moral principles of inclusiveness”²¹ (18).

Without wanting to sound overtly cynical, it is true that DM today is often used as a cover-up, a form of “window-dressing”. That management is sometimes doing nothing more than paying lip service to issues of equality and social justice was clearly illustrated at the turn of the century, when the economy took a sharp downward turn. Whereas the nineties were a time of economic boom and many firms experienced worker shortages, making it necessary for them to woo minority workers at all costs to fill in existing job slots, in the early 2000s, celebrating diversity suddenly took a back seat to economic pressures. Somehow, the DM thesis whereby raising a company’s diversity profile supposedly yields better competitiveness and more profits was less forcefully argued. Several months only after it had made the 12th rank in the *Fortune* 50 best minority-friendly companies, Lucent laid off half its workforce in July 2002, while Sempra Energy – ranked 2nd – was immersed in an accounting scandal of ‘Enronesque’ proportion, and Advantica dropped its minority-mentoring program, because “it had run its natural course” according to its diversity officer...

Between 2001 and 2002, companies of 100 employees or more slashed their training expenses by at least 5 % according to *Training Magazine*. And the women’s business advocacy group *Catalyst* concluded that the opportunity offered to black female top executives to reach top management jobs had actually dropped between 1998 and 2001²².

Corporate culture is not questioned in-depth, and celebrating diversity, although claimed to be a major company priority, often remains an empty shell. Although the involvement of management is essential for the policy to be taken seriously, a study carried out by the *SHRM* in 2001 and surveying a hundred large companies, showed that only 15% had in fact set up a special Diversity department with a real *Chief Diversity Officer* working in coordination with

²¹Humphries, Maria & Shayne Grice. “Equal Employment Opportunity and the Management of Diversity: a Global Discourse of Assimilation?” *Journal of Organizational Change Management*, vol.8 n° 5, 1995.

²² Still according to *Catalyst*, more than half of black females believe that diversity training has little effect on eradicating unconscious racism.

all the other line managers and mentoring progress. In 80% of the cases, DM was simply considered as a new strategy among others to be pursued within the HR department²³. Yet, here again, research shows that appointing a full-blown diversity manager or committee with responsibility for change is more effective than annual diversity training or one-stop diversity workshops:

“structures establishing responsibility – affirmative action plans, diversity committees, and diversity staff positions—are followed by significant increases in managing diversity. Programs that target managerial stereotyping through education and feedback – diversity training and diversity performance evaluations—are not followed by increases in diversity. Programs that address social isolation among women and minorities – networking and mentoring programs – are followed by modest changes”.²⁴

The key to successful DM lies in changing the corporate culture. It is the structure of the company itself that needs overhauling, not so much as individuals.

But perhaps the most serious objection is the way businesses present DM as a better adapted solution to discrimination than the cumbersome legal measures imposed top-down by the state or the federal governments and courts, thereby rejecting the latter as illegitimate because they are not market-driven. The only problem with that line of reasoning is that official measures apply collectively, whereas DM comes up with individual one-to-one solutions, possibly more flexible, but for which employers are not accountable to anybody but themselves. For minority advocates, this change of perspective, praised by some as the new ‘best practice’ solution to rid the workplace of discrimination and racism, carries its own dangers. By shifting the debate from the ethical to the economic sphere, DM also shifts the rationale for companies to pursue an anti-discrimination policy from the moral ground to that of profit-making. Thus, racism would no longer be condemned as morally unacceptable, but only if there is a good business reason to do so, only if it has a negative impact on the company’s

²³ The amount of financial investment shows the real commitment of corporations. Yet, according to the *SHRM* survey of 2001, average budget is no higher than \$240,000 when diversity programmes are under the HR’s responsibility, while it can reach \$1.5 million when the company invests in an independent diversity management department.

²⁴ Kalev Alexandra, Frank Dobbin, Erin Kelly, “Best Practices or Best Guesses? Diversity Management and the Remediation of Inequality”, Harvard working papers, 2005, 2-3.

productivity and bottom line. From this angle, DM is a way for businesses to question the legitimacy of current anti-discrimination laws and affirmative action or avoid a toughening of the existing legislation. It is a way of saying that since successful minority integration is in the business world's best interest anyway, any form of government-imposed preferential treatment (aka affirmative action) is both unnecessary and superfluous. But taking the law of the market as the ultimate yardstick is a way of opening the door to all kinds of abuses.

Let me once again quote Wrench on this issue:

“The important difference is that EEO and the legal endorsement of positive/affirmative action, were introduced as means of social engineering by governments, in order to produce a more equitable society. In contrast, diversity management is an organisational policy with business motives. If it is adopted widely it may indirectly produce a more equitable society as a side-effect of the actions of individual companies, but there is no guarantee of this” (79).

While relatively little empirical research concerning the economic impact of affirmative action has been conducted so far, economists Holzer and Neumark published a meaningful and extensive paper in 2000 in which they argued that companies with affirmative action policies did noticeably increase the presence of minorities and women and that any move to get rid of them was probably not in their best interest: “...in our view discrimination persists [in the labor market] even in the face of affirmative action, and would likely worsen in its absence”.²⁵

Meanwhile, the latest empirical data to date brings yet fresh evidence about the mixed results of diversity management as it is presently conceived and practiced within firms (Kalev, Dobbin, & Kelly, 2005).

In the fight against racism and discrimination, such a market-based approach alone should not be substituted to a strong legal apparatus which exposes the systemic characteristic of discrimination and places the notion of accountability elsewhere than in the profit-making sphere. The “hard law” of EEO legislation and affirmative action, undoubtedly tedious and cumbersome for businesses to respect, with the setting of precise goals and timetables, and the

²⁵ Holzer H. & D. Neumark, “Assessing Affirmative Action”, *Journal of Economic Literature*, 38-3, 2000, p.501.

legal sanctions that result in case of infringement also act as a safeguard by keeping the “soft law” of these new business practices under regulatory scrutiny and avoiding a presumably questionable transfer of competences from the public to the private sphere.

The affirmative action debate in France

Over the past decade or so, equal opportunity, diversity and affirmative action have also become salient issues on the French social and political agenda. The French society has started to realize that merely acknowledging that racism and discrimination are rampant and act as impediments to the integration of immigrant populations and their descendants, while a long-awaited necessary first step, is not sufficient unless concrete measures follow.

Today, in my opinion, the French society is standing poised at the same ambivalent point in time Americans experienced forty years ago, when they had to decide whether merely following the equal employment opportunity tenets of the 1964 Civil Rights act would suffice to level the playing field for Blacks or that more proactive steps, including resorting to some sort of preferential treatment, would become necessary. Between the mid-sixties and the early seventies, as it would become apparent that color-blind policies were not powerful enough to erase discrimination and that more color-conscious measures were called for, the shift from a reactive to a proactive attitude was operated and the US gradually started implementing affirmative action policies.

Even if there are many variations within the European Union, the UK and the Netherlands being in the vanguard concerning the adoption of affirmative action measures, while France is a lot more hostile, current debates highlight the fact that preferential treatment, under one form or another, will also probably become inevitable.

The current controversy taking place in the United States and the blows dealt to these policies over the past couple of decades, as exemplified by Proposition 209 in California and the most recent backpedalling from the courts in the field of education, are watched very closely by European observers. Should this be interpreted as meaning that affirmative action has run its course? Are we, Europeans, therefore to take a different path entirely? Perhaps by adopting a

class-based, instead of a race-based affirmative action, since the race and ethnicity variable seems to spark so much backlash? The rise of alternative solutions such as diversity management is also arousing our keen interest, even if, as the previous section of this paper aims to show, we should not be totally ingenious about it.

Since 2000, the European Union and the different member countries have been moving quite swiftly to adopt legislation addressing these issues. Even if solutions and remedies advocated in Europe will necessarily differ from the US model, the American experience is helpful: one example is the forthright acknowledgement by the EU of the notion of “disparate impact”, a distinction which was not part of the early anti-discrimination legislation in the USA and only became so in the early seventies (with the *Griggs v. Duke* Supreme Court decision of 1971). Acknowledging from the start the existence of systemic discrimination, regardless of the reality of individual prejudice, saves time in understanding the subtle mechanisms of exclusion, and the best ways to correct them, as many analysts have pointed out that modern forms of discrimination are increasingly coded and ambiguous, hence also less visible (Wrench, 1996).²⁶

One of the most sensitive questions today agitating European societies in general and France in particular concerns that of ethnic data collection and ethnic monitoring. Should ethnic and racial statistics be collected, how, and to what purpose.

After a brief timeline recalling the well-known changes that were brought in 1997 and 2000 to the European legislation, I will focus more closely on the current position of the French government and civil society regarding both issues of ethnic data collection and affirmative action. The response of the French business community will also be examined.

²⁶ For instance Wrench has noted, when analyzing racial discrimination in recruitment, that as social norms become stronger against open prejudice and racist rejection, discrimination also becomes more sophisticated and difficult to identify. One example is the coded use in France of the acronym BBR for “Bleu, Blanc, Rouge” which was recently exposed and denounced as a racist practice by employers trying to avoid recruiting minority candidates. Moreover, in legal terms, discrimination may also be established in the absence of an intention to discriminate, taking place not so much deliberately, but out of indifference, unawareness of the effects of a particular action or inaction, or simply because institutional practices go unquestioned. As such, in France, some job categories are closed to foreign applicants outside the EU (the Civil Service for instance) and until 2001, you had to be of French nationality to work at the Sécurité Sociale, until 2002 at the RATP (Paris transport system). Estimates believe some 7 million jobs to be thus closed to foreign nationals.

Timeline of European initiatives

1997

- Signature of the Amsterdam Treaty, which took effect on May 1st 1999. Article 13 empowers the EU to take appropriate measures against discrimination on the basis of race, gender, religion, ethnic origin, disability, age and sexual orientation. A whole set of directives and measures were to follow, colloquially called the “anti-discrimination package”.
- Creation of the *European Monitoring Centre on Racism and Xenophobia* (EUMC), renamed in March 2007 the *EU Fundamental Rights Agency* (FRA). Its role is to provide member states with reliable data on the phenomena of racism, antisemitism and xenophobia. The FRA collects data and information through its racism and xenophobia information network (RAXEN) composed of National Focal Points in each of the 25 member states. These NFPs are usually composed of research centers, NGOs and social partners. Data covering the fields of employment, education, health and social services, housing, racist violence and crime, and legal issues is collected but there is no field work involved.

2000

Two major Directives were adopted by the EU Council:

1. the Race Equality Directive, 2000/43/EC, implementing the principle of equal treatment irrespective of racial or ethnic origin, and forbidding discrimination related to racial or ethnic origin. A general framework was established, to be adapted by each country. The idea of indirect discrimination, or disparate impact, was introduced.
2. the 2000/78/EC Framework Employment Directive establishing a general framework for equal treatment in employment and occupation, related to criteria of age, handicap, religion and sexual orientation.

All member states were then required to transpose these directives into their own legal systems within a 3-year period. States are under the obligation to take appropriate measures to initiate dialogue between social partners in order to promote equal treatment, which can include the monitoring of workplace practices, yet there is no obligation for them to build a statistical apparatus built on ethnic or racial affiliation. As shown in the following box, the EU merely recommended different measures to collect data on discrimination nationally. All the same, while the FRA respects the reservations expressed by Member states, it nevertheless

believes that data collection on ethnicity is desirable, provided the individual cannot be identified directly or indirectly at any stage and that data is not entirely centralized :

At a minimum:

1. States should develop their social and economic statistics in such a manner that they would be more useful in disclosing data on the (potentially) disadvantaged economic and social position of members of groups vulnerable to discrimination. Data related to employment, housing, education and income should be broken down by the grounds of discrimination, e.g. national origin, disability, gender and age.
2. States should develop their justice system statistics in such a manner that data would be available on a yearly basis on the number of discrimination cases reported to the police and processed by the courts, and broken down by different grounds of discrimination.
3. Ombudsmen and specialized bodies should register the number and nature of complaints submitted to them and the course of action taken.
4. NGOs providing victim support should likewise keep record of the number and nature of complaints reported to them.

Optional, but in fact the most important part of data collection as regards measure number six:

5. Larger companies, public and private, should keep track of their workforce so as to be able to assess their recruitment, promotion and firing policies and practices.
6. Various kinds of research into the nature and extent of discrimination should be commissioned. The suggested research methods include, in particular, victim surveys, targeted surveys, attitude surveys, discrimination testing and qualitative research. It is only through these methods that a satisfactory picture of discrimination can be developed. Discrimination testing can be used as a method for checking compliance with law, and is one of the few methods, together with attitude surveys, that can be used to analyse discrimination with respect to all grounds of discrimination. Victim surveys, together with discrimination testing, have proved to be very efficient for awareness raising purposes and for bringing the issue of discrimination to the political agenda.

A sensitive issue: collecting racial and ethnic data

As a result, ethnic data availability and monitoring differs widely between member states.

The Netherlands and the UK both have extensive ethnically differentiated official data collections. The Dutch have objective criteria, namely the place of birth of the individual or of his parents or grand-parents. In the UK, the system is based on self-identifications. Ethnic data was introduced in the census in 1991, and included a “mixed” category in 2001, so that the British can identify to one category inside five large subgroups :

- White (white-British, white-Irish, any other white background)
- Mixed (white and black caribbean, white and black african, white and asian or any other mixed background)
- Asian or asian british (indian, pakistani, bangladeshi, any other asian background)
- Black or black british (caribbean, african, any other)
- Chinese or other ethnic group

Other countries such as Spain, Italy, Greece or France have very limited collections or even none. Some of the new member states, Hungary, the Czech Republic, etc. rely in their census on a voluntary self-identification, not necessarily a reliable method according to experts.

Similar reluctance exists concerning religious affiliation.

In France, extreme caution and reticence prevail and the French are inherently suspicious of any race-based data collection, even for the purpose of setting up an affirmative action policy. The very idea of registering personal data is met with fierce rejection, which reflects the emphasis laid on the rights of the individual to privacy. Many safeguards exist to protect this privacy, starting with the *Commission Nationale Informatique et Liberté* (CNIL), created in 1978, which protects individuals against the unwarranted use of personal information, and forbids the collection of ethnic, religious or gender-related data. The only data that can legally be collected and that can be helpful in measuring diversity in France are the following:

- last name
- first name
- nationality
- former nationality when necessary
- place of birth
- nationality or place of birth of parents
- address

Since 2006, the CNIL has somewhat adopted a more flexible approach, recognizing the legitimate need for employers and statisticians to compile information yet establishing precise guidelines as to which procedures to respect. Among those guidelines, the anonymity of treatment and destruction of files once the necessary statistical information has been collected are required. Employers also have to notify employees that data is collected and send the CNIL a justification for the data collection.

This reluctance to gather ethnic or racial data stems first from a deep-seated ideological belief in the values of egalitarianism and assimilation upheld by the French Republic. The French society was built upon a Republican model that is one and indivisible²⁷. Article I of the 1958 Constitution declares: “France is an indivisible, secular, democratic and social republic. It

²⁷ a form of “autism” or of “collective denial under the veneer of Republicanism” for many of its detractors, e.g. Columbia Law School Kendall Thomas.

ensures the equality before the law of all citizens without distinction as to origin, race or religion. It respects all beliefs”.

Also at stake is the fear of stirring up interest group politics and opening the door wide to single-issue advocacy organizations (the French call this “communautarisme”), which would propagate the victimization theory, thus leading to a breakdown of the social compact, and *in fine*, actually stigmatize the very populations these statistics were meant to help in the first place since shedding light on racism has the perverse effect of legitimizing the reality of discrimination and inequalities²⁸.

Finally, historical reminders of an infamous and not so distant past, that of the occupation of France in WWII and the Vichy regime, during which ethnic statistics were used to record the number of Jews and organize their mass displacement, also act as powerful deterrents.

Yet, several forms of preferential treatment already do operate in France, in education, politics and the workplace. These selective measures target economically disadvantaged children, women, and the disabled.

In education, the most well-known are public policies dating back to the early eighties that target economically disadvantaged populations in low-income areas (called “priority education zones”, “zones d’éducation prioritaire”, or ZEP). These geographically, not ethnically, defined preference policies activate compensatory mechanisms at the school level (increased funding per school and less students per class for instance). Since children from immigrant backgrounds are overrepresented in these classes, it is a way of reaching them without making race or ethnicity salient. The efficacy of these policies is however very much disputed²⁹.

More recently, flagship higher education institutions like the Political Sciences Institute in Paris (“Sciences Po”) opened its doors to disadvantaged students from poor areas by allowing them to apply to the school via an alternative examination procedure. Called “Priority Education Conventions” (CEP), and in operation since 2001, this system provides around 10% of the freshman class today and its results are deemed to be quite satisfactory. Following up on this initiative in 2002, the ESSEC, one of the top French business schools, chose the

²⁸ Useful information on this debate can be found on the site of this anti-affirmative action site, l’Observatoire du Communautarisme, accessible at <http://communautarisme.net>. See in particular Anne-Marie Le Pourhiet, “Pour une analyse critique de la discrimination positive” 05/04/2004.

²⁹ economist Thomas Piketty in particular, advocates reinforcing funding of ZEP « Education : les promesses de la discrimination positive », *Le Monde*, 21 février 2006.

option of injecting more money to enable high school students from disadvantaged backgrounds to take the existing competitive exams.

And in 2006, top-tier ultra-selective Parisian “lycée” Henri IV also started taking affirmative action measures to integrate students from socially disadvantaged backgrounds.

In politics, the idea of gender “parity” was introduced under socialist Lionel Jospin’s government in 1999 to fight for equal representation of men and women and remedy gender imbalance. On every municipal, regional, European and senatorial election ballot, parties are under the obligation of presenting equal numbers of female and male candidates.³⁰

In the workplace, the disabled also benefit from some kind of affirmative action, businesses being under the legal obligation to employ at least 6% of disabled employees³¹.

Even so, none of these existing affirmative action policies specifically targets ethnic minorities, even though they bear the brunt of discriminatory practices.

Semantics give us a clue as to how much the French tiptoe around the idea. To avoid the uneasiness of having to use the word “race”, “visible minorities” is now the commonly used euphemism, while a flurry of terms pointing to the inability to agree on a common terminology regularly surface in the media and the public discourse: “positive action”, “positive preferences”, “compensatory discrimination”, “affirmative measures”, “preferential action”, all these have been explored and rejected.

Ultimately, the French still have to decide between three options:

1. Republicanism is and should remain the ultimate model and no exceptions are to be tolerated
2. the principles of Republicanism should be temporarily suspended to allow for preferential treatment
3. Republicanism has to be reconsidered in an inherently multicultural society, in which equity becomes the new paradigm, and no longer equality

³⁰ although this equality largely remains fictitious, and political parties prefer to pay a financial penalty. Today, in 2007, the National Assembly only has one black female deputy (George Pau-Langevin)...

³¹ yet, here again, most never even come close to filling this quota, preferring to pay penalties.

Meanwhile, both the media and academia have repeatedly been putting these issues under the radar screen lately, and public awareness is growing. Associations fighting for minority rights are increasingly active and gaining visibility³². Research centers and think tanks, among which the “Observatoire des discriminations”, headed by Jean-François Amadieu from the University of Paris 1, have been carrying out several seminal empirical studies exposing the dramatic level of discrimination these “visible minorities”, namely North Africans, sub-Saharan Africans and West Indians experience in their everyday life³³. A recent conference held last November by the Center for Strategic Analysis, a government agency created in 2006 to help define public policy orientations, and which has been working on the issue of diversity and social inequalities, brought together many experts on the topic who for the first time openly discussed the appropriateness of building up a collection of statistical data on ethnic origins. The question at stake is whether the systematization of race-based data collection would have an entirely positive impact on discrimination. Amadieu, whose work is extremely influential in France, is of the opinion that data already exists, or that proxies are available (first names, birthplace of parents, current address, etc.), thereby making ethnic data collection both unnecessary and dangerous³⁴. Others, namely statisticians from the INED (demography institute) like Patrick Simon disagree. No decision has of yet been taken and the debate is ongoing today, with an amendment to the forthcoming immigration law under discussion in the National Assembly.

Government action over the past five years has accelerated, most certainly spurred by the “banlieues” riots of November 2005 which were also instrumental in bringing about a change of opinion. And current President Sarkozy, who has always expressed his support for affirmative action, recently gave strong signals to those who advocate preferential treatment measures by promoting several high-profile minority female figures to top jobs inside the French administration: Rachida Dati is now Ministry of Justice, Rama Yade assistant secretary to the Foreign Affairs & Human Rights Secretary, Fadela Amara is assistant minister to Housing...

Following is a quick review of the major government measures taken in the past ten years.

³² The MRAP (Movement against Racism), SOS-Racisme, la Ligue des Droits de l’Homme, the LICRA (International League against Racism and Antisemitism), the CRAN (Council of Black associations), etc.

³³ <http://cegoris.univ-paris1.fr/docsatelecharger/Barometre2006resultats.pdf>

³⁴ L’Observatoire des discriminations, <http://cegoris.univ-paris1.fr/observatoiredesdiscriminationsfd.htm>

Timeline of the French government initiatives

1998

- A High Council on Integration report commissioned by the Prime Minister and entitled “Fighting against discriminations” is the first major turning point. Colloquially called the “Berlorgey report”, it makes a worrying assessment concerning racial discrimination in France and recommends taking action and establishing an independent institute to monitor the phenomenon.

1999

- In the wake of the report, several structures are set up : the “Observatoire du Groupe d'Etudes des Discriminations” or GED³⁵ whose mission is to study how discrimination mechanisms operate, and “Departmental Commissions for Access to Citizenship” (CODAC) are created, to help young people born of immigrant parents to integrate society and the workplace.
- May 11: The Ministry of Employment together with labor unions and manager unions organize a roundtable to define a common policy in order to fight race discrimination at work: the “Grenelle Declaration”.

2000

- a one-stop telephone “green” number, the “114”, is set up by the Ministry of Employment and Solidarity, to centralize calls from victims or witnesses of racial discrimination.

2001

- Inkeeping with EU requirements, France adopts a law to fight against discriminations (law n°2001-1066, November 16), which overhauls the labor legislation and reinforces its provisions related to worker protection by shifting the burden of the proof on the defendant, and giving labor unions and associations power to represent discrimination victims in court.

2002

³⁵ its rechristening in 2001 “Groupe d’Etudes et de Lutte contre les Discriminations” was significant.

- January : a new law is voted, the “loi de modernisation sociale” n° 2002-73 (social modernization law) which, among other measures, sanctions moral harassment.

2004

- Creation of the HALDE (Haute Autorité de Lutte contre les Discriminations et pour l’Egalité), a commission somewhat similar to the EEOC in the United States, made up of a consulting group of 11 members whose mission is to monitor discrimination practices and help individuals or associations to take legal proceedings. According to its 2006 report, 4058 complaints were recorded that year, triple the amount of the previous year (1410). 35% of these complaints mentioned “origin” as the first motive, followed by health/disability (18%). Age and gender only elicited 6% and 5% of the complaints³⁶. 42% of all complaints were related to job discrimination, with twice to four times as many complaints concerning the post-hiring stage (lack of career evolution, promotion, etc.). Some 12% of cases were subsequently taken to court. Its 2006 budget was of 10.7 million euros³⁷.
- Creation of a Ministry in charge of promoting equal opportunities. Azouz Begag, himself of North African ancestry, was nominated³⁸.

2006

- March 23 : Equal Pay Act between men and women
- Equal Opportunity Act (loi pour l'égalité des chances, n° 2006-396 March 31 2006). In the wake of the “banlieues” riots of fall 2005, several measures related to employment and education were implemented:
 - requesting an anonymous CV from job applicants to prevent early ethnic identification which often results in rejection of the CV before the applicant even gets to be interviewed³⁹.

³⁶ HALDE, 2006 annual report, <http://lesrapports.ladocumentationfrancaise.fr/BRP/074000298/0000.pdf>

³⁷ for comparative purposes, the equivalent Commission in the UK, called the “Commission for Equality and Human Rights” had an estimated budget of 103 million euros for 2006 while the Irish “Equality Commission for Northern Ireland” had 9.8 million euros in 2005...

³⁸ the Ministry was subsequently rechristened under the current Sarkozy administration “Ministry of Immigration, Integration, National Identity and Codevelopment”, a combination of terms that prompted an outcry from opponents and also goes to show that if diversity awareness is mounting, assimilationist principles are not dead.

³⁹ yet the measure was finally not adopted, even if some companies have experimented it, among which American Express, BNP Paribas, Groupama, PSA.

- creating a national agency the « Agence nationale pour la cohésion sociale et l'égalité des chances » (ANCSEC)
 - reinforcing the powers of the HALDE
 - adopting the “paired testing” methodology as valid legal proof of discrimination.
- Cancelling the requirement that beneficiaries of the “carte famille nombreuses” (which confers discounts on the SNCF railway network to families of three or more children) have the French nationality. Foreign nationals may now also benefit from the card.

Business initiatives

French businesses have also responded quickly to the changing atmosphere. Codes of ethics, charters, diversity best practices have been multiplying over the past few years, partnerships with schools and associations have spread, as well as the mentoring and coaching of minority employees. Diversity management is now part and parcel of every mission statement and diversity conferences have multiplied⁴⁰.

2004

- October: 40 leading French businesses sign the “Diversity Charter”, a six-point contract in which they pledge to increase cultural, ethnic and social diversity inside their firms.⁴¹
- l'Oréal is awarded the *Global Diversity Award* by the Diversity Best Practices organization.

2005

- l'Oréal is awarded the *International Leadership Award* awarded by the Anti-Defamation League.
- The HALDE initiates an information campaign targeting the business community and crafts a series of general guidelines to help corporations organize the fight against

⁴⁰ at such a conference held in Amsterdam in 2004 and called “Legitimising diversity as a business tool” representatives from leading business sectors (IT, oil, chemicals, finance, telecoms, etc.) all described how their DM policies had translated into market and business benefits.

⁴¹ The list includes: Accor, Adecco, Adia, Airbus, Air Liquide, Arcelor, A.T. Kearney, Axa France, BNP-Paribas, CCF, CS Communication & Systèmes, Caisse des Dépôts et Consignations, Canal Plus, Carrefour, Club Méditerranée, Groupe Casino, Deloitte, Dexia, France Telecom, France Télévisions, IBM, Ikea, Lafarge, NEF, Noos, Pernod Ricard, PPR, PSA Peugeot Citroën, RATP, Rhodia, SAGEP, Serda, Servia Informatique, Schneider Electric, SNCF, Société Générale, Sodexo, Stream, Total, Vedior France.

discrimination. Over 200 large companies are contacted and asked to account for their practices in terms of equal opportunities and anti-discrimination measures. A total of 173 eventually respond.

2006

- October: an interprofessional national agreement on diversity is signed between several hundred large French companies, manager organizations (MEDEF, CGPME, UPA) and the large French labor unions CFDT, CFE-CGC, CFTC, CGT-FO and CGT which all pledge to increase diversity and equal opportunity inside their firms and detail a host of measures and good practices to be adopted, as well as goals and timetables to be met. Communication initiatives are to be set up, management training sessions are to be held regularly, and a person called “correspondant égalité des chances” is put in charge of monitoring diversity progress.
- In December, Microsoft France signs the 2004 Diversity Charter

2007

- March: the number of companies having signed the Diversity charter reaches 1,500

Whether all these moves will eventually translate into significant increases of minority workers inside French corporations, including at the executive level, remains of course to be seen. For the present time, such a positioning and adoption of codes of conduct are not binding. And in the absence of reliable ethnic data, employers will continue to face difficulties in their monitoring efforts. Meanwhile, diversity efforts are no immunity against discrimination lawsuits either, as l’Oréal recently had to concede, in spite of nominating a World Diversity Manager, being granted all sorts of diversity awards and claiming its diversity initiatives over the rooftops: Jean-Paul Agon, general manager of L’Oréal France, responding to the appeal trial which the company (together with Adecco, a temp agency) faced last July for racial discrimination, claimed his disbelief and sadness at the case, stating that “diversity is in our genes”.

Yet the business world is aware that public awareness to diversity issues is mounting. Amadeus-Dirigeants, a management think tank, thus informs managers on its website of the new legislation to be respected, and advises them that “signing [the diversity charter] sends a positive signal to the HALDE, to your co-workers and yourself, so as not to postpone any longer the necessary analysis of your HR procedures” . It ends its recommendations with the

following advice: “getting attention from the HALDE can deter your stakeholders, your clients, your present and future colleagues, in a word, it can be very upsetting for the whole company, and even jeopardize future contracts. This would be a shame don’t you agree ?”⁴²

What is probably not coincidental is that all these recent moves in favor of increasing diversity initiatives taken by the French corporations and manager organizations have also been coming on the heels of the greater offensiveness from the HALDE which has been stepping up its accountability requirements from businesses, taking cases to court when necessary⁴³. And even if many managers say they are sceptical about the impact of legislation to solve discriminatory practices, we have seen earlier in this paper that racism and discrimination probably stand a better chance of being eradicated with a combination of diversity management measures and policy action from the state.

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⁴² recommendations accessible on its website <http://www.amadeus-dirigeants.com/index.php>

⁴³ in its 2005/2006 report, 40% of the discrimination complaints were linked to origins, 15% to health or disability, 6% to gender or age; 15 cases were brought to trial and an information letter was sent to 146 businesses.

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