Diversity and Inclusion in Law Firms

Why quality of diversity matters more than quantity

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In recent years diversity has become an inreasingly important concept in human resource management. As Kossek, Markel, and McHugh (2003) observed "Most individuals are sophisticated enough today to know that it is socially desirable to state that managing diversity is an important organizational goal, as such contentions have become a truism in the management literature." (p. 332).

Diversity has always been a sensitive topic but this is especially true for the legal profession which is traditionally accepted as a male dominated profession offering more opportunities for advancement for Caucasian men compared to individuals with a disability or different gender, race, sexual orientation, or cultural background. Predominantly discussed from the viewpoint of equal employment opportunities and the business case, this has led to a constant monitoring of the number of male, female, and minority lawyers, implementation of diversity policies, diversity disclosures from law firms, etc. For example, the U.S. Equal Employment Opportunity Commission (2003) reported that although the number of women and minority lawyers in large American law firms constantly increased in the period from 1975 to 2002 and in 2002 the average number of male and female associates are "nearly identical", the average number of male partners (62.88%) greatly exceeds the average number of female partners (12.71%). Kumra (2015) and Vaughan (2015) observed that the situation in Great Britain was the same and senior positions in the legal profession were characterized by a "lack of diversity" (Vaughan, 2015, p. 104). Vaughan (2015) discussed the Legal Services Board's reporting rule which required legal firms in the United Kingdom to disclose information about their workforce diversity. He found it unnecessary because law firms have already started to disclose diversity data without any legal regulation and he also did not observed any change in the behavior of law firms as employers after the introduction of the reporting rule. According to the Level the Playing Field project for gender equality in Swedish law firms about 60% of newly employed lawyers in Sweden are women but only 10% of female lawyers are partners.

The number of academic and popular articles about diversity and gender equality among lawyers presenting similar data is substantial (see e.g., Above the Law, 2016; Backer, 2018; Marcus, 2016; Robinson, 2016). This overview only intended to shortly explain that various sources about the legal profession in different countries describe almost the same situation—lawyers with different cultural identities[1] have a lot better opportunities to enter the legal profession as

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[1] Cultural identity is often influenced by visible, more or less identifiable physical or stylistic features but is not equal with them. Ely and Thomas (2001) define it as a complex and dynamic construct stemming from the membership in social groups. Social groups are formed on the basis of identifiable features (including but not limited to sex, race, ethnicity, social class,

compared to 40 years ago but they are still underrepresented at senior positions. Implicitly, this data are generally presented as evidence for the existence of discrimination based on gender or cultural background and existing barriers in the advancement of female, minority, or disabled lawyers.

Statistical data of this kind are necessary and important but interpreting them as a sign of lack of diversity might sometimes be misleading. Explaining equality and diversity in terms of quotas or proportions of diverse lawyers to majority lawyers is a serious misunderstanding of the construct and undermines the importance of qualitative change that is absolutely needed for an effective implementation of diversity programs in organizations. In fact, forcing law firms to employ certain number of employees with given characteristics is not an optimal decision and might even have adverse effects for the organization and its employees. Various authors (Chrobot-Mason & Aramovich, 2013; Ely & Thomas, 2001; Harrison & Klein, 2007; Wolfson, Kraiger, & Finkelstein, 2011) have discussed the discrepancy in scientific reports regarding the outcomes of diversity—both positive and negative outcomes have been reported in different studies. Chrobot-Mason and Aramovich (2013) described diversity as a "double-edged sword' (p. 559) and Harrison and Klein (2007) concluded that "findings about the consequences of within-unit differences have been weak, inconsistent, or both" (p. 1199). This has influenced researchers to extend the study of diversity with analyses of qualitative features like employees perceptions about diversity and diverse colleagues and feelings of inclusion and belongingness to the work group and organization.

Kossek et al. (2003) observed that structural change marked by *increased number of female and minority employees was not related to a positive appreciation of diversity*. In their study they found out that organizational units with the highest increase of diversity had lower agreement whether the organization should pursue diversity as an organizational goal. Although groups with higher increase of female employees were more likely to express a positive attitude towards diversity as an organizational goal, they also were not convinced that the organization was really committed to diversity. Based on the results, Kossek et al. (2003) concluded that structural change alone is not expected to be appreciated favorably by employees and would not contribute to a positive attitude towards diversity in employees. Consequently, the ratio of diverse employees to all employees in the company should not be a key component of diversity policies and organizational change. Diversity campaigns should focus on the development of a positive organizational

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religion, nationality, and sexual identity; Ely & Thomas, 2001) but they are characterized with shared values, beliefs, norms, etc. One can identify himself/herself with different social groups to a different degree. The underlying worldviews, norms, and beliefs (as opposed to the visible physical features) are crucial to the proper understanding of diversity.

climate of diversity and the implementation of "supportive group norms" (Kossek, Markel, & McHugh, 2003, p. 328).

Organizations usually choose diversity as a strategic solution to improve performance and effectiveness. Ely and Thomas (2001) identified three different perspectives on workforce diversity, namely the integration-and-learning perspective, the access-and-legitimacy perspective, and the discrimination-and-fairness perspective. They are characterized with different rationale, value of cultural identity, connection to work, and indicators of progress.

The discrimination-and-fairness perspective is based on the notion of proportional equality and avoidance of discrimination. It is characterized with low value of diversity and lack of connection between diversity and work. Diverse employees are expected to accommodate themselves to the dominant culture.

The access-and-legitimacy perspective is the one based on the so called "business case". Under this perspective diversity is understood as a way to gain access to diverse clients and expand to new markets. It is characterized by an indirect relationship between diversity and work and diversity is usually restricted to departments and employees who work directly with clients. Apart from their contact with clients, diverse employees should also accommodate themselves to the dominant culture.

The third perspective on workforce diversity, the integration-and-learning perspective, is characterized by a direct relationship between diversity and work and a high value of cultural identity. Organizations which develop diversity through this perspective understand diversity as a source for learning and development. The insights gained from the contact with new and diverse viewpoints are implemented in the work process and product development. The integration-and-learning perspective is described by Ely and Thomas (2001) through the qualitative analysis of diversity climate in a small non-profit law firm. What initially began as a single project for which the firm hired one lawyer with diverse cultural background, expanded and influenced a major change regarding employee diversity. The diverse lawyer in the team brought with her different personal and professional background and offered a new perspective on the firm's strategic tasks and goals. The team integrated the new perspective in its everyday work. Eventually, the firm recognized diverse experience as a valuable source for learning and gaining new insights and was able to integrate this source for learning in the work of all employees which resulted in an organizational culture that values diversity as unique and special. Characteristic for the integration-and-learning perspective is that conflicts and tension resulting from the differences are openly discussed. Everyone feels free to share an opinion and explain his/her viewpoint which helps the firm to manage conflicts constructively. Employees benefit from the integration-and-learning perspective of diversity because they feel "valued and respected" (Ely & Thomas,

2001, 254). Organizations benefit from employees' perceptions of being valued by the company because these perceptions are related to employees' "conscientiousness, job involvement, and innovativeness" (Eisenberger, Fasolo, & Davis-LaMastro, 1990, as cited in Mor Barak et al., 1998, p. 90). On the other hand, employees in the company which implemented diversity through the discrimination-and-fairness perspective reported negative experiences and felt "undermined, devalued, or disrespected" (Ely & Thomas, 2001, p. 255). This is characteristic for companies which hire diverse employees as an affirmative action just because they have to reach certain proportion of diverse staff. This creates tension between majority and diverse employees because the organization does not make any attempt to integrate differences. Seeing diverse employees as an affirmative action denies them the opportunity to be hired and valued because of their skills and competences. Consequently, diverse employees experience dissatisfaction with their job and majority employees explain the hires of diverse employees as kind of charity on part of the organization and exclude them from decision making, innovation, problem solving, etc. This kind of negative experiences might remain unsolved for years and even cause doubts in diverse employees about their choice of profession in general (Wimes, 2015).

"Quality" of diversity is far more important for the organization than "quantity". Diversity is organizational phenomenon reflected in employees' "perceptions of the organizational context related to women and minorities" (Mor Barak, Cherin, & Berkman, 1998, p. 83). There is only one way for organizations to assess the quality of their strategic changes regarding diversity—through the assessment of employees' perceptions of diversity climate. Mor Barak, Cherin, and Berkman (1998) focused on measuring perceptions because people's behaviors are influenced by their perceptions of reality (what they believe is true). They conceptualized diversity climate as having two dimensions: organizational and personal. The organizational dimension reflects employees' perceptions of organizational policies and procedures regarding diversity and the personal dimension reflects employees' values or stereotypes of diversity and individuals with diverse backgrounds. In their survey Mor Barak et al. (1998) found gender and ethnic differences in the perceptions of diversity climate and employment practices. Men scored higher than women on the organizational dimension meaning that they perceived the organization as fair in its employment practices to a greater extent than women did. Men also felt that female and minority employees were included and had similar opportunities as everyone else to a higher degree than women and minority employees. The ratings were also higher for Caucasians compared to African Americans. Opposite results immerged for the personal dimension value of diversity where female and minority employees scored higher than male employees and Caucasians. Ethnic differences were also found for the factor personal comfort related to communication with people with a different background where Hispanics and African Americans scored higher than Caucasians and Asian Americans. The

general trend of women and minority employees feeling that the organization has to be more committed to promote awareness towards diversity was replicated in the qualitative analysis of employees' interviews.

Successful diversity management is reflected in the organizational climate for inclusion. While diversity as construct is more related to reducing discrimination in employment practices and creating equal opportunities for traditionally underrepresented groups (e.g., women and ethnic minorities), inclusion is related to **all** employees regardless of their differences. According to Nishii (2013) organizations that want to reduce negative outcomes associated with diversity (e.g., conflict and turnover) and to benefit from it "need to create environments that are inclusive of all employees" (p. 1755). In inclusive organizations employees are "valued for who they are" and "included in core decision making" (Nishii, 2013, p. 1754). These are the basic components of the integration-and-learning perspective of diversity described by Ely and Thomas (2001). Nishii (2013) found out that climate for inclusion was negatively associated with conflict and also moderated the relationship between gender diversity and both relationship and task conflict. Nishii (2013) confirmed the indirect effect of gender diversity on unit satisfaction through relationship conflict but also reported that this negative effect could be diminished by the moderation effect of climate for inclusion because high climate for inclusion reduced the negative effect of relationship conflict on satisfaction. This finding is especially important for organizations because lower satisfaction is associated with higher employee turnover. Nishii (2013) demonstrated empirically the importance of diversity management through development of an inclusive organizational climate.

McKay et al. (2007) and Chrobot-Mason and Aramovich (2013) confirmed the negative effect of diversity climate perceptions on turnover which is entirely mediated through organizational commitment (2007) and through identity freedom, psychological empowerment, climate for innovation, and organizational identification [2] (Chrobot-Mason & Aramovich, 2013). Moreover, results were consistent across different ethnic groups indicating that perceptions of diversity climate are important not only for minority but also for majority employees.

Diversity is a relatively new construct in organizational psychology and researchers agree that more empirical studies are needed in order to completely understand its nature and effects on organizations and employees. However, they also completely agree that organizations can benefit from diversity only if it is

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[2] Chrobot-Mason and Aramovich (2013) have named the construct 'organizational identification' but they used the Affective Commitment scale from Allen and Meyer (1990) to measure it. This scale is significantly correlated ($r = .83$) with the Organizational Commitment Questionnaire of Mowday, Steers, and Porter (1979) which is used in the survey of McKay et al. (2007) to measure organizational commitment. So I accept that McKay et al. and Chrobot-Mason and Aramovich actually measured the same construct.

managed effectively. Effective diversity management is reflected in employees' positive perceptions of diversity and in their feelings of inclusion: In organizations with an inclusive climate employees feel that they are allowed to be who they really are (to act in accordance with their multiple cultural identities) without experiencing any negative consequences—at the opposite end employees are expected to accommodate to the dominant culture. Climate of inclusion contributes to a deeper and more meaningful understanding of diversity—real diversity is in the difference between values, beliefs, attitudes, and viewpoints in individuals with different experiential backgrounds and the value of diversity is in the opportunity to learn from different experiences. Organizations which are successful in integrating those different experiences in the work process should experience potential benefits like lower turnover through reduced experience of conflict within groups, increased organizational commitment, feelings of empowerment, and job satisfaction. Nishii (2013) also expects that organizations with an inclusive climate should have higher performance and reduced rates of harassment and mistreatment in the workplace.

Perceptions of diversity and inclusion practices in the organization affect the behavior of every employee—majority and minority. Although there is a difference in the strength of the relationship between diversity climate and psychological and organizational outcomes (the relationship between diversity perceptions and turnover was stronger for African Americans compared to Caucasian men, Caucasian women, and Hispanics; McKay et al., 2007), diversity climate does matter for all employees because the effect of diversity perceptions on turnover was evident across all ethnic groups in the study (the strength of the relationship was the same for Caucasian men, Caucasian women, and Hispanics; McKay et al., 2007).

Diversity climate perceptions differ among gender and ethnic groups (Mor Barak et al., 1998). Organizations should be committed to promote awareness towards diversity. Majority employees might react towards opinions expressed by their minority colleagues based on stereotypes and prejudice without being aware that they hold such stereotypes. Similarly, they might rate organizational practices as equally fair for all employees just because they are not really attentive to the work conditions of other co-workers. Based on research on in-group and out-group differences Nishii (2013) concluded that there is a potential to minimize the effect of stereotypes through interpersonal contact between employees. It is advisable for organizations to create opportunities for employees to know each other personally. Nishii further states that inclusive climates allow the "engagement of whole selves" (p. 1767) and that conflict increases when people are expected to act in alignment with predefined norms (e.g., accommodate to the dominant culture) and hide their true selves.

Organizations which want to benefit from diversity should focus more on the quality of inclusion practices instead of the proportion of diverse employees. Ely and Thomas (2001) described the integration-and-learning perspective for managing diversity as the one associated with the most inclusive climate and the highest work group functioning. Employees feel valued and respective when they are equally included in the work process. Important for an effective inclusive climate is that status differences are minimized (resources should be equally distributed and all groups should hold approximately equal power and control over them) and that employees "work together […] to solve shared problems" (Nishii, 2013, p. 1754). These requirements are related also to the type of leadership that is characteristic for the organization and suppose that diversity and inclusion management should be integrated into the organizational culture in general. Inclusion could not be created in isolation.

Implications of diversity and inclusion management for law firms developed by practitioners with experience in the field are in congruence with the implications based on empirical evidence. Michelle Wimes (Chief Diversity and Professional Development Officer at Ogletree, Deakins, Nash, Smoak & Stewart, P.C.; 2015) and Kathleen Nalty (expert in diversity and inclusion in the legal industry; 2014) stress the importance of creating inclusive work environments in law firms. Michelle Wimes integrates her personal experience as an ethnic minority female lawyer with her professional experience as diversity manager in a large international law firm. According to Wimes law firms should focus on combining lawyers' professional development with cultural competence because it is "a best practice that has proven to be very effective" (p. 18). Law firms committed to diversity and inclusion should be engaged in providing the resources and creating the optimal conditions needed to develop an inclusive work environment. Valuing diversity is more than just a strategic statement; it should be reflected in strategic actions with the active participation of the firm's leaders (Nalty, 2014). According to Nalty law firms which strive to implement diversity and inclusion effectively should recognize the importance of promoting diversity and inclusion practices through leaders' involvement with the initiative. In an interview about his success in creating a diverse and inclusive climate in Nixon Peabody—USA based law firm that received a top rating from Human Rights Campaign for its commitment to corporate equality—Andrew Glincher explained that it was important to start the change from the top because employees needed to see that it was really happening (Marcus, 2016). Law firms that fail to integrate inclusion practices in every aspect of their work are in a situation of being "busy doing nothing" (p. 2278) as Kumra (2015) describes the inability of large law firms in the United Kingdom to challenge the status quo because of inefficient efforts to remove the factors responsible for discrimination.

To promote equality, challenge discrimination, and create inclusive environments law firms should focus specifically on networking, client contacts, access to mentors and sponsors, promotion opportunities, gender and racial stereotypes about skills and work efficacy, social and cultural intelligence, frequent feedback, and relevant skills development. Poor networking opportunities, access to clients, mentors, and sponsors, and stereotypes about diversity combined with an unconscious bias to link race and gender with competence are frequently identified as major barriers to the professional advancement of diverse lawyers (Kumra, 2015; Nalty, 2014; Wimes, 2015).

Important for the success of every organization is the ability of its leaders to attract and retain competent employees who are committed to the organization, identify its goals as their own, and want to grow with the organization and contribute to its development. From a psychological point of view the contract between employees and their employer is a social contract based on reciprocity: Employees committed to the organization expect that the organization will be committed to the development and wellbeing of its employees. Violation of the social contract on part of the organization results in higher attrition rates which are observed among diverse lawyers (Nalty, 2014). Law firms that want to retain their best employees should recognize the importance and potential benefits of inclusive work environments. The development of such environments requires **effective** strategic actions from the firm's leaders and a long-term commitment to the initiative because "inclusive work environments do not happen organically" (Wimes, 2015, p. 4). The key word here is "effective": Implementation of inclusion and diversity practices is deemed effective only when employees perceive a change in their work conditions. For that reason, law firms need to assess employees' perceptions of the firm's commitment to develop an inclusive climate.

The Survey of Inclusion and Diversity in Law Firms of Lawyer Performance Project is designed based on the latest theoretical and empirical advancements regarding diversity and inclusion management. It is developed for law firms with an understanding of the specific work conditions characteristic for lawyers. The survey aims to help managers in the legal industry to identify the strengths and weaknesses in the implementation of their diversity initiatives. It is useful for law firms that:

• Are planning changes in their diversity and inclusion programs. Based on the results from the survey managers will be able to develop strategic changes that were identified as necessary from the employees. This will increase the effectiveness of the program.

• Want to monitor the effect of the practices regarding inclusion and diversity that have been implemented and potentially to identify weaknesses that should be addressed.

The report of the survey will inform you about:

• Employees' perceptions of organizational fairness in implementing employment practices and human resource polices equally

• Employees' perceptions of organizational fairness regarding promotions

• The effectiveness of the firm in promoting inclusion and integrating differences

• Employees' personal value of diversity and their self-rated ability to communicate with people with diverse backgrounds

• Sexual harassment incidents experienced by female employees

• Employees' perceptions about the climate related to sexual harassment in the workplace

Sexual harassment is one of the major threats to equality, diversity, and inclusion in the legal industry. Among lawyers incidence rates vary between 25% and 67% in different countries (Bowcott, 2016; Laband & Lentz, 1998; Stanley, 2017; Whyte & McGregor, 2016). The experience of sexual harassment is related to negative consequences for both the employee and the organization (Estrada, Olson, Harbke, & Berggren, 2011; Fitzgerald, Gelfand, & Drasgow, 1995; Raver & Gelfand, 2005). Through sexual harassment perpetrators exert power and control over their victims. When organizational conditions are tolerant of sexual harassment the victims often do not report the incidents because they feel that the organization is not committed to protect their rights. This enhances the negative effect of the experience of sexual harassment and with time leads to ineffective work, job dissatisfaction, and increased turnover intentions. When incidents of sexual harassment remain unsolved this increases the inequality between perpetrators (male employees) and victims (female employees).

Therefore, in the Survey of Inclusion and Diversity in Law Firms sexual harassment is conceptualized as an indicator of the level of equality and inclusion in the organization. In the individual report of the results Swedish law firms will also be informed about their Gender Equality Index—a comparison of the firm to other Swedish law firms based on the level of organizational tolerance of sexual harassment and gender discrimination.

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