

**From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers**

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*This article examines the contextual factors driving legal mobilization of workers in the United States through an analysis of national origin discrimination charges under Title VII of the 1964 Civil Rights Act (2000-2005). Consistent with previous studies, this analysis confirms that high unemployment levels and weak labor protections promote legal mobilization. The findings also highlight the positive role that civil society may play in promoting claims-making. I argue that nongovernmental organizations fill the gap in places where organized labor is weak, and may help support claims-making particularly in places with a larger vulnerable workforce. The article concludes by offering suggestions for a renewed sociolegal research agenda that examines the role of 501c(3) civil society organizations for the legal mobilization of an increasingly non-unionized and immigrant workforce.*

Legal mobilization has typically been framed as a tool for collective social movements to enact broad changes in public policy. *Brown v. Board of Education* was a key victory for the civil rights movement, just as *Roe v. Wade* was significant for the women's rights movement. Critics have argued that the creation of formal rights through changes in public policy simply appeases the public and dampens social movements (Edelman 2004; Rosenberg 1991; Scheingold 2004), while proponents have argued that legal mobilization may in fact spur individuals to organize (Epp 1998; McCann 1994). Instead, institutionalist theorists interested in the implementation of such policies have shifted their focus away from assessing the efficacy of legal mobilization for building social movements, to analyzing the role that civil society can have in spurring legal mobilization.

For example, at the macro level, Keck and Sikkink (1998) find that transnational social-movement groups advocating for human rights can be successful in pressuring states to institute protections. At the micro level, scholars have examined the ways that nonprofits can empower individual forms of claims-making by assisting claimants in navigating complex rights bureaucracies (e.g., McCammon 2001; McVeigh et al. 2003).

Several factors are relevant to the process of individual claims-making. The economic and policy context can influence the level of legal mobilization. Periods of economic recession may dissuade claims-making, since workers are often left with few other employment alternatives (Donohue & Siegelman 1991; Epp 1990; Wakefield & Uggen 2004). Organizational characteristics (including internal dispute processes and management practices) can influence how workers respond to workplace violations, primarily by constructing particular parameters of what constitutes compliance with the law, thus deterring claims (Edelman 1992; Hoffmann 2003). Firms can also draw on legal and other monetary resources to avoid culpability and

promote settlements in lieu of litigation (Hirsh 2008; Hirsh & Kornrich 2008). Although collective bargaining may help workers pursue claims (McCammon 2001; Pollert 2005), outside of labor unions, access to legal counsel is crucial to helping workers to navigate the workplace enforcement bureaucracy (Nielsen & Nelson 2005; Zemans 2006). Overall, racial minorities, women, and low-wage workers are also less likely to pursue litigation by filing formal claims (Bumiller 1992; Ewick & Silbey 1998; Merry 1990).

However, scholars know less about the role that organizations outside the private and government sectors play in promoting legal mobilization at the workplace. This article examines the role of civil society (specifically 501c(3) organizations) in explaining variations in levels of legal mobilization in the context of declining levels of unionization and an increasing immigrant population. The analysis considers whether civil society has a positive mediating effect on the legal mobilization for two segments of the vulnerable workforce: nonunion workers and undocumented immigrant workers. I address these questions by analyzing discrimination charges filed with the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act (1964), based on national origin. In this article, I present a theoretical framework for understanding the ways that civil society can mitigate the challenges facing a growing immigrant workforce, and the relationship between community-based organizations and organized labor. I conclude by offering ways that these findings can be appropriated by other organizations of legal mobilization for vulnerable populations.

## **Legal Mobilization, Civil Society, and Immigrant Workers**

### Defining Worker Legal Mobilization

There are various ways that scholars have generally conceptualized legal mobilization. Many studies have focused on the highest levels of the dispute pyramid, analyzing processes of court litigation (e.g., Burstein 1991; Burstein & Monaghan 1986; Epp 1998; McCann 1994; Nielsen, Nelson, Lancaster, & Pedriana 2008b; Rosenberg 1991). Yet rights are often accessed outside of the courts, either collectively through social movements, or individually through administrative enforcement agencies. Many of the claims that are mediated by these agencies never reach the courts, and factors shaping the emergence and fate of these claims have been explored both qualitatively (e.g., Albiston 2005; Bumiller 1992; Merry 1990) and quantitatively (e.g., Hirsh 2008; Hirsh & Kornrich 2008; Wakefield & Uggen 2004).

Federal and state labor laws have become even more significant in combating workplace violations in an increasingly nonunionized economy. Discrimination charges under Title VII of the Civil Rights Act represent only one aspect of workplace violation claims filed by workers, though scholars have focused overwhelmingly on this area of employment law. The fact that the EEOC has the most extensive data available compared to other labor enforcement agencies more than likely accounts for this fact. Other employment statistics, most notably wage and hour violations, vary widely due to differences in state regulations and varying enforcement standards.

Under the Fair Labor Standards Act (FLSA), the U.S. Department of Labor is authorized to enforce employment protection laws, and in 2008 more than 23 states had enacted standards that exceeded the federal requirements (U.S. Department of Labor Wage and Hour Division 2008: n.p.). State and local fair employment practice agencies may also process federal claims,

which are incorporated into EEOC statistics and are readily available. However, there is no uniform data collection or reporting mechanism for federal and state agencies tracking wage and hour violations (Bernhardt & McGrath 2005). Several surveys have assessed the extent of wage and hour violations, particularly for low-paying jobs and immigrant workers (e.g., Mehta et al. 2002; Restaurant Opportunities Center of New York 2005; Valenzuela et al. 2006), but they do not provide representative data about factors driving claims based on these violations nationwide.

In general, scholars have not addressed the legal mobilization process for immigrant populations, primarily because of limited available data.<sup>2</sup> While the growing immigrant workforce is a key demographic for organized labor (Ness 2005), foreign-born workers are less likely to be unionized compared to native-born workers; nationally, Latinos overall have the lowest levels of union membership (Milkman & Kye 2007). Labor scholars interested in the claiming process for immigrants have tended to employ qualitative methods to examine occupational health and safety issues, and wage and hour violations (e.g., Azaroff et al. 2002; Cho et al. 2007; Nissen et al. 2008; A. Smith 2005; K. Smith 2003), while the context of discrimination for immigrant workers has been mostly overlooked. This is due in large part to the immediacy of worker safety and pay issues, compared to the broader and sometimes more elusive kinds of discrimination. The investigative process for discrimination, versus other areas of workplace violations, is also distinct. One EEOC director I spoke to compared the process for his agency to that of the U.S. Department of Labor:

It's apples and oranges though, because in the Department of Labor you may have 10 people who come to the federal government and of those 10 people eight of them are claiming minimum wage violation or no overtime violation, that's a no-brainer ... Our

investigations, we have to look through 30, 40 cases to get one. [We have to look for] disparate treatment or blatant discrimination based on a protective category, if there's gonna be an investigation. (Interview with Javier Chacon, deputy district director, EEOC, Houston, 23 June 2006)

Thus, while discrimination may require a “higher standard of proof” and be a more complex claim for workers to hire, it is nonetheless still significant to minority and immigrant workers.

### The Context of National Origin Discrimination

Discrimination, in particular based on national origin, was a prominent concern amongst legislators and advocates following the imposition of employer sanctions under the Immigration Reform and Control Act of 1986. Many feared that employers would make assumptions about workers' immigrant status in efforts to avoid violating the law. Consequently, the federal government dedicated specific resources to monitor such situations by establishing the Office of Special Counsel for Immigration-Related Unfair Employment Practices at the U.S. Department of Justice, which was charged with ensuring that employer sanctions did not unfairly impact immigrant-origin workers and did not accelerate the exploitation of undocumented workers. Workers are protected from discrimination based on national origin under Title VII of the 1964 Civil Rights Act (Equal Employment Opportunity Commission 2008a). The EEOC defines national origin discrimination as “treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background.” It can also include “treating someone less favorably at work because of marriage or other association with someone of a particular nationality” (Equal Employment Opportunity Commission 2002a: n.p.). In practice, national origin discrimination

complaints often overlap with other kinds of discrimination, such as race (Nielsen, Nelson, & Lancaster 2008a; Parker 2005).

National origin discrimination can include practices such as unlawfully enacting a citizenship or language requirement for hiring or promoting a worker, or unlawfully harassing or retaliating against a worker based on his or her ancestry. These protections extend to all workers regardless of their nativity or immigration status. The EEOC compliance manual acknowledges that “federal law prohibits employers from employing individuals lacking work authorization” but also emphasizes that “employers who nonetheless employ undocumented workers are prohibited from discriminating against those workers” (Equal Employment Opportunity Commission 2002a: n.p.).

Following the 2002 Supreme Court case *Hoffman Plastics v. National Labor Relations Board*, the EEOC issued a statement declaring its commitment to “root out discrimination against undocumented workers” and its commitment to not “inquire into a worker’s immigration status or consider an individual’s immigration status when examining the underlying merits of a charge” (U.S. Department of Labor Wage and Hour Division 2007: n.p.). The EEOC has also led many outreach initiatives targeted at immigrant workers in several U.S. cities (Equal Employment Opportunity Commission 2002b). But while national origin discrimination is an often overlooked workplace concern, usually overshadowed by a focus on occupational health and wage and hour violations, these charges are nonetheless significant for the growing immigrant workforce.

This study assesses the aggregate variation in levels of national origin discrimination claims for all 50 states (excluding the District of Columbia) over the period 2000-2005. This analysis is a pilot study to help legal and public policy scholars identify key institutional

variables driving legal mobilization and determine future research in other areas. This analysis focuses on the impact of civil society on legal mobilization, controlling for the economic and policy context, for two vulnerable populations: nonunion workers and Mexican immigrants. I propose four hypotheses, which I outline below.

## **Theoretical Model and Hypotheses**

### **The Third Sector—Tool for Public Action**

Labor unions have typically been the primary advocate for workers. Unionized workplaces are generally better paid, have more generous benefits, and have higher levels of worker satisfaction (Bennett & Kaufman 2007; Budd 2007). Unions can mobilize on behalf of their members by filing unfair labor practices complaints, but the 21st century has seen the lowest rates of union membership since the 1930s (Lichtenstein 2002). Most American workers are not represented by a collective bargaining contract and instead rely on federal and state bureaucracies to govern the conditions of their employment. When a labor violation occurs, workers can file a complaint with the appropriate agency, but they may confront a number of obstacles such as lack of knowledge, fear, or resistance from their employer. In the absence of a union, the third sector has become increasingly important for helping workers to overcome such obstacles to achieve their individual employment rights (Jolls 2004; Pollert 2005).

While conservatives tend to see the third sector as a replacement for government, other scholars, such as Salamon (2002), characterize nongovernmental organizations (NGOs) as a crucial “tool for public action” and a key element in an emerging “third- party government” structure. Low cost or pro bono legal services are perhaps the most visible aspect of nonprofit assistance for legal mobilization (e.g., Zemans 2006), but they constitute only a small part of the

role that civil society can play in the workplace. NGOs are well-known in the international community as monitors and advocates for improving labor standards and promoting government accountability (Doh & Guay 2004; Gereffi et al. 2001; Keck & Sikkink 1998; O'Rourke 2003). In the United States, these third sector organizations can also help mediate barriers that workers face in accessing their rights. Civil society organizations can raise consciousness about workplace rights and may provide workers with information and resources to file claims.

*Hypothesis 1: Places with a greater number of civil society organizations will have higher levels of claims-making.*

#### Mexican Immigrants and Undocumented Status

Largely due to limited data, scholars know relatively little about the mechanisms driving immigrant legal mobilization.<sup>6</sup> Immigrants are a growing segment of the American workforce (Pew Hispanic Center 2008), and undocumented immigrants constituted roughly 40 percent of all immigrants arriving in the United States in 2005 (or about 5 percent of the American civilian labor force [Passel 2006:ii]). These workers experience employment violations at high rates and confront significant barriers to accessing their rights in an increasingly nonunionized workplace. For many undocumented workers, there is a reluctance to engage government agencies for fear of deportation, language barriers, and lack of access to legal counsel (Fine 2006; J. Gordon 2007; Valenzuela et al. 2006).

Mexican immigrants are not the only category of workers eligible to file discrimination claims based on national origin. However, they do represent one of the most vulnerable populations by virtue of their economic standing and immigration history. The largest concentrations of Mexican immigrants are in traditional receiving states, which border Mexico,

but like other immigrants, they have begun moving into other states, primarily in the South (Batalova 2008). Mexican immigrants represent the largest foreign-born population in the United States and have one of the lowest socioeconomic profiles (Pew Hispanic Center 2008). The immigration history of Mexicans is distinct from that of other immigrant communities. The vast majority (80-85 percent) of Mexican immigration in recent years is undocumented, and more than half (57 percent) of the overall undocumented U.S. population is Mexican (Passel 2006:4). Undocumented workers face both the challenge of being foreign-born and of lacking legal status.

While the Mexican population is an imperfect proxy for the undocumented population across the United States, the probability that a Mexican immigrant is undocumented is relatively high and has been shown to impact community norms for accessing rights and benefits. This point is still relevant despite the likelihood that most Mexican immigrants who file claims are likely to be documented, either native-born or with legal resident status. Therefore not all Mexicans who file claims need to be undocumented in order for high percentages of undocumented workers in the community to have an influence on the overall rates of legal mobilization. For example, Van Hook and Bean (2009) discuss the role of “employment-based cultural repertoires” for Mexican immigrants accessing welfare benefits. Their findings suggest that the effect of undocumented status is not simply an instrumental liability that hinders access to institutional rights, but is also a legal definition that emphasizes an individual’s labor function in society while imposing cultural and psychological barriers to accessing rights.

*Hypothesis 2: Places with larger Mexican immigrant populations are more likely to have lower levels of national origin claims-making both due to their broader incorporation into the community and the deterrent effect of the challenges these workers face in the claims-making process.*

## Civil Society as a Mediating Institution

Undocumented workers, like many low-income workers, are often unable to afford private legal assistance when a workplace violation occurs. This is compounded by the fact that legal aid societies that provide alternative low-cost or pro bono assistance may be reticent or unable to serve some workers.<sup>8</sup> Such legal assistance is largely funded through the Legal Services Corporation, a federally funded program that prohibits serving undocumented workers, a growing population that is particularly at risk (Legal Services Corporation 2006). In the absence of direct access to legal counsel, civil society organizations often play a mediating role for promoting legal mobilization. These are the institutions closest to local communities, and they possess a unique advocacy relationship to these communities that earns them trust (Bloemraad 2006; Ramakrishnan 2005).

The challenges facing immigrant, and especially undocumented, workers are well known to labor standards enforcement agencies, as are the benefits that civil society organizations can provide in bridging this gap. For example, the outreach manager of the San Francisco EEOC explained, “The challenge is getting them to trust us. And we work very closely with other organizations to do that .... I’m a strong believer in collaborating with migrant workers” (Interview with outreach manager, EEOC, San Francisco, 4 Aug. 2006). She and the agency director went on to discuss the importance of building credibility in the community.<sup>9</sup>

Post-9/11, similar challenges in Asian- and Arab American communities emerged. However, demographically, the Mexican community represents the largest ongoing constituency for the San Francisco agency, and community relationships have been key to reaching these

workers. According to the EEOC outreach manager for the agency, one example was the recent success in a high-profile case involving a Mexican immigrant agricultural worker who had suffered sexual harassment:

I think it was tricky because if you think about the problems that this community faces, often documentation may be an issue, language is an issue, culture is an issue .... We were really fortunate in a lot of ways. I was working through community ties. [We had] staff who were bilingual, good ties to the community, and were trusted. (Interview with outreach manager, EEOC, San Francisco, 4 Aug. 2006)

This example suggests that civil society organizations may be particularly significant in workplaces with higher concentrations of workers who face barriers to legal mobilization, as exemplified by the Mexican community. Research shows that such organizations function as important agents and intermediaries for implementing existing policies and enforcing workers' rights more broadly, particularly for immigrant communities (de Graauw 2008; Putnam 2000; Skocpol 2003; Verba et al. 1993; Weil 2003). Though the third sector is diverse in terms of mission and purpose, civic organizations have been used to communicate information, particularly to the immigrant community, about their rights and resources available to them, and they are an important component of immigrant incorporation processes (Bloemraad 2006; Cordero-Guzman 2005). Community-based organizations can provide information to workers about their rights, encourage them to come forward when a violation occurs, and help them by guiding them through the process of submitting a claim. Beyond this important service, these organizations possess cultural literacy that may also help break through cultural barriers that make immigrant workers less likely to want to complain (Cho et al. 2007; Fine 2006; J. Gordon 2007).

*Hypothesis 3: The effect of civil society on levels of claims-making will be more pronounced in places with higher levels of Mexican immigrant communities as these organizations mediate these barriers.*

Last, unions may provide workers with better working conditions and alternative grievance mechanisms. Consequently, civil society organizations may be particularly important at this present juncture when union membership is waning. Nonprofit organizations inform workers of their rights through the creation of social networks, facilitate governance through referrals to government agencies, and in some cases provide guidance in navigating the claims-making process—all of which are functions traditionally provided by organized labor.

*Hypothesis 4: Places with higher levels of union density will rely less on civil society organizations to address workplace violations, and the effect of civil society on levels of claims-making will be less pronounced in places with higher levels of union density.*

Given these four hypotheses, the next section reviews the analytical model used to assess these relationships.

## **Methodology: Explaining Variation in Levels of Legal Mobilization**

### Analytical Model

This analysis models the rate of national origin discrimination claims in a state-year,  $A_{it}$ , with a negative binomial regression model. The negative binomial regression model is commonly used with data such as these, where the analysis requires modeling the occurrence of discrete events, which are over-dispersed—that is, more variation than would be expected with an ordinary Poisson model (Cameron & Trivedi 1998).<sup>10</sup> A specific expression of the negative

binomial regression model is used for panel data, which includes state fixed effects ( $Z_i$ ) to control any unobserved variation amongst the different states that may emerge.

$$\text{Equation 4.1: } \ln(\lambda_{it}/\eta_{it}) = \alpha_i + \beta X_{it} + \gamma Z_i + \epsilon$$

The model includes an exposure variable, which measures the “population at risk” for filing a national origin claim in each state ( $i$ ) - year ( $t$ ). In conjunction with the dependent count variable (i.e., the number of national origin claims in each state-year), the exposure variable acts as a denominator to provide a predicted rate of claims-making. The Appendix provides a conceptual overview of some ways to conceptualize and define this variable. The model uses group C, “all workers of color (non-white and/or Hispanic).” Data are drawn from the American Community Survey (U.S. Census Bureau, 2000-2005). (For a similar approach, see Rubenstein 2001, which models rates of sexual orientation discrimination claims across states using estimates of the lesbian, gay, bisexual, and transgendered population in the workforce as the exposure variable.)

Conversely, the other alternative “exposure populations” presented in the Appendix are inappropriate. For example, to use group B, “all workers,” would inflate the count of workers who are likely to file a national origin claim and consequently deflate predicted levels of claims-making. Alternatively, to use group D, “all workers of color who are foreign-born,” would underestimate the count of potential claimers, thus inflating rate estimates. Indeed, a worker need not be foreign-born to experience national origin discrimination (Equal Employment Opportunity Commission 2002a).<sup>11</sup>

## Measuring Legal Mobilization

Limited data are available on the individual characteristics of workers who actually file claims. Not only are these data kept strictly confidential and not readily released to the public by labor standards enforcement agencies, but many important characteristics of claimants (such as socioeconomic status and immigration status) are not recorded in any systematic manner. As a result, an individual-level analysis that interrogates the factors driving claims-making is very difficult, and researchers are left largely with aggregate analyses.

Certainly, aggregate analyses reveal different mechanisms than do individual analyses. They cannot predict an individual's propensity to engage in an outcome, and they cannot substitute for the precision that micro-level data provide (Geronimus & Bound 1999; Wooldridge 2002). Aggregate analyses, however, can offer information on contextual factors driving aggregate levels of claiming (Epp 1990; McVeigh et al. 2003). Within this framework, the objective of this analysis is to account for variation in levels of legal mobilization across economic and policy contexts. In the United States, worker protection and enforcement vary widely from state to state, as do the demographic and industrial makeup of the workforce, and the extent of civil society resources available to promote legal mobilization for aggrieved workers.

This analysis draws on data provided by the EEOC, obtained through a public records request. The data include all claims filed under federal statute across the country for national-origin discrimination between 2000 and 2005. In 2005, national origin discrimination charges accounted for 11 percent of all charges processed by the EEOC, and 15 percent of all Title VII charges.<sup>12</sup> I chose to focus on national origin claims specifically for the purposes of theoretical and methodological clarity.

First, focusing on one specific statute eliminates the risk of double-counting actual charges, as a single charge may include multiple statute allegations. In 2005, for example, the 55,461 actual charges filed represented 62,197 statute allegations. (There were 3,149 claims filed under Title VII color provisions, 14,349 claims under Title VII national origin discrimination provisions, and 44,699 claims under Title VII race provisions, for a total of 62,197 statutes. Further information available from author upon request.)

Second, by focusing on cases involving national origin discrimination, I can analyze specific information about the claimant population at risk. Title VII protections cover all workers regardless of nativity or ancestry, and the population most likely to file a particular claim varies for each. The EEOC does not collect data on the nativity or immigration status of its claimants, though other data shed light on the demographic composition of charging parties.<sup>13</sup> For example, Nielsen, Nelson, Lancaster, and Pedriana (2008b) analyzed a random sample of employment discrimination litigation cases from 1987 to 2003, focusing specifically on race, sex, age, and disability claims. They found that across all categories, African Americans file the largest share of claims (44 percent), followed by whites (33 percent), other (13 percent), Hispanics (7 percent), and Asians (3 percent) (2008b:9).

Based on my own assessment of the data, close to half of all national origin discrimination claims are filed by Hispanic claimants, compared to only 6 percent of those who file claims on the basis of color discrimination, and 3 percent who file based on race discrimination<sup>14</sup> (see Table 1). This distribution is likely an artifact of how the federal government defines Hispanic as a separate ethnic group that is not mutually exclusive to other racial categories (Hitlin et al. 2007; Rodriguez 2000). Similarly, national origin discrimination is not exclusive to other bases for discrimination claims, such as race and color (Equal

Employment Opportunity Commission 2002a). As a result, these distributions alone do not necessarily speak to the specific discrimination experiences of different groups, but they do, however, make analysis of them more complex. Consequently, an analytical approach that combines various bases of discrimination would be complicated by the difficult task of defining the appropriate “at-risk population.” Furthermore, given that this study’s focus is on the Mexican immigrant workforce, and the impact of undocumented status on that community, this analysis concentrates solely on national origin discrimination claims. Nonetheless, many of the lessons learned here may be useful in other national origin communities.

The geographic distribution of national origin claims is represented in Figure 1. In 2005, claims levels varied from seven claims per 100,000 minority workers in Mississippi, to 327 in Nebraska (further information available from author upon request). One of the benefits of disaggregating claims data by state is that it provides a way to assess the influence of various contextual factors such as industrial composition, demographic makeup of the workforce, and labor standards.

One of the challenges, however, is to disentangle which mechanisms affect the rates of employer violations of these discrimination protections, versus those that propel legal mobilization by framework for understanding legal mobilization given this dilemma, using the aggregate context of hate crime reporting. They argue that the “differences in the number of hate crimes reported in various regions do not simply reflect differences in the number of criminal acts motivated by bias” and may instead reflect “different incentives to call acts of bias to the attention of local authorities, as well as different incentives that influence law enforcement agents to respond to and to report, hate crimes” (2003:846). As such, the authors treat the level of

hate crimes reported as the measure of a “successful social movement outcome, rather than a valid measure of a particular type of crime” (2003:846).

However, two processes—employer violation practices and workers’ propensity to engage in legal mobilization—could impact observed levels of claims-making simultaneously. For example, more stringent labor standards might dissuade employers from discriminating against workers, while simultaneously encouraging aggrieved workers to come forward. Similarly, a tight labor market for employers (i.e., one with lower rates of unemployment that foster competition for talent) may also discourage discrimination, while also providing workers with fewer incentives to pursue claims against a hostile employer when alternative jobs are available. Therefore, an aggregate analysis such as this cannot distinguish between these different mechanisms. However, by controlling for economic and policy differences such as partisan strength of labor enforcement standards, this analysis seeks to account for these complex countervailing forces.

### Key Independent Variables

The primary independent variable in this analysis is the size of civil society. Social scientists have discussed the importance of civil society in various contexts, including civic and political participation, social movements, and legal mobilization. Due to its wide-ranging influence, this sector has been defined and operationalized in many different ways. Broadly speaking, most social scientists define civil society as the third sector, which functions between the market and state (Centre for Civil Society 2004). The most complex assessments incorporate a large number of indicators to measure the cultural and structural elements of civil society (Heinrich 2005). Some, such as Putnam (2000), even extend the definition of civil society to include broader forms of social capital through various networks, while others, such as Sampson

et al. (2005), focus on concrete collective action events. Institutionally, scholars tend to measure civil society by the number of voluntary nonprofit associations (Skocpol Sc Fiorina 1999).

In this analysis, civil society is operationalized as the number of registered nonprofit organizations in a state-year. The National Center for Charitable Statistics (NCCS) provides a count of the number of official 501c(3) registered organizations for every state-year,<sup>15</sup> broken down by National Taxonomy of Exempt Entities (NTEE) code.<sup>16</sup> This analysis uses NCCS data to test the effect of both the aggregate count of all 501c(3) organizations per 1,000 residents, and the count of organizations in the NTEE major category “R: Civil Rights, Social Action, and Advocacy” (CRSAA organizations) per 1,000 residents (see also McVeigh et al. 2003 for a similar operationalization). CRSAA organizations represent “private nonprofit organizations whose primary purpose is to protect and promote the broad civil rights of groups and civil liberties of individuals, to work for the realization of specific social or political goals or to encourage the participation of people in the public policy debate” and include “organizations that work to improve relations between racial, ethnic, and cultural groups; advocacy and citizen action groups that work to change public policy and opinion in a variety of areas; organizations that use courts to protect and enlarge civil rights and liberties; and organizations that promote voter education and registration” (National Center for Charitable Statistics 2008: n.p.). These CRSAA organizations are more directly involved in issues surrounding discrimination protections, though past research suggests that voluntary associations of all kinds could be relevant to disseminating information and providing resources for a variety of issues, particularly for immigrant communities (Bloemraad 2006; Cordero- Guzman 2005; de Graauw 2008; Marwell 2007; Ramakrishnan 2005). (The analysis presented below focuses on results for the

models including CRSAA organizations, though the findings do not differ significantly from the model measuring all organizations.)

This analysis also includes a measure of the size of the Mexican immigrant population in a state-year. The focus on the Mexican immigrant population is theoretically motivated by high levels of undocumented status in this community, as described above, which is likely to deter formal claims-making and benefit most from nongovernmental civil society resources. While other immigrant groups may share similar characteristics, no other immigrant group is as well distributed across the United States to warrant a national analysis. Data come from the American Community Survey for each state-year.

The model also tests the effect of the strength of organized labor using a measure of union membership for each state-year. These data are drawn from published news releases from the Bureau of Labor Statistics (Bureau of Labor Statistics 2008a), and represent the total union affiliation of employed wage and salary workers.

Two multiplicative terms are included: (1) a two-way interaction between the density of nonprofit organizations and the size of the Mexican immigrant population, and (2) a two-way interaction between the density of nonprofit organizations and union membership levels, which tests the mediated effect of civil society at different levels of organized labor participation. (Tests confirm that multicollinearity between the size of civil society and union membership is not driving model results.<sup>17</sup>)

#### Control Variables

In addition to these key variables, the study also controls for several economic and policy factors that shape workplace conditions and may influence levels of worker legal mobilization. First, a

measure of industrial concentration is included based on data from the American Community Survey (ACS). Data from the EEOC do not include detailed information on the industrial distribution of claimants and rely on the 1987 Standard Industrial Classification (SIC) system. Claimants are classified by agency investigators, which results in further inconsistent categorization. (Available data reveal that one-fifth of all claimants could not be categorized.) Drawing on the North American Industrial Classification scheme, this analysis controls for the proportion of the workforce in four industrial sectors: agriculture, forestry, fishing and hunting (1); construction (4); manufacturing (5); and arts, entertainment, recreation, accommodations, and food services (13). Based on current population survey data, these low-wage industries have a higher share of foreign-born workers than native-born workers (Pew Hispanic Center 2008) and are also major destinations for undocumented workers (Passel 2006). Additional information could be provided by using the full industrial distribution, though this would be at the expense of statistical efficiency.

The economic climate has also been shown to drive claims- making. The model controls for poverty and unemployment levels in a state-year. The poverty rate is based on the percent of individuals who are living in a family whose income falls below the federal threshold for poverty (100 percent of the threshold coded in the ACS.) The model also includes a measure of the annual average unemployment rate reported by the Bureau of Labor Statistics for the particular state-year (Bureau of Labor Statistics 2008b). Wakefield and Uggen (2004) have found that high rates of unemployment are a key factor driving levels of EEOC complaints; Donohue and Siegelman (1991) have found that the single most important factor driving the increases in the number of employment discrimination suits filed in federal district court during the 1970s and 1980s was a rise in the unemployment rate.

National origin discrimination is a federal protection under Title VII of the Civil Rights Act, though claims levels are likely to be influenced by the overall climate of workplace protections in a state. Employers in places with more worker-friendly policies may be less likely to discriminate, just as workers in these places may be more encouraged to make claims. The model controls for state labor standards using a measure of the minimum wage. The Fair Labor Standards Act sets the national minimum wage that must be given to workers, but states can also formally legislate higher or lower standards, or choose not to enact any standard at all (U.S. Department of Labor Wage and Hour Division 2008). States with no official standard are assigned the federal minimum, while states with rates below the federal minimum are assigned the highest state official rate.<sup>18</sup>

Lastly, because bureaucracies are influenced by the political climate in which they operate, I control for two measures of partisan strength. Partisan control can impact the appointment of key administrators in regulatory agencies and courts (e.g., Brace & Hall 1997; Cross & Tiller 1998; Tiller & Cross 1999). Wakefield and Uggen's (2004) analysis produces null results for the effects of partisan strength, though they offer several reasons to believe that economic and political changes affect levels of claims-making in other contexts. McVeigh et al. (2003) also control for political factors, arguing that partisan strength may affect the saliency of civil rights organizations. This model includes two dummy variable measures for each state-year: (1) whether a Democratic governor is in power, and (2) whether the state legislature has a Democratic majority.<sup>19</sup> Data are drawn from reports published by the National Conference of State Legislatures (<http://www.ncsl.org>, accessed 25 March 2009).

The results discussed below are calculated as mean predicted rates from the full model, using mean values in a Democratic context (see Table 2 for descriptive statistics).<sup>20</sup> Additional

data are also provided from interviews with labor standard enforcement agents in the San Francisco Bay area and the Houston metropolitan area in 2005-2006.

## **Results**

Table 3 represents the model results. The results, factoring in the economic and policy controls, are consistent with the conclusions from the existing literature. State-years with higher levels of the workforce in the agricultural and construction industries are more likely to experience higher levels of claims-making. Changes in poverty levels have no significant effect, and places with higher rates of unemployment have modestly higher levels of claims-making. For example, all things being equal, a state-year with a low unemployment rate of 2.5 percent would yield 6.5 claims per 100,000 minority workers. At the other extreme, a high unemployment rate of 8.5 percent would yield a claims rate of 8.4 per 100,000 minority workers. This positive effect supports economic analysis that low unemployment is a deterrent in claims-making (e.g., Donohue & Siegelman 1991; Wakefield & Uggen 2004). Conversely, when alternative employment is less feasible, aggrieved workers may be more likely to pursue claims-making as a tool to improve their workplace conditions. These findings suggest that in the current recessionary economic climate, we may see higher rates of claims-making (Sunnucks 2008).

Stronger labor protections, as measured here by the state minimum wage, have a slightly negative effect on levels of claims-making. All other factors being equal, state-years on par with the federal minimum wage have an average of 7.3 claims per 100,000 minority workers, compared to a rate of 6.5 in state-years with the highest labor standards, such as Oregon and Washington. This is likely driven by both employer practices and worker empowerment. Employers may be less likely to discriminate in a labor environment that is more favorable to

workers, while higher labor standards may also encourage those workers experiencing discriminatory practices to come forward. Although partisanship does not have any significant direct effect on claims-making, it is possible that the effects of political power may operate through more subtle channels such as bureaucratic leadership and changeover of federal control.

Net of economic and policy context, civil society has a robust positive influence in claims level. When using both the global and CRSAA measures of the size of civil society, all things being equal, places with a larger number of nonprofit organizations have higher levels of claims-making. In addition to having an independent positive effect on levels of legal mobilization, civil society also seems to mediate the negative effect in places with a larger vulnerable workforce. The positive effect of civil society is stronger in places with a larger Mexican immigrant population (Table 3, Model 2).

This suggests that the challenges facing immigrant workers do not act as an absolute deterrent. In line with existing research on the importance of community-based organizations for the immigrant community (Bloemraad 2006; Cho et al. 2007; Cordero-Guzman 2005; de Graauw 2008; Jolls 2004; Weil 2003), the results of these analyses suggest that one very important factor for legal mobilization amongst Mexican immigrants is likely to be access to civil society resources. Given what researchers know about the challenges facing immigrants in general, such as disillusionment with government based on experiences in their home country (Waxman 1998), and challenges facing Mexican immigrants in particular, such as their reluctance to engage with formal U.S. government agencies for fear of deportation (e.g., Andrews et al. 2002; Salcido & Adelman 2004), civil society may function as an important liaison between the existence and experience of these protections. Community and advocacy groups are often the resource of first resort for immigrants and can connect well-meaning policies, the enforcement agencies that

implement them, and the population they seek to protect. These organizations can provide crucial trust and entree to outreach efforts, and equip undocumented workers with the skills and confidence to assert their workplace rights.

Last, civil society organizations may fill the gap in areas where organized labor has been unable to make inroads. State-years with higher levels of union membership do not differ significantly in claims-making rates, though the effect of civil society is enhanced in places where union membership is lower. Unionized workplaces provide better workplace conditions, as well as additional internal workplace redress that aggrieved workers can pursue when problems arise. As noted above, tests for multicollinearity indicate that these results are not unfounded.

Labor scholars, however, have recognized the collaboration between labor unions and civil rights, especially when advocating for immigrant workers (Fine 2006; Jayaraman & Ness 2005; Milkman 2006; Tait 2005). Labor unions rely on the legitimacy and credibility that civil society organizations garner in the community during organizing drives, and community organizations rely on the resources and political clout of unions in advocating for workers' rights. Nonetheless, these institutions assume very different roles in terms of workplace protections and the claiming process. Given that overall unionization has been steadily declining in the United States, and that several key service industries where immigrant workers are concentrated also have low levels of union representation, these findings reaffirm the role that third sector organizations can play in facilitating labor standards enforcement and protection, as well as the legal mobilization of workers (Figure 3) (Cho et al. 2007; Fine 2006; J. Gordon 2007).

## **Discussion**

The results presented in this analysis provide an informative pilot study for the relationship between civil society and the labor standards enforcement process, and they suggest several implications for legal mobilization.

First, these findings call for continued attention to the subnational variation of claims-making processes. Legal mobilization research has tended to focus extensively on the influence of broad social movements in high-profile national court cases (e.g., Andersen 2006; Epp 1998; McCann 1994; Nielsen, Nelson, Lancaster, & Pedriana 2008b; Parker 2005; Rosenberg 1991). Important changes in the federal government over time have certainly altered the regulatory landscape and access to the claims-making process. However, more attention needs to be paid to how legal mobilization occurs within local bureaucracies outside of the courtroom.

The hundreds of federal and state labor standards enforcement offices (such as the EEOC) are in fact the gatekeepers for eventual litigation in the courts and are shaped not only by shifts in federal statutes, but also by the local economic and policy climate, the distinct makeup of the workforce, and the availability of third sector resources that can propel workers to file claims.

Second, these findings have highlighted the obstacles facing immigrant workers in combating discrimination. While the experiences of Mexican immigrants do not uniformly encapsulate those of all other immigrants, Mexicans represent the largest foreign-born community in the United States, and the largest source of undocumented immigration as well. Federal and state labor laws generally apply to all workers, regardless of documentation status. Yet there is a wide gap between the provision of these rights and the barriers facing immigrant

workers in accessing them. Much of the scholarship on immigration has focused on the formal protections that are withheld from noncitizens (e.g., Avendano & Hincapie 2008; Foo 1994; J. Gordon & Lenhardt 2006). Less is known about how these workers access employment rights once they are made available. This is contingent on mediation and interpretation by several actors, including the state, the employer, and the worker. Civil society is also an important actor that can help immigrant workers draw on these protections, particularly in nonunionized workplaces.

Last, Model 3 in Table 3 presents an interactive relationship between civil rights organizations and traditional labor unions. At a members of a union, alternative resources for workers are important (Bureau of Labor Statistics 2008a: n.p.). These groups can function as an outreach tool for labor standards enforcement agencies strapped for resources, particularly in places where organized labor has little political power.

For example, in Houston, the EEOC has partnered with other labor standards enforcement agencies, the local Latin American consulates, the central labor council, and several civil society organizations to inform workers of their rights and create accessible means for filing claims (Equal Employment Opportunity Commission 2002b; Gleeson 2008; Karson 2006). This coalition has come to be known as the Justice and Equality in the Workplace Partnership (JEWPP).

According to the EEOC deputy director in Houston, the goal of JEWPP is to “create many forms of outreach, including videos, town meetings, and public events, in order to show people how to file a complaint, and to raise awareness about their rights” (Interview with outreach director, EEOC, Houston District Office, 28 June 2006). Community organization members include immigrant rights groups, faith-based organizations, neighborhood centers, and many

high-profile civil rights groups such as the Mexican American Legal Defense and Education Fund (MALDEF). The JEWEP coalition in Houston acts as a crucial mediating institution between labor standards enforcement agencies and the immigrant community. Similar coalitions have been launched in other cities such as Dallas (Occupational Safety and Health Administration 2005), Denver (Secretaria de Relaciones Exteriores 2008), and Los Angeles (U.S. Department of Labor Wage and Hour Division 2006), with the Mexican consulate as a major broker in each case.

Though labor standards enforcement agencies have fostered long-term relationships with leaders and workers in the Mexican immigrant community, they struggle to do so for other new immigrants. According to the San Francisco EEOC outreach manager, the biggest obstacle to doing so for other immigrant groups is the lack of co-ethnic investigators who have the appropriate linguistic and cultural literacy, which impedes the creation of social networks to reach out to those communities.

## **Conclusion**

These findings have highlighted the important role of civil society in the legal mobilization process, particularly for vulnerable populations that may lack other formal resources for accessing workplace rights advocates. In particular, the research highlights the beneficial role that community organizations can play for Mexican immigrants, as well as nonunion workers. The long history of the undocumented migration of Mexicans is likely to shape the community's willingness to engage in formal legal processes. Similar issues may be relevant for other communities that may be reluctant to engage with established federal agencies. For these populations as well, nongovernmental actors may provide an important vehicle for accessing workplace rights, as well as other forms of legal mobilization.

Significantly, the research highlights the importance of civil society groups in places where traditional labor organizations lack political power and are underdeveloped. Though unions have historically been the most significant interest group in advancing workplace rights, their waning power in some communities has forced nonunion workers to seek out other advocates. While community-based organizations are not a substitute for a robust collective bargaining agreement, they present an important liaison to the only alternative set of protections for nonunion workers—federal and state labor law.

If indeed civil society is an important resource for vulnerable workers, then sociolegal researchers must continue to interrogate the specific role these institutions play in the legal mobilization process in addition to the other actors in this process (i.e., government officials, attorneys, and judges).

Going forward, there are some key questions that merit further investigation. First, if civil society organizations are effective in promoting legal mobilization, in what ways have they become “tools for public action” and government partners, as Salamon (2002) suggests? And what is the content and character of these third sector coalitions with government agencies? Other data suggest that these partnerships require the leadership of the government agency, as well as organizational capacity (Gleeson 2008; Karson 2006). These questions require comparative state and local studies that examine the factors driving different institutional bureaucracies and coalitions. The worker center movement provides one model (Fine 2006; M. Gordon 1964), but what others exist?

Second, if civil society resources mediate the negative effects of undocumented status for legal mobilization, at what stage of the dispute pyramid are they most relevant (Felstiner et al. 1980)? In other words, what is die nature of these interventions? Previous research has shown

that community groups are vital for educating workers about their rights and available resources for assistance (Cho et al. 2007). But when and how do these organizations empower workers to act on them, and what other factors are relevant? Additional qualitative research may shed light on the ways that workers draw on community resources as they decide whether or not to come forward.

Last, future research should also interrogate both the benefits and limitations of a decentralized claims-making bureaucracy that relies on community partners. While these findings suggest that partnerships are beneficial to the legal mobilization of vulnerable workers, it remains unclear whether these “tools for public action” facilitate or hinder the development of a robust labor-standards enforcement agency in the long-term. Longitudinal and historical case studies would be instructive here. For example, do community partners decrease incentives for agencies to hire and maintain “inhouse” staff and resources, especially in tight budgetary periods? If so, to what extent are these “third sector tools” unsustainable?

In sum, this article has sought to recast the sociolegal research agenda on the effect of legal mobilization on civil society, to instead examine the role that civil society plays on processes of legal mobilization, especially for vulnerable workers. The analysis also highlights the importance of disaggregating national trends to evaluate the effects of political and economic state-level contexts on legal mobilization outside the courtroom, and it indeed calls for analyses at the local level as well. In light of the changing American workforce, further research on legal mobilization processes should pay particular attention to factors facilitating or hindering claims-making for vulnerable workers, especially those who are nonunion and/or undocumented, and who have been shown here to particularly benefit from civil society resources. An extension of

these analyses for other rights arenas (both inside and outside the workplace) and communities is also warranted.

**Table 1.** National Origin Discrimination Claims, by Race and Hispanic Status of Claimants

Race	2000		2001		2002		2003		2004		2005	
	Hispanic	Total										
Asian	10	1,197	8	1,147	11	1,470	6	1,401	11	1,165	6	1,215
Black	70	1,911	103	1,942	89	2,159	92	2,089	76	2,034	104	2,115
Native American	31	106	18	107	13	102	21	97	26	92	17	82
Other Race	4,418	6,200	4,356	6,371	4,937	7,567	4,515	6,632	4,043	5,717	3,630	5,299
Unspecified Race	485	936	483	1,057	546	1,017	737	1,600	1,170	2,424	1,111	2,560
White	1,989	3,529	2,120	3,881	1,995	3,818	2,057	3,695	1,863	3,336	1,726	3,078
National Total	7,003	13,879	7,088	14,505	7,591	16,133	7,428	15,514	7,189	14,768	6,594	14,349

**Table 2.** Descriptive Statistics

Variable	Mean	SD	Min	Max
Count of National Origin Discrimination Claims	591	872	2	4,204
Count of Workers Who Are Not Non-Hispanic White	760,551	1,322,494	7,635	8,508,964
% Industry: AFFH	1.38	1.32	0.12	6.23
% Industry: Construction	4.43	0.64	2.94	6.56
% Industry: Manufacturing	7.38	2.77	1.06	15.31
% Industry: Services	5.80	1.56	4.09	15.91
Unemployment Rate (BLS)	4.87	1.13	2.30	8.10
% of Pop. Living in Poverty	12.70	3.22	6.18	22.14
% of Pop. Mexican Immigrant	2.01	2.75	0.00	12.22
Minimum Wage	5.30	0.82	1.60	7.35
Union Membership Rate (BLS)	11.79	5.64	2.30	26.70
Dem. Legislature Control	0.35	0.48	0.00	1.00
Dem. Governor	0.42	0.49	0.00	1.00
# of 501c(3) orgs. per 1,000 residents (All)	5.43	1.68	2.80	10.11
# of 501c(3) orgs. per 1,000 residents (CRSAA)	0.0438	0.0141	0.0206	0.0934

**Table 3.** Negative Binomial Regression Results of National Origin Discrimination Claims for United States, 2000–2005

	Model 1	Model 2	Model 3
% Industry: AFFH	0.189*** (0.059)	0.178*** (0.058)	0.176*** (0.058)
% Industry: Construction	-0.096* (0.050)	-0.083* (0.048)	-0.073 (0.050)
% Industry: Manufacturing	0.033 (0.022)	0.028 (0.022)	0.025 (0.022)
% Industry: Services	0.001 (0.029)	0.005 (0.030)	-0.02 (0.028)
Unemployment Rate (BLS)	0.045*** (0.015)	0.042*** (0.015)	0.045*** (0.014)
% of Pop. Living in Poverty	0 (0.016)	-0.002 (0.016)	0.006 (0.016)
% of Pop. Mexican Immigrant	-0.056* (0.033)	-0.213*** (0.080)	-0.074** (0.034)
Minimum Wage*	-0.057** (0.028)	-0.089*** (0.031)	-0.062** (0.028)
Union Membership Rate (BLS)	0.001 (0.013)	0.005 (0.013)	0.077*** (0.023)
Dem. Legislature Control	0.038 (0.042)	0.04 (0.042)	0.046 (0.040)
Dem. Governor	0.057* (0.031)	0.036 (0.032)	0.068** (0.030)
# of CRSAA orgs./1,000 residents	9.988*** (2.868)	4.989 (3.456)	26.904*** (5.089)
# of CRSAA orgs. * % Mexican Immigrant		4.035** (1.736)	
# of CRSAA orgs. * Union Membership			-1.799*** (0.476)
Constant	-9.871*** (0.526)	-9.466*** (0.561)	-10.431*** (0.547)

*N* = 300, Numbers in parentheses are standard errors.

\**p* < 0.1, \*\**p* < 0.05, \*\*\**p* < 0.01 (two-tailed tests)

■ of National Origin Discrimination Claims Per 100,000 Workers Who Are Not Non-Hispanic White United States, 2005

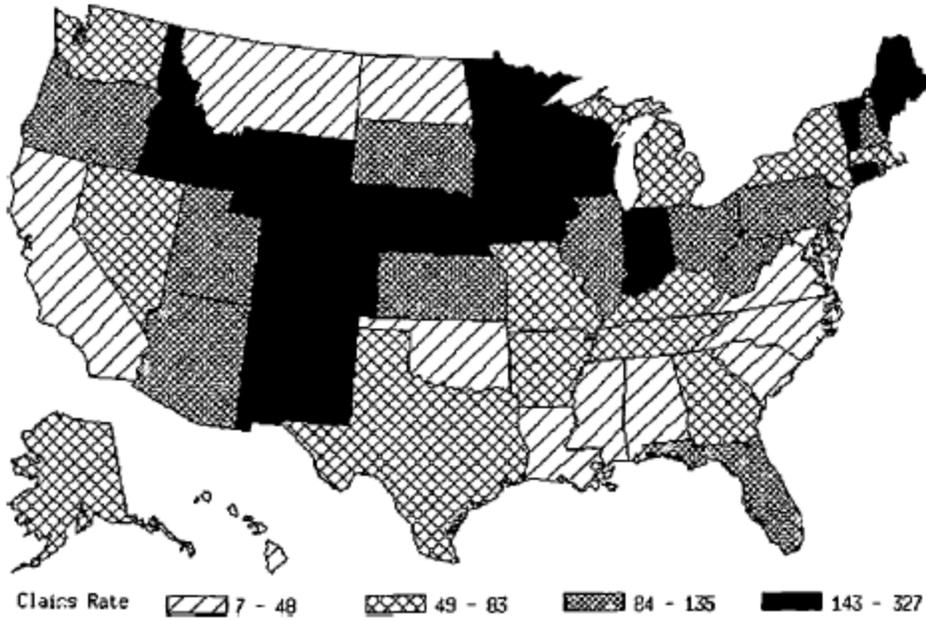


Figure 1. Number of National Origin Discrimination Claims per 100,000 Workers Who Are Not Non-Hispanic White United States, 2005

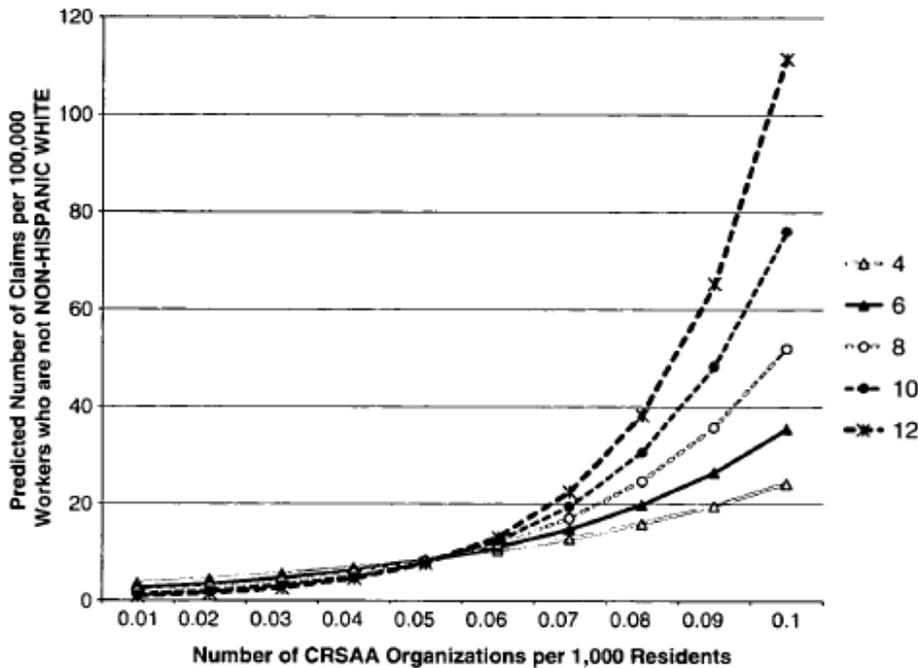


Figure 2. Predicted Claims Rate, by Size of Civil Society, Across Proportion of Population That Is Mexican Foreign-Born

Figure 2 is calculated from the following prediction equation:  $Predicted\ Claims\ Rate = \exp[-9.47 + (1.38 \times .1782) + (4.43 \times -.0826) + (7.38 \times .0277) + (5.80 \times .0046) + (4.87 \times .0417) + (12.70 \times -.0016) + (\% \text{ Mexican Immigrant} \times -.2132) + (5.30 \times -.0886) + (11.79 \times .0051) + (0 \times .0395) + (0 \times .0363) + (\# \text{ CRSAA orgs per 1,000 residents} \times 4.9894) + (\# \text{ CRSAA orgs per 1,000 residents} \times \% \text{ Mexican Immigrant} \times 4.0355)]$ .

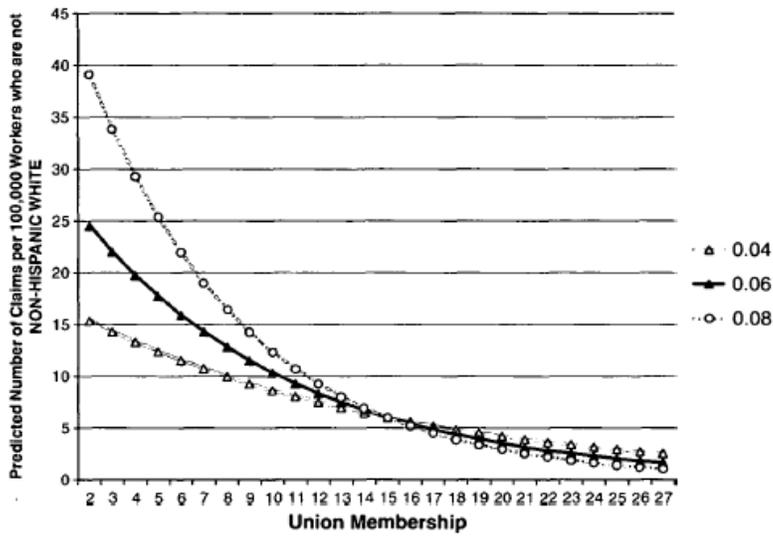
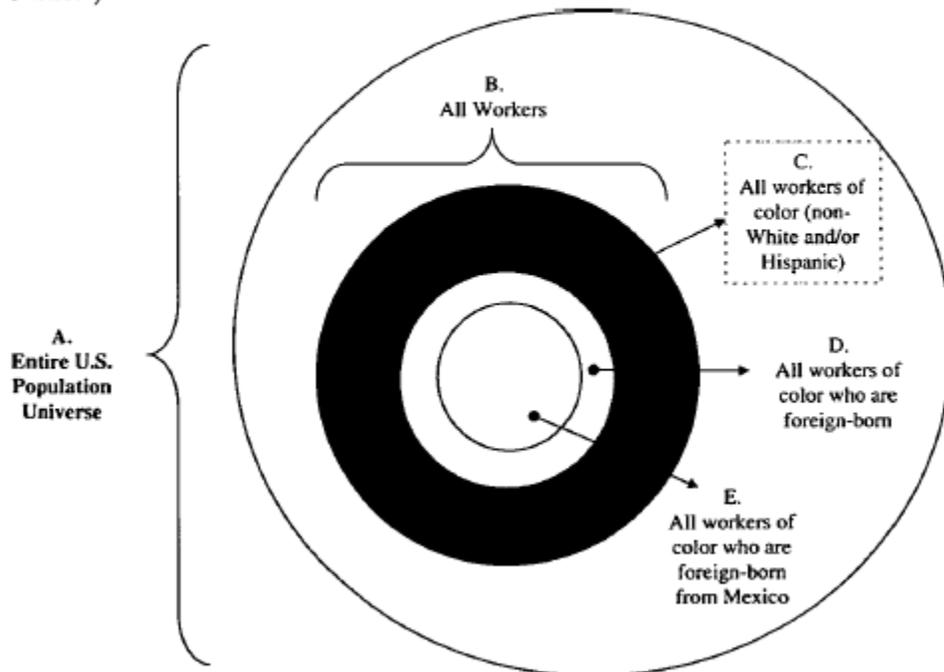


Figure 3. Predicted Claims Rate, by Size of Civil Society, Across Union Membership Level

**Appendix: Conceptual Diagram for Exposure Variable (Population at Risk of Filing a National Origin Discrimination Claim)**



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