
On Eliminating Discrimination and Achieving Equality in Higher Education

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This statement, an expansion and elaboration of the principles of racial and gender equity espoused by the AAUP for more than fifty years, was approved by the Association's Committee A on Academic Freedom and Tenure, the Committee on Gender and Sexuality in the Academic Profession, the Committee on Historically Black Institutions and Scholars of Color, and their joint Subcommittee on Discrimination in October 2023 and adopted by the Association's Council in November 2023.

Introduction

A half century ago, in 1973, the AAUP issued *Affirmative Action in Higher Education*, a major report that began by asserting that “discrimination against women and minorities in higher education is both reprehensible and illegal” and reaffirming “the emphatic condemnation of such practices by the AAUP.”¹ The report declared that “the further improvement of quality in higher education and the elimination of discrimination due to race or sex are not at odds with each other, but at one.” Its authors embraced a vision of affirmative action as “compensation for past failures to reach the actual market of intellectual resources available to higher education” and called for “the revision of standards and practices to assure that institutions are in fact drawing from the largest marketplace of human resources in staffing their faculties.” Three years later the Association issued the brief, but uncompromising, *On Discrimination*, a statement that announced the Association's condemnation of all discrimination “including, but not limited to, age, sex, disability,

race, religion, national origin, marital status, or sexual orientation.”

While considerable progress has been made in the past fifty years in overcoming discriminatory barriers and opening doors to members of formerly excluded or disfavored groups, the dangerous and ongoing backlash against movements for equality—already recognized by the 1973 affirmative action report as a “politics of reaction” and arguably reaching a fever pitch at the current moment—demands not only rededication to the principles of equal justice espoused by the AAUP a half century ago but also a more expansive and profound understanding of those principles. Today we must acknowledge the complex nature of systemic inequality and the need for institutional change and affirmative measures designed to eliminate discrimination and advance both formal and substantive equality.

Over the past fifty years the academic community, including at times the AAUP, has too often restricted definitions of discrimination to incidents and practices that were demonstrably illegal and failed adequately to address discriminatory practices and structures that, while perhaps passing legal muster, are inconsistent with the standards of excellence and fairness that must guide colleges and universities. A more capacious conception of discrimination, emphasizing substantive and not simply formal equality, is now both accessible and essential thanks to analyses of systemic discrimination

1. Marx W. Wartofsky, Ivar E. Berg Jr., Mary F. Berry, Butler A. Jones, Beatrice G. Konheim, Margaret L. Rumbarger, and William W. Van Alstyne, “Affirmative Action in Higher Education: A Report by the Council Commission on Discrimination,” *AAUP Bulletin* 59, no. 2 (June 1973): 178–83.

produced over the past decades.² Therefore, this statement understands discrimination not just in narrow, legal terms but also as a systemic problem.

In 1973, various legitimate practices subsumed under the rubric of affirmative action were already controversial and under attack as so-called reverse discrimination. At least since the US Supreme Court's 1978 decision in *Regents of the University of California v. Bakke*, the higher education community has countered these attacks by appealing to the need for diversity in student admissions and, if not directly then by implication, in faculty and staff recruitment. There can be little doubt that achieving and maintaining both a diverse student body and a diverse faculty are laudable and wholly appropriate goals. But these goals have led the academic community and the AAUP, at times, to neglect even more fundamental affirmative action goals—not only to remedy past and existing discrimination, but also to achieve, as the 1973 report put it, “the highest aspirations of universities and colleges for excellence and outstanding quality.”

This statement is issued at a historic moment in which fierce assaults on higher education are threatening the progress made on racial and gender equality and directly challenging the very essence of higher education as essential to the common good. Discriminatory attacks on efforts to advance knowledge about race, gender, class, sexual orientation, gender identity, and disability are inseparable from a larger and even more dangerous campaign against core academic values—including shared governance, academic freedom, and tenure—and learning itself.

Yet this statement is not simply a response to the political moment. It reasserts the AAUP's fundamental and enduring commitment to holding colleges and universities accountable for accomplishing their highest purpose: serving the public interest through teaching, research, and service, thereby enabling an increasingly inclusive democracy to fulfill its role in a complex and interrelated world.

The Responsibility of the Academic Profession regarding Systemic Discrimination

To fulfill their public mission, colleges and universities and their faculties must be committed not only

to eliminating discrimination but to addressing the persistent inequalities created by both past and present discriminatory practices and systems. Given the Supreme Court's 2023 decision striking down affirmative action programs in college admissions, it is incumbent on higher education institutions to reaffirm their commitment to these goals.³ This institutional imperative is described in the AAUP's 1973 report as “more than simply a matter of providing jobs for persons from groups which have in the past been unfairly excluded from an opportunity to compete for them; it is a matter of reorganizing the academic institution to fulfill its basic commitment to those who are seriously concerned to maintain the academic enterprise as a vital social force.”

The 1973 report continues,

The law now requires the elimination of discriminatory practices and equality of access for all persons regardless of race or sex; moral justice requires an end to prejudice and an increase of opportunities for those who have been denied them in the past by prejudice; enlightened self-interest requires that an institution reexamine its priorities where standards of merit are concerned, to revitalize the intellectual life of the community through the utilization of heretofore untapped resources. Most important, insofar as the university aspires to discover, preserve, and transmit knowledge and experience not for one group or selected groups, but for all people, to that extent it must broaden its perception of who shall be responsible for this discovery, preservation, and transmission. In so doing, it broadens the base of intellectual inquiry and lays the foundation of more human social practices.

Broad representation of faculty members—in terms of gender, race, and ethnicity—is essential to fulfill the promise of academic freedom to deepen existing disciplinary approaches and open new disciplinary paths, including the study of inequality and discrimination, methods for dismantling them, and strategies for reform and fundamental change. We now understand that, in order to address systemic and institutional forms of

2. For a fairly comprehensive overview of studies on systemic racism, see Mahzarin R. Banaji, Susan T. Fiske, and Douglass S. Massey, “Systemic Racism: Individuals and Interactions, Institutions and Society,” *Cognitive Research* 6, 82 (2021): <https://doi.org/10.1186/s41235-021-00349-3>.

3. The court issued its decision on June 29, in which it reviewed the student admissions programs of Harvard University and the University of North Carolina: *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 143 S. Ct. 2141 (2023).

inequality, a more expansive conception of discrimination must emphasize substantive and not merely formal equality.

Antidiscrimination law's primary model of "formal" equality seeks to expand equality of opportunity by requiring equal treatment of individuals who are "alike" or "similarly situated." For example, a woman and a man with PhDs in mechanical engineering should receive equal consideration as applicants for a faculty position in the mechanical engineering department. Feminist and critical race scholars maintain that such formal abstractions promote illusions of color-blindness and gender neutrality and tell us little about the lived and material experiences of marginalized groups.⁴

Formal equality by itself will not eliminate the conditions of social and economic subordination that maintain systemic racial, gender, and class-based inequality. A "substantive equality" approach, which is concerned primarily with achieving equitable outcomes that address the conditions and experiences of marginalized groups living in a deeply unequal society, is also needed. Requiring equal treatment, while necessary and essential, cannot by itself eliminate conditions of social and economic subordination that perpetuate racial, gender, and other status-based inequalities created by past discriminatory practices and maintained by inherited systems and structures.

Even were these problems not the fault of anyone living—which is highly unlikely—that would not make them less real. Not only does the formal equality paradigm severely constrict legal intervention, but it also fails to allow for an adequate consideration of context, that is, the specific conditions under which both individual and collective experiences of discrimination and status-based oppression occur. That history and context must be considered in addressing material and cultural inequality and must guide our understanding of discrimination.⁵

4. See Eduardo Bonilla-Silva, *Racism Without Racists*, 6th ed. (New York: Rowan & Littlefield, 2021); Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New York: The New Press, 2004); Charles R. Lawrence III, "Foreword: Multiculturalism and the Jurisprudence of Transformation," *Stanford Law Review* 47, no. 5 (1995): 819–47, <https://doi.org/10.2307/1229175>.

5. Faculty members who have the expertise and experience to contextualize inequality at their institutions are often overlooked or ignored. Instead, these efforts are delegated to administrators in diversity, equity, and inclusion (DEI) offices and others too focused on immediate results. These administrators, in turn, are often under the direct supervision of other administrative officers like presidents

Affirmative Action

Affirmative action in student admissions has been one focus of the attack on racial and gender diversity. As noted above, in 2023 the US Supreme Court ruled that race-conscious student admissions policies employed by Harvard University and the University of North Carolina violated the Fourteenth Amendment's Equal Protection Clause and Title VI of the Civil Rights Act of 1964. This decision overturned more than forty years of Supreme Court precedent permitting colleges and universities to adopt student admissions programs that consider an applicant's race as part of a holistic evaluation process.⁶

Even after the Supreme Court's decision in the Harvard and UNC cases, however, colleges and universities can and should continue efforts to achieve diversity in the student body, which even the court's conservative majority agreed are "commendable goals." These efforts include recruiting student applicants from diverse socioeconomic and regional backgrounds and first-generation college applicants, as well as engaging in a holistic admissions review that considers all aspects of applicants' background, experience, and accomplishments without using racial classifications. Colleges and universities should also increase student financial assistance and create an inclusive and supportive climate for all admitted students.

We thus reaffirm the following description of affirmative action in the AAUP's 1973 report: "What is sought in the idea of affirmative action is essentially the revision of standards and practices to ensure that institutions are in fact drawing from the largest marketplace of human resources in staffing their faculties and a critical review of appointment and advancement

and provosts, who may conclude that enough progress has been made merely by having created these positions. DEI officials do not have academic freedom, which limits their ability to fundamentally challenge institutional culture, nor do they have the authority to effect these changes even if they were so inclined. Unsurprisingly, turnover among these officials is high.

6. The court's decision did not address employment issues. As the chair of the US Equal Employment Opportunity Commission has stated, "It remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace." This is consistent with the 1973 report's endorsement of "special efforts to attract persons to improve the overall diversity of a faculty, and to broaden it specifically from its unisex or uniraace sameness" as "a variety of affirmative action which deserves encouragement."

criteria to ensure that they do not inadvertently foreclose consideration of the best-qualified persons by untested presuppositions which operate to exclude women and minorities.”

Unconscious Bias

It should go without saying that overt and intentional barriers based on discriminatory criteria in recruiting, evaluating, and promoting faculty members and in all other employment decisions must be eliminated. But intentional discrimination is only one aspect of racial and gender exclusion. Bias and stereotyping often function at an unconscious level, where they play a powerful role in such decisions. Thus, to exercise discretion fairly in employment decisions, it is essential that faculty members, as well as administrators and governing boards, be educated about the nature of unconscious bias and how it may affect judgments of merit in all aspects of professional and social relations.⁷ Unconscious bias may influence a wide range of judgments, such as evaluations of a candidate’s or colleague’s academic rigor, potential to achieve “excellence” and professional distinction, ability to be “objective” in their work, the level of their contributions as a coauthor, and so on. Unconscious bias may also be expressed in personal assessments, such as descriptions of a candidate or colleague as overly aggressive or outspoken, difficult to work with, unreasonable, unsociable, or lacking in “collegiality.” Scholars with a disability may be unfairly judged based on unfounded but common assumptions about the limits that a given condition may impose.

Education and training for faculty members and administrators about the nature of discrimination and unconscious bias should be governed, supervised, and led by elected faculty governance bodies as part of their primary responsibilities in hiring, promotion, and peer review. This work should be remunerated and count toward professional milestones, such as promotion and tenure. Further, it is incumbent on faculty members to raise issues of bias for discussion when they observe them in recruitment or promotion-review processes.

Academic departments and programs should seek scholars with new perspectives or work in emerging disciplinary fields to maintain the intellectual vitality

of academic programs and create opportunities to increase faculty diversity. Administrations should provide adequate resources and support for gender, race, and ethnic studies programs not only because these have become indispensable disciplines in contemporary scholarship, but also because, along with the recruitment of a diverse faculty in all disciplines, the expertise of faculty members who specialize in these fields can play a central part in ensuring the education of faculty members and administrators. Shared governance should also be fully engaged in the appointment of administrators to ensure that they are fully committed to achieving substantive equality throughout the institution.

Tenure and Contingency

Progress toward substantive equality also requires colleges and universities to address systemic employment inequalities created since the 1980s with the shift to a largely contingent academic workforce. Some scholars have suggested that it is no coincidence that the casualization of the professoriate developed just as women and scholars of color began to enter the profession in greater numbers and to challenge notions of universality, neutrality, and objectivity that are too often employed as weapons of privilege. Even as disciplines such as racial and gender studies have expanded and there has been an increase—however inadequate—in appointments of women and faculty members of color, the scope of tenure protections has severely contracted, with a disproportionate impact on these same scholars.

Today, over two-thirds (68 percent) of instructional faculty members hold contingent appointments that are ineligible for tenure. By contrast, in the mid-1980s, about 53 percent of the faculty members were tenured or on the tenure track.⁸ Insecure employment, declining salaries, and increased workloads, as well as the consequent erosion of academic freedom and shared governance, have made the academic profession increasingly unattractive to talented individuals. The casualization of academic labor combined with persistent legacies of past discrimination and the deleterious

7. See *Best Practices for Conducting Faculty Searches*, Office of the Senior Vice Provost, Harvard University, 2016, https://faculty.harvard.edu/files/fdd/files/best_practices_for_conducting_faculty_searches_v1.2.pdf.

8. Glenn Colby, “Data Snapshot: Tenure and Contingency in US Higher Education,” *Academe*, Spring 2023, <https://www.aaup.org/article/data-snapshot-tenure-and-contingency-us-higher-education>. The inclusion of graduate student employees would most likely inflate the current percentage of instructional faculty members holding contingent appointments that are ineligible for tenure to 75 percent.

effects of present-day bias make it hardly surprising that members of previously excluded groups may be reluctant to choose an academic career. Moreover, they are more likely to find themselves in positions of economic precarity due to burdensome student-loan debts.⁹

If, as the 1973 report declared and this statement reaffirms, “further improvement of quality in higher education and the elimination of discrimination due to race or sex are not at odds with each other, but at one,” then progress toward substantive equality is tightly bound to extending institutional structures and employment conditions in which fundamental principles of academic freedom are protected by the employment security of tenure and due process. Shared governance and collective bargaining can contribute to institutionalizing these protections in university policy, strengthened by provisions that address gender and racial equity in employment conditions.

Criteria, Standards, and Procedures

Eliminating barriers and enhancing fairness and inclusiveness in faculty recruitment and promotion demand regular and periodic review of criteria and standards. “Where a long period of time has passed since any serious study has been made to review the effects and the assumptions of stated or unstated standards of appointment and advancement (or where no study was ever made, but the standards were simply adopted on the strength of common custom and plausible hypothesis), it would be reasonable in any case to expect a conscientious faculty to reconsider the matter from time to time,” the 1973 report declared. The report continued,

When the use of certain unexamined standards tends to operate to the overwhelming disadvantage of persons of a particular sex or race who have already been placed at a great disadvantage by other social forces (not exclusive of past practices within higher education itself), it is even more reasonable to expect that an institution of higher learning would especially consider its

standards in light of that fact as well: to determine whether it is inadvertently depriving itself of a larger field of potential scholars and teachers than simple economy requires, even while compounding the effects of prior discrimination generally. We cannot assume uncritically that present criteria of merit and procedures for their application have yielded the excellence intended; to the extent that the use of certain standards has resulted in the exclusion of women and minorities from professional positions in higher education, or their inclusion only in token proportions to their availability, the academy has denied itself access to the critical mass of intellectual vitality represented by these groups. We believe that such criteria must thus be considered deficient on the very grounds of excellence itself.

A half century’s progress notwithstanding, the need remains for ongoing review of the validity of criteria and standards defining merit. Many examples exist of standards that unfavorably narrow the field of eligible candidates in ways that may have a disproportionately negative impact based on gender, race, class, or disability. These include recruiting and hiring candidates from an overly limited range of universities and assessing the merit of publications based on an overreliance on rigid standards and “objective” metrics such as citation counts. Assumptions embedded in these criteria will continue to exclude a significant number of excellent candidates and may have a disproportionately negative impact based on gender, race, class, or disability. As the 1973 report further observed, “The very criteria by which professional recognition is accorded have necessarily tended to reflect the prejudices and assumptions of those who set them, and professional recognition and advancement have generally been accorded those who most closely resemble the norm of those who have in the past succeeded in the academy.”

Closer evaluation of seemingly objective metrics in evaluating research or teaching reveals the power of the status quo and the influence of unconscious bias in shaping judgments about a candidate’s merits. Overemphasis on high citation counts and publication in “top journals” has been shown to undervalue much excellent scholarship, particularly for faculty members whose research challenges mainstream positions or pushes the boundaries of their disciplines. Similarly, undue reliance on narrow or rigid criteria of teaching excellence unjustifiably penalizes faculty members

9. White House Initiative on Educational Excellence for African Americans, “Fact Sheet: Black College Graduates and the Student Debt Gap,” accessed October 12, 2023, <https://sites.ed.gov/whblackinitiative/files/2016/11/Black-College-Graduates-and-the-Student-Debt-Gap.pdf>.

who present critical alternatives to the status quo or experiment with creative innovations. Furthermore, as multiple studies have documented, metrics such as student evaluations of teaching are often colored by unconscious gender and racial bias.¹⁰

Best practices to enhance fairness and inclusiveness in hiring and promotion should also be applied to other employment conditions, including salary increases, sabbatical leaves, and other benefits. Reinstating tenure-track positions as the norm would be beneficial to recruiting and retaining faculty members. Additionally, promotion processes should be reviewed to make them fairer and more open by providing greater clarity about criteria, standards, and procedures; ensuring protection of academic freedom in evaluations; providing full written reports explaining recommendations and decisions for or against promotion; and adopting full and fair appeals processes from negative decisions. The faculty should lead this review and revision process as part of its primary responsibilities in college and university governance.

Increasing diversity depends on retention of faculty members in a welcoming and supportive environment. This goal is generally framed as extrinsic to the primary purpose of higher education, which is the production and dissemination of knowledge for the common good. However, when colleges and universities recognize that scholarship produced by faculty members from previously excluded groups is not supplemental but fundamental to knowledge production itself, the expertise and experience of these faculty members will be appropriately valued.

Conclusion

The AAUP's 1973 report *Affirmative Action in Higher Education* offered a vision of a remedy for discrimination that

assumes that institutions of higher education are what they claim they are—and that all of us as teachers and professors are also what we say we are; that we mean to be fair, that our concern with excellence is not a subterfuge, that we are concerned to be just in the civil rights of *all* persons

in the conduct of our profession. If the assumption is a false one, then it will quickly appear that affirmative action plans can go the way of other proposals which are intellectually sound but which so frequently fail in their assumptions about the nature of people. For without doubt, the temptation will appear to the indifferent and the cynical to distinguish between the appearance and the substance of such a plan and to opt for the appearance alone. . . . We do not doubt in this respect that institutions of higher learning will thus reveal more about themselves in the manner in which they respond to the call for affirmative action, however, than what their response may reveal about the consistency of such plans with excellence and fairness in higher education.

Much has transpired since these words were written. We surely would be mistaken to think that conditions and challenges have not changed. Yet these words retain their relevance today. If colleges and universities are to be true to the principles they espouse, then they must be judged in part on how they rise to the challenges posed by the persistence of systemic discrimination and by movements for greater equality. In a sense, the academic community for decades and in a continually shifting environment has been taking a test; our performance thus far may reveal more about who we really are than many may find comfortable. The grades are not yet in—and the test will almost certainly become even more difficult in the near and, potentially, far future. We must take the opportunity now to recommit to ensuring that when the grades do come in, we can be proud of them. ■

10. For a meta-analysis of many of these studies, see Rebecca J. Kreitzer and Jennie Sweet-Cushman, "Evaluating Student Evaluations of Teaching: A Review of Measurement and Equity Bias in SETs and Recommendations for Ethical Reform," *Journal of Academic Ethics* 20, no. 1 (February 2022): 73–84.