**DEI in a Post-Affirmative Action World**

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**Introduction**

*Brown v. Board of Education*, alongside other legislation of the Civil Rights era, was constructed to provide students who had been historically discriminated against with the opportunity to participate equally in education. These rulings set the precedent for educational equity which lasted for over 60 years and has afforded millions of students with quality education. Yet, in recent years, the far right has worked to co-opt this revolutionary legislation to reinforce racist ideology within the American legal context.

The development of colorblind legislation on the side of the far right has effectively deconstructed and polarized equity and equality within the American educational system and has created the foundation for judicial decisions such as *Students for Fair Admissions v. Harvard.* The advancement of these misconstrued ideas regarding equity and inclusion, as highlighted within the case, makes the jobs of Diversity, Equity, and Inclusion (DEI) organizations harder throughout the country. Additionally, this decision reinforces the power of equity as a form of resistance. Therefore, I argue that the decision of overturning affirmative action puts pressure on DEI programs to either conform and become reproductions of hegemony or shift into sites of resistance.

**Equity and Equality**

To better understand how the *Students for Fair Admissions v. Harvard* case affects DEI spaces and policies, one must have a firm understanding of the similarities and differences between equality and equity. Within recent years, the two terms have been turned against one another and have become politicized, with equity being held up on the left as a tool for recognizing the role that historical discrimination plays in current structures. That is, those who the system does not support as heavily would get additional support to uplift them. This principle, wherein everybody has equal footing, is fundamentally intertwined with equality. The polarization of the words equality and equity has created a false dichotomy wherein the equality terminology is viewed with disdain and perceived as insufficient, while the terms share similar connotations (Minnow 172).

The creation and reinforcement of the dichotomy between equality and equity has negative consequences for those who are promoting legislation such as affirmative action, which impacts different students in different ways. While the term equality has a long history within American legal documents, the same is not true of equity. This leaves legal judgements surrounding equity in a difficult position when it is separated and pitted against equality, as there are few legislative documents which use the terminology (Minnow 169). The barriers built between equality and equity are therefore being utilized by the right as tools to dismantle legislative fiats such as affirmative action, as detailed within *Students for Fair Admissions v. Harvard.*

**Increase in Colorblind Racism**

The development of colorblind racism as an ideological view has also created an analytical framework for judicial review. Colorblind racism, which became widely popular in the early 2000s, highlights American meritocracy and liberalization as sufficient tools for eliminating racism (Toraif 2). That is, the free market provided by capitalism, alongside American democracy, have solved historical social issues. The ideology of colorblind racism is that modern neoliberal legislation does not have racist undertones, and therefore avoids racism as a modern issue (Toraif 3). It does not therefore recognize the complex underlying structures within American culture which facilitate racism.

The effects of colorblind policymaking and ideology within affirmative action cases throughout the United States are significant. In these cases, “merit” is produced using grade point averages and test scores which only test specific, Eurocentric skills. Yet, systematic disadvantages such as institutionalized poverty and the rising prevalence of the school-to-prison-pipeline are generally ignored. While these systemic inequities go unrecognized, marginalized communities will never be equally recognized within the academy.

***Students for Fair Admissions v. Harvard***

The principal argument in *Students for Fair Admissions v. Harvard* highlights the reality that some racial groups are disadvantaged by the university's affirmative action policy. This argument was fashioned to push the claim that Asian American students with high test scores were disadvantaged by the consideration of affirmative action criteria at Harvard (McClellan 2). However, it failed to consider the intersectional reality of many Asian American students, the large majority of which do not come from backgrounds with higher intelligence levels. The argument worked to reinforce and perpetuate the stereotype of the academically inclined Asian American student (McCellan 27). Despite this, the decision to overturn affirmative action passed through the Supreme Court by a vote of 6-3.

The reality of the ruling to overturn affirmative action is much starker than that which was promoted by the Supreme Court’s majority. The ruling is expected to precipitate a decline in Black and Hispanic representation in higher education by 2.5 percent within the next ten years (Howell 151). These discrepancies are even higher within the most selective educational institutions, which can expect to experience a decline of 10.2 percent (Howell 151). This is because systematic and structural discrimination has the most effect within these highly competitive and racialized spaces. Ironically, these outcomes promote both inequity and inequality under the guise of fairness.

**Impact on DEI Programs: Where to Go From Here**

Following the decision to overturn affirmative action by the Supreme Court, diversity, equity, and inclusion spaces and programs around the country have many hard choices to make. Some of the most crucial decisions include decoding the role of these spaces: were they built to support marginalized students or to act as another branch of the human resources division for educational institutions? If the primary role of these spaces is to continue to be a service to marginalized students, one place they can start is with the production of discussions regarding the similarities and differences between equality and equity. Educating students on the similarities can begin to dispel these misconceptions regarding polarization.

Additionally, these programs can continue to create safe and brave spaces for underrepresented and minority students. Community is a crucial component of feeling accepted for college students, who are often away from their families and friends for the first times in their lives. Creating space for people with similar identities is therefore crucial to students' sense of belonging. As DEI programs continue to lose funding, this sense of community is one thing that they are still able to provide.

**Conclusion**

The development of colorblind racist ideology throughout the past decade has had a negative impact on policies such as affirmative action throughout the United States. As exhibited in *Students for Fair Admissions v. Harvard*, imperfections in the existing interpretation of the law allow for drastic changes which will limit future representation within higher education institutions. Though these changes leave diversity, equity, and inclusion spaces hanging in a liminal legal space, directors and administrators of these programs still can make a difference. Through education regarding equity and equality, as well as programming which builds community, these spaces may continue to be an instrumental resource for underrepresented students.

**Works Cited**

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