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DEI STATEMENTS RECLASSIFY IDEAS ARBITRARILY

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COMMENTS OFFERED ON THE CSHE ROPS**
Is the University of California Drifting Toward Conformism?
The Challenges of Representation and the Climate for Academic Freedom
by Steven Brint and Komi Frey – ROPS CSHE.5.2023

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Progressives sometimes make mistakes. One of mine was being active in the Campus Draft Opposition, a prominent organization here on campus in 1968. I believed, with many others back then, that ending the draft was an effective way to oppose the Vietnam War. Later, I realized that ending the draft simply meant dumping military service on disadvantaged populations who were more likely to volunteer, creating a military that presidents could deploy without middle class approval. The larger anti-war goal was sound, but the particular instrument was not.

So, it is today with the use of DEI statements in academic personnel decisions. Of course, the larger goals of correcting injustice and ensuring fairness are sound, but the instrument is not. Requiring DEI statements and then evaluating them according to the announced guidelines narrows the culture of the university at a time when open inquiry and robust debate are more important than ever.

Brint and Frey help us understand how this narrowing came about. Honest disagreements about exactly how universities should become instruments for correcting social injustices were quietly reclassified. Writing DEI statements into the UC Academic Personnel Manual made DEI part of UC's mission. As the role of these statements was gradually expanded and what might count a suitable utterance was clarified, a whole range of opinions that earlier were accepted as part of fair-minded discussion were reclassified and redefined as dissents from the UC mission. Brint and Frey cite many examples, as did the [New York Times in a recent article](#) focusing on UCLA but relevant to the entire UC system. If you were not willing to get with the program, as understood by campus officers charged with overseeing the hiring process, you were not welcome here.

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This mistake took place in two contexts that make it historically understandable and worthy, perhaps, of a more patient response than some of its critics are willing to allow.

One context is Justice Powell's opinion in *Bakke*, which forced universities to practice affirmative action only as a means to enhance intellectual "diversity," implying that physical characteristics were tied to culture. Bringing more African Americans into universities was justified, for example, because African Americans had a different culture. Of course, this was true, up to a point, but scholars have long since shown that color and culture do not go together with remotely the frequency that the Powell doctrine implies. We would all be better off if universities retained the authority to decide just what they want to do about social injustice.

Affirmative action before *Bakke* -- and before Proposition 209 made it illegal in California -- was a much better way to act on what we have come to call our DEI goals. Just how to do affirmative action, and how much of it, can be a matter for disagreement and debate, to be sure, but that conversation promises more clarity and honesty than what we have been obliged to say under the sign of "diversity." Powell gave us a way to recruit historically disadvantaged faculty and students, which we very much wanted to continue doing. But he also gave us formidable temptations for evasion, self-deceit, and dissembling.

The second context for the DEI mistake is the established academic culture's genuine sensitivity to social injustices insufficiently acted upon by public and private authority. For all our limitations, we professors have done much to discover and disseminate truths about racism and misogyny that are too often ignored or downplayed. Social scientists, historians, and a variety of humanists, often inspired by protest movements, have been conspicuous players in the national awakening to the injustices that DEI programs are designed to counter. It makes perfect sense for defenders of white supremacy and patriarchy to attack the higher education establishment.

Often the specific charges these politicians make—especially about the ordinance of Critical Race Theory—are false, but those folks know who their enemy is. It is us. Our greater sensitivity to social injustice is a reason for pride, but this virtue has led us into a trap: we are inclined to accept more than our share of responsibility for evils the causes of which lie well beyond university policies and practices. Correcting prejudicial practices within our own institutions is one thing, but the farther we go beyond that, the more we let other institutions off the hook.

"Let the professors do it," is the unstated motto of the folks in power who refuse to provide adequate social services and elementary and secondary educational opportunities to historically disadvantaged populations. Universities are invited to pick up the social pieces left lying on California's floor as a result of the historic and ongoing failure of other institutions.

Hence, we find ourselves accepting too narrowly demographic an understanding of the services we provide to the California public. Striving to include more members of historically disadvantaged groups in our student body and faculty is a good thing, but by making a huge production of measuring and publicizing "underrepresented" and "overrepresented" populations, we imply something Brint and Frey correctly warn against: "we should not insist that groups be represented in proportions equivalent to their share of a state or a nation's population." The language of "representation" implies exactly that expectation, inviting the public to find fault with us for failing to reach a goal of proportional representation that is unrealistic in the near future because of conditions in the society at large.

Brint and Frey make much of a third context that is not as important as they suppose. The epistemologies of Foucault, Derrida, Rorty, and Butler that Brint and Frey describe as critiques of "the cultural of

rationalism” did indeed gain attention in last quarter of the twentieth century. The discussion surrounding these critiques encouraged a historical self-awareness on the part of scholars that has been more to the good than not. Although a few colleagues may blithely espouse anti-Enlightenment slogans, in my experience the overwhelming majority of humanists and social scientists continue to agree that some truth claims are more warranted than others, and that deciding what counts as warrant is not so difficult when a specific case is at hand.

A helpful example of how this can work is the 2002 book by our late Berkeley colleague, Bernard Williams. In *Truth and Truthfulness: An Essay in Genealogy* (Princeton University Press, 2002), Williams defends a resoundingly historicist analysis of *Wissenschaft* while lodging a series of dissents from the major thinkers Brint and Frey cite. Brint and Frey invite us to accept a simple polarity between “a sometimes-strident anti-racist progressivism and a sometimes overly-rigid and dismissive academic traditionalism,” which underestimates the genuine good sense and collegial interaction that I have experienced.

Brint and Frey are more helpful in showing that the reclassification of opinion through the creation of the DEI regime was not imposed by external authorities, but was the work of faculty working in concert with the Office of the President. As members of the systemwide Academic Council, colleagues took one step after another to institutionalize a commitment to diversity, equity, and inclusion, and to accept on our behalf a growing cadre of campus officers (some drawn from the faculty, others not) with significant authority (sometimes informal, sometimes formal) to influence what fields should be searched and who should be hired. Departments and schools, no matter what their record in pursuit of DEI goals, could not be trusted to understand and act upon their new duties. Supervision, in the form of “guidance,” was mandated.

Several campuses began to use DEI statements to disqualify job applicants before their research and teaching qualifications were even examined. A Report released late in 2019 of a Berkeley search in biological sciences proclaimed that 679 applicants were disqualified from the start solely on the basis of perceived deficiencies in their DEI statements, leaving only 214 applications for normal review.

Although the Divisional Council of the Berkeley Division of the Academic Senate had declared early in 2019 that on this campus, DEI statements should be considered only as part of a holistic review, the Report detailed a process remarkably different. The Report pointed to the search’s success in creating operative applicant pools with a greater percentage of historically underrepresented demographic groups, and its resulting success in making appointments that advanced the Campus’ diversity goals. Just how far things had gone was revealed by the fact that faculty and administrative officers who conducted the search, who made the resulting faculty appointments, who created the Report, and who approved the release of the Report were all comfortable with what had happened. They all treated it as the new normal.

Part of this new normal is a widespread feeling that in today’s world, we actually do need a political test. But we are cautioned against calling it that lest it be discredited by the bad company sharing that label. So, we use different language. We say that DEI statements merely facilitate the operation of our shared institutional values.

In the context of such reassuring talk, we should remember that the Loyalty Oath of the early 1950s was not understood as a political test by many of its defenders, and by many of those who merely tolerated it. It was first seen as something milder. Communist commitment was understood to be a barrier to the honest practice of critical inquiry.

Today, we see this as evasion. But when the Oath was proposed in 1949, the overwhelming majority of the UC faculty had little objection. David P. Gardner's classic study, *The California Oath Controversy* (University of California Press, 1967), documents the willingness of multiple faculty groups to tolerate the Oath. At the time of their dismissal, Gardner concludes, the thirty-one non-signers, as they looked to colleagues for support, "discovered themselves to be, for their irreconcilability, the object of resentment and criticism."

Only in later years, after the legendary non-signers were terminated and had created a deeper conversation about academic freedom-- eventually winning a court order for their reinstatement as faculty members--did almost everyone agree that the Oath was a political test, and therefore repugnant. By 1963, when I arrived at Berkeley as a graduate student, that revised understanding was fully in place. Surviving non-signers like Charles Muscatine were great heroes, regularly invoked by those of us involved in the Free Speech Movement. The faculty's original willingness to go along with the Oath itself can remind us that what we recognize as a "political test" is historically contingent.

Another aspect of the Loyalty Oath controversy is instructive for us today. Nearly all of the non-signers of the Oath professed their opposition to Communism in terms not so different from the terms in which today's critics of DEI statements affirm their own DEI values. The great medievalist Ernst Kantorowicz liked to boast how he, as a member of a militia, had fought Communists in hand-to-hand-combat in Munich in 1919. The full text of Kantorowicz's famous speech on the floor of the Academic Senate is found in Gardner, *Controversy*, 34-36. For an extensive account of the event, see Robert E. Lerner, *Ernst Kantorowicz: A Life* (Princeton, 2017), 312-328.

Recently, several measures have been taken to diminish the damage our "new normal" does to classical academic commitments. Following the embarrassing biological science search mentioned above, then-Vice-Provost Benjamin Hermalin early in 2020 directed that DEI statements be evaluated only within a holistic review of job candidates. In May 2022, the Academic Council, as Brint and Frey observe, declared "that faculty review committees should focus on candidates' actions with respect to diversity rather than their experiences or their plans," and "should not insist on 'right answers' on diversity statements."

This past summer of 2023, Mary Ann Smart, in one of her final acts as Chair of the Berkeley Division, explained to chairs and deans that the pronouncements about searches offered by Berkeley's Office of Faculty Equity and Welfare are to be taken as "*recommendations* rather than requirements." The italics were Smart's own, and she continued pointedly:

Except in situations where compliance with law and/or policy is at issue, Senate faculty, in conjunction with the Vice Provost for the Faculty, have the authority to set procedures for applicant review and to determine which candidate(s) to advance for further review, for campus interviews, and to recommend for appointment. In accordance with the campus's strong commitment to conducting fair and open searches, search committees are reminded that senate searches should adhere to established campus practices for applicant review.

Smart called upon her colleagues to remember that the Regents had assigned to members of the Academic Senate, and to no one else, "the authority... to make decisions about appointments to the faculty."

Other measures of this sort may further limit the damage the DEI regime can do. In the meantime, it is imperative that UC leaders do more to educate Californians and their elected representatives about what universities are designed to do. Diversity, equity, and inclusion in regard to what?

It is especially important to explain the role of the humanities and social sciences in a democratic society. In *The Humanities and the Dynamics of Inclusion Since World War II* (Johns Hopkins Press, 2006), a book I edited for the American Academy of Arts and Sciences several years ago, a group of us demonstrated not only that these disciplines were in the forefront of bringing historically disadvantaged groups into academia, but, more fundamentally, how these disciplines bring evidence and reasoning to domains where the rules of evidence are strongly contested and the power of reason often doubted. Among the most vital services of universities is to perform the critique of society's inherited pieties and entrenched interests, not in some iconoclastic mode, but by way of ensuring that beliefs and entanglements survive only when they are strong enough to meet the most empirically warranted of challenges.

Not every member of the public, and not every Regent or state legislator, can be expected to understand and appreciate this critical function of universities. But enough can to make the effort worthwhile. The need to keep trying was pressed upon me with special force during this campus's [1999 symposium marking the fiftieth anniversary of the Loyalty Oath](#). The event was all about the relation of the University of California to the politics and society of the state. I had just finished presiding over a panel consisting of four former presidents of UC (Clark Kerr, Jack Peltason, David Gardner, and the non-signer David Saxon) when a journalist covering the event for the *Sacramento Bee* came up to me and said, with some impatience, "You academics are too cynical about the public, so you don't do enough to explain yourselves. You don't give people enough credit for being able to understand you." Surely, that is as right today as it was then.

Academic personnel decisions should be made without any reference to DEI statements whatsoever, but I suspect we are stuck with them for a while. I trust that the leaders of the Berkeley Division of the Academic Senate and the administrators in California Hall will work together to make the best of our situation until this unfortunate mistake can be corrected.

I am not here making constitutional arguments, but the widespread concern that the DEI statements constitute forced speech, and are thus at odds with the First Amendment, may provide a basis for ending them. Moreover, DEI statements may not be consistent with the US Supreme Court's recent decision in *Students for Fair Admission v. Harvard*. We do not need constitutional arguments to know that DEI statements are a mistake, but these arguments may make the mistake easier to correct.

Some mistakes are never corrected. The military draft was abolished, partly as a result of the protests of relatively privileged college graduates like me. Most scholars today believe that had the draft remained in effect, President George W. Bush would not have been able to wage war in Iraq, and that the war in Afghanistan might not have lasted so long, if indeed it had happened at all. The draft made families of every station invested in the purposes to which their own sons and daughters were put at risk. The White House and Congress had to take note. Of course, the analogy can be pushed too far. But the sooner the DEI mistake is corrected, the less damage will be done.