

# ANTI \ DISCRIMINAZIONE

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Equality Scholars: It's time to speak out

David Oppenheimer





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## Equality Scholars: It's time to speak out

Good morning. My name is David Oppenheimer, and I have the great privilege to serve as the co-director of the Berkeley Centre on Comparative Equality and Anti-Discrimination Law. This morning, I plan to address the rising tide of a war on diversity and DEI (diversity, equity, and inclusion), which is occurring at extraordinary speed and force in the United States, and all over the world, including in many parts of Europe and elsewhere, as an “anti-woke” movement. For those of us who are equality scholars, this is a very frightening phenomenon. I'm going to talk mostly about the United States, because it's what I know best, but I will try to bring to these remarks some comparative perspective, because that's what we do. We are comparative equality scholars, advocates, lawyers, and academics – all of those things.

I want to start by introducing myself, because the question was asked: would I like to have somebody introduce me? It would have been such an honor to be introduced by so many of you, but I realized I wanted to define myself in terms of where I stand in terms of the topic that we're talking about this morning. And I realized that one of the great blessings in my life is that the first thing I would say about myself is that I am a spouse, a husband, to Marcy, who many of you have had a chance to meet, and who is the love of my life. That is an important part of how I define myself.

I'm a parent, and some of you know that it was just last month that I legally adopted my two adult stepsons, who are now, by law, my sons; I'm a grandparent. I'm also a lawyer, and for the first seven years of my legal career, I worked at the California Civil Rights Agency, as many of you have worked for equality bodies here in Slovenia and across Europe, and in Australia and in Hong Kong, and many other parts of the world. I'm now a pro bono lawyer. An

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important part of what I do, and in terms of how I see myself, is that I practice law with my students, intervening in civil rights, equality, and discrimination law cases. I'm a teacher. I was a high school teacher before I went to law school, and an important part of how I define myself is through my teaching and through my students.

I'm an organizer, which is part of how we all got to be together and get to be together each year. Because one of the things that I really love is finding connections between people and helping them to find those connections among themselves. I'm a researcher. And so, I want to share with you, this morning, some of my research on this war against diversity.

Although I said I'm going to spend most of my time talking about the U.S., I want to start in 1867 with John Stuart Mill and his introductory speech as the rector at St. Andrews in Scotland. Mill gave a speech at St. Andrews that is a remarkable address about the importance of diversity. He did so within a context of having himself been excluded from Oxford and Cambridge, because he was a Unitarian, at a time when Oxford and Cambridge only admitted Anglicans, and he did so in the midst of a campaign to admit non-Anglicans and to admit Catholics and Jews to Oxford and Cambridge, a campaign that was successful near the end of his life.

He had, as a member of Parliament, worked very hard for universal suffrage, for women's rights, for Irish self-rule, against slavery on a global scale. Then in 1868, he took a strong position against the Governor of Jamaica, because of a massacre of Black agricultural workers, and insisted that the governor should be prosecuted. He had most of the English establishment on the other side, led in part by Charles Dickens. The result was not only that he lost the fight, but that W. H. Smith, the bookseller, ran against him as a conservative and won, and ousted him from the parliament.

In Mill's speech to the students at St. Andrews, he says: You have to expand and diversify your student body. You have to expand and diversify your faculty. Because the only way to understand the world is to see it through the eyes of others. It's not enough to read about how other people see the world. You have to understand it through engaging with them in order to see it through their eyes. That's the power of how we learn. It's the power of education.

It was a powerful speech about diversity. It's mostly forgotten on that topic, although it's actually well remembered because he also said that the only thing we need to do to let evil prevail in the world is for good people to be silent. Talk



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about timely. I want to suggest to you that as equality lawyers, as equality scholars, and as equality activists: This is our moment not to be silent.

In the United States, on President Trump's first day of his second term, he issued several executive orders. I'm just going to focus on those relating to equality, diversity, equity, and inclusion. I don't mean to suggest that the other things he did were not important, but that's not the focus of this talk. He ordered that all diversity efforts, all diversity programs must immediately end, including any diversity programs and any diversity efforts and the jobs of anyone employed to work on diversity issues in the United States federal government or in state governments, or at any public or private university or secondary school or primary school, in the U.S. military, at all law firms, at all private companies within the U.S. And just to see how far his jurisdiction extended, he also ordered that any company anywhere in the world that had any connection to the United States must end immediately all of its diversity efforts, all of its diversity programs, because – he claimed – they were in violation of American law.

What was his legal rationale for this order? He said that any effort to promote diversity is an illegal form of racial, ethnic, or gender discrimination. He said anything we do to promote diversity is discrimination.

Where did he come up with this? It's been brewing for a while among the conservative think tanks and advocacy groups. It's the argument – you've all heard it by now, but have perhaps justifiably dismissed it as absurd – that any act which is race-conscious or gender-conscious is a form of racial or gender bias, and therefore violates the alleged obligation in law that we all be 'color-blind', pretending that race doesn't exist, that gender doesn't exist.

I don't know how we pretend that gender doesn't exist at the same time that we insist that a gender is assigned at birth based on biology, but it's only one of so many contradictions, and yet the argument in support of this radical executive order is that any effort to create, to put forward racial equality or gender equality or LGBTQ equality is itself a violation of the principle of equality. As legal authority, he pointed to a decision of the United States Supreme Court called the 'Students for Fair Admissions' or SFFA case<sup>1</sup>, in which the Supreme Court said that Harvard and the University of North Carolina could no longer use race or ethnicity as a factor in making decisions as to whom to admit to the university, rejecting their justification that they wanted to gain the educational benefits of

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<sup>1</sup> Supreme Court, June 29, 2023, *Students for Fair Admissions v. President and Fellows of Harvard College* (“SFFA v. Harvard”) and *Students for Fair Admissions v. University of North Carolina* (“SFFA v. UNC”).



diversity. The majority said that diversity is too amorphous to justify the use of race in the context of college admissions. That's all the court said. They took over 200 pages to say it. But that's all they said. They did not say that any effort to promote diversity is an illegal form of racial, ethnic, or gender discrimination.

This radical misreading of discrimination law, of equality law, of the Supreme Court decision in the SFFA case, is being pursued by the Trump administration in the United States and here in Europe, where your foreign affairs departments and your interior departments are getting letters from U.S. embassies saying your companies have to agree that they're in compliance with U.S. law on the question of diversity and equality. It's being weaponized by the U.S. Department of Justice and its Civil Rights Division, a once proud entity fighting for equality rights. It's being pursued by the U.S. Department of Education – although the President would like to eliminate that department entirely – through their Office for Civil Rights. It's being pursued by the U.S. Department of the Treasury, by the U.S. Department of State, by the U.S. Department of Commerce, by the U.S. Department of Health and Human Services, and of course by DOGE (Department of Government Efficiency), which is not really a department at all, simply an initiative in which a private citizen was given public power for a period of time in order to illegally fire people.

What are the primary targets? Science, universities, particularly top universities, particularly top research universities. The rule of law. Women, LGBTQ people, members of racial, ethnic, and religious minorities. Especially Black women. Here are some key examples of things that are being done. Several major U.S. law firms have been ordered to end their programs to increase diversity in their hiring, and to stop giving pro bono support to civil rights organizations, at the threat of losing their right to enter federal office buildings. Well, where are the federal courts located in the United States? They're located within federal office buildings. In other words, the Trump administration was saying to these law firms, if you want to continue to be able to practice law in our federal courts, you must end all of your diversity efforts, and you must stop doing pro bono work for civil rights groups. Some of them responded by saying, 'See you in court' – Federal court – and they sued, and each of them that has sued has so far won. Although we'll see what happens when it gets to the Supreme Court. But others caved. They said, 'Okay.' And in the aggregate, they have agreed not only to get rid of their diversity programs, not only to stop doing pro bono work for civil rights groups, but to provide legal services described as



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pro bono services to organizations that Trump wants to support, that is, right-wing advocacy groups, to the tune of just under \$1 billion. That's billion with a B.

The two largest charitable organizations in the United States supporting medical research, both of whom had been major supporters of diversity in science and medicine, the Howard Hughes Medical Institute [full disclosure, I'm in litigation against them, representing a scientist who was funded and then defunded by them] and the Chan Zuckerberg Foundation have pledged to end all of their diversity efforts. They had between them committed two billion dollars in diversity work. It's all ending. Several universities have been told that previously awarded grants, again totaling billions of dollars, are being halted mid-grant - something that in the past has almost never happened. So, for example, Columbia University has now agreed to put their Middle East Studies department under a federal receivership so that the Trump administration can have oversight about what they teach, who is allowed to teach, and that they supply the administration with information about all of the students who are taking courses in that department, and that the administration have a role in decisions about faculty hiring and student admissions. Columbia agreed to all of that in what they saw as an existential moment, that they otherwise would lose so much funding they could not continue to exist. Then after they agreed to all that, hundreds of millions of dollars were still pulled.

How is the Trump administration deciding what grants should be pulled? Well, in part through a search function in which they look for certain words, as we heard from Justice Neža Kogovšek Salamon of the Constitutional Court of the Republic of Slovenia, who spoke as our keynote on Wednesday. So, if a grant has the word 'gender' in it or 'woman' in it, that's a reason to simply cancel the grant. I've heard that a scientist who was doing work on transgenic biology had his grant pulled because it had the word 'trans' in it. People who study traffic intersections are in trouble, because the word intersection appears in the grant. The Smithsonian Museum took down an exhibit about the aircraft called the Enola Gay, because the word gay appeared in the name.

The University of Virginia was told that, despite the fact that they had ended all of their diversity efforts in compliance with the President's demands, the president of the university still believed in diversity. They said, you must fire him, or you will lose all of your federal funding, and so he stepped down. Now a political process controlled in part by the governor of the state of Virginia and in part by the board of trustees appointed by the governor of the state of Virginia, will decide who will be the next president.



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Harvard, which is certainly the best-known university in the United States, was told that the entire university including all of the hospitals that they run, were going to lose close to \$1 billion in grants without any kind of review process at all. They sued. They said, 'No, we're not', and they went into the US federal court in Massachusetts, and they sought an injunction to prevent those grants from being lifted. The Trump administration responded by saying, 'You know all those foreign students you have and foreign faculty you have', foreign as in not U.S. citizens, 'We're not going to issue them visas anymore.' Harvard added that to their lawsuit. Then the administration said, 'We'll make it easy. We're just going to declare you ineligible to enroll students who are not U.S. citizens,' and Harvard went back to court to expand the injunction. Then they said, 'You know, your tax-deductible status as a charitable or educational organization. We're lifting that.' So, Harvard went back to court. They said, 'You know, that accreditation you have as a university, we're working now to cancel Harvard's accreditation. You don't meet the minimum standards for higher education,' and they went back to court. Harvard kept winning, as they should have. Then the Trump administration said, 'If you want to settle, we're prepared to settle. The main thing we want is that we're going to decide going forward what students you admit, and we're going to decide going forward what faculty you hire and what they can teach.' Harvard sued again. That suit with all of those threats has been decided by the district court, and Harvard won on every count. The court found that these are absolutely illegal acts. But we don't know what will happen on appeal.

Many have concluded that the net effect of what will happen if Harvard loses any one of these claims is that it will lose its role as a leading institution in higher education. It may not be able to continue at all as a research university because so much of the funding for research in the United States comes from the federal government or from these charitable foundations, which are under threat from the administration. More broadly, universities are being told that it's a violation of federal law, it's a form of discrimination to have Black studies professors and Black studies departments and ethnic studies departments and women's studies departments because they encourage students to become critical of America. Museums are being ordered to stop displaying exhibits about Black history. Military cemeteries are being ordered to stop providing information about where Black veterans are buried. Many top government employees in non-partisan positions have been removed, often again illegally, from jobs where the jobs were created by Congress with terms of a certain number of years. Why? Because they have been described as 'diversity hires,' meaning they're not white men.



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The one I find most painful is Dr. Carla Hayden. Dr. Hayden was the first black woman to serve as the director of the Library of Congress, a position that the President has no authority over - but he thinks he does. She had just a few months left on a ten-year term as the Librarian of Congress when she received an email that said, 'Carla,' - just her first name, not Dr. Hayden - 'on behalf of President Donald J. Trump, I am writing to inform you that your position as Librarian of Congress is terminated effective immediately.' When the President's press secretary was asked about this firing at a press conference, she said, 'Oh, yeah, Carla.' It is clear to everyone here that white men are 'Doctor' and Black women are addressed by their first name. Oh, yeah, she said, 'Carla' 'was fired for her support of DEI and for 'putting inappropriate books in the library for children.' Well, just to be clear, the Library of Congress is a research library and a depository for books published around the world. It is not a lending library. It is not a children's library. There are no shelves of books for children. There are no children going to the Library of Congress to borrow books, because the Library of Congress doesn't lend books. This explanation is just a fabrication, because they couldn't stand that this highly accomplished Black woman held a position over which they don't even control, but faced with the kind of retaliation and death threats that come from the right when someone is outed as a supporter of diversity, she resigned.

Kelly Dermody, a San Francisco lawyer and a member of this Center [the Berkeley Center on Comparative Equality and Anti-Discrimination Law - ed. n.], has spoken a number of times at our events in Berkeley. Kelly is representing a class of federal employees who were high-level employees fired from their jobs. Within her class, she says, 90% of those people targeted for terminations based on a perceived association with diversity, equity, and inclusion are women or non-binary, and nearly 80% are Black women. That's who is being fired by the Trump administration because of their association with diversity.

Now, there is resistance. There have been over 400 lawsuits filed. In virtually all of them, we have received injunctions. The ACLU (American Civil Liberties Union) and the NAACP (National Association for the Advancement of Colored People) Legal Defense Fund, where Joy Milligan, my co-director, used to work, have been extraordinary in the amount of litigation that they have brought, and with their success in the federal courts. Here's a quote from a federal judge appointed by Ronald Reagan, not one of the great progressive presidents of American history. A white man, a lifelong Republican. «I've never seen a record where racial discrimination was so palpable. I've sat on this bench now for 40



years. I've never seen government racial discrimination like this. I'm hesitant to draw this conclusion, but I have an unflinching obligation to draw it – that this represents racial discrimination and discrimination against America's LGBT community. That's what this is. It would be blind not to call it out. My duty is to call it out»<sup>2</sup>. The judge is now being identified as a renegade, leftist, communist, anarchist judge, and of course, there will be an appeal from the decision.

The New York Times, talking about grants from the National Institutes of Health, says that in a typical year, there are perhaps 20 grants that are pulled early, usually because the principal investigator either has become ill or has passed away. They have now tracked 1700 grants that have been pulled early<sup>3</sup>. They say that their analysis, and the Times has done a very deep analysis, that they fall into two categories. One is that they are somehow concerned with issues of diversity or issues about serving Black communities or other minority communities, and/or women and/or LGBT people, all of whom in science have been underrepresented as subjects of study, which in medical science in particular has been a serious problem in terms of how women respond to various kinds of treatment for disease, because so many experiments are done, so many studies are done on men. Hundreds, perhaps thousands of studies in this category are being eliminated with no review, with no due process, with no opportunity for a scientist to come forward and say, «I'm making these important findings. I'm supporting this lab of people who are doing great work. Please take a look at what I'm doing». The Times said a lot of these studies were studies that were in some way directed toward minority communities, but then there's a whole other set of studies. They're studies of cancer, they're studies of dementia, they are not focused on minority communities, they're not focused on women or LGBT people, but the principal investigator is a person of color or a woman, or identified as LGBT, and those too are being cancelled in huge numbers as well.

I love my country, but I am so ashamed of the current leadership – of what's being done in my name. The Trump administration has announced that they're blocking funds awarded by Congress to, among other things, teach English to schoolchildren. They have defunded the entire civil rights divisions of the Social Security Administration, the Department of Homeland Security, and the

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<sup>2</sup> Judge William G. Young, as reported by Kyle Cheney and Danny Nguyen, *“My duty is to call it out”: Judge accuses Trump administration of discrimination against minorities*, politico.com, 16 June 2025.

<sup>3</sup> Katrina Miller, Carl Zimmer (2025), *National Science Foundation Terminates Hundreds of Active Research Awards*, in The New York Times.



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Department of Veterans Affairs. Each of these agencies have had longstanding commitments to ferreting out systemic discrimination in their operations, in their grants. The Education Department sent a letter to every educational institution in the United States. And they said, without referring to any evidence, we know who you are, and we know that you're engaged in 'pervasive and repugnant race-based discrimination against white and Asian students.' I don't believe they really care about Asian students. That's an excuse, not a reason. But they certainly seem to care about maintaining the advantages already experienced by white students. We know from data that Black students are disproportionately concentrated in schools with fewer resources, with less funding, with less experienced teachers, with fewer libraries and science labs and language labs, and other facilities. Yet this letter told public schools and universities they had 14 days to purge all diversity and equity efforts, including any program intended to help diversify the teaching staff, any program intended to narrow the achievement gap that Black students face, or lose their access to federal funding.

At the heart of these policies is a war on what I call the diversity principle. That principle is that people with different backgrounds, experiences, and viewpoints benefit from engaging with each other. That's why it's important for people who are insiders to expand their circles to include outsiders, and vice versa. The experience of being an outsider is often influenced by age, religion, ethnicity, gender, race, language, disability, economic class, and other forms of identity. Compared with groups that are more homogeneous, diverse groups do a better job of solving problems, making discoveries, teaching and learning from each other and improving democratic discourse. In a classroom, they learn more. In a science lab, they make more meaningful discoveries. In commerce, they make more money. In politics, they develop more innovative policies.

This idea is not new. It has a long and storied history. When Wilhelm von Humboldt founded the University of Berlin in 1810, having lived a life resplendent in diversity of all kinds, he decided, in the interest of diversity, that the university should include Catholics and Jews who otherwise would have been excluded. The University of Berlin was the first modern research university; those of us who teach at research universities, we teach at Humboldt universities. Humboldt's writing on diversity made its way into the epilogue of John Stuart Mill and Harriet Taylor Mill's 'On Liberty'. It was at the heart of what the Mills wrote about the idea of liberty, about political liberty and social liberty, about the subjugation of women. It was at the heart of their work, and it influenced a remarkable



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generation, not only in their native England, and not only elsewhere here in Europe, but also in the United States, where Harvard began that climb to being the best known university in the U.S., when it was transformed in the second half of the 19th century, in part based on Humboldt's ideas about the importance of diversity, about the clash of ideas, about bringing in Catholic students and Jewish students and Black students and immigrants and students from poor families in order to increase diversity, and at the same time to encourage students to talk to professors. Until the second half of the 19th century, at Harvard it was regarded as a violation of good manners for a student to talk to a professor. That changed with Harvard's commitment in the 19th century to diversity. In the early 20th century, the president of Harvard said what we are most proud of about Harvard is the diversity of our faculty and our student body, the religious diversity, the racial diversity, the ethnic diversity, the class diversity, it's what makes Harvard great.

Those ideas have been at the foundation of the modern university, the modern research university, ever since. It's our job as equality scholars and equality teachers, and as experts on the history of equality and diversity, it's our job right now to speak out in favor of saving this tradition. There's no one better equipped to do so.

Now, there's a line of rhetoric in the United States that I take very personally, that all of this is simply an attempt to reduce anti-Semitism at American universities. The Trump administration is saying Harvard is an essentially anti-Semitic institution, and that's why we have to control who's admitted as students, who we hire as faculty, and we need to know about the background of all students and any discipline they've had so that we can remove them. This link of their efforts to anti-Semitism is a false and utterly despicable claim. Anti-Semitism is a growing problem in the United States. It comes from the far right, it comes from the far left, and frankly, there's a fair amount of it that comes right down the middle from the mainstream. We would be wilfully blind not to recognize that there are problems with anti-Semitism that need to be addressed. While we're at it, there are problems with racism that need to be addressed. There are problems with sexism that need to be addressed. Our work is addressing the problem of bias and prejudice, as scholars and activists, and teachers of equality. There's a lot out there, and Jew hatred is not immune from that. In fact, the President surrounds himself with people from right-wing organizations who have made it clear that they hate Jews. That doesn't seem to bother him.



The Trump administration wants to convince us that any criticism of Israel is anti-Semitic, and as an American Jew that offends me. My family was driven from Spain in the 15th century and then from Central Europe in the 19th century. I'm not sure how long we can stay in North America. But the notion that any criticism of Israel is anti-Semitic should come as a shock to most Jews around the world, because many of us are highly critical at varying levels of the government of Israel, but not the state. I'm in the majority of American Jews, and I think of Jews worldwide, in believing in the absolute right of the Palestinian people to have a state, a state somewhere between the Mediterranean and the Jordan. I also think there's plenty of room there for two states, both of which would be larger than Slovenia. Two states with independence. Two states with freedom. Two states with an economy that works and that creates prosperity. But for Trump and his administration, they want us to believe that the only thing to do about anti-Semitism is to destroy the most important great American universities, and that's absurd, and it has nothing to do with anti-Semitism. It has everything to do with his opposition to diversity, his opposition to equality for women, and/or people of color, and/or LGBT people, and others.

I can tell you from history what's coming down the track, and that is if he succeeds in destroying these universities and if people in the United States respond in time by saying, this was a bad thing, he's going to say, his people are going to say, 'We're really sorry. We didn't want to do it. The Jews made us do it.' That's the oldest song in the book, and that's what's happening here.

So, I hope that all of us will stand together in opposition to this war on diversity and DEI. Because this is our moment as scholars of diversity and equality not to be silent.

Thank you for your time.