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In Pursuit of Civic Engagement in Texas: Leveraging Trust in a Changed Legal Landscape

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Abstract: Recent legislation in Texas changes the legal civic engagement landscape. With Diversity, Equity, and Inclusion programs now prohibited on public university campuses, advocates of affirmative steps to reach historically underserved groups may face unexpected obstacles. And recent Supreme Court decisions, on the use of race as a factor in college admissions, further increase the challenges. Due to these shifts in the goals public universities can legally pursue, what are the most appropriate civic engagement policy steps to eliminate barriers to success and realize a diverse student body? Building on the Town Hall program at Tarleton State University, and the specific ways in which it leverages trust, we make three recommendations: (1) Institutions should maintain an openness to outreach, through the leadership of student groups and invited guest speakers and other initiatives, to those on campus who struggle with the burden of invisibility; (2) Town Hall and related civic engagement programs should fine-tune the selection of advanced peer leaders, making it easier for them to pursue expertise in the classroom, in turn facilitating their ability to attract speakers as recommended in (1); and (3) institutions should ensure an opening for representatives to travel to underserved parts of the state, with the effect if not University-wide intention of increasing inclusion. Building on the research of Eric Morrow, Boleslaw Z. Kabala, and Christine Hartness in 2023, we seek to leverage trust for the sake of a genuinely inclusive environment, consistent with current legal limitations on civic engagement in Texas.

Keywords: diversity; equity; inclusion; power; justice

1. Introduction

On 17 June 2023, Texas Governor Greg Abbott signed into law Senate Bill 17, prohibiting Diversity, Equity, and Inclusion (DEI) on public university campuses. Of course, the road had been paved by corresponding bills in Austin on the subject of equity and inclusion at the K–12 level, as reflected in legislation such as House Bill 4509, which received the Governor's signature on 18 June 2021. Proponents presented the law as upholding informed patriotism, whereas opponents countered that it papered over vital parts of Texas history. A companion bill to HB 4509, HB 3979, premised on critical race theory as part of the curriculum in elementary, middle, and high schools, and forbidding the teaching of collective guilt, achieved an official endorsement from the Governor on 16 June 2021.

With anti-DEI the law of the land, the time had arrived to formally dismantle the recent architecture of inclusion at public universities across the state. The University

of North Texas went first. The A&M system was close behind. Spanning Texas, these office closures, which in many cases resulted in dedicated staffers having to find new jobs, represented a wake-up call: academia, in which it is all too easy to forget sometimes the reality of taxpayers as stakeholders in public institutions, was suddenly reminded of their existence. This was nowhere more evident, it turns out, than in the legal limitations on how public universities pursue specific forms of civic engagement through well-intentioned DEI programs.

And the developments in Texas were only part of a larger trend across the states. In Florida, a similar history unfolded. Indeed, at the New College, in consultation with the Claremont Review of Books, Governor Ron DeSantis staged what principled opponents characterized as a "hostile takeover" of the state's public honors college, with its reputation for quirkiness and intellectual eccentricity. As Texas and Florida became cynosures of national, anti-DEI debates, North Dakota, South Dakota, and Tennessee also moved into this policy space. Across the states, significant implications followed for publicly funded projects of inclusion.

At the national level, meanwhile, after suits brought by students alleging discrimination at Harvard and UNC in SFFA v. Harvard and SFFA v. UNC, the Supreme Court also significantly weakened, if it did not explicitly overturn, *Bakke v. Davis*. This decision had previously allowed institutions of higher education to use diversity as a plus factor in assembling a student body. Many had interpreted *Bakke* in a civic engagement direction. But with the precedent dismantled, those who hoped for a national reprieve from state measures were faced with bitter disappointment. Due to these recent and dramatic shifts, how can public universities continue to pursue creative civic engagement and the benefits of a diverse student body in a changed legal environment?

In this article, we focus especially on Texas and the national implications of current state policies and campus possibilities. We had the opportunity to tap into the institutional expertise and embedded insights of the American Association of State Colleges and Universities' (AASCU's) American Democracy Project, and we sought especially to leverage conversations in the A&M system. We find that, despite the legal prohibitions, individuals and groups have a neat opening to continue to take affirmative steps without running afoul of the law. There are reasons, therefore, to remain hopeful that community-based and engaged learning that allows both students and faculty to innovate is here to stay.

First, we survey exactly what happened with respect to higher education in Texas through the anti-DEI law. We note an interesting feature of SB 17, which will perform significant work in our argument, which is that the law exempts student groups from restrictions. This opening section includes a definition of civic engagement, a multivalent and contested concept (to peer-reviewed discussions to which the authors of this piece have contributed), and it is undoubtedly one that aids us in better understanding the post-SB 17 legal landscape in Texas. One might suppose that DEI is conceptually separate from civic engagement. But we show, in this section and throughout the article, that it is possible to see the former as highly important at least to versions of the latter. Second, we survey corresponding developments at the national level. Affirmative action is not DEI, but the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellow of Harvard College*, which weakened significantly—even if it did not outright overturn—the diversity rationale for affirmative action handed down in *Bakke*, also has civic engagement implications that bear on what state institutions in Texas can do today. It impacts the strategies they can pursue going forward regardless of whether SB 17 is kept in place, modified, or overturned. Due to the significance of *SFFA*, it behooves us to better understand the decision.

Third, we speak to contemporary strategies recommended by the American Association of State Colleges and Universities (AASCU)'s American Democracy Project, even as these continue to take shape, and at times in conversation with AASCU's American Democracy Project and contacts in the A&M system. Tarleton is proud to count itself among the over 300 institutions that have partnered with the American Association of State Colleges and Universities' (AASCU's) American Democracy Project. Fourth, we briefly outline steps taken by Tarleton State University to ensure compliance with the law, as our institution has stayed committed to a strategy of "all means all". Fifth, we introduce an important theoretical distinction in the literature, one that plays a crucial conceptual role in our argument. It covers a disagreement between Thomas Hobbes and Baruch Spinoza (to name two relevant 17th-century thinkers), but it also runs through the works of Max Weber and Michel Foucault: this is the opposition between formal and informal power. We connect this contrast to the SB 17 exemption of student groups. Whatever undergraduates choose to do to advance inclusion, without instructions from faculty members (informal power), is completely consistent with SB 17.

Sixth, we speculate on measures that Tarleton—and by extension other institutions who seek to expand civic engagement on campus—can take, through student groups, to see the likely realization of inclusive *effects*. Thus, the specific initiatives could involve intentional invitations of inclusive speakers over the course of the year—a practice that has been documented in the peer-reviewed literature; joint recruitment drives by fraternities and sororities with distinct historical and cultural identities, who nevertheless come together to build bridges and further civic engagement; and alignment of so-called lab leaders, in Tarleton's Town Hall civic engagement framework, with smaller classes to teach on subjects in which they already have a background or interest, to more efficiently build their policy expertise over the course of the semester and, as a result, invite the very speakers who we argue can make a difference.

Seventh, we discuss how those proposed measures fit into historical and background considerations related to equality and power. We survey legislative, executive, and judicial attempts to secure equal rights for all Americans, especially measures relevant to the most recent Texas controversies and national developments. Formal power is important, but informal power has also arguably resulted in advances in civic engagement and participation. Basically, through the mid-1960s, the legal revolution that resulted in the 1964 Civil Rights Act and the 1965 Voting Rights Act prioritized formal power, or constitutional and legal equality, which is a significant step. But starting especially in the mid-1960s, awareness increased that it was not enough to focus exclusively on formal power. We also had to stay cognizant of what was happening on the ground and remain attuned to the effects that laws may or may not produce, resulting in the perpetuation of inequality, hierarchy, and domination. Attempts to increase civil rights starting in the mid-to-late-1960s, from affirmative action through critical legal studies and critical race theory, and most recently to DEI, prioritize the pervasiveness of power and, hence, the need to pay special attention to informal dynamics. Recognizing these differences in the conceptualization of power helps clarify the big picture. Crucially, it situates students undertaking post-SB 17 initiatives in a line of activists who relied on the legitimacy of informal modes.

Eighth, we show how these student initiatives relying on informal power, in post-SB 17 Texas, actually reflect more consistency with the Aristotelian definition of "equity" than the pre-SB 17 DEI regime in Texas. This is because, for Aristotle, equity always stands *outside* the law. It is never codified as part of the general constitutional or legal framework (as was the case in pre-SB 17 in Texas), because equity perfects the law precisely by filling in in those circumstances that the law could not foresee in advance. We include in this section a discussion of other approaches to equity in education (secondary and tertiary),

also consistent with the extra-legal Aristotelian view insofar as they do not require general legal codification. This helps us understand to an even greater extent steps in education that are possible today and that further ensure everyone receives accommodation, and that we are teaching to the full potential of all students.

Finally, and ninth, we conclude with big-picture reflections on both the pro-democracy literature and the decentering, democratic ideas of Jacques Derrida—which, in an unexpected way, support our informal mechanism of capitalizing on and expanding existing student expertise. As we lean into this distinction between formal and informal power—the latter based on human capital in networks of trust and understanding—we further build on the argument in ways consistent with the research of Peseta and Bell (2020), who rely on student expertise even to the extent of involving undergraduates in the collaborative design, with faculty, of components of assessment and curriculum.

2. Diversity, Equity, and Inclusion—Civic Engagement Developments in Texas

It may be hard to conceptualize what, exactly, state-mandated developments at public universities have to do with civic engagement. After all, it is a broad term, and there is not even agreement among scholars studying the subject as to what constitutes civic engagement. Thus, Ekman and Amna (2012) have underscored that political participation and civic engagement both carry different connotations, with the latter simply expressing in a more "latent" way what is already conveyed by the former. i.e., people getting involved in local, state, and federal governmental processes. Mary Prentice has offered her own understanding, with civic engagement a variation on service learning but with broader implications (Prentice 2007, p. 136). Kaskie et al. (2008) have advanced yet another definition, with much of the literature arguably influenced by the works of Sidney Verba, Robert Putnam, and, ultimately, Alexis de Tocqueville. All of them, to different extents, demonstrated interest in associational life and explored how groups (such as unions, the Knights of Columbus, Lions and Rotary Clubs, Parent–Teacher Associations, and other voluntary organizations) facilitated the involvement of everyday citizens in their communities.

Morrow et al. (2023) then explored not only how this discourse has been and continues to stay multivalent and hard to define, but how (whatever your definition of civic engagement) it came to apply especially to colleges and universities, with bodies of higher education seen as the group or association that is especially well-suited to cultivate habits of participation in support of democracy. Fascinatingly, although antecedents exist in colonial America, and one could plausibly suggest that the modern civic engagement conversation around universities kicks off with President Truman's report on Higher Education for Democracy (Zook 1947), the most directly relevant initiatives go back to the 1980s and 1990s.

As Morrow et al. (2023) explained it:

Around the 1980s, however, a significant change took place: according to Ostrander, civic engagement took off as a movement on college campuses (Ostrander 2004). It was driven in part by Deans, Provosts, and University Presidents who were no longer content with institutional aloofness. Indeed, on numerous occasions, explicit guidance was provided for innovation-minded scholars to incorporate, in their own research, the needs and questions of surrounding local communities, and, according to one scholar, "[t]op professional organizations in higher education have recently [since the 1980s] devoted their annual conferences to the topic [of civic engagement], major publications in academe have featured the issue, and the literature (both practical and theoretical) is growing rapidly"

> ([Ostrander 2004](), p. 75). As confirmed by Timothy Stanton, all this amounted to
> a major paradigm shift, felt especially in the palpable energy on campuses and
> in the numerous directives issued by administrators who sought to undo the
> perception that their institutions pursue learning only for its own sake.
> ([Stanton 2008](), pp. 20–21, 35–38) (sct. 6.2, para. 2)

Universities at this time, in other words, have come to be seen not as needing, first and foremost, to perpetuate their historic role of serving as detached and contemplative spaces of isolation, standing aloof from the cares and concerns of citizenship. Well-situated and influential members of political, financial, and academic elites instead called for acknowledgment of the direct embeddedness and involvement of universities in communities, with significant implied potential for positive social change. Against the backdrop of this major paradigm shift that accelerated in the 1980s and 1990s, what universities can teach about race and its history, how they can teach it, and which activities they can legally encourage their students to consider, represent fraught questions. One cannot deny their implications for civic engagement.

Although one might argue that DEI and civic engagement are conceptually distinct, on at least some of the understandings mentioned above (in addition to others), there is a robust connection. Indeed (see also our Section [6]() below), it is perhaps possible to see DEI as primarily concerned with the justice of institutions. But one could also argue that without ongoing exposure to different lived experiences and perspectives *at* a university, it is hard to cultivate a habit of reaching out and engaging across genuine differences *outside* the university. Aristotle, on whom we rely in exploring extra-legal prospects for equity in a post-SB 17 space, would say that justice (which can stand in need of supplementing through equity) is not just an abstract idea but instead an embodied habit. If so, then practices of the pursuit of equity on campus certainly have civic engagement implications beyond its walls. And it is in this context that we consider recent developments in Texas.

Texas Governor Greg Abbott launched his offensive against DEI, with implications for how best to pursue civic engagement at the university level, in February 2023. In a memo from his chief of staff, Gardner Pate, state agencies and public universities were advised that applying DEI policies to hiring decisions violated federal and state law. The following week, Lt. Governor Dan Patrick listed Senate Bill 17 (SB 17) as one of his legislative priorities. Patrick's list described SB 17 as "banning discriminatory 'Diversity, Equity, and Inclusion' (DEI) policies in higher education" ([Lt. Gov. Dan Patrick 2023]()).[1]

The partisanship over SB 17 was reflected in its journey through the legislature and 11th-h passage on sine die, the last day of the legislature's regular session. Although the dynamics of party support in the leadup to the adoption of any bill do not necessarily provide information about how to think about the significance of the changed legal landscape post-passage, here, in the context of DEI on public university campuses, the situation may be different. This is because, in the context of civic engagement, an important bill passed along partisan lines suggests that the conversation on the other side will be especially sensitive. A conversation about civic engagement in a time of division will look different

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1   Indeed, the 88th session saw the introduction of at least seven pieces of legislation aimed at dismantling components of DEI within higher education. Some never made it past the filing stage, including House Bill 1006, which was intended to protect free expression and academic freedom, and House Bill 1046, which prohibited public colleges and universities from requiring students or employees to affirm or commit to a particular statement of belief as a condition of admission or employment; both bills were referred to the House Committee on Higher Education after their first reading and subsequently died in committee. Two additional bills that, at first glance, appeared to suffer the same demise, House Bill 3164 and Senate Bill 2313, were actually given new life within SB 17, believed to be one of the toughest anti-DEI bills in the nation.

than one on the same subject in an era of lower political polarization. And the passage of SB 17 definitely reflected deep divisions.[2]

Once passed, SB 17 became section 51.3525 of the Texas Education Code. It is a relatively short piece of legislation with subsections (a) through (d) covering the core substance. Subsection (a) begins by defining the "Diversity, Equity, and Inclusion office" (DEI) by the activities the office is engaged in. The definition focuses on activities that attempt to influence or promote "differential treatment" with respect to race, sex, color, or ethnicity. However, it is interesting to note that the enumerated activities include sex as a classification in 51.3525(a)(1) only:

> "Influencing hiring or employment practices at the institution with respect to race, *sex*, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws." [emphasis added]

The remaining activities, "(2) promoting differential treatment . . . (3) promoting policies or procedures, . . . [and] (4) conducting trainings" omit sex from among the classifications, although (4) mentions gender identity and sexual orientation. The conference committee explicitly rejected the House's inclusion of the sex classification in the later three activities in the conference version of the bill, which was subsequently passed by both chambers.

Subsection (b)(1) contains the mandate to institutional governing boards. They are required to certify (1) no DEI office exists, (2) none of the aforementioned activities are conducted, (3) no DEI statements are required or given preference, and (4) no preferential treatment exists in hiring or any other institutional function except as required by federal law. The governing board also must ensure that internal institutional policies establishing disciplinary measures for those who violate the act are developed. These policies are in addition to institutional and individual penalties for violators described in subsections (e) through (h).

Exemptions to the act are outlined in subsections (c) and (d). The first exemption is for statements highlighting institutional support for first-generation, low-income, and under-served student populations. However, the statutory language appears to limit the exemption to two situations: (1) when applying for a grant or (2) complying with accreditation standards. Subsection (d) contains the remaining exemptions to 51.3525(b)(1), including classroom instruction, scholarly research, guest speakers, student success programs, or activities sponsored by recognized student organizations. Though not expressly listed in subsection (c) or (d), the elimination of sex as a classification in 51.3525(a)(2)–(4), as mentioned above, would suggest that activities that attempt to address gender disparities, except in employment practices, are also exempt from the prohibitions in 51.3525(b)(1).

Thus, a pride month not sponsored by a DEI office may appear exempt because of subsection (d), but the explicit prohibitions against institutional support of identity and orientation initiatives in other parts of the short bill might give some members of a university administration pause. Indeed, even as Tex. Educ. Code Ann. § 51.3525 appears simple and direct on its face, the reality on the ground is that different universities in Texas have already demonstrated significantly different responses. As one piece in *Inside Higher*

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[2]   Republican Senator Brandon Creighton filed the bill, joined by eight of his fellow senators. This signaled early support for the bill, with almost half of the Republican-controlled Senate members signing on. A majority of the primary sponsors of SB 17 were members of the Committee on Education, which Creighton chaired. SB 17 passed the Senate along party lines 19 to 12 (Senate Journal 88th 4/19/2023, p. 1093) and went on to pass the House 83 to 62 in a slightly modified form (House Journal 88th 5/22/2023, p. 4859). A conference committee was convened and later filed their report with recommended revisions. The Senate and House both passed revised SB 17 along party lines (SJ P3178, HJ P6039), and it was signed into law by Governor Abbott on 28 May, 2023.

Ed explained it, "... preparation has varied greatly depending on the institution. ... The result is a messy patchwork of campus policies, procedures, and approaches designed to ensure compliance with the new law" (Alonso 2023). How is that possible? Another article in *The Chronicle of Higher Education* addressed the dynamic in the following way: "... the law, SB 17, leaves too much to interpretation, critics say. As a result, general counsels' offices will be expected to figure out such details as what to do if job applicants submit unsolicited diversity statements, whether public college employees may serve as faculty advisers for identity-based student organizations, and what kinds of diversity trainings are prohibited" (Lu 2023). The devil, as the saying goes, is in the details.

Overall, the article in the *Chronicle* speaks to the ambivalence within which a number of public universities in Texas will operate and the corresponding need for robust discussion of different possible responses that all fall within the space of upholding the law. Its title is, "Are Public Colleges in Texas Still Allowed to Hold Pride Month? It Depends Who You Ask." The point is that this is *not* just because of gray areas that are inevitable in any statute. The counsel quoted in the article acknowledged a *general* need for interpretation, in any legal framework, as follows: "... the law is not black or white but somewhere in between, which means some degree of interpretation is required." But SB 17 also seems to have at least three specific gray areas, making adaptation on the part of public universities in the state especially fraught and challenging.

Thus, there is simply a lack of precedent. "There have not been any statewide bans on Diversity, Equity, and Inclusion in the past," Ingram said, "and so, there's not like there's a hundred years of precedent to draw upon when you're trying to interpret what constitutes DEI or what constitutes impermissible preference" (Lu 2023). This novelty may be a challenge and an opportunity. As it turns out, there is also ambiguity with respect to what counts as "differential treatment or a special benefit." The article explains:

> Senate Bill 17 offers many opportunities for interpretation. For example, the law prohibits public college employees from performing the duties of a Diversity, Equity, and Inclusion office, which it defines as an office established to promote purposes, including "differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity," but it does not define differential treatment or special benefits.

Again, the issue of definition is key. On top of that, there are questions with respect to clarity when it comes to how best to interpret words that include "undeserved," and then also "race, color, or ethnicity," and then also "activity." Even where the statute may seem to provide a clear exception, the tendency of institutions to overcomply may create a chilling effect among faculty, staff, and students. The following has already been observed when it comes to Pride Month:

> Texas A&M system's general counsel's office said a university may host multicultural events or programs as long as they are open to everyone who wants to participate and the *emphasis is on history and culture*, while Texas Tech's allows universities to recognize heritage months *only if they are federally designated as such*. Meanwhile, the University of Texas system's guidance allows for programs *for federally and state-recognized* heritage and history days and months, advising that an institution should focus on history; it is also the only one of the three to specifically mention Pride Month as being allowed. [emphasis added]

These are all palpable differences of interpretation and may have real consequences.

Leaving a further opening for variation in responses, university memos that provide guidance, as the author points out, also do not all bring up health care. This leads to questions about the status of university-wide or university-sanctioned counselors and

therapists, who may be pursuing inclusivity and affirmation. All of the above areas of ambivalence do not render the possible policy responses we offer below, all unambiguously consistent with SB 17, any less compliant with the law. But due to the context of increased interest in the law with the issues described above, they potentially heighten awareness of suggested possibilities.

3. Students for Fair Admissions, Inc. v. President and Fellow of Harvard College—Civic Engagement Developments in the Nation

The move to dismantle DEI efforts in Texas through the passage of SB 17 was followed 1 month later by the U.S. Supreme Court decision in *Students for Fair Admissions* (*Students for Fair Admissions, Inc.* 2023). Chief Justice Roberts wrote the majority opinion, which held that the race-conscious admission procedures at Harvard College and the University of North Carolina (UNC) did not comply with the Equal Protection Clause nor satisfy the requirements of earlier judicial precedent. The opinion was a significant blow to affirmative action, which has been a cornerstone of the DEI framework for over 40 years.

The U.S. Supreme Court first considered affirmative action in *Bakke* (*Regents of Univ. of Calif. v. Bakke*, 1978). Bakke, a White man, was not admitted to the university's medical school, whose admission process included 16 seats set aside for minority applicants, some of whom had lower admission scores than Bakke. The university argued that the minority seats helped those "perceived as victims of 'societal discrimination,'" improved the delivery of health care in underserved communities, and increased the number of minorities in the medical profession (*Bakke*, 438 U.S. at 310). Each justification was rejected by Justice Powell as failing to meet the standard of a compelling state interest. Only the "attainment of a diverse student body" was found to be a "constitutionally permissible goal" under the purview of the institution's duty to create an effective educational environment (*Bakke*, 438 U.S. at 311).

The benefit of a diverse student body was later affirmed in *Grutter* (*Grutter v. Bollinger* 2003) and *Fisher* (*Fisher v. Univ. of Tex. at Austin* 2013). In both cases, White applicants filed suit alleging the institutional admission processes violated the Equal Protection Clause, and in both cases, the court upheld the admissions policies as being narrowly tailored to achieve the goal of a diverse student body. Of particular interest to the subject of this article is the identification of civic engagement as one of the essential benefits of a diverse student body. "Effective participation by members of all racial and ethnic groups in the civic life of our National is essential if the dream of one nation, indivisible, is to be realized" (*Grutter*, 539 U.S. at 332).

Students for Fair Admissions stopped short of expressly overturning *Bakke*. Instead, the court found that the Harvard and UNC admission policies failed to comply with the restrictions established in *Bakke* and its progeny. Nevertheless, it is clear the court has raised the bar on what constitutes a constitutional race-conscious admission program. Where earlier courts seemed content to accept the benefits of a diverse student body, including civic engagement, as self-evident, *Students for Fair Admissions* derided such benefits as ill-defined, unmeasurable, and poorly linked to the goal of diversity (*SFFA*, 143 S. Ct. at 23–24). Additionally, whereas earlier precedent seemed to emphasize the requirement that a race-conscious admissions program do the "least harm possible" (*Grutter*, 539 U.S. at 341), *Students for Fair Admissions* emphasizes that race-based admissions systems "may *never* be used as a 'negative'" (*SFFA*, 143 S. Ct. at 27) [emphasis added]; in the "zero-sum" context of college admissions where one applicant being accepted necessarily means another applicant is not, it is difficult to imagine a race-conscious policy that could surpass the bar set by *SFFA*. *Id.* at 27.

The legal ramifications of Tex. Educ. Code § 51.3525 and *SFFA* on civic engagement in Texas cannot be overstated. If institutions are to continue developing cross-cultural awareness, expanding perspectives, and preparing students to work within civic structures for the betterment of their fellow citizens, they will have to look for new ways that do not run afoul of § 51.3525 or *SFFA*. This article advances several possibilities.

4. Entering a National Conversation with the American Association of State Colleges and Universities

The American Association of State Colleges and Universities (AASCU), a network of 350 regional public institutions, many with minority-serving (MSI), Hispanic-serving (HSI), and historically Black (HBCU) designations, strives to advance and reimagine student success and encourage institutional transformation. In 2003, AASCU established the American Democracy Project to encourage innovative approaches to civic engagement within institutions of higher education. During the past 20 years, it has assisted universities to embed integral, relational, organic, and generative practices in curricular and co-curricular activities so that undergraduates become thoughtful, engaged global citizens, ready and willing to create a more equitable, diverse, and inclusive democracy. Tarleton State University is an AASCU member and contributes heavily to the success of the American Democracy Project.

AASCU's American Democracy Project provides a structure for campuses to share, innovate, and collaborate on ways to encourage students to be informed and engaged global citizens. For decades, civic engagement on college campuses was measured by student voting rates and political engagement. However, with the advent of Robert Putnam's *Bowling Alone* and national conversations that led to AASCU's American Democracy Project, a more expansive view of global citizenship began to be embedded into the structure and function of civic engagement on college campuses.

During the past 20 years, the academy has developed more language, examples, and assessments for the value of civic engagement work on campuses. Of critical importance is the U.S. Department of Education's *A Crucible Moment: College Learning & Democracy's Future* (2012). That commissioned text pushes against the notion of colleges existing solely for workforce preparation and training and encourages higher education institutions to embed civic inquiry and civic action through the campus culture and general education courses. *A Crucible Moment* paints a clear picture that a civic-minded campus will result in students' problem-solving across differences. In the wake of *A Crucible Moment*, conferences like the national Civic Learning and Democratic Engagement (CLDE) meeting served as a place to generate a CLDE Theory of Change (Hoffman et al. 2018) and efforts to assess the broad view of civic engagement became much more common. AASCU further developed resources to help integrate civic learning across a variety of majors (Resources to Support Civic Learning in the Major n.d.).

AASCU's American Democracy Project also led the charge to see a responsible and informed global citizen as an interdisciplinary endeavor. The project encouraged faculty, staff, and administrators to frame the integration of information literacy, the inclusion of deliberative and constructive dialogue, a recognition of responsible stewardship practices, and skill development of advocacy and problem-solving as keys to a healthy and civic-minded campus climate and as a means to attain broad student success.

AASCU's American Democracy Project offers a unique space for administrators, faculty, and staff members to reflect on SB 17, both among Texas institutions and at the national level. Within Texas, all institutions pivoted to modify their core offerings and transition from DEI offices so as to align with legislative demands. AASCU institutions, though, were continuing, rather than starting anew, conversations about upholding the institutional

mission and embedded civic engagement values. AASCU's American Democracy Project, too, continues to provide avenues for students to practice civic agency and civic inquiry.

5. Tarleton State University Responses to SB 17

Tarleton continues to pursue President Hurley's "all means all" goal of supporting student achievement and belonging among our most vulnerable populations while remaining in compliance with state and federal legislation. These goals are integral to the Tarleton Strategic Plan and were undimmed by the impact of SB 17. In the division of Academic Affairs, faculty have embraced the system-funded initiative to enhance teaching practice through coursework developed by the Association of College and University Educators (ACUE). Part of the ACUE framework focuses on helping faculty acknowledge diversity in the classroom, support equitable access to instruction, and create an inclusive learning environment. Tarleton seeks to have at least 75% of its faculty participate in an ACUE training program during the first 3 years of employment. The Division of Finance and Administration is working with the Texas A&M University System to remain transparent and provide clear guidelines for faculty, staff, and students. A new webpage dedicated to explaining new policies and procedures in the wake of SB 17 includes a lengthy frequently asked-questions section addressing many of the areas where SB 17 may intersect with university life.

6. Formal and Informal Power—An Important Distinction

Before proceeding, we want to define a key concept: this is the difference between formal and informal power. The two help us to better understand possible responses by public universities in Texas pursuing civic engagement post-SB 17. This is because even as these public institutions of higher education no longer intentionally pursue projects of Diversity, Equity, and Inclusion, it may be that we can still see their spontaneous development. This is not legally problematic if the effects happen in a way unintended by the university administration. The initiatives in question, in other words, must reflect informal as opposed to formal power.

Formal power refers to explicitly authorized, constitutional, or legal authority, with a connection to the possibility of coercion or enforcement. Informal power refers to influence that is more indirect, interpersonal, or cultural, and that is typically contrasted with legal or constitutional impact. Alona Labun, in her excellent *Social Networks and Informal Power in Organizations*, surveys several conceptualizations of power before locating this particular one. She starts with a classic example: "What happens when your boss's secretary doesn't like you? You might find that when you try to make an appointment, the secretary can't fit you in, and your memos tend to find their way to the bottom of the in-tray. A secretary wields considerable influence . . . by acting as a gatekeeper" (Labun 2012, p. 8). Building on this example, and surveying different paradigms that range from those of Brown (1985) to Kramer and Neale (1998) to Lonner (1980) to Mazur (1973), she defines informal power as follows: "A manifestation of the distribution of power in a system of actors will be the network of influence and deference relations among actors in the system" (ibid. p. 9), with the behavior and responses of actors depending on their perception of that influence in others. Informal power, to emphasize, is harder to define. It can shift unexpectedly in interpersonal networks and rarely appears in legally or constitutionally codified form.

Interestingly, the contrast between these two kinds of influence seems to have played an important role in early modern political philosophy, as informal power clearly aligned with democratic possibilities. Thus, in *Potentia: Hobbes and Spinoza on Power and Popular Politics* (Field 2020), Sandra Leonie Field shows how the comparison of two famous 17th-century political philosophers who helped build modernity, Thomas Hobbes and Baruch

Spinoza, is profitably conceptualized using these terms. Hobbes, it turns out, preferred formal power (*potestas*); Baruch Spinoza, at the end of the day, inclined towards informal (*potentia*) possibilities. Strikingly, Spinoza, not Hobbes, was the first Western theorist of liberal democracy. Field's book is interesting, among other things, for how it shows informal power contributing to contemporary democratic activism.

This distinction between formal and informal power does not just occur in Sandra Field's book on Hobbes and Spinoza (2020). Below, we do not claim to provide an exhaustive survey of ways in which it is possible to use the concept. We also do not argue that all the thinkers cited below use the term or apply it in the same way. Gradations exist, of course, so informal power certainly does not point to an association merely with unwritten kinds of influence. But the idea is that there is a core insight, a basic contrast, and applying it in an intuitive sense will illuminate the dynamics of higher education in post-SB 17 Texas.

Thus, Max Weber famously distinguishes between power and authority. Power, generally, is the ability to bring about change in the external world, whether it relates to physical objects or people; authority is the capacity to do so *legitimately* (Weber 1978; Haugaard 2018). Legitimacy refers to the belief of those subjected to power that those who wield it do so in a rightful way. And authority is considered by Weber in terms of probability; it is power that, due to the beliefs of the supporting population, has a greater likelihood of producing effects (Haugaard 2018, pp. 105–6).

Weber describes three kinds of authority or legitimate power. One, as we will see, corresponds most closely to formal power. The three modes of authority follow: charismatic, traditional, and legal–formalistic (Weber 1978; Haugaard 2018). Legal–formalistic, which emerges later, comes with a transition out of traditionalistic rule in the process of the coming into being of the modern state. (Charismatic authority, reflecting a dynamic of informal power insofar as it pertains to a person rather than formal rules of any kind, may reappear in modern societies—especially, arguably, due to the possibilities of connection through technology between a leader and the masses). Legal–formalistic authority is the closest to what we have described, in this article, as formal power.[3]

In sociology, Donald J. Black has further expanded on these possibilities. There exist formal internal procedures and protocols that police must follow, in addition to written frameworks of state and federal law and municipal ordinances. But it is also the case that police officers act, on the ground, out of necessity, at times without formal authorization. In understanding this behavior and the implications for law, it is important to consider, as the titles of Black's works indicate, *The Manners and Customs of the Police*, as well as *The Social Organization of Arrest*. His *The Social Structure of Right and Wrong* goes so far as to take the focus off written instructions entirely. In these and other works, he shines a spotlight on gossip, feuding, and even suicide, all as ways *outside a framework of law* in which people manage disagreements.

Finally, in addition to Hobbes and Spinoza and the above-described authors, it is worth mentioning Michel Foucault (Foucault 1972, 1977, 1978). He matters in an age of globalization, in which power is not neatly contained within the borders of sovereign Westphalian nation-states, and that is characterized by a proliferation of media outlets and a fragmentation of information ecosystems. Foucault's relevance in such a world is related to the fact that

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[3] In support of legal–formalistic authority, Weber sees four different kinds of rationalization—theoretical, practical, formal, and substantive (Kalberg 1980). One of them, as it turns out, is most closely aligned with legal–formalistic authority. Not surprisingly, this is formal rationality, which depends on a system of rules (Ibid.) and is especially associated with industrialization and bureaucratization. Weber believed the "iron cage" of rationality, likely referring to an instrumentalization of reason and profit maximization, was destructive of the human spirit (*Protestant Ethic*). But, overall, he also understood formal rationalization—the movement across institutions and society, leading to more explicit codified rules and guidelines and supporting legal–formalistic authority—as a significant improvement over the historical alternatives. In this way, he supported the increase over historical time in formal power.

pouvoir is literally everywhere. It spills over and through the cracks of explicitly constructed legal boundaries, making the containment through the law of this power an impossibility. Foucault, to emphasize, does not neglect the interaction of formal and informal power, or their equivalents. But he clearly identifies informal power as universally present and, in modernity, of greater importance than formal power (Foucault 1988).

To summarize, across many different thinkers, the "hard power/soft power" distinction illuminates relevant dynamics. We have considered its ubiquity in the context of Hobbesian and Spinozist, Weberian, Legal Sociological, and Foucaultian perspectives. We are on the way to seeing how it illuminates the legal civic engagement landscape in post-SB 17 Texas.

7. Informal Civic Engagement Possibilities in a Post-SB 17 World

What are potential initiatives at a public university in Texas, in further pursuit of goals of engagement and inclusion, that allow a school to stay fully mindful of a changed legal landscape at the state level? Interestingly, SB 17 exempts student groups. This leaves open the intriguing possibility that, without undermining in any way the intent of the law, on-campus student organizations might nevertheless freely pursue more robust agendas of inclusion than teachers in the classroom. Student organizations that could play a relevant role include sororities, fraternities, student governments, and various religious associations, to name only a few. And ways in which they might contribute to on-campus education include (a) the highly intentional selection of invited speakers; (b) targeted advertisement and outreach to potential members of on-campus organizations in a way that disrupts historical and cultural expectations, and that builds bridges with student populations that, based solely on their demographic positioning in the community, may experience a higher likelihood of experiencing greater exclusion; and (c) the acquisition of more in-classroom expertise, on the part of advanced students who teach other students in the context of programs such as Town Hall at Tarleton State University. Ensuring that advanced students gain more substantive policy expertise is supported by literature (Peseta and Bell 2020) describing actual course content and curriculum collaborations between students and faculty. As we propose in a Town Hall Framework, the implemented idea further increases the momentum of equitable student speaker invitations. We mention, finally, (d) openness maintained by the administration to alumni, informally, traveling on their own to the different regions of the state, to visit underprivileged communities generally in a way that makes the university's interest more immediately present to them. Below, we discuss, in turn, these possibilities, which rely on informal power in its intersections with formal authority. We also provide examples.

Before even starting to consider the ways in which *student groups* can leverage their agency, so that the university informally brings about inclusive effects without intending them, a general observation is in order. Assuming a student finds a welcoming association, groups can increase the sense of belonging and community as experienced by undergraduates, *apart from whether the leadership of the group takes intentional equity-oriented steps*. Post-SB 17 in Texas, to the extent that DEI work might or might not happen as a result of autonomous steps taken by associations, it makes sense for a university to maintain a rules and registration regime that empowers the maximum number of student groups on campus. If this is the case, *apart from the leadership or programs espoused by the groups*, more students will feel welcome and included.

Indeed, starting one's journey at college can be daunting, and many find themselves feeling overwhelmed and invisible. In order to encourage students to find their community on campus, many universities provide students with resources such as involvement fairs, lists of student organizations, and immediate connections through peers within their resi-

dences. With the recent dismemberment of Diversity, Equity, and Inclusion offices under Texas SB 17, many universities fear that they will be unable to reach the students who feel that they are unable to fit in with their peers. Addressing and catering to students' wants and needs in college can be used to draw the attention of students' interests across campus. Many students use college as a way to grow their resume and gain the life experiences that they crave after leaving home for the first time. Having a variety of organizations and opportunities that cater to student interest will increase student involvement. Student organizations work hard to promote themselves at the beginning of each year in hopes of recruiting new members, but they find that students engage best when they are incentivized to do so. When students feel that they are gaining something that benefits them, they are more likely to want to be involved and participate in the different leadership opportunities offered on campus. To help students find their community, we recommend that administration and campus leaders encourage students to seek membership within organizations that place a heavy focus on civic engagement through community outreach and service, as these organizations' memberships are composed of individuals from a vast range of backgrounds. Promotion of these organizations can come from university executives, faculty, and staff, as well as through self-promotion. Staff and campus leaders should also provide resources dedicated to helping students find their path or interest in other opportunities through means such as organization fairs, email hotlines dedicated for providing guidance, and making students aware of the resources available to them.

But now to return to possibilities of intended student group steps of inclusion:

1.   *Student-Invited Speakers*

What do the guests invited by student groups contribute to a member's overall educational experience? The answer is, potentially, a good bit. Of course, the number and quality of outside speakers successfully secured by student associations will vary dramatically based on any number of factors: the budget of the student group, the overall ability of the university to attract the voices in question to the student and faculty, as well as administrative relationships that might facilitate successfully reaching out to the distinguished public servant or businessperson that interested parties have in mind. Contingency is at play; there is no general rule. *Whoever* is successfully invited, however, can end up impacting a student's educational experience in hard-to-measure ways.

Imagine a conservative group in Texas whose budget allows for the drawing of three high-profile guests to campus in a year, and which makes two sets of potentially different choices, both delivering substantive educational content to whoever is in attendance, albeit with slightly different emphases. The first set of speakers includes Jason Riley of the Wall Street Journal, Kimberley Strassel, writing for the Wall Street Journal, and David French, expressing his opinions in the New York Times. The second set features, not only those who identify as right of center, but also individuals who have consistently demonstrated their desire and ability to engage with conservatives, even as they do so from a different perspective: Cornel West, Donna Brazile, and Jehmu Greene. Our hypothetical student group would remain perfectly consistent with the letter and spirit of SB 17, in a way that faculty might not, in saying that they have intentionally factored in the embodied experiences and identities of the second set of speakers in selecting viewpoints that resonate with the conservative mission of a club on campus while also proving especially edifying to its members. This hypothetical student group, through its speaker invitations, retains the ability to take affirmative and thought-provoking steps of inclusion without in any way undermining the letter or spirit of SB 17.

A counterargument is perhaps that speaker invitations do not really matter, and that they have, at best, a minimal impact on the education students receive while at an institution. But this is belied anecdotally by students' own reported learning experiences at

four-year institutions, and it is directly contradicted by the peer-reviewed literature. Thus, Hagan et al. (2020) have pointed to the disconnect in biomedical research between the backgrounds and cultural/ethnic identities of trainees, and the backgrounds of invited guests who are invited to speak on campus and potentially mentor those in attendance down the road. Building on studies that document the higher incidence of Impostor Syndrome among underrepresented minorities and the literature that speaks to the powerful effect, in this context, of having role models with whom a trainee can connect, they recommend a more inclusive profile of invited speakers to effect better outcomes. In *"All Guest Speakers Are Not Created Equal,"* Craig et al. (2020) report further results in line with these findings. Thus:

> Students prefer knowledgeable and passionate industry professionals, as well as alumni who can share personal and industry examples. Gender and racial differences indicate women and Hispanic students have greater interest in learning from guest speakers. Additionally, first-generation (FG) college students demonstrated greater investment in guest speakers than non-FG college students.

This last supported observation is all the more remarkable, insofar as it appears that a judicious and intentional selection of guest speakers could disproportionately benefit the very students who are at the highest risk of discontinuing their four-year studies. And Segarra et al. (2020) highlight a similar dynamic in the speaker lineup of STEM society annual meetings. Ensuring intentionality makes for a more equitable representation of voices at these gatherings helps to overcome epistemic exclusion, and it improves research productivity in the short and intermediate terms.

Since invited speakers who resonate in multiple ways with students have concrete and measurable impacts on student learning, minimizing the importance of this sphere of undergraduate and graduate education is counterproductive. To the extent that student groups are able to contribute to this work, they are not merely pursuing an extracurricular possibility. They are participating in a vital function of the university. And they are able to do so while affirming, and not undermining, SB 17.

Could student groups pursue deliberative dialogues in the same way? Yes. To take a few examples: a discussion of *Democracy and Misinformation* (O'Connor and Weatherall 2020; Nyhan 2020), *New Jim Crow* (Alexander 2011; Forman 2012), or Vincent Lloyd's recent book on *Black Natural Law* (Lloyd 2016), especially as supported or co-sponsored by any partnership of students, *need not understand itself as bound by the equivalent of a "fairness doctrine"* [footnote] *that applies to these kinds of structured exchanges.* On the contrary, although other student coalitions on campus may object vehemently to the framing of the above discussion of mass incarceration, and they may disagree entirely with the assessment that unregulated amplification of ideas not supported by experts undermines democracy, they are free (within constraints of funding, faculty, and administrative support) to organize deliberative dialogues "weighted" more favorably in the direction of their preferred explanatory framework. These might include a showcasing of scholars who continue to believe that deterrence is applicable in criminal justice (*"Deterrence: Pro and Con"*), or that markets remain a viable foundation on which to organize economic activity (*"Commercial Society: Worth Defending?"*), or perhaps even that specific medical care for minors can benefit from diverse community and family inputs, without the weight of a decision resting entirely on individual autonomy (*"Transition Care in Multiple Contexts"*). The point, again, and analogously to the vital role of student groups in facilitating speakers above, is that these associations have a free hand, under SB 17, to boldly pursue initiatives of maximum diversity and inclusion, without the constraints that may bind teachers and administrators.

2. *Boundary-disrupting student organization advertising, membership drives, and recruitment*

Or consider a sorority or fraternity in Texas at a school that has historically housed a majority White population. What are the recruitment and outreach activities that it chooses to pursue at the beginning of the year to boost membership? These might include handing out promotional materials at orientation, distributing that information in the dining hall, or leveraging access provided by student services. More likely than not, these initiatives do not include starting with an email intended to reach specific campus populations that, for a variety of historical and path-dependent reasons potentially related to identity, have the lowest likelihood of considering the fraternity.

But what if they did? To stick with our overall proposal of formal university support for SB 17, paired with openness to student agency that may have unexpected and unintended (by the university) inclusive effects, imagine the following: a historically Black fraternity conducts a recruitment drive with one whose majority membership is White. As they collaborate, both organizations express a real openness to accepting members who identify differently from the prevailing associational culture. The idea is to grow civic friendship and engagement across lines of division, at least as these appear from a systemic perspective. Interestingly, the literature is divided on whether disruption of expectations of this kind serves positive or counterproductive purposes.

An early study thus found no negative consequences for Black students from belonging to a Black fraternity (Fox et al. 1987), and, in fact, concluded that attitudes towards extracurriculars and a positive idea of cultural sophistication were only aided through membership. This contrasts, to some extent, with a fascinating and more recent article by Rashawn Ray and Jason Rosow in the *Journal of Contemporary Ethnography* (Ray and Rosow 2012), which showed that Black and White fraternity experiences are fundamentally different: whereas Whites enjoyed invisibility and a lack of accountability in many of these organizations due to often simply being in the majority, Blacks were subjected to higher accountability, visibility, and even surveillance (ibid.). The authors concluded, "If higher education officials really want students to have similar experiences, White fraternity men should be mandated to follow the same rules and regulations as other student groups, while there should be a reduction in the level of surveillance that Black fraternities experience" (ibid., p. 89). Frustratingly, Ray and Rosow acknowledge that there is no silver bullet. Interestingly, they do not mention steps of (voluntary student) integration as a potential path to reducing disparities.

Matthew Hughey, writing in *Social Problems*, has further cast doubt on the integrationist narrative, suggesting that full acceptance of minority members into majority groups is dependent on the reproduction of certain stereotypical attitudes (Hughey 2010). But, intriguingly, in the context of these different findings, a relatively recent dissertation (Butts 2012) concludes that White fraternity members in Black organizations seek to join for positive service reasons, make valid contributions while members, and, interestingly, that *all* groups characterized by racial or cultural homogeneity for historical reasons should consider ways to recruit diverse members to increase the diversity in their organizations as a whole. How does the author pursue this goal? Note the words he uses: "In light of this, it may be beneficial for fraternity national officers, chapter advisors, and members of the fraternity to discuss how informal and alternative recruiting methods may assist with the recruitment of diverse individuals into their organizations" (p. 121). The reference to *informal* mechanisms is salient given our argument in the context of SB 17.

Clearly, there are pitfalls on either side. The risk of tackiness is not insignificant. Tarleton student Sona Powers, who has worked on Tarleton inclusion initiatives in the past, spoke to the dynamic in the following way:

> A joint recruitment drive from both a majority Black and majority White fraternity
> sounds great, but if those organizations are only focusing on getting people

from diverse backgrounds "through the door" without having the advocacy and resources to support those individuals, that is ultimately a failure. Inclusion isn't just getting more people from diverse backgrounds into your organization, inclusion is fundamentally changing the culture, language, and attitude your group has towards people it may see as completely different.

I think that, fundamentally, a recruitment drive like [this] ... can be a great stepping stone for inclusion, but it cannot be the only stone on the ground. Behind that recruitment drive needs to be conversations about issues of racism and discrimination that happen in these fraternities, and how these organizations can protect their minority members from being harmed or ignored in the case of bigotry. Without that support system then, that recruitment drive is nothing but false promises and, like I said before, it isn't really increasing the inclusion of the organization, and it definitely can (and in my opinion should) be seen as tacky.

Tarleton student Alexander Lagos added the following opinion: "I think something like that would be an excellent way to promote inclusivity. After all, a fraternity is meant to be a brotherhood, and by having two working together, I think, by nature, it will increase the affinity and lessen potential misunderstanding between them while sending a positive message to potential members." Clearly, there is no blanket prohibition against appealing to members of currently or formerly excluded categories in this way. Strikingly, at a time when it is perhaps assumed that younger learners are more skeptical of integration and lean to a greater extent in the direction of safe spaces for historically underprivileged groups, both of these students expressed the view, despite reservations, that expectation-disrupting and diversity-increasing engagement might have positive effects.

3.   *Acquisition of additional policy expertise by advanced student leaders*

In keeping with activating the agency of our advanced undergraduates, an additional possibility integrates formal possibilities to a slightly greater extent. Our Town Hall Texas and Federal Government framework at Tarleton, which has a demonstrated record of increasing student retention, involves undergraduates taking Texas and Federal Government courses, and then also meeting in a smaller weekly group to focus on a specific policy area, whether that is environmental issues, fiscal policy, or rural economic development, etc. The smaller policy sections are taught by advanced undergraduates, contributing to the development of trust in cohorts as already described in *Religions* (Morrow et al. 2023). At the end of the semester, undergraduates in both Texas and Federal Government present their policy research to invited guests—public servants, businesspeople, and academics—who provide the students with critical and affirmative feedback. The below suggestion *formally* provides our undergraduate peer leaders with greater expertise, so that they have more ability to effectively invite whichever speakers they want, in whichever groups they have placed membership.

Excitingly, the Town Hall civic engagement program at Tarleton has recently added a robust research component. Working with our advanced students, who in many cases leveraged our contacts with the public officials who arrive on campus the evening of "Town Hall" to provide all our undergraduates in the framework with policy feedback, we generated materials covering the latest bills passed by the Texas legislature, related political developments, and, in some cases, national trends that bear on the legislative landscape in our state. Thus, Will Hanson worked with Executive Director of the Texas Dairymen Darren Turley, and our resulting and collaboratively produced supplemental materials now aim to ensure that everyone who has taken the Rural Economic Growth lab understands the significance of Texas Proposition One, or the "Right to Farm" Bill. As Payton Jones collaborated with Tarleton Professor Hennen Cummings to deliver insights to our students

in Environmental Policy, our hope is that they currently leave this smaller section with awareness of HB 2847, which emphasized hydrogen as an alternative clean energy source, and Senate Bill 786, which did the same with geothermal energy. And as Addison Anderson worked with Interim Director of Public Affairs at North Texas Tollway Authority Arturo Ballesteros, to find out more about different revenue instrument possibilities in Texas, our aim is for students who have spent a semester in the smaller fiscal policy peer group to have the ability to speak both to House Bill 2 and 3, and the corresponding Senate Bill 2 and 3, which effected reductions in property and franchise taxes, respectively.

To emphasize, this is a formal equipping (through Tarleton and the GLSP Department) of our students with expertise. But as they truly gain this advanced and highly technical knowledge—through working with local and state movers and shakers—undergraduate peer leaders should gain facility in helping us invite public officials and businesspeople to Town Hall. This, in turn, equips these and other advanced students to effectively, and informally, invite to campus other outside speakers, in other contexts, including potentially in student organizations that are still free under SB 17 to pursue steps of inclusion.

The peer-reviewed literature already contains multiple examples of universities *formally* building and using the expertise of students for the sake of student–faculty collaborations on assessment outcomes and curriculum content. Peter Felten, a Provost at Elon University in North Carolina, called our attention to this in an interview (Kabala 2023). He refers positively to the scholarship of Peseta and Bell (2020), which intends to arrive at a place of greater equity through the cultivation of student expertise, often through engagement in student–faculty partnerships. Allow us to here summarize their work on student–faculty partnerships.

Thus, in surveying a vast literature that includes classic works along the lines of Newman's history of a university, and more recent versions of that project such as the Australian history of a university, the authors show how students can acquire expertise, how students can drive change, and how they can realize the agency we are attributing to them in this article (ibid., pp. 105–9). In preparation for different kinds of faculty and staff partnerships with students, the authors first stress the importance of reconnecting with the teaching to students, humanistically, of the different forms that universities have taken going back to the Middle Ages. Here, the authority is J.J. Williams (ibid., pp. 101–3). Also, however, the authors want to "teach the university" to students sociologically—asking about the legitimation purposes of knowledge, etc. In this domain, the authority on whom they draw is G. Hunter. If our recommended response is to uphold the formal requirements of SB 17 (anti-DEI law) while *informally* staying open to what students improvise—what better way to pursue this strategy than to have students understand themselves as shaping the university, including through their own expertise.

Interestingly, Peseta and Bell (2020) acknowledge that students are definitely experts when it comes to at least one domain . . . this is the experience of their studies. And through disruption events, creating student partnership capacity across the University, and basically even co-designing curriculum . . . their project is about activating students for the sake of expertise. This is very relevant in a post-SB 17 environment. The authors surveyed SAPs in Australia, New Zealand, and the Philippines, and the conclusion is that they represent a workable approach.

To emphasize, through Town Hall, we propose to also ramp up advanced peer leaders to the expert stage in different and substantive policy areas. As advanced peer leaders who teach undergraduates in labs are theoretically selected in a way that makes them more likely to gain and represent expertise in their policy area over the semester; and as they generate research in collaboration with outside public officials and businesspeople who are matched to those areas, they grow in ability to leverage contacts and to successfully

invite outside speakers. This, in turn, should help our advanced student leaders and any associated student groups more efficiently invite an inclusive lineup of speakers to campus.

4. *Administrative openness to alumni informally traveling to every region of Texas to signal presence in the most historically disadvantaged parts of the state*

To highlight again: The point of this article is to ask what a university might do, in full compliance with SB 17: formally disavowing and repudiating DEI based on a legislative commitment to neutrality and fair processes while remaining open, informally, to the inclusive agency of parts of its community, and especially students. In that spirit and by way of analogy, Tarleton and other public universities might consider the 1997 Texas accomplishment of HB 588, which is sometimes referred to as the "top 10 percent" law. With the support of Governor George W. Bush, who had campaigned across the state as a "compassionate conservative", HB 588 became law. As is widely recognized, it automatically ensures that the top decile of students in their high school class gain entrance, if they want, to every public university in the state. As is also widely acknowledged, this bill became law in the wake of the 5th Circuit Court of Appeals decision *Hopwood*, which declared affirmative action unconstitutional. Did the "top 10 percent" law increase the percentage of underrepresented individuals, including minorities, on campus? It did [Reference Needed]. It is possible, then, to interpret HB 588 as a "go-around:" Without undermining the formal provisions of the US Constitution as the 5th Circuit Court of Appeals interpreted them, Texas was *indirectly* increasing inclusivity on college campuses, even as public universities were not, at the time, considering race intentionally, even as a "plus factor". This is the logic of formal and informal power explored in our essay.

Imagine Tarleton State University building on existing momentum to simply maintain an openness to alumni, voluntarily and on their own, traveling to the most underrepresented parts of all nine regions of the state equally (this would, presumably, involve traveling to the region that they consider home). Texas is the most geographically diverse part of the Union, according to leading scholars (Jones et al. 2017). These geographical parts of the state range from East Texas to South Texas, to the Panhandle and West Texas, to name only a few. Even with no funds allocated for this specific purpose, since Tarleton has successful graduates from all nine regions of the state, it is perhaps just a question of informally (through alumni) encouraging former Tarleton students to travel and promote the school in the most disadvantaged areas of their respective parts of the state. This might just advance inclusivity without any explicit, or formal, consideration of categories whose consideration is no longer legal according to anti-DEI legislation, analogously to what George W. Bush and the Texas legislature accomplished through the "top 10 percent" law.

8. Equality and Power

As it turns out, it is also possible to locate these proposed student activities, capitalizing on unscripted undergraduate involvement, in a broad sweep of civil rights initiatives. This is all the more true if such efforts are understood with respect to the dichotomy discussed above: formal and informal power. Indeed, doing so helps us to understand student initiatives better and to gain a greater appreciation of the creative role informal power can still play. It may make this post-SB 17 moment, with respect to civic engagement opportunities in Texas and other states, a more hopeful one.

5. *Civil Rights Laws: Formal Power*

To access the question in the following way: Why did activists start to explore additional strategies beyond the securing of legal equality, only a few years after what were considered landmark civil rights accomplishments? The analogy to the new legal reality post-SB 17 in Texas may be imperfect, but it is clarifying. Starting in the mid-60s, supporters

of civil rights in some cases shifted from a plan of advancing formal equality to being more attuned to informal power. Similarly, socially aware academics pursuing civic engagement in post-SB 17 Texas find themselves thrust into an environment where a formal strategy has been foreclosed, but where it may be possible (as outlined in our discussion of student group initiatives) to draw on an abundance of informal possibilities.

Thus, by the mid-1960s, as higher education continued to resist or ignore desegregation attempts despite the Court's ruling in *Brown v. Board* (*Brown v. Board of Education* 1954), additional legislation such as the Civil Rights Act of 1964 compelled colleges and universities to admit students of all races, color, and national origins or risk forfeiting federal funding. The act directed the Department of Health, Education, and Welfare (hereinafter "HEW") to verify compliance with the act or withdraw federal funding after providing an opportunity for a hearing. With the 1965 Voting Rights Act also in place, one could plausibly make the case that, on paper, the Johnson administration with Congress had secured equality and the rule of law. And formal civil rights protections, of course, were not limited to legislative purview, with the Supreme Court contributing significantly to the expansion of civil rights and civic engagement opportunities, as understood through the lens of formal power, and not just in *Brown v. Board*.

Even with all of these formal guarantees of equality, by the late 1960s and early 1970s, it was becoming increasingly clear that the achievement of formal equality had, in many cases, not shifted the dynamics on the ground. Patterns of residential segregation persisted. So did disparities in income, educational outcomes, and encounters with law enforcement. This led to a shift in thinking among many civil rights champions and advocates of equality. The transition was to focus more on informal, as opposed to formal, power. This shift is comparable, perhaps, to what confronts, even if by necessity, some of the supporters of continued civic engagement efforts in post-SB 17 Texas.

6.　　*Affirmative Action and Critical Race Theory (CRT): Informal Power*

In that tumultuous decade of the 1960s, when was the necessity (of a more informal-power-focused approach) first articulated? At a commencement address at Howard University, Lyndon Johnson famously declared that you do not bring a human being in chains to the starting line of a race and expect that person to compete on the same terms as everyone else (1965). *Affirmative* steps are needed due to a history of discrimination and domination. And it was President Johnson who initiated federal attempts to go beyond formal equality in the sense of legal and/or constitutional rights and to focus, at least in part, on outcomes.

Richard Nixon, strikingly, confirmed these measures through executive orders. Although he is often presented as a conservative break from Johnson, the first president to resign under threat of impeachment has also been characterized by others as the last chief executive of the nation to continue the legacy of the Great Society. The Supreme Court in *Bakke* further held that diversity was an acceptable rationale for outcome-oriented college admissions processes. Although these moves, rulings, and orders were themselves formal initiatives (i.e., tied to the law and coercion), they were legal measures that, unlike the landmark laws of the mid-60s, sought to incorporate greater awareness of the dynamics of informal power (related to indirect influence and culture) on the ground.

Now, it may seem strange to simultaneously pair, and contrast, affirmative action and critical race theory with each other, but several authors help us to make precisely that conceptual move (Brooks and Newborn 1994; Romero 2002; Herring and Henderson 2012; Nan 1994). It is possible to interpret their articles to suggest that affirmative action is still, in some sense, related to liberalism, whereas critical race theory openly considers itself *illiberal*. At the same time, it is plausible to read their work with openness to the idea that a commonality between affirmative action and critical race theory is that both sets of ideas strongly support the notion that formal power, as it appears in a constitution or laws, is not

sufficient to meet our current challenges.[4] Thus, whether it was in the work of Kimberlé Crenshaw, Derrick Bell, Richard Delgado, Patricia Williams, Linda Greene, or others, critical race theory, to varying extents, supports the need for a wholesale restructuring of society, perhaps along the lines of Black cultural nationalism. Critical race theory—in calling for ever more comprehensive or radical alternatives to racial preferences—emphasizes that formal frameworks themselves potentially reflect deeply ingrained racist attitudes and preconceptions. Thus, while some critical theorists approve of affirmative action, others reject it as insufficiently radical, accommodationist, or paternalistic.

Indeed, the greater focus on informal power in critical race theory—relative even to that found in the writings of liberal defenders of affirmative action—was explained in a relatively accessible article in *Politico* by Gary Peller. Peller teaches constitutional law at the Georgetown University Law Center. As he unpacks it, "the common starting point of our [critical-race theoretical] starting point is that racial power was not eliminated by the successes of the civil rights movement of the 1950s and 1960s." Reflecting on his experience at the University of Virginia Law School in accepting applications in the 1970s and 1980s, Peller further observes, "Some of my colleagues serving on the admissions committee were the very same people who had administered the school when it was segregated." Notice the difference between formal and informal power: "The rules had changed, but they [the people who had supported segregation] were still in charge." Formal power derives from a set of rules; informal power flows from a specific person or group of people. According to critical race theory, the ongoing power (informal) of negative and persisting racial attitudes is such that there exist "racial power dynamics embedded even in what was called 'knowledge' in academia or 'neutrality' in law."[5] Changing this positively, as critical race theorists seek to do, does not preclude formal frameworks or reliance on the coercion of governmental power; it does necessitate—and this is a commonality critical race theorists might share with the potential student leaders we theorize in this article—an enhanced awareness of the significance of informal power dynamics on the ground, and a willingness to engage with them on that level.

7. *Diversity, Equity, and Inclusion (DEI): Informal Power Continued*

The subsequent transition to DEI, then, which further extends the dynamic of informal power that those pursuing activist civic engagement in post-SB 17 Texas today may want

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[4] One can find the beginnings of critical race theory in 1977, when a group of legal scholars, many of them students at Harvard Law School, convened the first Conference on Critical Legal Studies in 1977. Critical legal studies was a scholarly endeavor that built upon the theory of legal realism, which had earlier abandoned the premise that judicial opinions were the product of mechanized legal analysis in favor of a legal pragmatism that viewed the development of law as the product of social, political, and economic influences. But critical legal studies took it one step further by seeking to "expose the assumptions that underlie judicial [decisions and] . . . question the presuppositions about law and society" (Trubek 1984). By the late 1980s, some of those involved in critical legal studies turned their focus to race, which they believed had not been sufficiently examined under the critical legal studies approach (Shah 2023).

[5] Another textbook confirms this relatively greater emphasis on informal power in critical race theory: "Color-blind, or 'formal' conceptions of equality, expressed in rules that insist only on treatment that is the same across the board, can thus remedy only the most blatant forms of discrimination." . . . Attentive, in this way, to the limitations of formal color blindness, critical race theory holds that even formal *non*-color blindness (affirmative action) can suffer from unconscious racism or paternalism. The problem is deeper than that allowed by a modified liberalism. It requires attunement to the dynamics of both formal and informal power, with the latter almost certainly of greater importance. And the significance of informal power to critical race theory is further demonstrated by a famous essay, important also insofar as it is very accessible, and authored by one of the foundational theoreticians of critical race theory, Derrick Bell. It includes a thought experiment—and this exercise of the imagination highlights, again, a greater appreciation of informal power, or of its interaction with formal modes, in a strain of protecting civil rights different from affirmative action and color blindness. Conceive the following: What is the likely response if Martians landed on the planet, demanding all natural resources? Bell speculated that whites would revert back to attitudes that allowed for the sale of Black people, and in this case, countenanced their abduction by aliens. The takeaway of this provocative essay is that we still have not seen real changes despite revisions to formal frameworks of law. Precisely because of, and to the extent that racism exists in the present just as it did in the past, there is an ongoing and increasing need to engage with more of the informal dynamics.

to consider, likely started not in the halls of academia but rather in response to the anti-discrimination legislation and related judicial decisions of the 1960s and 70s (Alfonseca 2023; Charles 2023). Outside the academy in the companies, factories, and workplaces across America, ensuring compliance with the civil rights legislation created the need for specialized positions. Colleges and universities, under greater scrutiny from HEW, also hired staff to ensure compliance with class-based legislation. In part, this was to "minister to Black students, because the schools had no experience in dealing with Black students in numbers" (Charles 2023, ¶15). Thus, it would not have to be a question, as is sometimes the case with critical race theory, of preserving an opening for a wholesale reconstruction of the whole "system." However, as we are about to see, the dynamic of formal and informal power stays in place.

Thus, writing in the *Journal of Business and Behavioral Sciences*, Bernadette Baum highlights concrete steps that employers can take to ensure that all employees have equal access to resources in the office and equal ability to participate in decision-making at their respective level and rank, regardless of the informal resources with which they come into the job. She explains that diversity may get an individual through the door, but it does not say much about how the person will be treated post-hire. To ensure that the team works well after this decision, with people enjoying access to the same resources, the author recommends that workplaces implement different training methods, administer a climate survey, focus on onboarding, and even encourage journaling on the part of their employees. This is with an eye to the removal of unconscious obstacles to everyone's inclusion and effectiveness, which may have been captured through formal mechanisms.

Gregor Wolbring and Annie Nguyen, writing in the journal *Trends in Higher Education* [sic], support this understanding of the importance of informal power in DEI. The authors performed an analysis of 1000-plus abstracts speaking to DEI initiatives at journals, in professional associations, and at universities, though underscoring that universities are not the only workplaces in play. Tamtik and Guenter further explored DEI in the context of Canadian universities (also without suggesting that these are the only workplaces in which the protocols can apply). They analyzed action plans and performance reports, political commitments, training and administrative hires, and initiatives to support welcoming environments. Although Tamtik and Guenter found that it is hard to provide a stable and across-the-board definition of DEI, the initiatives they surveyed generally focus on informal power. This is because the goal, in seeking to address unconscious biases or obstacles to success that no one knew existed, is to get beyond the formal guarantees of equality and arrive at the true challenges to real equality. Alfonseca, in many ways, confirms this analysis, drawing connections back to workplace office compliance in the 1960s and 1970s.

In reflecting on affirmative action, critical race theory, and DEI, all of which prioritize awareness of informal power dynamics, it may be especially striking that a proliferation of these programs (DEI) seemed to spring into existence in response to images of the national tragedy of George Floyd's interactions with the police, which circulated on the internet. These images themselves eloquently and viscerally expressed a dynamic of informal power. To phrase it somewhat differently, DEI frameworks seemed to receive a lease on life from the terrible demonstration of on-the-ground power (and they were adopted, to emphasize, not just across the board at universities but also in other workplaces). The potential student initiatives discussed above are not an outlier; they can be seen as fitting into a series of attempts, going back to the late 1960s, to extend civic engagement (to the extent that people feel confident of the ability to live and act securely) through indirect means. And the students who potentially undertake these initiatives, of course, need not see themselves as simply engaged in the equivalent of school or social clubs. Like those who came before them who pointed to the limitations of liberalism and formal power through affirmative

action and even arguably critical race theory, these student activists need not despair; they have at their disposal informal power, which if the way the national conversation has shifted under the influence of affirmative action and Black Lives Matter is any indication, is hardly an impotent instrument.

9. Equity: Ancient and Modern Modes

Further support for, and resources with which to conceive of these possible student initiatives, comes from a surprising source. Could it be that a classical philosopher helps us to understand the possible undergraduate attempts to advance equity, as discussed above? Aristotle, the author of *Nicomachean Ethics*, did write at length in that work on the subject of equity. As it turns out, he theorizes equity in at least one way that is, potentially, precisely what supporters of specially tailored strategies of success and advocates of DEI may have had in mind: legitimating exceptions to general rules or frameworks of law.

Indeed, equity—that focuses on the insufficiency of "on-paper" equality and the need for accommodations of vulnerable groups and populations, adjustments that do not always fall under a rigid and inflexible rule of justice—arguably has a rich pedigree in the history of legal thought and political philosophy (Curren 2010; Sucre 2013; Klimchuk et al. 2020). As Aristotle argues, it is possible to defend good-faith exceptions to this framework, adjustments to circumstances not covered by the generality of law, from the perspective of justice (Aristotle 1975, 1137a31-8a3). The law is a standard, and it allows us to reason together . . . including about times when there is a need for exceptions. Thus, Adam MacLeod, who is now published in this special issue, argues for equity, although against an interpretation that damages the law (MacLeod 2024) (of course, the question becomes when exceptions are, and are not, damaging).

That the Aristotelian perspective might support equity in the contemporary DEI sense is suggested by none other than MacLeod himself, even though this is not his own position (Kabala 2024). MacLeod points to a specific essay by John Finnis as upholding the DEI possibility. Specifically, he mentions Finnis' *Human Rights and Common Good*, and, in that book, the sixth chapter, which is on "Virtue and the Constitution" (Finnis 2011). As Finnis asks in the relevant passage, "What is the content of the civic virtue that should be inculcated in circumstances of moral disagreement, and how does it relate to traditional moral virtue? *Does it include respect for and appreciation of diversity?*" [italics mine] (ibid.) His answer is a qualified "yes." But if it is possible to view DEI programs as also advancing diversity while supporting equitable exceptions to rigid and inflexible rules of justice that do not serve all, even the thought of John Finnis may provide support to ad hoc and contemporary DEI interventions.

More likely, however, and interestingly enough, the Aristotelian sense of "equity" is especially helpful after SB 17—even more so than before. This is because Aristotle theorizes "equity" as perfecting the law from outside the law (or any formal framework, for that matter). As it turns out, the initiatives of student groups theorized above correspond precisely to this category of activity, insofar as post-SB 17 in Texas one cannot, as part of the law, advance generalized and formal frameworks of equity. This would be a startling point—for those who are interested in various initiatives related to equity, a classical philosopher actually becomes relevant in Texas precisely at the moment when institutional DEI is declared illegal.

Thus, writing in the Nicomachean Ethics, the philosopher emphasizes the extra-legal (though not illegal) dimension of what is at stake: equity corrects, but it does not itself reflect, legal justice. In Aristotle's words: "What causes the problem is the fact that the equitable is just not [italics ours] according to law but as something which is a correction [italics ours] of what is legally just" (1137b11-12). Or, consider the following: "This also

makes plain what the equitable man is. He is one who chooses and does equitable acts, and is not unduly insistent upon his rights, but accepts less than his share..." (1137b34-5). What accounts for this need to correct general, legal, and formal justice? According to Aristotle, it is the fact that laws do not always cover individual circumstances. The law, as a general framework, falls short. Special situations then require adjustments to the rules. True justice or fairness becomes impossible without case-by-case exceptions. In other words, for Aristotle, there is a need to judge how not to apply the law. This is equity.

In applying this distinction between ancient and contemporary equity to the current landscape in Texas, one observes, again and clearly enough, that formal and institutional DEI is no longer workable, at least at public universities. Pre-SB 17, one could argue, this approach aimed to address the special needs of populations, subjected for centuries to uniquely negative forms of domination, through an established, formal, and legally sanctioned framework of DEI rules. Post-SB 17, however, such a formal framework of DEI at a public university in Texas no longer enjoys the support of the law. Yet the extra-institutional pursuit of equity on campus is a conceivable scenario. We showed this especially in our discussion of student groups and ways in which they can structure guest speaker invitations and engage in other activities. Intentional inclusion on the part of students, even without formal approval of the university administration, still achieves pre-SB 17 equitable effects. And this understanding of "equity," without turning back the clock, and to the extent that it occurs outside of a formal framework, is arguably more in line with the Aristotelian view of the term.

Given this focus of Aristotelian ancient political philosophy, at least, on equity that cannot be codified as part of a general framework, and especially in considering the importance the classics placed generally on education geared towards the specific character of the regime, it may prove fruitful and encouraging to see a quasi-Aristotelian notion of equity also pursued in various educational contexts, *where there is not an explicit call to enforce regimes of equity through the law*.[6] The following books do not reference Aristotle or John Finnis, but it is possible to see how they all speak to a more intentional outreach to particular individuals and communities without attempting simply to apply an inflexible standard of justice, and without doing so through legal mandates. These ideas have caught on not just at universities, but in K–12, and in the corporate world.

Thus, in *Your Students, My Students, Our Students*, the authors contrast the greater access of students to general education classrooms in Italy with the situation in the US, arguing that the approach of moving fewer learners to "disabled" tracks in Italy provides teachers more responsibility for all students in a way that builds inclusive culture (chapter 1).

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6   To emphasize, equity as Aristotle presents it in the above passage certainly relates to legal justice, and exceptions to legal justice that might be made (as Aristotle says) in order to perfect justice. Admittedly, then, the application to education, and modern educational theory specifically, is not a precise one. It is made by analogy (and we feel that Aristotle himself could be read in support of such a move, emphasizing as he does that not all subjects admit of the same degree of precision). Here, the analogy would go something like this: as rules of legal justice spell out the kinds of behavior that lead to different kinds of consequences, so, too, in the classroom, objective guidelines exist whereby different degrees of lack of effort connect to specific negative assessment outcomes, and vice versa. And just as equity, in the legal context on which Aristotle focuses in the relevant part of the *Nicomachean Ethics*, allows for suspension of a framework of rules (or parts of the framework) if a judge or authoritative body prudentially deems that inflexibly applying the rules would not result in justice, so, too, can a teacher offer extra credit to a student based on personal circumstances, or otherwise judge that the same set of circumstances is, or is not, mitigating in allowing for makeup opportunities, etc. The point is, to advance this extended comparison of exceptions in the spheres of law and education, Aristotle in the *Nicomachean Ethics* is clear that equity is not part of the law—it cannot be spelled out in advance, because we do not know what the circumstances may or may not be that, in the judgment of a wise individual or group of individuals, call for an adjustment. Analogously, to try to legislate in advance DEI at public universities—something that is now forbidden by Texas law—does not seem to capture the spirit of "exception to the existing framework." In Texas pre-SB 17, *DEI was the framework*. It is intriguing, therefore, to consider that teachers at public universities in Texas may now be able to apply equity-by-analogy in the classroom and in their pedagogy, to a greater extent and in a specific Aristotelian sense.

Through specific practices, which include maintaining awareness of the importance of beliefs, exercising caution towards labels, and providing accommodations to everyone (because we all have special needs), they illustrate the pursuit of more intentional outcomes to increase inclusivity (Jung et al. 2019). *Promoting Equity in Schools* (Harris et al. 2017) picks up a number of these themes in an Australian context, even as it points to Finnish schools achieving higher average academic performance, not because of scores at the top but rather because of those who rank lower doing relatively better (chapter 2). The book critiques an overreliance on testing and market forces and instead asks about ethical leadership that prioritizes considerations of equity. Yes, evidence is good, but what is still better while incorporating it is to avoid "a slavish adherence to research and data" (p. 9/181). And *Becoming a Critically Reflective Teacher*, in the midst of these discussions, focuses on the importance of shedding assumptions. These include, from a hegemonic perspective, not just dominant ideologies of patriarchy and White supremacy, where these continue to have power, but also the notion that teachers should always relate to students—it may be that learners at times do look for authority instead of relatability (Brookfield 2017).

Culturally Responsive Teaching and the Brain, meanwhile, speaks to the neurological justification of tailoring and adjusting approaches based on culture as a potential barrier to learning and as an activating mechanism of knowledge acquisition. Going over neural structures, which include the reptilian brain and neocortex, as well as focusing on neuroplasticity, the author highlights the importance of feeling welcome to connect with others, which then makes for engaged learning that actually grows connections in the brain. It is important to avoid microaggressions, according to Hammond, that trigger the fight or flight response that gets in the way of learning on an actual brain chemistry level (Hammond 2014). Finally, *We Can't Talk About That At Work* builds on the ideals of dialogue, counseling attention to the context in which people find themselves before initiating tough conversations (Winters 2017). There is no attempt to pursue silence, which has been characterized as the Hobbesian strategy—conversations matter, but even so, this does not necessarily mean that it is imperative to address everything, apart from context, from the very beginning (Bejan 2017). Going still further, most of these sources uphold the idea that maximizing human potential requires more actively, and deliberately, accounting not just for our thoroughgoing equality and common humanity, but also our multifaceted modes of difference, as we in fact celebrate both. A shared theme of the above equitable education books is thus higher standards, even as excellence is individually tailored and pursued for all.

It is also possible to multiply examples of peer-reviewed articles that address DEI themes in different disciplines. Thus, just recently, a number of researchers examined what this dynamic would look like in nursing (Canty et al. 2022), STEM (Jauchen 2023), and medical education (Smith and Hudson 2023; Holdren et al. 2023). At business schools and seminars, the subject also comes up—with other peer-reviewed articles highlighting the salience and increased efficiency of working in a diverse environment (Jaeck et al. 2023). This case has been made in the context of law schools (Razzante and Boss 2022), and it has been expanded to address going beyond the motions in academia to bring about real change (Ezell 2023). There are even attempts to expand the logic into geoscience (Jones 2021—"We need accomplices, not allies" . . .). If a social policy reckoning is underway, touching on the application of law to different populations, it may be said that this has a corresponding epistemological dimension, as authors of peer-reviewed articles have asked whether modes of knowledge acquisition and creation themselves have not been biased, in ways of which we were unaware, all the way down.

The point, certainly, is not to set up a false opposition between standards and movement in the direction of equalization of outcomes, in which equalization is supposed to

occur as the result of specially tailored and particularized pedagogical approaches to groups that have experienced domination in uniquely unjust ways. That this binary ("standards vs. equity") choice is false is illustrated especially by the fact that even Liberty University, which has been perceived according to the logic of culture war as anti-DEI, in the fourth week of a critical theory course that includes readings from Christopher Rufo also highlights a study that suggests color blindness is not the optimal way to effect across-the-board improvement in scores (Plaut et al. 2009). Equity, in this sense, goes beyond diversity and multiculturalism, as Vincent Lloyd argues in *Black Natural Law* (Lloyd 2016), to the extent that it is not just a numbers game but requires ongoing and sustained investment in people. And this understanding, as Aristotle himself would characterize equity, does not necessarily require legal enforcement.

10. Democracy, Power, and Civic Engagement

The issue of SB 17 is rooted in a larger conversation about the global democratic recession and the key indicators of how autocracies thrive in the 21st century. Multiple measures of the health of a democracy exist, but both the V-Dem Institute and the Economic Intelligence Unit agree that a healthy democracy consists of indicators beyond the presence of elections. Instead, principles like electoral, liberal, participatory, deliberative, and egalitarian measurements and judgments about human rights, governmental functioning, and civil liberties are key to developing a quantitative and comparative assessment of the general health of a country's democracy. Since 2000, the general trend worldwide has been toward autocracy, including in the United States, which has been listed as a flawed democracy since 2016. (Democracy Index 2022; Nations in Transit 2023: Explore the Data n.d.; Koop 2023).

In this context of a democratic deficit, and as Paul Carrese also points out in his article in this special issue, Ronald J. Daniels, President of Johns Hopkins University, argues in *What Universities Owe Democracy* (Daniels et al. 2021) that the needed contribution to civic engagement from universities is crucial. Daniels is deeply troubled by the state of American democracy, whose lack of health as the author sees it is indicated by high percentages of respondents who are not happy with democracy and who would not mind a strong leader, low percentages of those who tolerate someone from another political party, and low percentages of those who trust others who may disagree with them politically. Daniels sees one solution. This is the return of civics education, which one can also refer to as education for civic engagement. As the author makes the case, it has not only brought Americans together historically, but it continues to improve the individual life prospects of those who receive it.

The problem, Daniels continues, is that the institutions that used to provide unifying and career-enhancing knowledge about American history, the Constitution, and local government, to name only a few, are no longer providing it. The reference, of course, is to K–12 schools. Why did they, for the most part, take a step back from this valuable national service? According to Daniels, "[i]n the late 1960s, growing disenchantment with the very idea of a unified civic culture and frustration with the sidelining of minority experiences and historical inequities led to the disappearance of many civics courses from K–12 curricula." (p. 96/322). Other factors were in play, too, and Daniels mentions the concern in the 1980s, when it seemed the US was falling behind in significant ways relative to the rest of the world in math and reading. To emphasize yet again, and whatever the ultimate reasons, Daniels sees the discontinuation of civics classes in K–12 as an unmitigated disaster.

Have colleges and universities stepped up to fill the void? This is where one can sense Daniels' frustration, but also his utter bewilderment. Colleges and higher education in the early republic were responsible for the moral formation and shaping of colonists and

early settlers. This much is undeniable. But this "shaping", or civic engagement function, faded at the university level by the mid-19th century as universities increasingly took on orientations towards research as the primary task of the institution. Despite acknowledging attempts to instill patriotism at the university level during World War I, and also indicating his awareness of Truman's efforts to involve the federal government in higher education, specifically in the area of education for inclusive citizenship, Daniels quite strikingly claims that universities never stepped into the open space created by the disappearance of civic education at the K–12 level. Daniels does not see the general studies movement, the momentum behind core curricula to read classic texts, or even the proliferation of service learning and community service options in the 1980s and 1990s as addressing the fundamental problem. The above possibilities at universities may be quite stimulating and enriching in their own right, but they are not, according to him, civic engagement. Indeed, civic engagement is not just reading great books, and it does not involve exclusively community service without a connection to laws, legal systems, and constitutions.

It may be hard to believe, then, but Daniels certainly insists: the primary and secondary schools used to provide civic education, which they no longer do; universities are extremely well-positioned to share with learners necessary government- and community-related information and to begin to work on the habits that support a democracy; but this does not change the fact that there has been, and continues not to exist, an organized strategy among heads of universities to pursue civic engagement, properly speaking. Daniels' recommendations to have universities teach democracy are intended to address pressing civic participation needs that, as he sees it, are not being addressed.

For Daniels, it is universities teaching the fundamentals of democracy that addresses the democratic deficit documented above. The author refers to this as his university-wide "democracy requirement". Its implementation will certainly vary greatly with respect to specifics from campus to campus, but overall, the four pillars on which it rests are "knowledge skills, values, and collective action" (p. 126/322). This might take the form of "Engagement" courses at the University of Virginia (p. 124), the "Democracy Fellows" program at Wake Forest, or Danielle Allen's Democratic Knowledge Project at Harvard, but whatever the variation, the point of all of them, as Daniels presents it, is true civic engagement, which can involve service, but which necessarily also asks the students to think about connections to the political system and how they might navigate it.

We agree, of course, that universities have a crucial role to play in addressing democratic deficits, and this article has been about ways in which they might (informally) do that. Interestingly, as he considers the contribution through civic engagement that universities need to make to democracy, Daniels does not account for the special role of student groups, as we have described it above, nor of organizations like AASCU's American Democracy Project, which develops connections between and among multiple universities. Are there theorists whose ideas about democracy might illuminate the situation in which a public university such as Tarleton State in Texas finds itself, fully appreciating the formal vs. informal dynamic that we have highlighted as key to a post-SB 17 education response?

Interestingly, Jacques Derrida may fit the bill. He writes movingly about the place of an authentic university community in "*The Principle of Reason: The University in the Eyes of Its Pupils*" (Derrida et al. 1983). Responding to his own question ("What is the essence of the university?"), the French thinker clarifies that it is not reason. Reason/rationality has a strong technical or professional connotation, and Derrida deplores the professionalization and instrumentalization of higher education. When professionalization becomes the order of the day, the university is beholden to special interests, and in terms of funding and recognition, it is at the mercy of the military–industrial complex. Whatever else it is, at that point, it is no longer the more democratic community that the university was before

the 19th-century "event" of moving into a research model of higher education. Before this event, which led to professionalization, the essence of the university, according to Derrida, was not reason, but thought. Thought, and the freedom to question everything, supports the pre-professional university.

In that spirit, what other democratic ideas deriving from Derrida, we ask, might prove relevant to the university pursuit of civic engagement in Texas post-SB 17? Developing an interpretation of his work in this context potentially makes sense for several reasons, and the first is less well-known. Through his famous essay "Racism's Last Word" (Derrida and Kamuf 1985), and as illustrated in other political interventions against apartheid (Fouéré 2019), Derrida certainly contributed to racial reconciliation in South Africa in the late '80s and early '90s. However, his semiotics and deconstruction, refusing as they do to bestow legitimacy and authority on canonical interpretations of key texts, also move policy in an emancipatory direction.

How so? The famous critique of Saussure (Derrida 1970) undercuts fixed rigidities of sign and signifier, held together in a structure with a natural "center". In their place, it detects instead a free play of sign and signifier, with categories of meaning that are fluid in constantly shifting in their relations with one another. Strikingly, at one point in the essay, Derrida refers to the "superabundance of the signifier" (p. 10). And, although the word "generosity" does not occur in that essay, it would be easy to see how "superabundance" involves a generosity, or hospitality, of meaning. This, in turn, allows us to connect Derrida's foundational essay to later work on radical generosity and hospitality, in which he had taken a heightened interest by 2000 (Derrida 2000, 2003). In this work, we show presently, Derrida may support *informal* university moves towards greater inclusiveness, as discussed above and as extended through student initiatives.

Simon Glendinning (2016) has connected Derrida directly to "the heart of legal thinking", showing how the French philosopher navigates the tension between historically conventionalist discourses that posit only power as relevant to morality and Platonic responses that envision a higher law or right standing above the law of the city. The existence of a general rule is just because without a rule there is no justice, but law for Derrida is also the imposition of political violence, and to the extent that this is accurate, true justice is singular, not possible to capture through a rule. It is, thus, necessary to go outside the law for justice, even as the law is justice. The play of legal signifiers, which is also the generosity of the sign that resists confinement to an exclusive meaning, points to the outside; this is still, to emphasize, in support of justice, or one understanding of justice that reinforces another; or, perhaps, it is the exception to justice that is necessary to support it. If so, the account starts to resonate with MacLeod's account in this special issue of equity in Aristotle and Finnis, except with the added lenses of event, singularity, and generosity.

Radical generosity that connects an understanding of sign or gesture to a politics of extreme hospitality, in Derrida, has been noted by a number of his interpreters. Thus, Marcel Hénaff (2019) notes the paradox within Derrida's analysis, which, precisely because it always, in human terms, occurs in the context of some reciprocity (receiving a present increases the likelihood of wishing to reciprocate), suggests that gifts are not possible in the true sense of the word, especially if they are intended in that way. Much the same conclusion is reached by Ali Kashani in his engagement with Derrida on cosmopolitanism in *Radical Generosity: Resisting Xenophobia, Considering Cosmopolitanism* (Kashani 2019). True generosity, as is also the case with a gift in the true sense of the word, and as is also a reality with the justice of singularity as outlined in the above discussion, is impossible. And yet, note the move Derrida makes, as described by Kashani. The unrealizability of hospitality (and by extension radical gift-giving) does not entail that this attitude ceases to guide us; instead, "[the French theorist] is skeptical about the Kantian idea of hospitality and

cosmopolitan rights in terms of political institutions, which limits the unconditional notion of hospitality and cosmopolitanism . . . *Derrida introduces an ethical move beyond [institutions]*" [italics mine] (ibid., p. 24). Beyond institutions, of course, is the space of possibility. It is an informal sphere, and it is the very space we are considering in this essay with respect to post-SB 17, *informal* student activism possibilities.

We suggest the following thought experiment, consistent with Derridean categories, further indicating possible informal responses at public institutions of higher education in Texas. A small town has a population, say, of 4000. Although the Latino population is almost 50%, as it turns out, there are only 10 Black families (a situation that actually corresponds to reality in the town of Dublin, a ten-minute drive from Tarleton State University). How about this scenario: a newly elected mayor decides to prioritize the first set of house visits, to intentionally go out of his way in the opening days on the job to greet and extend a heartfelt welcome to African Americans. Has he undermined classically liberal principles of neutrality, which SB 17 upholds? Or is this a powerful gesture of concern and care? The situation is clarified by the fact that monies have not been set aside based on identity; the cost of the visits is minimal.

Sharing of time in this way is intentional, but it is not clear what, if anything, a mayor would stand to gain from the symbolism, especially without any plans to run for national office. Therefore, it may become possible to discern the impossible logic of gift. And even if the gift, as Derrida explains it, is, strictly speaking, not attainable, what he also characterizes as the impossible logic of hospitality seems within reach. From a Derridean perspective, we do not go first to the person who seems completely at home; we move towards, and we honor, the individual who feels most like a stranger. Even as it is not entirely clear what the taking of these steps by a city-wide elected official means, or if there is one and only one meaning, the outreach occurs in the singular space beyond institutions, informally. In this way, it represents a conceptual bridge to post-SB 17 student activism.

11. Conclusions

In this article, we have considered the unfolding situation in Texas with respect to public university programs of Diversity, Equity, and Inclusion (DEI). We situated them in the context of developments at the national level and in other American states, illustrating how, for many, the pursuit of civic engagement, which was previously interpreted to include both affirmative action and Diversity, Equity, and Inclusion on college campuses, seems to have hit significant roadblocks. These developments in Texas and around the nation have global implications for the pursuit of justice and equity, in response to actual changes in legal systems. And the apparent ascendancy of populist and nationalist movements that wish to make further legal changes in this direction, in many parts of the world, only heightens the urgency of the subject and discussion. In the face of a rapidly shifting legal landscape, what are ways in which supporters of justice can still pursue robust frameworks of civic engagement?

First, we surveyed exactly what happened in Texas, showing that Senate Bill (SB) 17, which prohibits DEI on public university campuses, did not happen in a vacuum. There were two bills in the previous legislative session that limited the content of K–12 social studies discussions of race and Texas history. SB 17 then prohibited the on-campus existence of DEI offices at public universities, and the specific actions of Brandon Creighton in committee were especially significant. In this section, we also unpacked a number of definitions of civic engagement. The term is a fluid one, as already demonstrated by Morrow et al. (2023), and several of its possible understandings apply to the legal change in Texas. Second, we considered how developments at the national level, specifically through the *SFFA* decision, reinforce the challenge for those seeking to make encounters

with others, in civic contexts, happen as a meaningful part of a university education. Although *SFFA* does not definitively overturn the *Bakke* precedent, and although it does not dispositively foreclose the use of diversity as a "plus" consideration in college admissions, it undoubtedly places obstacles in the way of how many universities would like to pursue civic engagement.

Third, we discussed the American Association of State Colleges and Universities (AASCU), of which Tarleton State University is a member, and its American Democracy Project (ADP) in which the university is significantly invested. AASCU experts and Tarleton researchers have collaborated in the past, and both the organization and initiative provide a nationwide network of contacts and spaces for important conversations. Recently, these discussions related to embedded values, and they helped Tarleton to stay in compliance while pursuing vigorous civic engagement once SB 17 was passed.

Fourth, we pointed to Tarleton's response to SB 17 to date, including the dimension of publicity and transparency as demonstrated by the website, a teaching course that encourages students to stay mindful of everybody, and other measures. Tarleton's President James Hurley has articulated an "All Means All" approach that remains fully compliant with SB 17.

Fifth, we covered a crucial distinction on which we rely in the piece, which has relevance in political science and a number of other fields. This is the contrast between formal (or "on paper") power and informal (or "on the ground") influence. It has been explored in the context of Hobbes–Spinoza studies, as well as in a recent article that surveys different literatures. Beyond that, it is a contrast that is relevant to any number of important and foundational thinkers in sociology, criminal justice, and cultural studies. Max Weber, Donald Southerland, and Michel Foucault, to name only a few, rely on the distinction (between formal and informal power), regardless of whether they use those actual terms. It is a distinction more complicated than whether something is written down or not, because even unwritten constitutions can serve as examples of formal power. But the sense in which it is possible to understand the term as reflecting more cultural or indirect influence certainly applies; students intentionally pursuing DEI-oriented speaker invites, as we showed, is, at the very least, an *indirect* way for a university to pursue this kind of goal, even if the students write down their plans in a group charter or organizational mandate. Crucially, a thinker such as Sandra Leonie Field does appear to approximate the usage of "informal power" as "not written down". Without a doubt, this distinction speaks to real shifts within organizations, and it helps us to predict leadership dynamics in those groups.

Sixth, we were able to clarify why the distinction between formal and informal power is so important and how it applies to our proposal. Strikingly, SB 17 exempts student groups from the prohibition against pursuing DEI-expanding agendas. What this means is that a university that does not intentionally, *formally* pursue DEI (in full compliance with Texas law) could nevertheless refrain from interfering with different student groups, and thereby allow them to explore different DEI-aligned options. What this also shows is that even as a university does not support DEI as a matter of policy, in terms of effects or on-the-ground activity happening on campus (permitted by the law), it may witness interesting results.

We actually considered a number of possible recommendations, all of which hinge on the *informal power* of students to act as a part of the university. All of them are consistent with the distinction in the literature between formal and informal power. The positive effects of bringing in a diverse speaker lineup have already been discussed in peer-reviewed articles, although not in the context of student groups doing the inviting. The beneficial outcomes of Greek organizations on campus doing recruitment events together and encouraging diverse cross-memberships have also been considered in published form by academics, though

not in a post-SB 17 setting in Texas. And the subject of student expertise in a program such as Town Hall, which has recently moved in the direction of activating student research capacity, has, as far as we know, *not* been raised in peer-reviewed articles, either. The point of that increased *subject* expertise among our peer leaders in Town Hall, to emphasize— apart from the benefits to undergraduates of having student leaders who know more—is also to further facilitate the invitation of outside speakers to campus, since the Town Hall research has been produced by advanced students working with the outside guests (mayor, county court commissioner, etc.). We provided an analogy, at this point in the argument, to the way George W. Bush was able to increase diversity at universities without explicitly intending the effect. It is possible that our student groups, without Tarleton intending the outcome, can also advance DEI discussions in unexpected and creative ways.

Seventh, we further made it clear how this distinction between two kinds of power, on which we rely in the article and on which student activists can draw, has applied historically. Without going into a lengthy history of civil rights, we were able to demonstrate how an important pivot point in the mid-1960s involved a shift in focus from formal to informal power dynamics. Namely, the triumphs of the 1964 Civil Rights and the 1965 Voting Rights Acts celebrated the establishment of constitutions or legal equality. As successive waves of the pursuit of civil rights and equality unfolded—affirmative action, critical race theory, and DEI—it was because of what was now deemed the insufficiency of the earlier (legal or formal) accomplishments of the 1964 and 1965 laws. And this changed assessment, for those who theorized other ways in which to pursue equitably distributed social standing and equality, had to do precisely with the indirect, cultural, and non-legal or non-constitutional ways in which power can still operate inequitably, even in the presence of fully recognized legal and constitutional equality. Students who take on these initiatives need not feel, therefore, that their efforts are insignificant.

Eighth, we explored how the specific form of equity, which we argue is still permissible to pursue in a post-SB 17 framework (in Texas and other states), is, and is not, consistent with Aristotle's use of the term. Strikingly, for Aristotle, equity stands outside legal frameworks. You cannot speak of legally codified equity because this virtue is specifically oriented towards those situations that the law was not able to predict or anticipate. In this sense, any application of equity that we might recommend in post-SB 17 Texas—which can no longer be prescribed by the law or constitution, but might be pursued by student groups, as we will show—is more in line with an Aristotelian understanding. Having clarified that, we take up how equity applies in modern contexts in educational theory.

Ninth, and last, we considered the global context in which this is all important, and pro-democracy theoretical paradigms that make this formal-informal power distinction valuable, as students continue to act and explore options on public university campuses in Texas. The Democracy Index suggests that substantive commitments to democracy world-wide are declining. It is certainly possible to understand the effects of DEI—inclusivity, policies that care for every member of the community without overlooking systemic barriers to success—in a pro-democratic light. Jacques Derrida, who was a pro-democracy thinker with an active interest in racial reconciliation, provides additional conceptual tools with which to understand informal possibilities.

Other theoretical paradigms exist and could contribute to further elaboration. In addition to that of Derrida, Philip Pettit's perspective may lead to insights. Pettit, of course, famously and in the late 90s, helps break intractable debates between liberalism and communitarianism. He presents a third way, which is republicanism (Pettit 1997). Now, his understanding of that set of ideas is not the understanding of ancient philosophy, according to which the shaping of souls (by laws) is necessary for citizenship (Pettit 2005, pp. 157–74). Rather, his ideology is of republicanism as non-domination. And where

this version differs from liberalism is that the chief harm to avoid is not interference, but domination. A person can experience domination even in the absence of interference—take the classic example of a wife who lives in fear of her husband and is, therefore, dominated, even when no intervention occurs in her personal space (ibid. and Kabala 2020, pp. 16–18). Analogously, in the afterlife of slavery and systems that clearly had dominating effects (Elia 2018), is it not possible to suggest that without the corrective measures of intentional and informal outreach, an individual from a historically disadvantaged group will experience domination? Insofar as the *absence* of informal and intentional, radically generous, steps may signal an inadequate reckoning with the sins of the past, it also may suggest the ongoing and destructive existence of past, unaddressed tendencies.

In terms of future research, our analysis of the situation in Texas has national and global implications. The proposals explored here in no way intend to subvert Texas law. To the extent that we indicate ways to harness the agency of students towards specific outcomes, this work may spill over into research on civil society, embedded knowledge, Student as Partner initiatives, flourishing communities in different types of regimes, and questions of institutional identity (insofar as some universities may actively close an opening like the one Tarleton maintains, even as they are not by law required to do so). Our reflections have been offered in a spirit of responding reasonably and charitably to evolving on-the-ground situations, and we eagerly anticipate the resulting dialogues.

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