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FORMAL AND SUBSTANTIVE EQUALITY IN THE U.S. AND UK: A COMPARATIVE LEGAL STUDY

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Abstract

In the June 2023 decision of Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, the US Supreme Court ended race-conscious affirmative action in college admissions, making "colorblind" interpretation of the Equal Protection Clause the dominant view. This paper argues that this landmark ruling is an issue beyond domestic law, but is a very telling microcosm of a basic global legal struggle over what equality means. A comparative legal study of US law and the UK's "positive action" shows substantial differences in legal philosophy. While the US legal system is dedicated to a formal equality model, which does not allow for the use of race as a factor in admissions, the UK, which is influenced by international law, has put in place a "substantive equality" framework which includes the legal practice of "positive action" a set of proportional voluntary measures to redress disadvantage and underrepresentation. The difference is mainly due to different legal and philosophical roots, which inform ideas of equality.

Keywords: *Affirmative Action, Positive Action, SFFA v. Harvard, Equality Act 2010, Equal Protection, Formal Equality, Substantive Equality, Comparative Law*

INTRODUCTION

This paper is a comprehensive comparative analysis of the legal and policy frameworks that govern race-conscious measures in the United States and the United Kingdom. The recent Supreme Court Ruling in Students for Fair Admission, Inc. V. President and Fellows of Harvard College (SFFA) marks a crucial movement, fundamentally altering decades of

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precedent and signalling a significant jurisprudential shift. The debate over how to address the historical and ongoing racial disparities in education, employment, and society as a whole has increased. While both nations struggle with these challenges, they have developed different legal and policy mechanisms[1].

By examining their Historical course, core legal doctrines, and underlying philosophical principles, this paper will show a profound divergence between the US and the UK approaches. The US is rooted in a "Colorblind" Formal Equality, while the UK works under a practical, evidence-based substantive equality[2]. This issue is of great import to institutions and corporation's world over as the legal and practical risks related to DEI initiatives are now very much a function of which jurisdiction you are in.

Despite what is often a-like structure between the U.S. and the UK in terms of legal tools used to address issues of equality, a large philosophical and legal divide exists. This tension is fuelled by an underlying conflict between a "colorblind" strategy that requires race-neutrality in governmental action and a "race-conscious" strategy that aims to address systemic disadvantages[3]. In the United States, the successful undermining of race-conscious college admissions by the SFFA ruling has been translated into a new wave of corporate DEI program litigation.

This has left the law for employers and higher education institutions marked by increased judicial scrutiny and legal uncertainty[4]. On the other hand, within the United Kingdom, institutions have to navigate a sophisticated legal regime that allows for "positive action" to combat disadvantage without falling into the trap of unlawful "positive discrimination"[5][6]. The

[1]Roman, E. (no date) *SFFA v. Harvard College: Closing the doors of equality in Education*, *Seattle University School of Law Digital Commons*. Available at: https://digitalcommons.law.seattleu.edu/sulr/vol47/iss4/8/ (Accessed: 12 September 2025).
[2]Author Catharine Alice MacKinnon, E. *et al.* (2019) *Equality*, *American Academy of Arts & Sciences*. Available at: https://www.amacad.org/publication/daedalus/equality (Accessed: 12 September 2025).
[3]*SFFA v. Harvard and SFFA V. University of North Carolina FAQ* (2025) *Legal Defense Fund*. Available at: https://www.naacpldf.org/case-issue/sffa-v-harvard-faq/ (Accessed: 12 September 2025).
[4]Adegbile, D.P. *et al.* (2024) *Corporate Dei landscape-one year after SFFA*, *BACK*. Available at: https://www.wilmerhale.com/en/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa (Accessed: 12 September 2025).
[5]How can employers make their workplaces appeal to older workers? – Kliemt.blog. https://kliemt.blog/2023/03/10/how-can-employers-make-their-workplaces-appeal-to-older-workers/
[6]*Positive discrimination: New ET case emphasises the importance of a competitive recruitment process: The Diversity Faculty Blog* (no date) *Linklaters*. Available at: https://www.linklaters.com/insights/blogs/the-diversity-faculty-blog/2024/august/positive-discrimination_new-et-case-emphasises-the-importance-of-a-competitive-recruitment-process (Accessed: 12 September 2025).

issue, then, is not so much a legal one but a fundamental philosophical one, and an understanding of this underlying rift is essential to understanding the policy and legal results in both nations.

Research Questions:

1. How has US affirmative action jurisprudence developed, and what are the legal and societal implications of the SFFA v. Harvard ruling, especially concerning the doctrine of "constitutional colour-blindness"?
2. What is the UK legal framework for dealing with racial inequalities, and how does its "positive action" concept compare with the US "affirmative action"?
3. What are the fundamental legal and philosophical principles govern the divergence between US and UK approaches, and notably the difference between formal and substantive equality and the application of varying legal tests?
4. What has the SFFA decision done for corporate Diversity, Equity, and Inclusion (DEI) efforts in the U.S. and beyond

This research will present an analysis of a very dynamic legal field at present. The SFFA decision set off new legal challenges and public debate which in turn made it a priority for legal professionals, policy makers and institutional leaders to study what is today's legal risk and what are the relevant issues. This decision has chilled race-conscious measures in public and private sectors, requiring a clear evidence-based guide to compliance and future strategy.

The comparative approach illuminates the strengths and weaknesses of different legal philosophies. The report looks at what the U.K. has done and puts forth a different model for achieving diversity and including what is unique from the U.S. perspective. To understand legal precepts like "strict scrutiny" and "proportionality" is key to put together which also the private and public sectors will follow as the success of certain programs is based on passing these basic legal checks.

The paper looks at the legal and policy structures of the US and the UK. We base our results on the material put forth which includes legal history, case reports, academic articles, and news reports. We do not go in to great detail about the socio economic causes of radical inequality beyond what is required to analyze the legal and policy aspects. We mainly look at the legal and philosophical analysis of race conscious policies.

To compare and contrast legal doctrines and their real-world applications within the US and UK.To offer a concise, fact-based appraisal of the current legal risks and issues facing institutions and companies and to contribute to the existing academic and public debate through a comprehensive, data-based report

This paper first establishes affirmative action's legal and historical context in the United States, followed by a detailed analysis of the landmark SFFA ruling. Then, it provides a comprehensive comparative look at the UK's distinct legal framework and Equality Act 2010 jurisprudence. Then the study would arrange these points by examining the foundational philosophical and legal principles: Formal vs. Substantive equality and strict inspection vs. proportionality, which would account for the profound divergence between the two nations. The paper concludes by presenting core findings and offering suggestions for future action and research.

FINDINGS

1. The SFFA Decision as a Jurisprudential Paradigm Shift towards Colour-blindness

Affirmative action as a practice came out of the 1960s civil rights movement, which put forth this as a solution to the large-scale issue of systematic discrimination against racial and ethnic minorities and women in the fields of employment and education[7]. In 1961, President John F. Kennedy signed Executive Order 10925, which put into place this policy that federal contractors must see that job applicants are treated "equitably without regard to race, color, religion, or national origin"[8][9][10][11]. Data from the US Bureau of Labor Statistics and other groups report a significant and lasting issue of racial disparity. In 2023 for instance, we see that Black and American Indian unemployment rates were higher than the national average, at the same time which White and Asian rates were lower. Also, the median White worker puts in 24% more hours of work, which results in him earning 28% more than the median Latino and Black workers. In terms of the labour market, these inequalities are also made worse by

[7]Vorob'ev, D. N. (2024). The Influence of Critical Race Theory on the Contemporary Ideological Divide in the USA. USA & Canada Economics – Politics – Culture. https://doi.org/10.31857/s2686673024100047

[8] Allen, Anita "Affirmative Action ." Encyclopedia of African-American Culture and History. . Retrieved September 15, 2025 from Encyclopedia.com: https://www.encyclopedia.com/history/encyclopedias-almanacs-transcripts-and-maps/affirmative-action

[9] Part Time Social Video Coordinator - Spotify for Artists job at DBC New York, NY, US - diabeteskortet.se. https://diabeteskortet.se/jobs/job/part-time-social-video-coordinator-spotify-for-artists-at-dbc-new-york-ny-L1l2Y1gwNVJxTlhpV3ptOHJqN1EreFB1MkE9PQ==

[10] Colby, G., & Fowler, C. (2021). Broadening Efforts to Address. Academe, 107(1), 21-26.

[11]*A brief history of affirmative action and the assault on race-conscious admissions* (2024) *EdTrust*. Available at: https://edtrust.org/blog/a-brief-history-of-affirmative-action-and-the-assault-on-race-conscious-admissions/ (Accessed: 15 September 2025).

substantial differences in education and wealth. Black students are twice the number of their White counterparts, who are in underfunded school districts, and in 2022, we see that 91% of Black students did not perform at a proficient level in 8th-grade math as opposed to 66% of White students. Also, very much to the fore is the issue of the great racial wealth divide, which we see play out in that the median Black family has a net worth of only $282,310 as of late 2023[12].

In the case of Students for Fair Admissions v. Harvard the Supreme Court's ruling is a break from past US precedent which saw at best a very limited acceptance of race into the equation in terms of higher education. Chief Justice John Roberts' majority opinion broke up the "diversity" framework. Before this decision, the Court's precedent was most particular in Bakke (1978) and Gutter (2003), constantly upholding the concept of diversity as a compelling interest, allowing for race to be used as a "Plus factor" in a holistic admission review[13]. his created a narrow pathway for universities to continue pursuing diverse student bodies.

The SFFA ruling didn't simply place new restrictions on this process; it directly attacked the core hypothesis that had made race-conscious admissions constitutional for decades. While stating that the university's diversity goals were not "sufficiently coherent" for strict scrutiny and that the programs lacked a "clear termination point," the Court had effectively eliminated the "compelling interest" needed to survive judicial review for this specific purpose. This action of the Court demonstrated that it has moved from a position of "limited acceptance" to a "philosophical rejection" of race-conscious policies. The ruling's dependence on the doctrine of colorblindness, a principle that would argue the Constitution prohibits the government from considering race at all, gestures that the Court is moving towards an interpretation of the Equal Protection Clause that disallows any consideration of race, even out of a desire to correct past inequities[14]. This is in support of a rigorous formal equal model that does not take into account present group disadvantages.

The SFFA decision is a break from past practice and the outgrowth of what we see as a legal conundrum, which Bakke presented. By rejecting the "diversity" argument as a non-

[12]*Racial Economic Inequality*, Inequality.org https://inequality.org/facts/racial-inequality/.
[13]*A brief history of affirmative action and the assault on race-conscious admissions* (2024) *EdTrust*. Available at: https://edtrust.org/blog/a-brief-history-of-affirmative-action-and-the-assault-on-race-conscious-admissions/ (Accessed: 15 September 2025).
[14](No date) *The SFFA v. Harvard and UNC race in ...* Available at: https://www.acenet.edu/Documents/Issue-Brief-SCOTUS-SFFA-Harvard-UNC.pdf (Accessed: 16 September 2025).

quantifiable and inborn form of discrimination, the Court has taken the country back to the purest form of formal equality. This ruling fulfills legal theorists' claim in 1978 that affirmative action was doomed. It is a full-scale retreat from using race as a factor in achieving equal results in the public education system[15].

2. The Chilling Effect on Corporate DEI and the Ripple of Muldrow

The Result of the SFFA ruling on corporate diversity, equality, and inclusion (DEI) initiatives is a powerful example of a legal chilling effect extending over the law's direct application. While the SFFA decision was based on the Equal Protection Clause of the Fourteenth Amendment, which applies to public institutions and doesn't legally bind private corporations, which were governed by Title VII of the Civil Rights Act[16], opponents are exploiting the philosophical and rhetorical victory of SFFA to create a new legal and public relations risk. The arguments were that if the race-conscious measures are unconstitutional in public education, they are morally and legally suspect in the private sector[17].

This Philosophical momentum is amplified by other judicial decisions, creating a causal and practical pathway for lawsuits. For example, the Supreme Court's decision in Muldrow v. City of St. Louis has lowered the burden of proof for plaintiffs in Title VII cases, requiring them to show only "some harm" rather than a "Heightened harm"[18]. This new level makes it easier for plaintiffs to challenge a broader range of workplace practices. Hence, there has been a "Sharp uptick in litigation" challenging corporate programs, with groups like the American Alliance for Equal Rights (AAER) filing lawsuits against diversity fellowships and targeted training programs. This would demonstrate a direct link in which SFFA provides the ideological ammunition, and Muldrow lowers the legal barrier, leading to increased litigation and the subsequent rollback of specific corporate DEI programs. The Result is that

[15]*Affirmative Action's Strict Scrutiny Revisited: Creating Meaningful Compelling Interests*, Princeton Legal Journal (May 8, 2023), https://legaljournal.princeton.edu/affirmative-actions-strict-scrutiny-revisited-creating-meaningful-compelling-interests/.

[16] Greenberg, J. (1970). Integration or Segregation? University of Pennsylvania Law Review. https://doi.org/10.2307/3311242

[17](No date a) *Students for fair admissions, inc. v. president and fellows of Harvard College | 600 U.S. ___ (2023) | justia U.S. Supreme Court Center*. Available at: https://supreme.justia.com/cases/federal/us/600/20-1199/(Accessed: 21 September 2025).

[18](No date b) *Muldrow v. city of St. Louis | 601 U.S. ___ (2024) | justia U.S. Supreme Court Center*. Available at: https://supreme.justia.com/cases/federal/us/601/22-193/ (Accessed: 21 September 2025).

institutions are now navigating a landscape of increasing legal scrutiny and a sense of institutional fear, even when their actions were previously considered lawful[19].

3. The UK's Refinement, Evidence based Approach to Positive Action

In the UK, for a positive action to be lawful, it must pass a "proportionality" test[20]. This test requires which of the employer's actions is a balanced and appropriate response to a rational perception that members of a protected characteristic group are disadvantaged, underrepresented, or have special needs[21]. The proportionality principle, a central element of human rights in the UK, says that any restriction on an individual's rights is the "least restrictiveoption", which is also supported by detailed reasoning. It requires a delicate balance between an individual's rights and the rights and interests of others[2223].

UK tribunals have been putting forth a strong effort to see that strict positive action is enforced. In the case of Furlong v. Chief Constable of Cheshire Police, we see a tribunal that supported a discrimination claim brought by a white male who was not offered a job for which he was preferred over candidates with protected characteristics[24]. It was determined that the police force's policy, although it came from a good place, was a "one size fits all" approach, which did not meet the "proportional means" to a legitimate goal. Also, it set a very low bar and did not put in place a proper analysis of what other measures were in play, which, in turn, was found to be an illegal case of positive discrimination[2526].

In a similar case, Turner-Robson v. Chief Constable of Thames Valley Police, it was reported that the Tribunal determined the police force had, in fact, practiced positive discrimination, which they carried out by appointing a minority ethnic Sergeant to a Detective Inspector post

[19]Adegbile, D.P. *et al.* (2024) *Corporate Dei landscape-one year after SFFA, BACK*. Available at: https://www.wilmerhale.com/en/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa (Accessed: 12 September 2025).
[20]Anne Morris, *Positive Discrimination: Workplace Guide*, DavidsonMorris (June 18, 2025), https://www.davidsonmorris.com/positive-discrimination/.
[21]*Positive Action not Positive Discrimination*, Banner Jones https://www.bannerjones.co.uk/resources/positive-action-not-positive-discrimination.
[22] Duffy, H. (2013). The 'war on terror' and International Law. https://core.ac.uk/download/388672746.pdf
[23] Shannon Clark, *Positive action or positive discrimination?*, Field Seymour Parkes (Sept. 13, 2024), https://www.fsp-law.com/positive-action-or-positive-discrimination/.
[24]Mr M Furlong v The Chief Constable of Cheshire Police: 2405577/2018
[25]https://www.gov.uk/employment-tribunal-decisions/mr-m-furlong-v-the-chief-constable-of-cheshire-police-2405577-2018
[26]Clare Grundy, (Feb. 14, 2019), https://assets.publishing.service.gov.uk/media/5c66abfd40f0b61a1e93a27a/Mr_M_Furlong_v_The_Chief_Constable_of_Cheshire_Police_2405577.18_judgment_and_reasons.pdf.

without going through a competitive recruitment process[27]. The Tribunal also put forth that the police force's action of not having a competitive process was not a proportionate means to achieve what they put forth as a legitimate goal, which in this case went beyond simple encouragement, and which also put other officers out of a chance to apply for the role[28].

These reports present that in legal philosophy, the US has a different approach to. In the UK's case, we do not see the nullification of positive action out of a wide-scale rejection of race-based solutions. What we see instead is a focus on what is done. The rulings also report that the judiciary will support the goal of increased diversity but will closely examine the actions taken to that end. What is key to a legal policy is not a philosophical stand against what they term "color blind" practices, but a practical stand for research, open process, and a clear ratio for proportionality[29].

4. The Philosophical and Legal Divergence

The US and UK go at it from a very different philosophical base between formal and substantive equality.

Formal equality is a legal principle that says the state must treat all similar individuals in similar ways, which means to apply the rules and norms that are blind to, or without regard for, the group status of people who are different in social standing[30]. This approach presents a picture of a level playing field, which is put forth in the "color blind" principle, which we see in the US legal system. Also, it is thought that any use of race as a category is to be put forward as impermissible, which in turn is a feature of the intent behind the classification[31].

In contrast, we see that which is put forth by the principle of substantive equality is the creation and application of equality rules, which are very much designed to identify and to redress the social standing of groups that are in different positions in a society[32]. This approach notes that the system and historical disadvantage leave a formal and symmetrical application of the law far from sufficient for true equality. It is aware of the fact that past

[27] *Positive discrimination: new ET case emphasises the importance of a competitive recruitment process*, Linklaters (Jan. 17, 2413), https://www.linklaters.com/insights/blogs/the-diversity-faculty-blog/2024/august/positive-discrimination_new-et-case-emphasises-the-importance-of-a-competitive-recruitment-process.

[28] Shannon Clark, *Positive action or positive discrimination?*, Field Seymour Parkes (Sept. 13, 2024), https://www.fsp-law.com/positive-action-or-positive-discrimination/.

[29] https://www.equalityhumanrights.com/sites/default/files/demystifying-positive-action-2019.docx.

[30] https://www.law.berkeley.edu/files/fieldplacement/Chapter_I.pdf.

[31] https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1579&context=ilr

[32] https://www.law.berkeley.edu/files/fieldplacement/Chapter_I.pdf.

discrimination has produced very deep-seated social inequalities, which the legal framework must proactively address to bring about a just and equitable society[33].

Transatlantic approach to Legal Philosophy

As we see from the analysis, the US legal system has put its support behind what we may term as formal equality. This has brought about a legal structure in which a put forth policy, which is out to achieve a substantial goal, remedying past inequality, had to present a formal non-remedial reason, "diversity" for itself[34]. hat internal contradiction made the policy vulnerable in the Court of law, which is how it came to be struck down in the SFFA. The UK, although not a fully realized model of substantive equality, has a more practical legal structure that includes what, in some cases, may be considered affirmative action, which is put in place to directly and proportionally achieve a substantive outcome[35].

The International Dimension: CDHR

The philosophy issue also plays out in how each of these nations approaches its international responsibilities. The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) reports that, which is doable, and in some cases, member states must put special measures in place to redress racial inequality.

After ratifying CERD in 1994, the US is put under a theoretical obligation to implement its provisions, which become the law of the landBut the US has a history of push back, which includes the addition of reservations to the treaty and failure to file promptly reports to the UN Committee on the Elimination of Racial Discrimination[36]. The US legal culture, which puts excellent stock in individual rights and "color blind" practices, has, in fact, gone against the group-based remedies put forth by CERD[37].

In that which regards the UK, we see it has a "dualist" approach to law, which in turn means that international treaties do not become part of our legal structure until we see fit to include them in our domestic laws[38]. That said, we see a greater practice from UK courts to use CERD to inform their decisions, which in turn sees them interpret our domestic laws in a way

[33] https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1579&context=ilr
[34] (July 6, 2023), https://www.acenet.edu/Documents/Issue-Brief-SCOTUS-SFFA-Harvard-UNC.pdf.
[35] https://www.equalityhumanrights.com/sites/default/files/demystifying-positive-action-2019.docx
[36] Baker, P. (1981). British nationality bill 1980. Patterns of Prejudice. https://doi.org/10.1080/0031322x.1981.9969615
[37] *Microsoft Word - CERD - FAQs.doc*, (Dec. 4, 2007), https://www.aclu.org/wp-content/uploads/document/cerd_faqs.pdf.
[38] https://publications.parliament.uk/pa/jt200405/jtselect/jtrights/88/8805.htm

that is in agreement with the reports which the state has put forth to the international community[39]. This shows how the UK's legal culture, which in many ways agrees with the idea of positive measures, has been more open to the international agreement's precepts than the US, which puts forth a different constitutional structure.

The Persisting Need for Intervention: Socioeconomic Analysis

In the US and the UK, we see legal and philosophical differences that are far from academic; they are, in fact, a response to what is very real and well-reported social and economic gaps in our two countries. That the inequalities persist within the context of existing legal structures puts forth that while legal policy is a requirement, we also require other solutions for which very deep-seated system-wide issues are at play.

The issue of which legal test is applied is not a matter of technicality; it is a reflection of the institutional philosophy that underpins the concept of equality. The US strict scrutiny test is, by design, a tool for judicial review that puts the government at a significant disadvantage in defending racial classifications[40]. As we see in the SFFA case, the conservative judiciary may use this tool to put forward very high bars for the government to jump, which question the "coherence" and "end game" of the policy. This approach is that of a formal equality model, which is very skepticalof a government that puts race into play[41]. In contrast, the UK's proportionality test is a more flexible approach to balancing competing interests. It asks if a specific action is a proportional and reasonable means to a legitimate end[42]. UK case law shows that this test is a go-ahead for action if it is put forth with procedural rigor and is based on a legitimate need. This is a product of a different foundational choice. The US judicial system, under the colorblindness doctrine, has put itself forward as the main body to which the public looks for redress in issues of race, in which the strict scrutiny test has, in effect, ended affirmative action in college admissions[43]. The UK system, on the other hand, has put the primary responsibility for dealing with racial inequality on its legislative and executive bodies, such as the Commission on Race and Disparities and the 2010 Equality Act, with the

[39] PEERS Steve, *Jurisdiction upon and after the UK's withdrawal: The perspective from the UK Constitutional Order*, (Jan. 10, 2018), https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/596831/IPOL_BRI(2018)596831_EN.pdf.
[40]*{{meta.pageTitle}}*, (Aug. 26, 2022), https://www.oyez.org/cases/2022/20-1199.
[41](July 6, 2023), https://www.acenet.edu/Documents/Issue-Brief-SCOTUS-SFFA-Harvard-UNC.pdf.
[42]*Understanding positive action and positive discrimination*, https://lexhr.ai/news/understanding-positive-action-and-positive-discrimination.
[43]*Positive discrimination: new ET case emphasises the importance of a competitive recruitment process*, Linklaters (Jan. 17, 2413), https://www.linklaters.com/insights/blogs/the-diversity-faculty-blog/2024/august/positive-discrimination_new-et-case-emphasises-the-importance-of-a-competitive-recruitment-process.

judiciary's role to see that the proportionality and fairness of the action are present, not to destroy the policy itself[44].

Conclusion

The analysis of what the US and the UK do to achieve equality shows two different and separate paths. In the US, which has a constitutional and judicial history of formal "color blind" equality, we see that they have had trouble coming up with a legal framework that is also workable for affirmative action, which by its very nature is a policy that is aware of race. SFFA is the culminating issue of that issue, which saw the primary legal framework that supported race-conscious policies in public education done away with, and gave more of a platform to challenge in the corporate world. Also, the legal system in the US produced a chilling effect that dissuades institutional and corporate diversity projects because of the SFFA decision, which also, at the same time, lowered the bar for plaintiffs.[45].

In that regard, we see that the UK has a more practical and process-oriented "positive action" framework, which they have put in place and have proved to be very adaptive to the issues of systemic inequality. The UK's approach is founded on the theory of substantive equality, which puts forward the idea that we must pay attention to group-based disadvantage. While this framework does see some legal pushback in the form of strict proportionality tests, as we see in some of the legal challenges, it does provide an obvious and lawful road map for organizations that want to promote diversity[46].

In that which regards law and philosophy to be of great import, these do not, in large part, address the issue of economic and social inequality in both countries. What the data does show is that the US has not had success with affirmative action, nor has the UK had success in terms of what I'm terming a "cure" of racial inequality with what's presented through the present systems of positive action. That which lies before us as we look to the future is the fact that the two nations will have to improve their current models rather than simply perfect what is already there, also included is the task to get at those socio –structural issues that are the base in which we find racial inequality things like the economic and home ownership and

[44] *{{meta.pageTitle}}*, (Aug. 26, 2022), https://www.oyez.org/cases/2022/20-1199
[45] *Corporate DEI Landscape—One Year After SFFA*, (June 27, 2024), https://www.wilmerhale.com/en/insights/client-alerts/20240627-corporate-dei-landscape-one-year-after-sffa.
[46] Catharine Alice MacKinnon, *Equality*, American Academy of Arts and Sciences (Jan. 1, 2020), https://www.amacad.org/publication/daedalus/equality.

education-based gaps in which people are born into that which in turn reproduce the inequality we see play out. While the UK has an adaptable and I might add innovative approach, that in no way means the full extent of equality is at hand; that is to say the complete eradication of these differences is going to require that each of these nations take a very different kind of stand against it, one that is a large-scale social undertaking that goes well beyond the scope of the court room.

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