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KerryAnn O’Meara

Abstract. Discretion and faculty exercise of judgment in discretionary spaces are pervasive and essential to full participation. Through everyday engagement with policies, practices, and routines, faculty are in an ideal position to see and address equity issues. However, because discretion can be enacted in ways that reproduce racialized organizations, and amplify privilege, we need checks and balances on faculty discretion in key domains. Sometimes, we need new boundaries within which faculty judgment and discretion reside. I consider

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these issues and examine strategies inside and outside higher education to leverage, check, and structure faculty judgment and discretion to advance full participation.

Keywords: faculty, discretionary spaces, equity, full participation

A community college instructor analyzed his gradebook. He saw that his Latinx students had perfect attendance but did not submit the homework, which was hurting their grades. In response, he introduced a new practice: starting on the homework in class so it could be demystified. His success rates for Latinx students went from 33% to 85%¹

A dean told a faculty search committee that she would not move forward with their short-list of candidates because the search committee articulated an interest in candidates with diversity, equity, and inclusion experience in the job description. Yet DEI was not apparent in their selection criteria.

A small team of faculty and their department chair reviewed workload data that showed time-intensive service roles were being routinely shouldered by 3 of the 25 department faculty. They decided to put in place a new policy where these roles would be automatically rotated among faculty on a schedule.

In each of these examples, a decision was made. These decisions occurred in what might be called “discretionary spaces” (Ball, 2018), or places where faculty and academic leaders hold the power and authority to make decisions and take action. Discretionary spaces are pervasive in academic life. The decisions made in these spaces deeply affect the full participation of faculty, students, staff, and other stakeholders.

By full participation I mean institutions and systems of higher education where Black, Brown, and Indigenous, LGBTQ, women, people with disabilities, and those who seek to learn, teach, and inform practice across a range of epistemologies thrive. Full participation is not about access to our academic spaces but who is flourishing and feels they belong there. This vision assumes a racially and ethnically diverse set of leaders create and shape the policies that govern us. Full participation means equity and justice are centered in major decisions about budgets, assessment of student outcomes, and faculty success (Stewart, 2020). Full participation requires action—changing policies and systems of oppression that create equity gaps. Full participation is an often stated but unmet goal of higher education (Sturm et al., 2011). Well before the National Science Foundation (NSF, 2008) used the term “broadening participation” to mean expansion of science to individuals, institutions, regions, and groups that had previously been excluded and minoritized, full

¹This example was crafted from the real story of Dr. Jason Burke told in Bensimon & Gray (2020, p. 72)

participation was part of legal and political discussions of what it meant to have power.

Discretion, or the freedom to make decisions within a set of boundaries set by our institutions and fields, is a defining characteristic of most professions, including the academic profession. There are at least three assumptions upon which institutions, fields, and society afford discretion. First, we assume the professional has some knowledge and expertise relevant to the domain of work, some skills, habits, and norms guiding their discretion in acting there. Second, there is an assumption that discretion is needed because it is not possible to anticipate and provide standardized responses in certain domains of work where human beings are involved and uncertain technologies are common. This is in fact where judgment and discretion meet issues of equity and full participation. Individuals and groups will vary in what they need to succeed. Creative, equity-minded professionals look for and act on differences in needs, contexts, contributions, and constraints (Bensimon et al., 2016; Bensimon & Dowd, 2012; Witham et al., 2015), something that automated and universal approaches obscure and prohibit. Third, discretion is a privilege afforded with the assumption that it will be used to advance the public good. The case of an E.R. nurse is illustrative of these three tenets upon which discretion operates. Imagine an E.R. nurse receives five new patients at the same time at her hospital. She uses discretion to decide who to serve first and in what ways. She is granted that discretion because of her training as a nurse with knowledge of illnesses, treatments, and relevant timing and because it is not possible to automate responses to all the situations that will come into the E.R. (Evans & Harris, 2004). Furthermore, we assume the nurse can see different patient needs and has the overall best interests of the patients and hospital in mind in making judgments.

However, in practice we know human judgment is flawed, subject to cognitive biases and mistakes. Surgeons leave sponges inside patients, and pilots forget to flip switches with dire consequences. Higher education faculty make mistakes grading tests or make comments that are discouraging to student learning and motivation. Such cognitive errors and lapses in judgment occur, and as a result the surgeon, pilot, and faculty member are less effective at what they are trying to do. There are many efforts in fields of practice to try and improve judgment and improve practice. However, effective practice is not the only issue. Human judgment and discretion are also shaped by societal biases, institutional, and disciplinary logics and defaults that cause workers to exercise discretion in ways that treat individuals differently, and reproduce the status quo, amplifying the status of those already advantaged. If the E.R. nurse intentionally or implicitly decides to triage patients based on their race rather than their illness, or the faculty member provides different kinds of feedback to women students than men students on the same work, they have

thwarted full participation in enacting discretion. In this way professionals who enact discretion can create, reproduce, and deepen existing inequalities.

In this presidential address, my main focus will be faculty discretion, and discretionary spaces in colleges and universities, though I often turn to other fields and practitioners for additional context. In using the word “faculty,” I mean all those who serve in such roles whether tenure track, tenured, or contingent and to other members of the academic workforce who hold and enact discretion. Because of their distinct roles in classrooms, in designing curriculum, in knowledge production and gatekeeping, faculty exercise discretion in areas with high stakes for equity and full participation. Drawing on political theory, behavioral economics, and higher education research and practice, I offer ways to leverage, check, and structure faculty judgment and discretion to advance full participation. As I do, I invite you to think about the areas where you make judgments and exercise discretion. Where are your discretionary spaces? What barriers do you see for particular groups in those spaces?

Faculty as Street-Level Bureaucrats

In centering the role of faculty discretion and discretionary spaces in the project of full participation, I was guided by political scientist Michael Lipsky’s book *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* and the application of Lipsky’s (2010) work to K-12 classrooms by 2018 AERA President Deborah Loewenberg Ball. Published first in 1980, this book was written at a time when many institutions were responding to the civil rights movement for social and political equality in the United States (Lipsky, 2010). A main focus of the book was the discretion of police, which gives this work special salience in light of the murder of George Floyd among others, and subsequent protest and demands for racial justice in the United States. Street-level bureaucracy is best understood as an exploratory framework and analytic lens to link the small micro choices made by practitioners to larger historical, political, social, and cultural macro issues.

In *Street-Level Bureaucracy*, Lipsky (2010) argued that the exercise of discretion is a necessary and important dimension of the work of teachers, social workers, nurses, and judges, that is, street-level bureaucrats, who regularly interact with citizens in the course of their jobs. Lipsky (2010) used the words “street-level” because the work these actors do tends to occur outside of public view at a distance from where managers reside. Street-level bureaucrats make many small decisions within their sphere of influence that are experienced by stakeholders as policy (Korteweg, 2006; Lipsky, 2010).

Although Lipsky’s (2010) work does not employ critical race theory directly, I see it as in conversation with work on racialized organizations and systemic racism. As Ray (2019) observes, in racialized organizations formal commitments to equity are often decoupled from “policies and practices

that reinforce or at least do not challenge existing racial hierarchies” (p. 42). Lipsky (2010) observed that one mechanism of uncoupling is the assumption of professionals using discretion to enact rules and practices assumed to be neutral. As Ray (2019) observes “racial inequality is produced through relatively passive participation in racialized organizations” (p. 40). Faculty, as street-level bureaucrats, can passively reproduce racialized organizations simply by enacting a schema about what it means to be a productive scholar in reviewing someone for an award. Also, Martin et al. (2012) wrote about who is and is not allowed to use discretion to break the rules in racialized organizations. Lipsky (2010) helps us see how professionals break rules to leverage or threaten equity in everyday activities. Finally, both Lipsky (2010) and Ray (2019) observe that actors distribute resources through enactment of routine practices and that distribution of resources can legitimize racial hierarchies. For example, a teacher disregards a math idea offered by a student as irrelevant to a conversation the class is having. That decision to disregard the math idea does not occur because of school policy; rather it occurs within teacher discretion to teach as they think best (Ball, 2018). Yet that discretionary action is experienced by the student as if it were policy.

Turning to a higher education example, Milkman, Akinola, and Chugh (2015) sent email inquiries to 6,500 professors. They pretended to be doctoral candidates wanting to discuss research opportunities. The names of students were randomly assigned to signal gender and race but the messages were otherwise identical. Faculty were significantly more responsive to students assumed to be White males than to all other categories of students collectively, particularly in higher-paying disciplines and private institutions (Milkman et al., 2015). Faculty, acting as street-level bureaucrats, responded to students outside of managerial view, using their own discretion, and social biases shaped their response. Prospective doctoral students, however, would experience such email responses, or lack thereof, as who their institutions value. In a more positive example, when campuses were closed due to COVID-19, many faculty participated in makeshift porch graduations. Faculty did not participate in porch graduations because of a university policy; rather, they wanted to recognize the extraordinary one-time event in a graduate student’s life when they become a “doctor.”

Discretion has boundaries and limits however. Dworkin (1977) wrote that, “Discretion, like the hole in a donut, does not exist except as an area left open by a surrounding belt of restriction” (p. 31). Evans and Harris (2004) further elaborated on this same point by noting discretion is not the “absence of principles or rules; rather it is the space between them” (p. 881). Likewise, faculty discretion exists within a set of boundaries set by their institutions, departments, and fields. Some of the boundaries placed around faculty discretion support and some constrain the ability of faculty to act as agents to advance full participation. For example, a faculty member may recognize

that a disproportionate number of graduate students have children and face challenges navigating childcare when required courses are offered during the day. They may wish to change the time of class but operate within the boundaries and policies set by their department and college and thus may have less agency to change course schedules.

Relatedly, there are different levels of discretion, ranging from none (e.g., such as being required to use an approved syllabus) to high discretion (e.g., such as evaluating a colleague for promotion). For example, I might have the ability as a faculty member to vote for someone's tenure but not to award it, as there is a policy that assigns authority to the Board of Trustees.

Unfortunately, the conditions under which street-level bureaucrats make decisions and exercise discretion are also the conditions where cognitive biases, as well as social biases, thrive (Beddoes & Pawley, 2014; Casey et al., 2012; Heilman, 2001; Moss-Racusin et al., 2012; Moody, 2012; O'Meara et al., 2019). Such conditions include ambiguity, rush or pressure, lack of feedback, and salient social categories relevant to the judgment (Casey et al., 2012). Judges hearing asylum cases have to make rulings with incomplete information; teachers have to control discipline in overcrowded classrooms and miss important student needs (Lipsky, 2010; Van Cleve, 2016). Such conditions not only make professionals less effective; they also make it more likely they will discriminate.

Faculty enjoy greater discretion over their work lives than many other street-level bureaucrats because of assumptions of their subject knowledge and expertise and traditions of autonomy and academic freedom in higher education (Austin, 2003; Braxton, 2005; Brower et al., 2017). Brower, Jones, Tandberg, Hu, and Park (2017) applied the concept of street-level bureaucrats to faculty implementation of developmental education in 28 state colleges in Florida. The authors found faculty taking oppositional, circumventing, satisficing, and facilitative positions to support, ignore, or resist policy implementation depending on personal commitments and interests and how leaders talked about the change (Brower et al., 2017). Faculty are like other street-level bureaucrats in that they make decisions in discretionary spaces wherein a lack of information, socialization, and tools, as well as awareness and will, mean they unintentionally create or perpetuate equity gaps. And, there are faculty who overtly act in racist, sexist, and other oppressive ways and resist change because they benefit from systems of inequality.

Left to Their Own Judgment and Discretion

Social psychologists, sociologists, and those in decision-making science have been instructive in helping us to identify areas where faculty judgment reflects cognitive and social biases. For example, when given CVs with identical characteristics and asked who they would hire for faculty and research positions, faculty preferred the CVs of those assumed to be White and Asian

candidates over those who were assumed to be Black and Latinx (Eaton et al., 2020), and those assumed to be men over those assumed to be women (Moss-Racusin et al., 2012). There is evidence of bias and discrimination in interactions at work. For example, Blair-Loy et al. (2017) taped engineering job talk interviews and found women candidates received more questions and were interrupted more often than male candidates. O'Meara, Sayer, Nyunt, and Lennartz (2020) conducted a time diary study and found women and faculty of historically minoritized identities experienced more microaggressions in their workday. There is epistemic exclusion, highlighted so effectively by Settles, Buchanan, and Dotson (2019), showing that certain research topics, methods, and approaches are positioned by faculty as peripheral to academic fields or devalued in advancement decisions. Research topics focused on historically minoritized communities have been less successful in NIH grant competitions (Hoppe et al., 2019), and novel contributions made by historically minoritized and women faculty are not taken up by colleagues at the same rate as similar contributions by White and male colleagues (Hofstra et al., 2020). Authors assumed to be women are not given as much credit as those assumed to be men for collaborative work (Sarsons, 2015). In each of these examples, faculty make judgments in discretionary spaces, outside formal scrutiny. These judgments are shaped by biases and privilege that thwart full participation. In bringing this research into view, I want to acknowledge it is a complement to, not a replacement for, the extensive work on structural racism, sexism, homophobia, classism, and rankism (Patton et al., 2007; Ray, 2019; Teranishi & Parker, 2010), which helps us to understand interconnected and intersectional barriers that shape the cumulative experiences of those historically minoritized.

Given the extensive social science research over three decades showing implicit bias in the academy, as well as racism and sexism revealed through critical perspectives, we might expect more attention to faculty discretion and its role in full participation. Plausible deniability is a common response of faculty and academic leaders to this research as well as climate surveys conducted by HERI, COACHE, and disciplinary associations, showing Black, Brown, women and LGBTQ faculty experiencing greater stress and less legitimacy. The argument is—if the exclusion of some groups, or privileging of others occurs outside of formal policy or practice—if it occurs in places with unregulated discretion, we as individuals, departments, fields, and institutions are not accountable. It is out of our hands. But, we know, we are responsible. We are not only the product of formal hiring, mentoring, salary, promotion and tenure, and advancement policies—the constraints and boundaries we place on discretion—we *are responsible for what we enact*. As the work of Estela Bensimon (2007) has underscored so well, that is what it means to be equity-minded. We are accountable for historical and continuous exclusionary practices, policies, and programs that cause inequal-

ity. Although many are inside, the sources of disparities may be outside our institutions. However, if we want to remedy those disparities, we have to use our power and resources, our best assets, which includes the academic workforce to address equity gaps no matter the source (McNair et al., 2020). As Gary Rhoades (2006) articulated in his presidential speech, we are the higher education we choose.

Higher education is of course not alone. There are other fields where practitioners enact and encounter racism, sexism, and other oppressions in discretionary spaces. There are also fields where practitioners use discretion to disrupt oppressive habits and patterns and enact justice. Given this, I was interested in efforts taken by other fields to leverage, check, and structure the discretion of their front-line street-level bureaucrats. The fields of criminal justice, medicine, and K-12 education are also grappling with the judgment and discretion of their street-level bureaucrats. In some examples, efforts target more effective performance generally and reducing cognitive errors; in other cases, efforts target disruption of biased and discriminatory treatment.

Let's consider criminal justice first. Biases against Black defendants are well documented in almost every step in the judicial system (Rachlinski et al., 2008). Prosecutors have been observed to have practically "unreviewable discretion," deciding whether to charge and what crime to charge, making decisions whether or not to oppose bail, offer a plea bargain, disclosing potentially exculpatory evidence to defense counsel, deciding which jurors to strike, and how to frame the defendant in closing arguments (Smith & Levinson, 2011; Van Cleve, 2016). The recent Kentucky Attorney General's handling of the Breonna Taylor case illustrates this point. The criminal justice system has experimented with eliminating discretion—and there are notable failures. For example, reform efforts to "ban the box" noting time served in prison was found to cause employers to discriminate more against Black and Hispanic workers by inviting guessing (Doleac & Hansen, 2016). By reducing judicial discretion in sentencing through the CA three strikes law, the role of the District Attorney (e.g., deciding whether to file charges and what kinds of charges) became more prescient (Greenwood et al., 2002). The use of body-worn cameras to check police discretion and behavior was found to have no tangible effects in one randomized trial (Yokum et al., 2017). Instead of reducing bias, the use of data analytics by police to deploy resources and identify suspects can deepen patterns of social inequality and challenge civil liberties (Brayne, 2020). There have, however, been some successes. Realizing that millions of Americans fail to appear in court for low-level offenses, triggering warrants for their arrests, equity-minded agents redesigned the summons form and provided text message reminders that resulted in 30,000 fewer arrest warrants over a three-year period in New York City (Fishbane, Ouss, & Shah, 2020). This example is what behavioral economists would

frame as changing the “choice architecture” around the decision to appear (Bohnet, 2016; Kahneman, 2011; Selinger & Whyte, 2011; Thaler & Sunstein, 2008). Criminal justice officials recognized the decision to not appear was more often unintentional than active and could be nudged toward appearing in court if the summons information was made clearer and more salient. Likewise, equity-minded agents from the National Center for State Courts have worked with judges on strategies to reduce bias in court decisions, to add periodic review and feedback to judges, and to determine when three-judge courts are necessary in high-stakes decisions (Casey et al., 2012). Across these examples we see attempts to leverage better use of discretion, adding judgment or accountability to decisions, and restructuring or reordering decisions to improve overall effectiveness and reduce discrimination.

Medicine is another area struggling with judgment and discretion. Implicit biases shape patient–provider interactions, treatment decisions, and health outcomes (Chapman et al., 2013; Hall et al., 2015). Studies have shown race and gender independently influence how physicians manage patient chest pain (Schulman et al., 1999), and discrimination against Black and Hispanic patients shapes how pain is treated in emergency rooms (Heins et al., 2006). There are cases where doctors do not follow best practice. Francesca Gino and colleagues (2015) studied what happened after the Food and Drug Administration issued a statement warning that drug-eluting stents used in certain conditions were causing blood clots and death. Ironically, the more experience surgeons had, the more they felt like experts and the less likely they were to update their beliefs and change how they used the stent (Staats, Diwas, & Gino, 2015). There are, however, some success stories. For example, researchers have found that when a surgical team works through a checklist before surgery, they reduce complications due to infection (Bliss et al., 2012). Cheryan and Marcus (2020) point out that one of the reasons the surgical checklist works is that it corrects for a male default confidence bias and improves communication and respect among the team.

The University of Maryland Health Advocates in Research or, HAIR, project, is an effort to reduce health disparities through blood pressure, diabetes, and other health and wellness screenings (Linnan et al., 2012). Realizing that the discretionary space within which health care was being delivered was in and of itself part of the production of disparities, the HAIR project designed a third space. HAIR leaders engaged trusted members of Black communities to partner with health professionals to offer health screenings in black-owned barbershops, improving health care access and outcomes. Such an effort is reflective of Ray's (2019) observation that “racial inequality is not merely “in” organizations but of them” (p. 48), which means full participation sometimes requires dismantling and stopping the use of systems creating inequality (Garza, 2020).

Teachers can be facilitators of discrimination or leverage racial justice. Patricia Hill Collins (2009) has written that K-12 teachers are “frontline actors” with a great deal of discretion. Deborah Ball (2018) observed that K-12 teaching is, “dense” with discretionary spaces. Ball drew on the example of two Black girls in a math classroom, Toni and Aniyah, and their interactions with the teacher and classmates as they engaged in mathematical reasoning. Ball identified 28 different moments of discretion apparent in 1 hour and 28 minutes of class time; each moment or decision having a different consequence for whether Black students like Toni and Aniyah felt included, disrespected, devalued, understood, and appreciated for their own good ideas. Ball (2018) further connected these micro moments to the macro forces shaping the exercise of teacher discretion. Black girls have a higher rate of suspension than White girls; Black girls are more likely than White girls to be disciplined for subjective interactions such as minor violations of dress code, cell phone usage, and disruptive behavior (Epstein, Blake, & Gonzalez, 2017). Ball and her colleagues at the University of Michigan tape interactions in math classrooms, play them back, and engage teachers in recognizing where their habits and actions can reproduce racism and where they can radically change that dynamic and uplift students (Ball, 2018). They help teachers understand how their own identities can shape how they read student responses and provide new ways to see students and interact.

Across these three fields, we see equity-minded advocates leveraging practitioner judgment. They draw out “slower” and more deliberate thinking (Kahneman, 2011), often using data, disaggregated by race, gender, and other identities. They ask practitioners to pause and see habits causing harm. Showing doctors racial disparities in treatment of pain in ER settings and showing teachers discretionary moments in math classrooms are examples of leveraging practitioner judgment. Likewise, Cheryan and Markus (2020) show us how practitioners can be shown “default” aspects of their culture, such as pervasive ideas, policies, or patterns of interaction, that are considered standard, normal, and neutral but actually predict the lower participation and success of women or Black and Brown students and employees. Thus, judgment can be leveraged by increasing awareness, by changing minds, and by developing professional skills and commitments that make for more effective and less discriminatory exercise of judgment and discretion. The instructor who studied his student’s grades disaggregated by race began to see his student’s needs more clearly and, afterward, took actions to improve their success.

Judgment and discretion are “checked” when we create guardrails for effective, equity-minded practices and outcomes. Relevant examples here are surgical checklists that attempt to mitigate human error and requiring professional development on new medical treatments or culturally competent teaching practices. If equity-minded judgment and discretion

cannot be leveraged, it is sometimes necessary to change the boundaries of the decisions being made. For example, if scientists have found that the way a medical device is being utilized by doctors is causing harm, hospital administrators could decide to require doctors to use the device in a better way or lose privileges at the hospital. Drawing on federal data describing the workforce of 708 private sector establishments and surveys of employment practices, Kalev, Dobbin, and Kelly (2006) found that “structures that embed accountability, authority, and expertise” (p. 611) are most effective in increasing the diversity of their workforces. The dean that turned back the faculty search in the opening vignette provided a check on the exercise of discretion. In sum, discretion can be checked by adding judgment to the situation and by adding authority, accountability, and expertise to a discretionary space.

When judgment and discretion are operating in spaces that are themselves culpable in producing or reproducing inequality, those spaces may need to be dismantled and recreated with new boundaries for discretion. Examples include creating new health care delivery systems like the HAIR project, or creating a new way to organize how faculty service labor is shared as in the vignette shared at the beginning of this paper.

Attempts to Override, Avoid, and Get Around Faculty Discretion

Given the historical and continuous need to change higher education to advance full participation, and given limited resources, it is important to examine what has been tried and had limited or no success. A very common approach taken in the project of full participation has been implicit bias trainings for students, faculty, staff, and academic leaders. What we have come to understand is that absent other interventions integrated beside them, such as concrete strategies to reduce bias when it happens, the results do not persist long term (Greenwald & Lai, 2020; Kalev et al., 2006). Lai et al. (2016) studied eight interventions that had previously been shown to reduce implicit race preferences and found that they did not persist after a few days. This is because despite training and the best of intentions, human beings are not good at “conscious over-ride of bias” (Greenwald & Lai, 2020, p. 436). Although a number of scholars have implemented effective implicit bias training with faculty and found positive pre-to-post change in awareness and intended behaviors (Carnes et al., 2015; Jackson, Hilliard, & Schneider, 2014; Moss-Racusin et al., 2016; Sheridan et al., 2010; Smith et al., 2015), such training is typically paired with other supports and interventions (e.g., use of rubrics, equity advocates, work-life assistance). In fact, Duguid and Thomas-Hunt (2015) point out that implicit bias trainings absent mitigation strategies can normalize the existence of bias and lead individuals to feel as though their actions are unimportant. Also, as Cheryan and Marcus (2020) observe, by emphasizing the effects of differential treatment, implicit bias trainings can obscure male and/or white defaults baked into evaluation systems. This is

not to say we do not need bias trainings to leverage equity-minded judgment, only that we need such trainings coupled with concrete equity-minded tools and practices. And, we need them not to be focused more generally but in specific work domains like hiring, admissions, workload, and promotion and tenure evaluation. Contrary to 2020 OMB guidance (Exec. Order No. 13950, 2020), we need such trainings to be led by science and expertise in diversity, equity, and inclusion and to use the terms “white privilege” and “structural racism” explicitly as appropriate.

Color evasiveness, which assumes that if we ignore or avoid race, fairness and equality will follow, has also been a common approach in higher education (Plaut, 2010, 2014; Plaut, Fryberg, & Martinez, 2011). Yet Plaut (2014) found policies and practices that encourage color evasiveness in organizations generally predict negative outcomes, leaving discrimination undetected, and can produce more, rather than less, stereotyping and prejudice. Plaut et al. (2011) found that faculty in departments that espoused color evasiveness were more likely to be places where faculty reported stereotype threat, negative emotions, and weaker sense of belonging. Even in cases where faculty are instructed to be, and try to be, color-evasive, they rarely are. As Damani White-Lewis (2020) outlined in his work on hiring, academics will use their discretion, shaped by biases, “conveniently” as it suits the argument they want to make. Color evasiveness comes into play, for example, when hiring or promotion and tenure committees are charged by equity administrators not to let race, gender, and other protected characteristics influence their assessment of candidates. In the case of hiring, a search committee may not be given any demographic identity information on candidates and, in the case of promotion, explicitly charged to make decisions without regard to it. Yet both groups are also told to value diversity in decision-making. Such search committees are left wondering how to accomplish this mixed message both conceptually and practically.

A third strategy has been to assign one person in a decision-making group a leadership role with regard to equity-minded thinking. Indeed there are clear benefits when women and Black and Brown faculty serve on search committees (Rice & Barth, 2016; Smith et al., 2015) and Smith (2009) and Liera (2020) found positive effects from well-trained equity champions serving on search committees. However, there are caveats with this approach. Rankism within committees can diminish the equity champions voice when they are a graduate student, staff member, or early career faculty member. When the equity champion is not from the same field as the other committee members and candidates, their voice can be minimized. Also, we would ideally not rely on one person to do equity work but rather engage the entire committee in equity-minded judgments and actions (Posselt et al., 2019; McNair et al., 2020).

Fourth, many efforts to leverage equity-minded thinking have been one size fits all and assumed faculty and academic leaders were entering their discretionary spaces with the same knowledge, awareness, and habits with regard to seeing and advancing full participation. We know from much research that this is not true (Stolzenberg, et al., 2019), and many of the more successful efforts have focused within disciplines and/or departments where particular logics, defaults, and habits can be interrogated and understood in relationship to particular kinds of evaluation decisions (Posselt, 2016).

Indeed, we know there are systemic and pervasive equity gaps in higher education and not all of the strategies taken to address them have been successful. However, we also know there has been success in leveraging, checking, and structuring faculty judgment and discretion toward the project of full participation. I turn to such examples next.

Leveraging, Checking, and Structuring Faculty Discretion to Advance Full Participation

On the one hand, faculty judgments in discretionary spaces can come wrapped up in arguments of expertise, disciplinary logics, practitioner knowledge, defaults, and privilege (Gonzales, 2018; Gonzales & Ayers, 2018; Posselt, 2016; Posselt et al., 2019; Posselt et al., 2020) and act as part of the glue that keeps structural inequities in place. Also, faculty positions are structured with significant autonomy, making some behaviors hard to see and intervene (Braxton & Bayer, 1999; Gappa, Austin, & Trice, 2007). Given this, and given the lack of progress made in many areas, the logical conclusion for many interested in advancing equity in higher education is to eliminate, or severely limit, faculty judgment and discretion. However, just as in the examples of medicine, criminal justice, and K-12 teaching, when we try to eliminate faculty decision-making in a discretionary space with high stakes for equity, we can also reproduce inequalities. For example, during the COVID-19 pandemic, historically marginalized faculty have faced distinct challenges. The experiences of Black, Brown, and Indigenous faculty have been shaped by health and financial disparities, and women have disproportionately handled parental and family care responsibilities, often at the expense of research productivity (Gonzales & Griffin, 2020). To have policies that do not recognize these differences in contexts but treat all faculty the same disadvantages those faculty most challenged. If we remove judgment and discretion from the situation, we remove the opportunity for faculty and leaders to respond flexibly and equitably to these differences in faculty experiences and contexts. Also, faculty can transmit their biases to the supposedly objective tools that they create to replace discretion. For example, if faculty create rubric criteria that the best candidate will have received a particular grant, award, or number of publications, and these are typically found among those with historically privileged backgrounds, they are bak-

ing advantage for privileged groups into the hiring process in another way, while creating an illusion they removed discretion to make the process fair.

Yet the most important reason we do not want to remove all judgment and discretion from key domains of faculty practice is because faculty judgment can be shaped to be equity minded. Discretion can be exercised to intentionally advocate for historically minoritized groups (McNair et al., 2020; Posselt et al., 2019, 2020; Rhoades, 2006). Because of their distinct roles in classrooms, in designing curriculum, in knowledge production, and in gatekeeping, faculty have intimate knowledge of the contexts where inequality arises. For example, Cheryan and Marcus (2020) tell the story of computer science faculty realizing more of their male students entered college with programming experience. A result was a more intimidating classroom environment for women early on in their programs. Faculty shifted the way courses were offered to alter and remove this advantage along with other reforms and increased the number of degrees offered to women by 45% (Cheryan and Marcus, 2020). As in the case of the community college professor studying his gradebook, faculty can be creative in pursuing what is disadvantaging their students or colleagues and make decisions in the service of equity. The work of Gary Rhoades and Judy Kiyama (Rhoades et al., 2008) and Leslie Gonzales and Aimee Terosky (2020) of faculty enacting agency by subverting boundaries set by their fields, institutions, and society underscores the possibility of leveraging equity-minded judgment and agency.

Yet faculty judgment and discretion also need to be checked. Posselt et al. (2020) argue we need to build equity checkpoints into decision-making routines that interrogate the criteria used to make decisions, the deliberative process, and the outcomes. Not unlike the surgical checklist, such guardrails can help ensure faculty are fully leveraging equity-minded judgment and tools (Ridgeway & Correll, 2004). And indeed, when we try to leverage faculty judgment and put in place equity checkpoints and the outcomes still do not reflect full participation, we need to reexamine and refine the boundaries or range of motion within which faculty are making judgments. We need “system-changing responses” (Bensimon, 2018, p. 97). Next, I turn to concrete strategies equity-minded leaders can seize to leverage, check, and structure discretion in five domains of practice: admissions, hiring, tenure and promotion, workload, and teaching and mentoring. I have synthesized the goals and strategies applied in each domain in Table 1.

Admissions

One of the best examples of leveraging judgment and discretion to be more equity-minded is holistic admissions. When decision-makers overrely on student SAT or GRE cut-off scores, they do not account for structural differences in student opportunity, constraints, and achievement. Bastedo et al. (2017) conducted a randomized controlled trial and found providing

detailed information on high school contexts increases the likelihood that admissions officers recommend admitting an applicant from an underserved high school. Such contextualized review takes more time, with case-by-case reading of files, and not overvaluing any one component of the file. There are also equity checks built into the system, such as three or four different admissions officers reviewing a file. By adding judgment to the situation, they ensure that no one missed a critical context or factor. There are structural constraints in place too. Admissions Directors can reverse a decision. They are assigned responsibility for ensuring equitable admissions outcomes. Similarly, Julie Posselt's (2019) *Equity and Inclusion in Graduate Education* research initiative works with graduate faculty to see inequities that are baked into standardized test scores. Rather than overrelying on standardized test scores and the prestige of undergraduate institutions, Posselt and colleagues encourage faculty to pay attention to criteria that individually are likely to advantage different groups. Posselt et al. (2019) recommend scheduling equity checks throughout the review process to ensure that outcomes are not overly shaped by any one criterion.

However, what if such strategies are employed and faculty still admit a very White or very male student body? What happens if the move to test optional admissions unintentionally produces a less diverse student body? This is where structural strategies are needed. For example, realizing the need to repair and remedy long periods wherein no Black students were admitted, the University of Chicago English Department decided to admit only students who want to work in Black Studies in 2021 (Flaherty, 2020). The program faculty exercised judgment and discretion in making this decision but also added a new constraint or set of boundaries for their admissions process. This decision also shifted resources to remedy historical and continuous equity gaps in admission to doctoral study.

Hiring

Turning to the issue of faculty hiring: much effort has gone into professional development. Often the emphasis is on trying to get a search committee to pre-commit to decision criteria before they conduct evaluations. Studies show that when evaluators write down, commit to, and are reminded of criteria prior to reviewing candidate materials, they are more likely to rely on the criteria and not bias in their judgments (Bauer & Baltes, 2002; Isaac, Lee, & Carnes 2009; Greenwald & Lai, 2020; Moody, 2012; Posselt et al., 2019; Uhlmann & Cohen, 2005). Although this strategy attempts to remove biased judgment, it can also engage equity-minded judgment by getting faculty to design criteria that reflect DEI knowledge, commitments, and contributions (Posselt et al., 2019). There is an interplay of structure and agency, as faculty judgment is leveraged to determine the criteria but then bound by those criteria in making decisions.

TABLE 1.
LEVERAGING, CHECKING, AND STRUCTURING FACULTY JUDGMENT AND DISCRETION TOWARD FULL PARTICIPATION

<i>Goal</i>	<i>Strategies</i>
<p>Leveraging Encourage slower, deliberate faculty thinking that is able to see equity gaps, and design solutions that assume responsibility for eliminating inequality.</p>	<p>Provide faculty disaggregated data on equity gaps that is close to their routine practices</p> <p>Provide additional new information and/or reframe information to help update beliefs</p> <p>Create communities of practice that social norm equity-minded judgment and action</p> <p>Improve self-efficacy in seeing equity gaps and provide concrete steps and tools that can be taken to remedy in particular areas of practice</p>
<p>Checking Create guardrails to ensure equity-minded judgment becomes equity-practices, and outcomes</p>	<p>Ask decision-makers to use decision-support tools where criteria are outlined before decisions are made; ask them to use checklists to ensure all steps to an minded action through policies, equity-minded process were taken</p> <p>Require reasons for decisions</p> <p>Conduct audits of policies and practices to add context where universalism harms equity</p> <p>Add more decision-makers and thus judgment to the situation</p> <p>Script language in policies and practices to ensure the full participation of historically minoritized groups</p>
<p>Structuring Change the boundaries of judgment and discretion and/or dismantle and</p>	<p>Change the default settings (e.g., masculine, White, preferred kinds of scholarship) or set of options under consideration at the level of role models, stop using a system if it is creating equity gaps ideas, interactions, setting</p> <p>Add oversight, reassigning final authority and/or removing authority</p> <p>Assign accountability for equitable outcomes to leaders (e.g., to performance reviews)</p> <p>Shift resources to or away from those with discretion to respond to historical and continuous equity gaps</p> <p>Create a new organizational structure—such as a third space or new set of expectations to disrupt inequalities experienced in first or second spaces (e.g., changing entrance requirements, removing courses weeding out students)</p>

Note. In synthesizing goals of equity-minded reform toward full participation, I drew from work by Posselt et al., 2019; Bensimon, 2006, 2018; Lipsky, 1980; McNair, Bensimon, & Malcolm-Piqueux, 2020 (cited in references).

Another equity checkpoint is asking for reasons. Research suggests that when we require people to justify their opinions or choices, it can change thinking and behavior and reduce reliance on stereotypes (Kahneman, 2011; Salancik & Pfeffer, 1978; Tetlock, 1985). For example, Nadler, Lowery, Grebinoski, and Jones (2014) conducted an experiment where they had participants watch a video of a department chair applicant and rate him for the job. Though the participants watched the same exact video, they perceived the applicant as either gay or non-gay. In half of the cases, participants were given an accountability nudge and told they would need to explain their ratings; in the other half, they were told they would not have to explain ratings. Participants who did not have to explain their ratings showed bias against the gay applicant, whereas participants who explained their ratings showed no differences in ratings between the applicants perceived to be gay or non-gay (Nadler et al., 2014).

Acknowledging a compelling interest in hiring a more diverse faculty that has DEI knowledge and competencies, many institutions and/or departments now require faculty job candidates to submit diversity statements as part of their application package (Carnes, Fine, & Sheridan, 2019; Schmalings et al., 2019). Although the consequences of requiring candidates to submit, and hiring committees to consider, DEI efforts are not yet known, institutions that require such information change the default setting of the hiring decision. Faculty knowledge, skills, and commitments to DEI work can no longer be ignored—they are now a required part of the review process. Likewise, universities that have decided to reinstate hiring postpandemic but open positions in areas that focus on race in America or structural racism and racial inequality and realign hiring plans to include disciplines where more Black, Brown, and Indigenous scholars reside (Kyaw, 2020; Talley, 2020) are also restructuring discretion by shifting resources toward particular departments.

Workload

Turning to the issue of workload, faculty and academic leaders exercise judgment and discretion in how they take up and assign campus service and mentoring work. For many reasons ranging from cultural taxes (Joseph & Hirshfield, 2011) to critical agency (Griffin & Reddick, 2011), the current system engenders many equity gaps in faculty workloads that are well documented. Faculty from historically minoritized racial groups spend more time on mentoring and diversity-related work than faculty who are White (Antonio, 2002; Baez, 2000; Griffin & Reddick, 2011; Jimenez et al., 2019; Joseph & Hirschfield, 2011; Turner, González, & Wood, 2008; Turner & Gonzalez, 2011; Wood et al., 2016). Women spend more time on teaching and service (Eagan & Garvey, 2015; Griffin & Reddick, 2011; Guarino & Borden, 2017; Hanasono et al., 2019; Link et al., 2008; Misra et al., 2011; O'Meara, 2016; O'Meara, Kuvaveva, & Nyunt, 2017; O'Meara et al., 2017; Winslow, 2010) and

spend less time on research than men (Bozeman & Gaughan, 2011; Link et al., 2008; O'Meara et al., 2017; Winslow, 2010). Black, Brown, and Indigenous faculty report their DEI work does not count for tenure (Jimenez et al., 2019) and women are asked more often to engage in less promotable or career-advancing tasks (Acker & Armenti, 2004; Babcock et al., 2017; El-Alayli et al., 2018; Hanasono et al., 2019; Misra et al., 2011; Mitchell & Hesli, 2013; O'Meara et al., 2017). These patterns are found in cross-sectional surveys, interviews, focus groups, time diary studies, analyses of faculty CVs, and annual faculty reports (O'Meara et al., 2021).

Many of the equity gaps in academic labor can be explained by requests being made of faculty and by faculty exercising discretion to take up work without any information about what other faculty are doing and without any structure to manage the process to be equitable. Drawing on the concept of equity-mindedness and the Equity Scorecard model (Bensimon, 2006; Bensimon et al., 2016), as well as behavioral design techniques (Bohnet, 2016; Kahneman, 2011; Thaler & Sunstein, 2008), I worked with colleagues Audrey Jaeger, Joya Misra, Dawn Culpepper, Elizabeth Beise, Courtney Lennartz, and Alexandra Kuveava to try and leverage the judgment of faculty and department chairs to see labor inequalities experienced by women and faculty of historically minoritized identities. We helped departments develop dashboards or simple, easy-to-read displays of different faculty work activities. These dashboards helped departments to identify equity gaps in their units such as women associate professors taking on more high-effort service, faculty of historically minoritized identities serving on more search committees, and having more advisees (O'Meara et al., 2020).

Department teams then put in place policies and practices that made the way work was taken up, assigned, and rewarded more equity minded and intentional and less haphazard. For example, departments put in place credit systems and planned rotations of time intensive service roles (O'Meara et al., 2020). The idea is to leverage faculty judgment to be more aware of inequalities in teaching and service requests and to see invisible service and labor taken on by historically minoritized groups. However, if that fails, there are new default settings and systems in the department to check faculty behavior and steer it back toward equitable allocation and reward of labor. Through a randomized experiment with treatment and control groups, we showed that sharing disaggregated workload data and putting these equity-minded policies and practices in place leads to greater workload equity and faculty satisfaction (O'Meara et al., 2018).

Promotion and Tenure

What about faculty evaluation? Promotion and tenure decisions are high stakes and engage significant faculty judgment and discretion (O'Meara, 2002, 2011). Among the many equity issues raised in these discretionary spaces are

the devaluation of research topics focused on social justice (O'Meara, 2011) and/or historically minoritized communities (Settles, Buchanan & Dotson, 2019), the devaluing of newer forms of scholarship (O'Meara, 2002, 2011), methods, and epistemologies, and the fact that much of what we ask faculty to do in the way of DEI does not "count" in the review process (Jimenez et al., 2019). Such equity concerns are baked into the language of policies and practices and emerge as promotion and tenure cases are considered. As such, colleges and universities need to audit promotion and tenure policies for default ideas about excellent scholarship that prevent epistemic justice and ambiguous criteria that advantage already privileged groups (O'Meara, 2018a; Settles et al., 2019). Workshops with promotion and tenure committees can help faculty understand where subtle and overt biases appear in such areas as teaching evaluations, external letters, citation counts, and professional networks and increase faculty knowledge about how to evaluate nontraditional scholarly products (O'Meara, 2018b). For example, the University of Michigan STRIDE program (University of Michigan, 2020) trains committees to break exclusionary habits when topics, methods, or epistemologies differ from those in the center of their disciplines. Such efforts to leverage faculty judgment are critical to improving the integrity and legitimacy of faculty evaluation (O'Meara, 2018b; O'Meara et al., 2020; Posselt et al., 2019).

However, when such efforts fail and promotion and tenure decisions reflect privilege, epistemic exclusion, racism, sexism, and other forms of oppression, it is critical that academic leaders have the ability to review and overturn such decisions. Such oversight is a way of checking discretion. We can also try to restructure what counts. For example, I am working with colleagues to understand whether promotion and tenure committees would "weight" DEI more fully if it was presented in a different format and if there was a weight assigned to DEI when using a rubric. Institutions could change the default from no discernible way to count DEI work consistently and meaningfully to one where the path for counting DEI work is clear.

Teaching, Learning and Mentoring

As Estela Bensimon (2007) pointed out in her ASHE presidential talk, there is no more important place to leverage faculty practitioner knowledge and discretion than in promoting the success of historically minoritized students. As one of the most influential people in many students lives, faculty have widespread opportunities to employ equity-minded strategies to support student success (Gold, Stripling, & Kurleander, 2020; McNair, Bensimon, & Malcom-Piquex, 2020). Faculty can do this individually and through inquiry-minded groups.

The Equity Scorecard Project described by Bensimon (2007) was built on a practitioner as researcher model and engages small groups of faculty and other practitioners in teams to examine student data disaggregated by race

and ethnicity and other identities. In their book *From Equity Talk to Equity Walk*, McNair, Bensimon, and Malcom-Piqueux (2020) share how faculty and practitioners used Racial Equity Tools to see patterns of inequality previously unnoticed. Bensimon (2006) observed that a critical aspect of this project is that the data shared are “close to practice” (Dowd & Bensimon, 2015; Dowd et al., 2018) and solutions are “constructed with local knowledge by local practitioners” (Bensimon, 2007, p. 459). California State University leaders likewise sent faculty a link to student success dashboards. Faculty could click and see the courses in their major with the largest GPA gaps between first-generation and non-first-generation students (Gold et al., 2020). Through this simple informational nudge, they attempted to leverage faculty judgment and discretion to act to reduce equity gaps. Both examples underscore the point that those closest to a challenge to full participation will be in the best position to see it and take action. Data are useful catalysts to engage faculty in equity-minded reforms.

However, Bensimon (2007) also points out that it can be faculty member’s implicit “deficit interpretations of unequal outcomes” (p. 460) that threaten the success of Black, Brown, and Indigenous students. College classrooms that do not attend to student prior experience, emotion, racial, cultural, and other identities can deprive students of, as Anna Neumann (2014) observed in her presidential speech, “the freedom to learn.” There is not a standardized test that can replace teacher judgment and discretion. In their work on *Convergent Teaching*, Pallas and Neumann (2019) outline how faculty can pull in student prior experience, and identities, and position them in conversation with disciplinary knowledge to advance learning. In Anna Neumann’s presidential talk (2014) she described key judgments made by college professors such as using a piece of popular culture to pull students into a topic, nudging student prior knowledge toward an academic idea, reiterating key points students made, and letting students interrupt her to finish her sentences that contributed to their learning. Likewise, Cheryan and colleagues (2009) have found faculty can make small changes in their classrooms, such as the posters on the wall, that change whether women and Black, Brown, and Indigenous students feel that they belong there. Faculty can act as “institutional agents” (Stanton-Salazar, 1997, 2011) who seek out and sponsor historically minoritized students as advisees, TAs, and research partners (Bensimon & Dowd, 2012; Dowd, Pak, & Bensimon, 2013; McCallen & Johnson, 2019; Museus & Neville, 2012; Rendón et al., 2000). Faculty can engage in epistemic exclusion by turning away dissertation ideas that relate to social justice or they can help students develop those ideas. Faculty can utilize assessment tools created to see if their syllabi reflect authors of multiple identities and standpoints (Forth, 2013). For example, Linguists created a Gender Balance Assessment Tool to count how many times women are cited

on your syllabus and a Gender Bias Calculator which shows places where we used gendered, biased language in letters of recommendation (Forth, 2013). Such tools can help faculty “walk equity talk” (McNair et al., 2020).

What do we do, however, when classroom spaces and mentoring relationships have become spaces of oppression? Equity-minded leaders need structural tools to dismantle systems causing harm. Examples include removing faculty graduate faculty status when there is evidence of sexual harassment or racist behavior and removing or requiring reform of courses disproportionately weeding historically marginalized students out of certain majors. Sometimes new boundaries need to be drawn, for example, releasing faculty from the structures of standardized syllabi and learning experiences that perpetuate the myth of universalism that all students need and will succeed with the same approaches (DiAngelo, 2011; McNair et al., 2020). In other words, we can use the idea of discretion and discretionary spaces to rethink our policies, curriculum, and mentoring systems. Rather than assume such constraints or processes are set in stone, we can assume they are tools that can be rethought and redone to advance fuller participation.

CONCLUSIONS

In 2020 we saw the damage that occurs when discretion is exercised without regard to full participation. Elected officials decided to use force against those engaged in peaceful protest. Employers fired workers who were also taking care of children at home, and state election boards restricted voting in places known to have higher proportions of Black, Brown, and Indigenous voters. Yet discretion aimed at issues of equity, justice, and full participation was also on display. Mail carriers disobeyed requests to slow down mail delivery because they knew needed prescriptions were in there. Teachers refused to go back to work because of lack of PPE to keep children, as well as themselves, safe. Nurses taped pictures of themselves to their protective gear to connect with patients, and doctors danced to make patients laugh in dire situations. We saw discretion exercised in the legacy of Justice Ruth Bader Ginsburg who told us she wrote her dissents, not for today, but to shape the better decision tomorrow (Totenberg, 2002).

Discretion, and faculty exercise of it in discretionary spaces, is pervasive, necessary, and essential to full participation. Through everyday engagement with policies, practices, and routines, faculty are in one of the best positions to see and address equity gaps. Given this, we need equity-minded judgment, and the discretion to act on it, to grow. However, because discretion is enacted in ways that reproduce racialized organizations, and amplify privilege, we need checks and balances. Such checks and balances include equity-minded leadership (Kezar & Posselt, 2019) that helps to guide, be responsible for, and advance equity-minded outcomes.

And when that does not lead to fuller participation, we need to dismantle what is not working and design new systems to exercise and bound discretion. I look forward to working with you to take action in discretionary spaces to advance full participation.

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