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Backlash Against Equality:  
The "Tyranny" of the "Politically Correct"

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American and Canadian mainstream media have recently published numerous articles sounding alarms against a so-called takeover of college and university campuses by the forces of "political correctness." This anti-PC literature charges that leftist, feminist and anti-racist students and scholars are using such undemocratic tactics as indoctrination, censorship and outright intimidation to secure institutional and curricular change on campus whose effect is to subvert fundamental western traditions and values.

The author first examines the social context in which the PC controversy has arisen and the political roots and agenda of the anti-PC movement in both the U.S. and Canada. She argues that this movement is a well-funded and well-orchestrated coalition of right-wing interests whose object is to generate and fuel popular fear against substantive egalitarian change not simply on North American campuses but in society at large.

She then analyzes the rhetorical techniques used to obscure this conservative agenda and the underlying conflict its apparently liberal symbolism masks. Rather than being a debate about the limits of freedom of expression on campus or the merits of curricular change, she argues, the controversy turns on opposing visions of the meaning and importance of equality in liberal democracy. Stripped of rhetoric, the conflict is between the relative merits of formal and substantive equality.

After describing what distinguishes these two competing visions, the author applies a substantive critique to anti-PC literature in order to disclose the characteristic features of formalist ideology and their function in rationalizing and perpetuating social inequality. She illustrates how and why the status arguments relied upon in the formalism revealed in anti-PC literature demonstrate that formalists do not live up to their own stated principles and, indeed, abandon such principles when democratic change threatens to alter the socially and legally enforced second-class status of historically subordinated groups.

Dans une littérature abondante, les médias américains et canadiens ont récemment dénoncé les partisans du *political correctness* en les accusant d'avoir pris le contrôle d'un certain nombre de collèges et d'universités. Selon ces écrits anti-PC, les valeurs traditionnelles de la civilisation occidentale sont menacées par des professeurs et étudiants féministes, anti-racistes et de gauche qui, au moyen de tactiques anti-démocratiques tels l'endoctrinement, la censure et même l'intimidation, essaient d'influencer les structures institutionnelles et les programmes.

L'auteure situe d'abord la controverse dans son contexte social et examine les origines politiques et les objectifs du mouvement anti-PC au Canada et aux États-Unis. Selon elle, il s'agit d'une réaction bien financée et bien orchestrée par la droite en vue d'entretenir une crainte envers la possibilité d'une réforme basée sur l'égalité substantielle, non seulement dans les universités nord-américaines, mais dans toutes les couches de la société.

Elle entreprend ensuite une analyse des procédés rhétoriques dont se servent les auteurs anti-PC pour dissimuler sous un vernis de libéralisme les vrais enjeux et la politique conservatrice dans leurs propos. Elle fait voir que le vrai débat ne porte pas sur la liberté d'expression dans les universités ni sur le contenu des programmes, mais plutôt sur des visions opposées du sens et de l'importance de la notion d'égalité dans une démocratie libérale. Abstraction faite des jeux verbaux, il s'agit d'un conflit entre l'égalité formelle et l'égalité substantielle.

Après son étude de ces deux visions, l'auteure amorce une critique substantielle de la littérature anti-PC afin d'exposer au grand jour les principales caractéristiques de l'idéologie formaliste, ainsi que la façon dont elles servent à justifier et à perpétuer les inégalités sociales. Elle démontre comment et pourquoi les arguments anti-PC, qui s'appuient sur des notions de statut social pour promouvoir une vision formaliste de l'égalité, retombent sur ceux qui les utilisent, car ceux-ci se montrent incapables de respecter leurs propres principes et y renoncent complètement dès qu'une réforme démocratique risque d'améliorer le sort de ceux que la loi a toujours réduits à un statut inférieur.

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## Prologue

Feminist teaching, scholarship and campus activism have probably never received as much public attention as they have in the last eighteen months<sup>1</sup> in the endless articles on the forces of “political correctness”<sup>2</sup> sweeping North American campuses. Neither have teaching, learning and writing in the universities by scholars of colour and lesbians and gay men.<sup>3</sup> Ironically, during a time when the politics of difference<sup>4</sup> have become a central concern of systemically oppressed groups, the media, fed by prominent conservative voices, have lumped diverse and divided communities together indistinguishably, attributing to them a uniform politics whose means and ends are subversive of the long-accepted mission of the university as well as the traditions that distinguish liberal education and democracy. The subversion charged is the hostile takeover of academic institutions by radicals propagating a wholesale attack on Western liberal traditions and values through illiberal means: the indoctrination of students, the censorship of dissent and the intimidation of those who would defend liberal principles.

The alarms being sounded against the tyranny of the politically correct are of mythic dimension. On any measure — numbers, professional status and secu-

<sup>1</sup>This article was completed in August 1992.

<sup>2</sup>Because the so-called “political correctness” movement is a manufactured menace serving as symbolic proxy for diverse communities engaged in social change, I have adopted the shorthand “PC” and “anti-PC” to convey this symbolic aspect of this literature’s political rhetoric and to reduce the alleged menace to size.

<sup>3</sup>Let it be clear from the outset that not all feminists are white and not all scholars of colour are heterosexual. Throughout this article I use the term “heterosexist” to refer to conduct or practices which oppress lesbians and gay men. As Mary Eaton pointed out to me, the term “homophobic” is largely a misnomer. It is hatred, anger and contempt, rather than irrational fear, which animate and rationalize most discrimination against lesbians and gay men. “Homophobia” does describe the fear that “homosexuals” will force themselves sexually on anyone of their sex regardless of age, but the stereotype attributing an indiscriminate, predatory sexuality to lesbians and gays as a class not only is both sexist and heterosexist but serves gender and heterosexual privilege. This article only uses the term “homosexual” when quoting others because it is not a term lesbians or gay men choose to describe themselves, but a label coined for a medically constructed “illness” signifying psychosexual “deviance” (see *infra* note 210). The term is particularly unacceptable to lesbians because its apparent gender neutrality erases lesbian existence and politics even while its unspoken referent is gay men and the stereotypes attributed to them and, thus, to lesbians by proxy.

<sup>4</sup>By “the politics of difference” I mean awareness that inequality is textured and often compounded by multiple disadvantages grounded in sex, race, disability, class and sexual identity, and that (in)equality theories which falsely universalize from the experience of only, say, white women or gay men or heterosexual women of colour or that treat racial minorities as an undifferentiated class are flawed by their erasure of situated differences. For representative writings on this topic, see e.g. Gloria Anzaldúa, ed., *Making Face, Making Soul (Haciendo Caras): Creative and Critical Perspectives by Women of Color* (San Francisco: Aunt Lute Foundation Books, 1990), especially the seven essays in s. 6 (“If You Would Be My Ally: In Alliance, In Solidarity”); Mari Matsuda, “When the First Quail Calls: Multiple Consciousness as Jurisprudential Method” (1989) 11 *Women’s Rts. L. Rep.* 7; bell hooks, *Ain’t I a Woman: Black Women and Feminism* (Boston: South End Press, 1981); Makeda Silvera, ed., *Piece of My Heart: A Lesbian of Colour Anthology* (Toronto: Sister Vision Press, 1991); Leigh Megan Leonard, “A Missing Voice in Feminist Legal Theory: The Heterosexual Presumption” (1990) 12 *Women’s Rts. L. Rep.* 39; Mary Eaton, *Theorizing Sexual Orientation* (LL.M. Thesis, Queen’s University, 1991), especially c. 1, 5. See also *infra* note 145.

riety, institutional leverage — white women and people of colour, whatever their sexuality, are far from dominant in academic institutions. Their method, honestly described, is the antithesis of indoctrination. On the other hand, the impact of more than token numbers of students and scholars traditionally excluded from the ivory tower is proving a fundamental challenge to its traditional norms. In particular, non-traditional perspectives, experiences, knowledge, history, pedagogy and reasoning, in aggregate, are increasingly testing claims central to existing distributions of power: the disinterestedness of established knowledge and standards of cultural and academic excellence and the universal merit of those liberal axioms which conserve the prevailing legal and social order. To the extent such claims cannot withstand critical challenge, new scholars and their scholarship are indeed subversive of partial or false truths; but this outcome vindicates the ideal of rational liberalism. To the extent new critical perspectives and the institutional changes they catalyze generate a more inclusive and pluralist intellectual, social and political culture, they are indeed subversive of exclusionary cultural practices; but this outcome vindicates the ideal of participatory democracy.

That anti-PC literature demonizes a minority-driven vision of democratic social change as “illiberal” speaks volumes about the demonizers and the liberal orthodoxies they would immunize from critical dissent. This article analyzes the political context, rhetorical framework and the form and content of the charges levelled against so-called forces of “political correctness.” I argue that anti-PC literature seeks to shore up the distribution of power served by the ideology of formal equality against the challenge posed by the politics of substantive equality. I argue, further, that in promoting the partisan agenda of partisan interests through partisan reporting while proclaiming the neutrality and universality of each, anti-PC literature exemplifies not only the ideological method of formal equality, but those of its characteristics most vulnerable to substantive egalitarian critique.

## I. The Context of the Political Correctness Controversy

### A. *The Political Roots and Agenda of the Anti-PC Movement*

Those who have manufactured<sup>5</sup> and then sounded the alarms about the tyranny of the politically correct have emerged in a particular historic context. Iso-

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<sup>5</sup>See e.g. results of a 1990 survey which asked Canadian university presidents to rank 20 concerns about campus changes in the previous five years. The top three academic problems mentioned were that students are too preoccupied with careers, lack interest in broad intellectual issues and are apathetic. Closed-mindedness ranked seventh as an academic concern. Alcohol abuse, antipathy towards women activists and theft were the three top-rated non-academic concerns. Student protests, violence and religious bigotry were ranked lowest on the list of concerns of the 66 presidents who replied to the survey (Lila Sarick, “Quest for Knowledge Low on Student Lists” *The [Toronto] Globe and Mail* (12 July 1991) A1). See also Huntly Collins, “PC and the Press” (1992) 24:1 *Change* 12 at 14: Surveyed by the American Council on Education whether their schools had experienced controversy over the “political correctness” of courses, speeches or lectures, less than 10% of 359 administrators who responded said yes. Even Derek Bok, who views the imposition of political orthodoxy in universities as one of the top three problems on American

lated and localized variations on anti-PC themes have been expressed in departmental and other university governing bodies since the rise of Women's Studies and Black Studies programs and minority recruitment in the early 1970s.<sup>6</sup> They surfaced periodically in the mid-1980s in the press and scholarly journals, whenever critical minority scholars pressed (successfully or not) for systemic institutional change rather than token inclusion at the margins of the university organization.<sup>7</sup>

The anti-PC attack which dominated the popular press in 1991 draws on these earlier insider battles, but has been largely orchestrated and propagated in the United States by non-academics<sup>8</sup> on the payroll of right-wing foundations

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campuses, argues that few students have been stifled by political correctness, that conservative views are "clearly more prominent on campus" than 20 years ago, that only "a tiny number of law schools and a few sociology and literature departments" have experienced destructive internal divides, and that the number of major campus controversies has been inflated by media over-reporting and constant repetition ("Universities: Their Temptations and Tensions" (1991) 18 *J. Coll. & U. L.* 1 at 8-9). *Contra* Steven Bahls, "Political Correctness and the American Law School" (1991) 69 *Wash. U.L.Q.* 1041 at 1044 (59.8% of law students surveyed stated some professors are intolerant of differing views).

<sup>6</sup>Canon wars and curriculum battles have a very long history. See e.g. Gerry O'Sullivan, "The PC Police in the Mirror of History" (1992) 52:2 *The Humanist* 17; John Thelin, "The Curriculum Crusades and the Conservative Backlash" (1992) 24:1 *Change* 17; Paul Lauter, *Canons and Contexts* (New York: Oxford University Press, 1991) at 22. For resistance to Women's Studies, see e.g. Robert Bezuchla, "Feminist Pedagogy as a Subversive Activity" in Margo Culley & Catherine Portuges, eds., *Gendered Subjects: The Dynamics of Feminist Teaching* (Boston: Routledge & Kegan Paul, 1985) (struggles following co-education at Amherst College in 1976); Thelma McCormack, "Feminism, Women's Studies and the New Academic Freedom" in Jane Gaskell & Arlene McLaren, eds., *Women and Education: A Canadian Perspective* (Calgary: Detselig Enterprises, 1987) 289 (emergence of and opposition to Women's Studies in Canada). For hostility to Black Studies, see Lauter's critique of Allan Bloom in *Canons and Contexts, ibid.* at 272-86; Gary Peller, "Race Consciousness" [1990] *Duke L.J.* 758 at 802-807.

<sup>7</sup>In my own institution, Queen's University in Kingston, Ontario, Professor David Toogood denounced the propagation of "orthodox feminist ideology" dictating a "'correct' version of women's history" which it is unsafe to criticize due to feminists' "monopoly" on hiring ("Recruitment of Feminists Curbs Academic Freedom" *Queen's Journal* (30 January 1987) 11). Shortly thereafter, an undated open letter from unnamed "concerned lawyers, law students & law teachers" was sent to Canadian Law Deans protesting misrepresentation and "abuse of public trust" in their advertisements inviting "men and women with outstanding academic or professional credentials" to apply for teaching positions. The letter claimed that there had been a takeover of law school hiring processes by feminists using "strong arm tactics and outright intimidation" to exclude "the best qualified candidates — often male" and that critics of feminist hegemony were too afraid to speak out (on file with author). Similar charges surfaced in the U.S. legal community against the emergence of Critical Legal Studies as early as 1984. See Paul Carrington, "Of Law and the River" (1984) 34 *J. Legal Ed.* 222 and responses to Carrington by Robert W. Gordon *et al.*, "'Of Law and the River,' and of Nihilism and Academic Freedom" (1985) 35 *J. Legal Ed.* 1. See also Jerry Frug's analysis of the attack on C.L.S.: "McCarthyism and Critical Legal Studies" (1987) 22 *Harv. C.R.-C.L. L. Rev.* 665.

<sup>8</sup>There is an academic wing to the anti-PC onslaught: the National Association of Scholars, which claims 2,100 members in the U.S. Its objects include opposing the politicization of American campuses in general and PCness and affirmative action in particular, and defending traditional academic standards and academic freedom. See D'Arcy Jenish, "A War of Words: Academics Clash Over 'Correctness'" in *Maclean's* (27 May 1991) 44; Jerry Adler, "Taking Offense" in *Newsweek* (24 December 1990) 48 at 49. For some of the less savory tactics of the NAS, see David Beers, "PC? B.S." (1991) 16:5 *Mother Jones* 34 at 35. The NAS began life in 1982 as the Campus

and think tanks,<sup>9</sup> and/or by employees<sup>10</sup> or politicians in the Reagan-Bush administration<sup>11</sup> and/or by the right-wing press.<sup>12</sup> President Bush himself has

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Coalition for Democracy which held conferences and published papers as early as 1985 on the politicization of scholarship and the takeover of universities by tenured leftists. The NAS receives significant funding from right-wing foundations and is linked by funding and personnel to the Reagan administration, the right-wing press, right-wing campus newspapers like the *Dartmouth Review*. See Scott Henson & Tom Philpott, "The Right Declares a Culture War" (1992) 52:2 *The Humanist* 10.

<sup>9</sup>See e.g. Beers, *ibid.* at 64: The National Association of Scholars is linked to the Madison Center for Education Affairs, whose founders include neo-conservative Irving Kristol, former Republican Treasury Secretary William Simon, former Republican Education Secretary William Bennett and the late Allan Bloom. The Center's Collegiate Network helps launch conservative campus papers and urges their editors to be "quite ideologically narrow." See also Ellen Messer-Davidow, "Doing the Right Thing" (1992) 9:5 *Women's Rev. Books* 19 (conservative "student" papers and the NAS manufactured "incidents" and attacked faculty at universities such as Texas, Duke, Dartmouth and Harvard, which incidents are repeated by conservative journalists such as George Will and Dorothy Rabinowitz. Funders include Bradley, Coors, JM, Olin, Scaife and Smith Richardson Foundations. There are 55 conservative think tanks in 22 states which, along with legal, political and economic foundations, belong to the Madison Group).

<sup>10</sup>Dinesh D'Souza wrote *Illiberal Education: The Politics of Race and Sex on Campus* (Toronto: Collier Macmillan Canada, 1991) with \$30,000 support from the Olin Foundation and while working for the National Endowment for Democracy and the American Enterprise Institute. Both were set up by President Reagan and neither is accountable to Congress for its congressional funding. Prior to authoring *Illiberal Education*, D'Souza was a domestic policy analyst for Reagan. As an undergraduate he edited the *Dartmouth Review*, one of the first student papers funded by the Institute for Educational Affairs (now merged with the Madison Center), during which time the *Review* stole and published private letters of gay students, published an interview with former Klan leader David Duke, along with a staged photo of a lynched Black man on the Dartmouth campus and parodied affirmative action beneficiaries. He also edited Princeton's alumnae/i review, *Prospect*. His first column, calling for the abolition of Women's Studies rather than letting it "fester and fall away in scabs," spoke of "perspiring feminists" who want to be men and "slatterns" who have abortions "to prove they are liberated." See Messer-Davidow, *ibid.*; Alice Jardine, "Illiberal Reporting" (1992) 9:5 *Women's Rev. Books* 27; Beers, *supra* note 8 at 65; Henson & Philpott, *supra* note 8 at 14-15. Roger Kimball, author of *Tenured Radicals: How Politics Has Corrupted Our Higher Education* (New York: Harper & Row, 1990), published much of his book in article form while he was managing editor of *New Criterion*. That periodical has received funding ranging from \$225,000 - \$325,000 annually since 1984 from the Olin and Scaife Foundations (1984-88) and the Bradley Foundation (1987-88 only) (Messer-Davidow, *ibid.* at 19).

<sup>11</sup>William Bennett, then Chair of the National Endowment for the Humanities (N.E.H.) and later to become Secretary of Education, first raised alarms about the state of education in the humanities in *To Reclaim a Legacy: A Report on the Humanities in Higher Education* (Washington, D.C.: N.E.H., 1984). He claimed that criticism of the classic texts of Western civilization and their displacement by second-class works threatened to erode the legacy of timeless truths which should be conserved and passed on to the next generation. In 1988 and 1990, Lynne Cheney's annual reports as Chair of the N.E.H. attacked the "politicizing" of the humanities as a result of minorities' demands that higher education be more inclusive of their histories. She, too, called for a return to the classics that transcend all "accidents of class, race, and gender ..." by speaking to us all. See e.g. Joan Wallach Scott, "The Campaign Against Political Correctness: What's Really at Stake?" (1992) 23:6 *Change* 30 at 34; D'Souza, *ibid.* at 68-69 (Bennett deplored Stanford's reform of its mandatory introductory course in Western Civilization, stating that a great university has been "brought low by the forces of ignorance, irrationality and intimidation"). See also Henry Hyde & George Fishman, "The Collegiate Speech Protection Act of 1991: A Response to the New Intolerance in the Academy" (1991) 37 *Wayne L. Rev.* 1469 (summary of genesis and explanation of contents of Congressman Hyde's bill protecting student speech against speech codes).

<sup>12</sup>Most notably, George Will, Irving Kristol and Midge Decter.

lent his voice to the anti-PC movement.<sup>13</sup> His Office for Civil Rights and Department of Education publicly (and erroneously) declared the designation of scholarship funds for minority students illegal under Title VI.<sup>14</sup> His Secretary of Education has delayed renewal of the accreditation authority of the independent Commission which accredits 500 colleges and universities in the Middle Atlantic and Caribbean regions since the Commission withheld its approval of two academic institutions for failing to implement their own diversity policies.<sup>15</sup>

The anti-PC movement — and it is a movement — is clearly an organized campaign arising out of the coalition of right-wing interests that currently dominate American political and economic institutions.<sup>16</sup> This is not to argue that its charges are *per se* suspect because of their right-wing origins. But it is to underline that the anti-PC literature is *political* in origin and aspiration, and that for all its defence of timeless, universal truths and disinterested scholarship, its program is grounded in very recent history and a highly partisan agenda promoting a particular strain of democracy. As Joan Wallace Scott views this phenomenon:

We are experiencing another phase of the ongoing Reagan-Bush revolution which, having packed the courts and privatized the economy, now seeks to neutralize the space of ideological and cultural nonconformity by discrediting it.<sup>17</sup>

Discrediting “it” is intrinsically tied to discrediting “them.” In anti-PC writing, the ideas and values which menace the timeless truths conservatives defend are attributed to traditionalist society’s traditional outsiders: people of colour, feminists and lesbians and gay men. Repelling the menace requires discrediting the policies which let “them” into institutions devoted to the conservation and dissemination of cultural traditions in the first place.

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<sup>13</sup>In his University of Michigan commencement address on May 4, 1991 President Bush stated: Ironically, on the 200th anniversary of our Bill of Rights, we find free speech under assault throughout the United States. The notion of “political correctness” has ignited controversy across the land. What began as a cause for civility has soured into a cause of conflict and even censorship (Reported by Jenish in *Macleans*, *supra* note 8 at 44).

<sup>14</sup>Michael Olivas, “Federal Law and Scholarship Policy: An Essay on the Office for Civil Rights, Title VI, and Racial Restrictions” (1991) 18 J. Coll. & U. L. 21. Olivas contests the declaration from the Office for Civil Rights and the Department of Education stating that allocating football game profits to minority scholarships violates Title VI. Indeed, the O.C.R. retreated. Olivas also notes that the federal government “fraudulently backdated O.C.R. responses to make it appear that the Department of Education had complied with court [postsecondary desegregation] orders” (*ibid.* at 23).

<sup>15</sup>Ellen Schrecker, “Caught in the Crossfire” (1992) 9:5 *Women’s Rev. Books* 22. The delay has significant consequences: Unless colleges and universities are accredited, they cannot receive federal aid and their students cannot receive federal student loans. See also Lillian Robinson & Linda Brodkey, “Not Just a Matter of Course” (1992) 9:5 *Women’s Rev. Books* 23.

<sup>16</sup>For differing accounts of the composition of the American New Right and neo-conservative movements, see *e.g.* Robyn Rowland, “Women Who Do and Women Who Don’t Join the Women’s Movement” in Renate Klein & Deborah Lynn Steinberg, eds., *Radical Voices: A Decade of Resistance* (Toronto: Pergamon Press, 1989) 42; Sheila Ruth, “A Feminist Analysis of the New Right” in Klein & Steinberg, eds., *ibid.* at 93; Zillah Eisenstein, “The Sexual Politics of the New Right: Understanding the ‘Crisis of Liberalism’ for the 1980s” in Nannerl Keohane, Michelle Rosaldo & Barbara Gelpi, eds., *Feminist Theory: A Critique of Ideology* (Chicago: Chicago University Press, 1982) 77.

<sup>17</sup>Scott, *supra* note 11 at 30. See also Schrecker, *supra* note 15.

## B. "Quotas": The American Target

Republican administrations under Presidents Reagan and Bush have systematically opposed, neutralized or cut virtually every federal civil rights or social welfare law or program which facilitates the entry of non-privileged white women and people of colour into the university system.<sup>18</sup> The Republicans have been particularly aggressive in opposing affirmative action.<sup>19</sup>

The anti-PC campaign emerged at the same time that the U.S. Congress was debating the *Civil Rights Acts* of 1990 and 1991, which were an attempt to expand protection from and damages for racial and sexual employment discrimination and to override decisions by the U.S. Supreme Court eroding the permissible scope of affirmative action programs and altering the burden of proof in disparate impact litigation.<sup>20</sup> President Bush vetoed the 1990 legislation because, although it expressly declared hiring quotas illegal, he claimed it would force employers to institute quotas to pre-empt discrimination suits. The Act ultimately approved by the President was little different from the earlier version. Although the anti-quota clause was dropped, it remains unclear whether sex or race-based hiring goals or quotas will now be found discriminatory.<sup>21</sup>

President Bush's public stand against non-existent "quotas" in the name of preserving equal (*i.e.* race and sex-neutral) opportunity, is ideologically akin to the alarms he and his administration have sounded against a non-existent "take-

<sup>18</sup>See *e.g.* Ronnie Steinberg, "The Unsubtle Revolution: Women, the State and Equal Employment" in Jane Jenson, Elisabeth Hagen & Ceallaigh Reddy, eds., *Feminization of the Labor Force: Paradoxes and Promises* (New York: Oxford University Press, 1988) 189; Harold Brackman, Steven Erie & Martin Rein, "Wedded to the Welfare State: Women Against the Reaganite Retrenchment" in Jenson, Hagen & Reddy, eds., *ibid.* at 214; Linda Gordon, ed., *Women, the State and Welfare* (Madison: University of Wisconsin Press, 1990); Susan Faludi, *Backlash: The Undeclared War Against American Women* (New York: Crown Publishers, 1991) at 259-64. See also Patricia Williams' analysis of the U.S. Supreme Court's recent rulings on affirmative action in *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991) at 104-07 (when the Court allowed consent decrees setting hiring goals for Black firefighters to be challenged by white firefighters, Reagan's Assistant Attorney General remarked that the case was "a home run for white men" (*ibid.* at 107)).

<sup>19</sup>See Derrick Bell, "Xerxes and the Affirmative Action Mystique" (1989) 57 *Geo. Wash. L. Rev.* 1595. See also Charles Martin, "The Origins of Racial and Ethnic Conflict on U.S. College and University Campuses" (1991) 37 *Wayne L. Rev.* 1363 at 1374 (attempts by the Attorney General and Civil Rights branch to rescind Executive Order 11246 requiring hiring goals at 20,000 companies employing 23 million Americans).

<sup>20</sup>See *Civil Rights Act of 1991*, Pub. L. No. 102-166, 105 Stat. 1071. These Supreme Court decisions include: *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989); *Martin v. Wilks*, 490 U.S. 755 (1989); *Lorance v. A.T.&T Technologies*, 490 U.S. 900 (1989); *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989).

<sup>21</sup>For a comparative analysis of the 1990 and 1991 Acts and their underlying politics, see Andrew Dansicker, "A Sheep in Wolf's Clothing: Affirmative Action, Disparate Impact, Quotas and the Civil Rights Act" (1991) 25 *Col. J. L. & Soc. Probs.* 1. For the jurisprudential history behind the legislation, see Bruce Comly French, "A Road Map to Achieve Enhanced Cultural Diversity in Legal Education Employment Decisions" (1991) 19 *N. Carol. Cent. L.J.* 219; Mark Grunewald, "Quotas, Politics, and Judicial Statesmanship: The Civil Rights Act of 1991 and Powell's *Bakke*" (1992) 49 *Wash. & Lee L. Rev.* 53.

over” of universities by radical propagandists in the name of preserving academic freedom and excellence. Both straw targets have been created during a deepening economic crisis in which Republican social welfare cuts, regressive tax policies, privatization initiatives and deficit management as well as global restructuring have resulted in massive unemployment and a growing gap between rich and poor.<sup>22</sup> Republicans have not only abandoned the casualties of Reaganomics but characterized them as undeserving, immoral or criminal.<sup>23</sup> Simultaneously, in anti-PC literature, they have demonized those who prioritize egalitarian change as enemies of the American way.

The redistributive impacts of anti-discrimination laws and programs in favour of white women and people of colour in the last two decades have been minimal by contrast with the disastrous effects on both groups of global restructuring and domestic fiscal policies. But, in both cases, their dislocative impacts have been shared by middle and working class whites, particularly men relocated or displaced by the feminization of the labour market as industrial jobs are lost and the service sector mushrooms.<sup>24</sup> Anti-PC literature, along with other attacks on affirmative action, offers a cheap fix for profound social and economic problems. The message appeals to white and/or male resentments and fears by blaming “preferential treatment” of undeserving women and minorities for white men’s personal losses and for America’s economic decline. The appeal is often baldly racist.<sup>25</sup>

As one of the few remaining institutional power bases generating criticism of Republican policy while suggesting the transformative potential of real, not phantom, affirmative action, universities are a necessary and easy target. They

<sup>22</sup>See e.g. Jenson, Hagen & Reddy, *supra* note 18; Martin Kilson & Clement Cottingham, “Thinking About Race Relations: How Far Are We Still From Integration?” (Fall 1991) *Dissent* 520.

<sup>23</sup>See e.g. Williams, *supra* note 18 at 22-24, 28; Kilson & Cottingham, *ibid.* at 522-23.

<sup>24</sup>See Jensen, Hagen & Reddy, eds., *supra* note 18; Isabella Bakker, “Pay Equity and Economic Restructuring: The Polarization of Policy?” in Judy Fudge and Patricia McDermott, eds., *Just Wages: A Feminist Assessment of Pay Equity* (Toronto: University of Toronto Press, 1991) 254; Economic Council of Canada, *Good Jobs, Bad Jobs: Employment in the Service Economy* (Ottawa: Supply & Services Canada, 1990). On how regimes backed by the ideology of formal equality ensure that the redistributive impacts of egalitarian reform fall primarily on the lower classes, see Alan Freeman, “Antidiscrimination Law: A Critical Review” in David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York: Pantheon Books, 1982) 96 at 110-14.

<sup>25</sup>One of the more disturbing reflections of this phenomenon is the popular support for the anti-immigrant, anti-Semitic, anti-Japanese and anti-affirmative action themes in the “America First” messages of past presidential hopefuls David Duke and Pat Buchanan. Former Grand Wizard of the Ku Klux Klan, David Duke, had the support of 56% of Louisiana Republicans and 55% of white voters in the Louisiana gubernatorial campaign (David Corn, “Beltway Bandits: Every Man a Duke” (1991) 253 *The Nation* 732). He claimed to have received 100,000 letters supporting his presidential candidacy (Mike Trickey, “Top Job Bid: Neo-Nazi Duke Challenges Bush for Republican Nomination” *The Ottawa Citizen* (5 December 1991) B7). Pat Buchanan, former Republican presidential contender, also appealed to racism in the Republican primary campaigns in the U.S. South. Leading up to the Georgia primary, he lambasted President Bush for being soft on quotas [!] and on pornographic and obscene art funded by taxpayers. His television ad for the latter charge featured nearly nude, leather clad, gay Black men in a performance funded by the National Endowment of the Arts. See Norma Greenway, “Just a Good Ol’ Candidate” *The Ottawa Citizen* (1 March 1992) A3.

can be cast as the last bastion of American radicalism out of touch with or hostile to ordinary Americans' values but in control of their children's learning and economic future; as the breeding ground of minority discontent which proves too much education can be a dangerous thing; and as a microcosm of the dangers of genuine integration. The enemy within the gates is education for social change.

### C. Equality Law: The Canadian Target

Anti-PC literature has circulated widely in Canada, primarily via American periodicals on Canadian news-stands, but also through reprints in Canadian newspapers<sup>26</sup> and a few home-grown feature stories.<sup>27</sup> Canadian political and economic institutions are not so monolithically conservative as are their American counterparts,<sup>28</sup> and, although our welfare state is being dismantled,<sup>29</sup> there

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<sup>26</sup>For instance, reprints of Richard Bernstein's *New York Times* piece "'Politically Correct' Attitudes at University" *The [Kingston] Whig-Standard* (30 October 1990) A1; Stephanie Schorow's *Boston Globe* piece "Political Correctness: Tyranny of the Left: Freedom of Speech Under Fire," reprinted in *The London Free Press* (22 June 1991) E1.

<sup>27</sup>See e.g. the cover story in *Maclean's*, *supra* note 8 at 40: "The Silencers: 'Politically Correct' Crusaders Are Stifling Expression and Behaviour"; the editorial by Michael Crawford, "Have Feminists Gone Too Far?" (1990) 14:6 *Canadian Lawyer* 5; the cover story by Carol McLeod, "The Feminist Vision" (1990) 14:6 *Canadian Lawyer* 10; Deborah Watson, "Is Legal Scholarship Failing?" (1991) 15:1 *Canadian Lawyer* 20; John Allemang, "The Rise of the New Puritanism" *The [Toronto] Globe and Mail* (2 February 1991) D1. There have been countless articles, columns and letters which use the term "political correctness" as if it were a proven, rather than an ascribed, attribute of proponents of social change.

<sup>28</sup>There are significant differences between the types and scope of conservatism in the two countries. Canada's federal Conservatives, backed by the business community, are pursuing economic policies very similar to those pursued by the Republican administration, but against the backdrop of a more highly regulatory state shaped by a three-party system in which a well-established social democratic party has played a significant role in securing social programs and rights unmatched in the U.S. In Canada, the anti-PC phenomenon is much less linked to defence of the American way or a nationalism premised on pride in being the pre-eminent symbol of Western civilization. In large measure, this may be because Canada is still in search of its distinct identity as a nation and because part of our identity turns on not being American.

In Canada's three-party system, voter dissatisfaction with traditional mainstream parties (conservative or liberal) has generated significant support for newly founded or previously moribund parties. New right-wing, regionalist parties such as the Reform Party and Confederation of Regions parties have growing support in the West, eastern Ontario and New Brunswick. They, along with the separatist/nationalist Bloc Québécois, are likely to alter profoundly the federal party system. The election in 1991 of New Democratic governments in Ontario, British Columbia and Saskatchewan is at least partly a backlash against the prior government and the federal Tories rather than a popular swing to the left. And, indeed, Premiers Bob Rae, Mike Harcourt and Roy Romanow have soft-pedalled their social democratic policies to appease the business community. Interestingly, in both British Columbia and Saskatchewan, the predicted defeat of right-wing governments by the New Democrats was accompanied by a shift of alarmed right-wing voters to the Liberals, who had little popular support prior to the election.

<sup>29</sup>Some of these conservative economic policies include: deregulation, privatization of public services and publicly-owned corporations, free trade, regressive tax reforms, cutbacks to or outright dismantling of state-funded social services, labour laws curbing unionization and facilitating deunionization and *ad hoc* legislation such as wage controls or back to work laws curbing union power, and back-peddalling on public-sector pay equity in Newfoundland and the federal government. See e.g. Judy Fudge, "Labour Law's Little Sister: The Employment Standards Act and the

remain effective oppositional voices at the grassroots level.<sup>30</sup> More, in the last decade, the Supreme Court of Canada adopted a substantive approach to equality rights, acknowledged the existence of systemic discrimination and endorsed the imposition of hiring quotas to remedy it.<sup>31</sup> And notwithstanding the unevenness of the Supreme Court's fidelity to its own equality jurisprudence,<sup>32</sup> the Canadian Constitution explicitly legalizes affirmative action.<sup>33</sup>

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Feminization of Labour" (Ottawa: Canadian Centre for Policy Alternatives, 1991); Jensen, Hagen & Reddy, eds., *supra* note 18 at c. 1, 2, 11, 12; Leo Panitch and Donald Swartz, *The Assault on Trade Union Freedoms* (Toronto: Garamond Press, 1988).

<sup>30</sup>See e.g. Penney Kome, *The Taking of Twenty-Eight: Women Challenge the Constitution* (Toronto: The Women's Press, 1983). A national grassroots women's lobby persuaded the Prime Minister and nine premiers to include a specific sex equality guarantee in the Constitution which will not be subject to legislative override. See also the influence of equality-seeking groups on the latest round of constitutional negotiations in Constitutional Conference Secretariat, *Renewal of Canada Conferences* (Ottawa: Queen's Printer, 1992). Perhaps because oppositional voices have had some successes in challenging unconstitutionally discriminatory federal legislation, the most recent federal budget axed the Court Challenges Program which provided funding to research and litigate constitutional equality challenges.

<sup>31</sup>Litigation high water marks in equality law include *Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd.*, [1985] 2 S.C.R. 536, 23 D.L.R. (4th) 321 (proof of intent unnecessary for violation of human rights legislation and employer has duty of reasonable accommodation where facially neutral rules have disparate impact on members of groups against which discrimination is legislatively prohibited); *Canadian National Railways Co. v. Canada (Cdn. H.R. Comm.)*, [1987] 1 S.C.R. 1114, (*sub nom. Action Travail des Femmes v. Canadian National Railway Co.*) 40 D.L.R. (4th) 193 (quotas imposed by a human rights tribunal an appropriate remedy for systemic discrimination); *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219, 59 D.L.R. (4th) 321 (pregnancy discrimination is sex discrimination); *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252, 59 D.L.R. (4th) 352 (sexual harassment is sex discrimination notwithstanding that all women are not harassed and some men are); *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, 56 D.L.R. (4th) 1 (rejection of formal equality approach to *Charter* equality guarantees in favour of substantive equality approach); *R. v. Keegstra*, [1990] 3 S.C.R. 697, 39 C.R.R. 5 (criminal proscription of hate propaganda justifiable limit on freedom of expression); *R. v. Lavallée*, [1990] 1 S.C.R. 852, 55 C.C.C. (3d) 97 (expansive interpretation of self defence for battered women who kill their abusers); *Butler v. R.*, [1992] 1 S.C.R. 452, 70 C.C.C. (3d) 129 (harm to human dignity and to women's equality caused by obscene materials justifies their criminal proscription and resulting limit on freedom of expression).

<sup>32</sup>On the residual pull of formalist equality reasoning, see Diana Majury, "Equality and Discrimination According to the Supreme Court of Canada" (1991) 4 C.J.W.L. 407. I am also grateful to Mary Eaton for her observations on how the "similarly situated" test for equality entitlement continues to appear in post-*Andrews* caselaw. For recent cases illustrating how tenuous the current Court's hold on the meaning of systemic discrimination is, see *R. v. Nguyen*, [1990] 2 S.C.R. 906, 6 W.W.R. 289 (statutory rape provisions); *R. v. Seaboyer*, [1991] 2 S.C.R. 577, 83 D.L.R. (4th) 193 (striking down exclusionary rules limiting admissibility of sexual history evidence in rape trials); *Canadian Council of Churches v. Canada (M.E.I.)*, [1992] 1 S.C.R. 236, 88 D.L.R. (4th) 193 (rejection of equality arguments in favour of expanding the standing of public interest groups to challenge the constitutionality of legislation). *Butler v. R.*, *ibid.*, articulates an equality interest in obscenity prohibitions, but never explicitly refers to the equality guarantees of the *Charter*.

<sup>33</sup>S. 15 of the *Canadian Charter of Rights and Freedoms* reads:

- 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- 15(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic ori-

In my view, anti-PC literature in Canada plays not only to the resentments of casualties of the current recession/depression,<sup>34</sup> but to sexism and racism inflamed by the last decade of landmark equality decisions which have resulted in the visible emergence of disadvantaged individuals and groups willing to risk the filing of human rights complaints<sup>35</sup> or to petition government for reparations for past violations of their civil liberties.<sup>36</sup> That constitutional equality litigation is rarely initiated<sup>37</sup> or won<sup>38</sup> by disadvantaged groups is not well recognized. Rather, isolated individual complaints, some culminating in legal redress, are portrayed as a mini-revolution by minority or "special interest" groups securing through litigation and elite networking what they have failed to gain through established democratic processes.<sup>39</sup> This mythology has, I believe, been helped

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*gin, colour, religion, sex, age or mental or physical disability* [emphasis added].

(Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11).

<sup>34</sup>For structural causes of this recession, see *supra* note 24; Gordon Ternowetsky and Graham Riches, "Economic Polarization and Restructuring of Labour Markets in Canada: The Way of the Future" in Riches and Ternowetsky, eds., *Unemployment and Welfare: Social Policy and the Work of Social Work* (Toronto: Garamond Press, 1990) 19. For the role of Canadian state fiscal policy, see Marjorie Cohen, "Women and Economic Structures" (Paper presented at National Association of Women and the Law Conference on the Feminization of Poverty, 23 February 1991) [copy on file with author].

<sup>35</sup>I am thinking here of Sikhs willing to protest their exclusion from employment or schools due to prohibitions on wearing turbans or kirpans (see e.g. *Bhinder v. Canadian National Railway Co.*, [1985] 2 S.C.R. 561, 23 D.L.R. (4th) 481; *Dashminder Singh Sehdev v. Bayview Glen Junior Schools Ltd.* (1988), 9 C.H.R.R. D/4881 (Ont. H.R. Bd. Inq.) and the successful lobby to gain the right to wear a turban as a Mountie; lesbians and gay men litigating for family benefits (see e.g. *Canada (A.G.) v. Mossop* (1989), 71 D.L.R. (4th) 661, 12 C.H.R.R. D/355 (F.C.A.)); and women litigating for protection from pregnancy discrimination and sexual harassment (see e.g. *Brooks v. Canada Safeway*, *supra* note 31; *Janzen v. Platy Enterprises*, *supra* note 31; *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84, 40 D.L.R. (4th) 577).

<sup>36</sup>Japanese Canadians subject to expropriation, forced relocation and internment during the Second World War finally received an apology and reparations from the federal government in 1988. For an account of this history, see K. Victor Ujimoto, "Racism, Discrimination and Internment: Japanese in Canada" in B. Singh Bolaria & Peter S. Li, eds., *Racial Oppression in Canada*, 2d ed. (Toronto: Garamond Press, 1988) 127; Ken Adachi, *The Enemy That Never Was* (Toronto: McClelland & Stewart, 1991). Members of the Chinese-Canadian community are still campaigning for reparations for the head taxes imposed on Chinese immigrants from 1885 (S.C. 1885, c. 71) to 1923 (S.C. 1903, c. 8).

<sup>37</sup>See Gwen Brodsky & Shelagh Day, *Canadian Charter Equality Rights For Women: One Step Forward or Two Steps Back?* (Ottawa: Canadian Advisory Council on the Status of Women, 1989). In the first three years of equality litigation under the *Charter*, only 17 of 591 cases were initiated by or on behalf of disadvantaged groups. Of the 44 sex equality claims, 35 were brought by men on behalf of men's or fetal rights (*ibid.* at 49, 118-19, 128).

<sup>38</sup>As Elizabeth Sheehy has noted, not one of the Supreme Court of Canada *Charter* decisions which has advanced women's equality has been decided under the equality guarantee ("Feminist Argumentation Before the Supreme Court of Canada in *R. v. Seaboyer*; *R. v. Gayme*: The Sound of One Hand Clapping" (1991) 18 *Melb. U. L. Rev.* 450 at 451). On the other hand, there have been some devastating rejections of s. 15 arguments, notably, *R. v. Seaboyer* and *Canadian Council of Churches v. Canada (M.E.I.)*, *supra* note 32.

<sup>39</sup>Political scientists F.L. Morton and Rainer Knopff have recently decried the emergence of a "Court Party," a loose alliance of bureaucrats, lawyers, academics, media personalities and equality-seeking groups who are pursuing political "revolution" through constitutional litigation. ("The Supreme Court as the Vanguard of the Intelligentsia: The Charter Movement as Postmaterialist Politics" (Paper prepared for conference on "Two Hundred Years of Canadian Constitution-

along by the fact that with the notable exception of the Rushton affair,<sup>40</sup> the campus controversies which have generated the most media attention in Canada have concerned feminism and anti-feminism in Canadian law schools.<sup>41</sup>

My expectation is that while anti-PC ideology is being used to justify opposition to internal change within both American and Canadian universities, in Canada it will not adversely affect state support for employment equity in public education. Its institutional threat, rather, is to equality litigation and law reform. By this I mean that Canadian courts will face mounting pressure to retreat from the substantive equality jurisprudence which they pioneered in the 1980s and to adopt the conservative version of civil liberties being promoted in American and Canadian anti-PC literature.<sup>42</sup> Similar pressure may also chill legislators from introducing statutory or constitutional changes recognizing cultural diversity and group rights.<sup>43</sup>

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alism," revised January 1992 [copy on file with author]). Their alarms about the anti-democratic means and ends of this "intelligentsia" were picked up in the national press. See Al Strachen, "The Charter Revolution: The Hidden Opposition" *The [Toronto] Globe and Mail* (11 January 1992) D3.

<sup>40</sup>Professor Phillippe Rushton, who teaches at the University of Western Ontario, remains at the centre of campus protest over a paper he presented in 1989 which hierarchically ranks "Orientals," "Caucasoids" and "Africans" according to brain size, intellectual aptitude, sexual restraint/ permissiveness and social organization. See Michael Ziegler, Fredric Weizmann, Neil Wiener & Q. David Wiesenhal, "Phillippe Rushton and the Growing Acceptance of 'Race-Science'" in Ormond McKague, ed., *Racism in Canada* (Saskatoon: Fifth House Publishers, 1991) 77.

<sup>41</sup>See e.g. Sheila McIntyre, "Gender Bias Within the Law School: 'The Memo' and its Impact" (1987-88) 2 C.J.W.L. 362 (Queen's University Faculty of Law); Ann Robinson, "Thémis retrouve l'usage de la vue" (1989) 3 C.J.W.L. 211 (Quebec civil law schools); Bruce Feldthusen, "The Gender Wars: 'Where the Boys Are'" (1990) 4 C.J.W.L. 66 (University of Western Ontario Faculty of Law) and references therein to the systemic human rights complaint against Osgoode Hall Law School at 68.

<sup>42</sup>Indeed, in oral argument at the Supreme Court of Canada in *Canadian Council of Churches v. Canada (M.E.I.)*, *supra* note 32, the Crown argued that the reason the appellant and interveners sought expanded public interest standing for groups composed of and/or representing disadvantaged individuals was that they did not trust individuals to present "politically correct" equality arguments (personal observation, 11 October 1991). Some Alberta judges have objected to gender sensitivity education on the ground it is imposing "political correctness" on them: David Vienneau, "Some Judges Balking at Anti-Sexism Training" *The Toronto Star* (10 December 1991) B1. More recently, Mr. Justice John Sopinka of the Supreme Court of Canada delivered a public address citing the demand for "political correctness" from equality-seeking groups as one of four major threats to freedom of expression in Canada and as a potential influence on judicial decision-making: Michael Fitz-James, "Judges Shouldn't Be Cowed by 'Political Correctness': Sopinka" *The Lawyers Weekly* (1 May 1992) 2. For an American judge's attack on the forces of political correctness, see Thomas Gibbs Gee, "'Enemies or Allies?': In Defence of Judges" (1988) 66 *Texas L. Rev.* 1617 (crusading leftist bigotry an open scandal; faculty who teach leftist dogma not necessarily protected by academic freedom).

<sup>43</sup>The defeat by popular referendum of a comprehensive package of amendments to the Canadian Constitution in October 1992 has been explained by many citizens who voted "no" and by some commentators as a rejection of the proposed Accord's recognition of collective rights and/or special legal treatment of "special interests." The most prominent public denunciation of the Accord's departures from formal equality principles was former Prime Minister Pierre Trudeau ("Trudeau Speaks Out" *Maclean's* (28 September 1992) 22 at 24-25). For articles explaining the "no" vote as a rejection of group rights, see Barbara Amiel, "Yes to Canada, No to Group Politics" *Maclean's* (9 November 1992) 19; Mary Janigan, "No to Politics as Usual: Special-interest Groups Suffer a Setback" *Maclean's* (9 November 1992) 85.

## II. The Rhetorical Politics

### A. *Masking the Conservative Campaign*

I think it is important to identify anti-PC literature as a well-orchestrated essentially conservative campaign for two reasons. First, its conservative animus and agenda have been successfully obscured by its "bait-and-switch" rhetorical formula. By this I mean that the slogans which characterize this literature — "political correctness" and "censorship" — and their calculated appeal to freedom of expression are not traditionally conservative, but rather civil libertarian icons. American conservatives have unashamedly associated their politics with morality,<sup>44</sup> advocated censorship,<sup>45</sup> and engaged in red-baiting<sup>46</sup> to denounce civil libertarians.<sup>47</sup> They have also sought to shape curriculum content and educational policy according to right-wing ideology and interests.<sup>48</sup>

Second, notwithstanding the liberal rhetoric, the decidedly conservative positions advanced in the anti-PC literature are offered as apolitical ideals, typically as defences of academic and cultural excellence, of rational inquiry and debate, of classical humanism. True, the defence is built on less-than-neutral representations<sup>49</sup> of the scholars and scholarship said to be undermining aca-

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<sup>44</sup>In the American context, I am thinking here of the Reagan alliance with the Moral Majority, what George Bush made of the school prayer issue in the last presidential campaign, the portrait of the Soviet Union and later Iraq as "evil empires," recent attempts to ban National Endowment of the Arts grants to artists (like Robert Mapplethorpe) who portray homoeroticism or whose work is offensive to any religious group. In Canada, consider the "pro-family" and anti-gay and anti-lesbian planks of the Confederation of Regions party, R.E.A.L. Women (an ultra-conservative national women's group) and the "family compact" caucus of the federal Conservative party. See e.g. Karen Dubinsky, "The Real Women Behind R.E.A.L. Women" *Between The Lines* (20 November 1991) 8; Geoffrey York, "Tory Politicians Form Family Compact" *The [Toronto] Globe and Mail* (4 June 1992) A1.

<sup>45</sup>See, on this point, Judith Frank, "The Attack on Political Correctness" (1991) 43:4 *Amherst* 14 at 19.

<sup>46</sup>See *infra* notes 136, 139-40 and 232-41 and accompanying text.

<sup>47</sup>The most dramatic example was the mileage George Bush's 1988 presidential campaign made from branding Michael Dukakis a liberal and a card-carrying member of the American Civil Liberties Union, which group had opposed school prayer and defended flag burners.

<sup>48</sup>The *Family Protection Act* proposed in 1979 as Senate Bill 1808, 96th Congress, 1st session, title 1 would have prohibited federal funding of "educational materials or studies...which would tend to denigrate, diminish, or deny role differences between the sexes as it [*sic*] has been traditionally understood in the United States." See Margaret Andersen, "Changing the Curriculum in Higher Education" in Elizabeth Minnich, Jean O'Barr & Rachel Rosenfeld, eds., *Reconstructing the Academy: Women's Education and Women's Studies* (Chicago: University of Chicago Press, 1988) 36 at 46. Elizabeth Schneider has documented a pattern of interference by state governments seeking to prevent law school legal clinics from representing clients suing the government ("Political Interference in Law School Clinical Programs: Reflections on Outside Interference and Academic Freedom" (1984) 11 J. Coll. & U. L. 179). See also Faludi, *supra* note 18 at 259-64, 290-300.

<sup>49</sup>The most outrageous example can be found in Kimball, *supra* note 10. Kimball's thesis is that political radicals pursuing faddish and/or ideological goals are destroying the apolitical mission and neutral standards of the university and dismantling the traditional curriculum of time-honoured works whose study helps maintain civilized life (xi-xviii). I would describe the book as a sustained sneer, characterized by smug, spiteful, sensationalist and dishonest reportage. Illustrations include: the description of new critical scholars as champions of "liberal political pieties" combined with

demic and cultural standards. But the portrait of polarized struggles within the universities between defenders of disinterested knowledge or time-honoured traditions of excellence and politically motivated, second-rate scholars teaching second-rate texts to subvert "Western civilization," is rarely acknowledged as a conflict between two fundamentally political visions responsive to the social and political changes shaping the world outside as well as inside the ivory tower.<sup>50</sup> Western civilization in this literature is a monolith; Western democracy anything but a pluralist terrain of competing and often contradictory impulses and principles; Western culture a synonym for that which changes nothing in existing distributions of power.

This conservative stirring of civil libertarian impulses dressed up as the timeless, universal truths that distinguish the Western world may be hypocritical, even cynical. But it is nonetheless strategically astute. It offers bigots respectability<sup>51</sup> and it offers liberals who believe reformism has gone too far a liberal discourse for opposing further institutional change without appearing conservative in doing so.<sup>52</sup>

### *B. The Underlying Controversy: Conflicting Visions of Equality*

The invocation of censorship and academic excellence are just two of the calculated rhetorical techniques which advance a conservative agenda and conservative values through symbolic politics and, thereby, mask and divert attention from the specific political controversy at the heart of this one-sided debate. This armageddon over pedagogy and course offerings at elite academic institutions is proxy for the fundamental conflict between two opposing visions of the

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"half-digested tenets of the latest intellectual fads" (at 7); dismissal of a Black scholar's analysis of the racism underlying the U.S. constitution as an opportunity for white middle class scholars to indulge in "ecstasies of intellectualized liberal shame" (at 20); of scholarship with which he disagrees as "murky verbal paste" (at 48), "prattle" (at 63), "a tapestry of clichés" (at 120), "opaque verbal shenanigans" (at 123), "sophistic blather" (at 139) and so on. *Ad personam* attacks also abound, such as Kimball's observation that Louis Althusser "succeeded rather well" in his desire to overcome bourgeois conservatism "even if he finally fell prey to 'contemporary humanist ideology' when he confessed to murdering his wife in a fit of insanity" (at 65). His critique of cultural relativism and deconstruction is that it puts Shakespeare on the same footing as Bugs Bunny (at xii) and would preclude censure of the brutality of the Central Park rapists because all values are relative (at 155-56).

<sup>50</sup>"Strategies of Reduction," M.E. Bradford's foreword to the Symposium on "The State of the Humanities" in (1992) 34 *Modern Age* 98, is paradigmatic. For the author the defence of the "rightful" place of the "old disciplines" of the classical humanities in "the house of intellect" is defined as a "moral" (*i.e.* not political) exercise, a restoration of "an inheritance to be valued not merely because it is ancient but rather because it is clearly indispensable to civilized men and women" (at 101).

Even where defence of the old disciplinary norms is explicitly described as "conservative," *i.e.* as belief in the "free market and free men, in constitutional government and rule of law, in individual freedom and traditional values," such beliefs are depoliticized, standing as "neutral" principles counterposed to leftist orthodoxy or as the core ideas underlying the durability and moral supremacy of Western civilization. (See Eugene B. Meyer, "Why Legal Academia Is Worse, Yet Better Than You Thought" (1992) 34 *Modern Age* 112). For a thoughtful analysis of this stance, see Lauter, *supra* note 6.

<sup>51</sup>See Dansicker, *supra* note 21 at 46. See also *supra* note 25.

<sup>52</sup>See *infra* notes 71-83 and accompanying text.

meaning and importance of equality in liberal democracy.<sup>53</sup> Stripped of rhetoric, the contest is between formal and substantive equality. As defined by an anti-PC academic, however, the battle is between “a healthy, invigorating, democratic equality of opportunity” and “a malignant, stifling, oppressive equality of results.”<sup>54</sup> In anti-PC literature, the defenders of the former are a host of “eminent,” “prominent” and “noted” white, male scholars in prestigious institutions who invoke Plato, Shakespeare, Locke, Arnold and the Founding Fathers of constitutionalism.<sup>55</sup> The advocates of the latter are white feminist scholars, often lesbian, and scholars of colour, often radical, who are more frequently identified by their racial, sexual or political associations than by their professional status,<sup>56</sup> as well as student activists depicted as fervent but immature and ill-educated.<sup>57</sup>

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<sup>53</sup>“Books cannot mold a common national purpose when, in fact, people are honestly divided about what kind of country they want — and are divided, moreover, for very good and practical reasons, as they always have been. ... [T]hat reading is being made to bear such an inappropriate and simplistic burden speaks to the poverty both of culture and of frank political discussion in our time” (Katha Pollitt, “Why We Read,” excerpted in (December 1991) 283: 1699 *Harper's* 34 at 38).

<sup>54</sup>“Discriminating in Equality’s Name” *London Free Press* (25 May 1991) E2. Morton and Knopff, *supra* note 39, sound alarms against “radical democrats” in the “postmaterialist left” who reject equality of opportunity in the name of equality of results and use courts, not electoral politics, to reconstruct social institutions (*ibid.* at 15-16, 28-32). Though not explicitly about “political correctness,” the article by Morton and Knopff promotes the takeover thesis typical of anti-PC writing: they claim that a radical “Court Party” wields such power in the federal bureaucracy, the media, the universities and scholarly funding organizations that it sets the agenda for *Charter* litigation and interpretation.”

<sup>55</sup>The big name voices, typically, are backed up by concurrences from women or men of colour. Lauter, *supra* note 6 at 133-50, makes a persuasive case that those who would preserve the old Western civilization canon for its timeless truths, do not differ in one significant respect from many of the white male deconstructionists they rail against. When activists of the 1960s assailed the existing curriculum as irrelevant to its time and as complicit in reproducing racism, sexism and imperialism, many academics sought to develop new models of inquiry to link academic work with social change. As radical movements disintegrated or were co-opted, imported European deconstructionist theories that challenged traditional cultural norms came to substitute for social activism. Opaque and obscure rhetorical analysis became a new formalism with the result that “theory as a mode of literary discourse ... has primarily succeeded in reestablishing academic privilege ... for those who practice theory within the literary profession” (*ibid.* at 141). This same critique is made by Barbara Epstein: “‘Political Correctness’ and Collective Powerlessness” (1991) 21 *Socialist Review* 13 (few critics of objectivity are either radical or committed to joining politics with scholarship; the moralistic strain of campus reformism is a substitute for radical politics).

<sup>56</sup>From D’Souza, *supra* note 10 at 7, 18, 28, 72, 151, 191, 214, 217, one finds, for instance: “African American” genetic race theorist Leonard Jeffries; “former worker for Caesar Chavez’s United Farm Workers,” Annette Kolodny; “former law clerk for Earl Warren,” Chancellor Ira Heyman; “consummate victim,” Rigoberta Menchu; “former antiwar activist,” Alexander Aleinikoff; philosopher Martin Heidegger, who “harbored strong Nazi sympathies”; Paul de Man, author of “pro-Nazi and anti-Semitic articles ... during the early 1940s”; “former vice presidential candidate of the U.S. Communist party,” Angela Davis; “small, demure” Dean Hilda Hernandez-Gravelle who is a “native of Puerto Rico” whose speech conveys “ideological fervor.” See also Dinesh D’Souza, “Illiberal Education” *The Atlantic* (March 1991) 51 at 64, in which English professor Eve Sedgwick is introduced as the author of “Jane Austen and the Masturbating Girl” and “How to Bring Your Kids Up Gay” and never discussed further.

<sup>57</sup>D’Souza’s reported conversations with students frequently involve exchanges in which he quizzes them on texts they have not read or splices their dialogue with quotes from sources which refute their positions or traps them in what he sees as contradictions or describes their demeanour in denigrating ways — in short he makes them look stupid. See *e.g.* *supra* note 10 at 34-35, 75-77,

There is, in short, not a little playing upon bigotry and hierarchy to characterize the “malignant” camp in the equality battles that have generated the anti-PC literature.

The inflammatory symbolic rhetoric employed in anti-PC writing is a particularly extreme form of the privileging of abstract principles over material facts which distinguishes formalists from the substantive egalitarians and which ensures that the former need not and, perhaps, cannot engage with the latter at the level of substance. Because formalists idealize abstraction as methodology, they abstract material inequality from their analysis when defining the ends of justice. Substantivists start with material inequality in order to end the injustice it causes.<sup>58</sup> Where formalists argue theoretically among themselves about the ideal balance to be struck between the conflicting principles of liberty and equality, those pursuing equality of results focus upon the power conflicts between actual social groups, and examine concretely whose liberty serves to secure whose inequality and how.<sup>59</sup> The difference in method is a difference about substance — the substance of power.

Disengagement in what ought to be a serious debate is compounded by power differentials whose erasure by formal egalitarians and whose emphasis by substantive egalitarians are paradigmatic of what animates and rationalizes their distinctive approaches.

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99-105, 209-10, 221-24. To be fair, his reported exchanges with faculty and administrators rely heavily on editorial asides to suggest the weakness of their positions too: (the interviewee winced, shifted uneasily, betrayed suppressed anxiety, stumbled, etc.). However, there is something of the bully in using his well-financed platform, researchers and editorial power to construct named students as ignorant, particularly insofar as at least two of these profiles have been exposed as less than honest. See Maurice Isserman, “Travels with Dinesh” (1991) 6:5 *Tikkun* 81 at 83-84; Jardine, *supra* note 10 at 28-29.

<sup>58</sup>See e.g. Richard Epstein, “A Common Law for Labor Relations: A Critique of the New Deal Labor Legislation” (1983) 92 *Yale L.J.* 1357 at 1364:

common law rules in their ideal form make legal entitlements among strangers without reference to personal status. Legal rules do not refer to flesh-and-blood individuals, but to those lifeless abstractions, *A* and *B*, about whom nothing else is known or — more to the point — is relevant. ... Stating propositions in general form is, moreover, a powerful antidote to abuse and favoritism ...

By contrast, see Williams:

The rules may be colorblind, but people are not. The question remains, therefore, whether the law can truly exist apart from the color-conscious society in which it exists, as a skeleton devoid of flesh; or whether law is the embodiment of society, the reflection of a particular citizenry’s arranged complexity of relations. ... The real issue is precisely the canonized status of any one group’s control. Black individuality is subsumed in a social circumstance — an idea, a stereotype — that pins us to the underside of this society and keeps us there, out of sight/out of mind, out of the knowledge of mind which is law. Blacks and women are the objects of a constitutional omission that has been incorporated into a theory of neutrality. It is thus that omission becomes a form of expression, as oxymoronic as that sounds: racial omission is a literal part of original intent; it is the fixed, reiterated prophecy of the Founding Fathers (*supra* note 18 at 120-21).

<sup>59</sup>This way of formulating what distinguishes the two approaches is Catharine MacKinnon’s. See *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987) at 166.

The anti-PC literature's refusal to engage actual distinctions between formal and substantive equality is facilitated by the actual inequalities between the two camps. In articulating their position, formalists have on their side tradition based on and backed by power, including especially the power of law,<sup>60</sup> and the law's neutrality toward the power to purchase speech.<sup>61</sup> They can affirm the *status quo* in symbolic shorthand, invoking "freedom" or "equal opportunity" or "liberal democracy," without needing to define such terms or defend their partial availability and results.<sup>62</sup> By contrast, consider the definitional burden always facing those who would invoke "feminism" or "systemic racism," and the persuasive burden on those who propose altering the uneven distribution of actual freedom in order to advance the equality of all.<sup>63</sup>

Actual or professed belief in the icons of formalism tends to correlate highly with privilege because privilege correlates highly with actual enjoyment of freedom, opportunity and political participation.<sup>64</sup> The habits and entitlements of privilege also correlate highly with the presumption that one has standing to speak about or on behalf of subjects/objects one knows little about,<sup>65</sup> and

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<sup>60</sup>See e.g. Williams, *supra* note 18 at 23-36, 71-74, 158-64 (rights and freedoms as bargained purchases unavailable to ownable/disowned non-persons) and citing Christopher Stone's article "Should Trees Have Standing?":

We are inclined to suppose the rightlessness of rightless 'things' to be a decree of Nature, not a legal convention acting in support of some status quo. ... [U]ntil the rightless thing receives its rights, we cannot see it as anything but a thing for the use of "us" — those who are holding rights at the time (*ibid.* at 160).

See also Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989).

<sup>61</sup>See J.M. Balkin, "Some Realism About Pluralism: Legal Realist Approaches to the First Amendment" [1990] Duke L.J. 375, who argues that

free speech in a situation of radically unequal economic power is not free speech at all because it is skewed by the preexisting distribution of property. ... The long term effect ... is an unequal exposure of particular ideas, and the stifling and co-opting of more radical and imaginative ideas about politics and society (*ibid.* at 379).

See also Charles Lawrence, "If He Hollers Let Him Go: Regulating Racist Speech on Campus" [1990] Duke L.J. 431 at 466-72.

<sup>62</sup>The scope and complexity of the critique of dominant ideologies is an inherent difficulty for progressive academics. Critique requires a thorough understanding of a particular ideology as well as its limitations; affirmation of the status quo requires neither. Intellectually [progressives] do the "second shift" — forced constantly to defend our basic assumptions as well as do the work we're led to because of them. ... [O]ur arguments tend to be complicated and historically situated. ... [While] [t]he Right has sound bites ... (Lisa Kahaleole Chang Hall, "Trapped in the Ivory Tower?" (1992) 9:5 Women's Rev. Books 25).

<sup>63</sup>On how and why this burden of persuasion reflects and promotes white supremacy (and by analogy, all systems of subordination), see Lawrence, *supra* note 61 at 472-76.

<sup>64</sup>The privileged, of course, also have a real stake in maintaining the unequal distribution of freedom, opportunity and participatory influence, while cultivating hope in their universal accessibility.

<sup>65</sup>As Scott stated:

Serious intellectuals have only to read the self-assured, hopelessly ill-informed, and simply wrong descriptions of deconstruction, psychoanalysis, feminism or any other serious theory by the likes of D'Souza, Richard Bernstein, David Lehman, Roger Kimball ... to understand the scam. They will recognize people for whom teaching has no real value, for whom literature is a pawn in a political argument but not a passion-

will deserve or be granted credibility and/or immunity from correction when doing so.<sup>66</sup> From the vantage point of privilege and in the interest of its rationalization, formalists can and do limit the terms of social debate. By definition<sup>67</sup> and by necessity, those terms ignore or understate the magnitude of the systemic social inequalities which both ground and mandate pursuit of equality of results.<sup>68</sup> In the context of this imbalance in real and ideological power, freedom to dissent from formalist first principles, and opportunity to reply to anti-PC attacks are little more than formalist abstractions.<sup>69</sup> If the conflict between formal and substantive egalitarians in the anti-PC literature has seemed so one-sided that there have been few replies let alone a debate, this is not happenstance.<sup>70</sup>

### C. *The Liberal Middle Ground*

There has always been a shifting and uncertain middle ground between the two opposing approaches to equality, the ground occupied by the liberal and moderately progressive centre. To date, it has stood on the sidelines in the anti-PC wars, and not without reason. As Howard Lesnick has observed, most moderates have followed an *ad hoc* and ambivalent approach to institutional change. They believe the liberal system to be better than known alternatives such as feudalism or totalitarianism, but they also perceive abuses of power

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ate commitment to the play of language and the pleasure of reading (*supra* note 11 at 32).

See *infra* notes 139-54 and accompanying text on the objectification of critical scholars.

<sup>66</sup>See Bruce Feldthusen's critical analysis of men's "right not to know" and how it plays out in his academic community, *supra* note 41. Immunity from challenge is a product of power in several senses: the targets of powerholders are often their subordinates, which makes rebuttal risky; powerholders' names, status, wealth and contacts can purchase media coverage for their views and suppression of their critics (including by veiled libel threats). Credibility is not just an incident of race, sex, class and occupational privilege; it is relational. When your targets lack credibility by virtue of their race, sex, class or occupation, your word is likely to be believed. Rape laws and rape trials are the paradigm example.

<sup>67</sup>See text, *supra* at note 58.

<sup>68</sup>D'Souza, *supra* note 10 at 128, 140, claims, for instance, that "despite the supposed decay of progressive values in Reagan's America, the retrenchment or backlash feared by many civil rights activists has not materialized," and that racism "is not dead by any means, but it is truly powerful only in small pockets of society, and it is discredited morally and politically in all sectors of public life." See also, Allan Bloom, *The Closing of the American Mind* (New York: Simon & Schuster, 1987) at 91-93.

<sup>69</sup>Indeed, most of the replies to the PC literature I have read were published in campus presses, alumni/ae journals, letters to newspaper editors and non-mainstream periodicals like *Change*, *Mother Jones*, *The Women's Review of Books*, *Socialist Review*, *The Humanist* and *Tikkun*. Collins, *supra* note 5 at 16, argues that the one-sidedness of the mainstream media's coverage of the PC phenomenon may have to do with the small number of reporters who cover higher education (only 13 of 369 members of the U.S. Education Writers Association identify themselves as higher education writers) and with confrontations within media organizations about their own continuing under-representation of white women and people of colour.

<sup>70</sup>I am not postulating a grand conspiracy. Rather, I am describing a well-orchestrated backlash against change by those who stand to lose the most from equality. Michelle Boivin remarked on reading a draft of this article that this is not a debate, but "a flexing of muscles," a "power play by real powerholders."

within liberalism and consider them destabilizing.<sup>71</sup> Once prompted, and issue by issue, they have generally recognized the justice as well as the legitimating impact of greater inclusiveness in admissions, hiring and curriculum content and, therefore, have supported temporary departures from formalist norms and/or the promotion of diversity as a continuing educational objective.<sup>72</sup> It was not only that so white and so male a community and core curriculum looked bad, it was that arguments for women or racial minority role models on faculty, for a greater diversity of perspectives in the classroom and for censure of overtly discriminatory conduct, were consonant with affirmations of liberal tolerance and pluralism. The problem has always been how to appear progressively "liberal" without changing any of the foundational core of liberal institutions. The answer has tended to involve supporting inclusive reforms such as additional courses, faculty, services, support groups, etc., without fundamentally altering or replacing institutional structures, curricular content, concepts of academic freedom, standards of merit or the disciplinary boundaries and hierarchies which reflect and shore up white male privilege.

To date, not much has been required of liberal progressives who supported or, at least, went along with minority activists over the objections of the small local core of outraged or doom-mongering conservatives: a few white women hired, scholars of colour at least interviewed, the insertion of a couple of readings on racism or feminism in conventional core materials, the approval of one or two elective courses taught by non-mainstream or visiting scholars, more effort to use gender-neutral language in the classroom, approval of or service on *ad hoc* committees studying on-site bias and so on.<sup>73</sup> And, in my experience, a lot was expected by many moderates in return for their support: the right to be accredited as non-sexist and non-racist — *i.e.* as a different breed from most

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<sup>71</sup>Howard Lesnick, "The Wellspring of Legal Responses to Inequality: A Perspective on Perspectives" [1991] Duke L.J. 413 at 429-30. See also Martin Redish & Gary Lippman, "Freedom of Expression and the Civic Republican Revival in Constitutional Theory: The Ominous Implications" (1991) 79 Cal. L. Rev. 267 (although liberal democracy tolerates significant poverty and discrimination, imposing a "new czar to right all moral wrongs" would be worse).

<sup>72</sup>Peller, *supra* note 6 at 775-79. Whether race (or sex) conscious affirmative action is approved as a temporary exceptional measure to remedy past discrimination or as a means of institutionalizing diversity as an autonomous value which will co-exist with merit, the prevailing liberal integrationist approach assumes existing merit criteria are neutral, objective standards undistorted by racial (or sexual) domination.

<sup>73</sup>For a description of the limits on reform, see *e.g.* Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1987). At 140-61 Bell discusses "The Unspoken Limit on Affirmative Action" on minority hiring in academic institutions. See also Mary Childers, "Women's Studies: Sinking and Swimming in the Mainstream" (1984) 7 Women's Studies Int. Forum 161. For empirical measures, consider *e.g.* Yolanda Moses, "...but some of us are (still) brave" (1990) 7:5 Women's Rev. Books 31, on the representation of Black women as students, faculty and administrators in American colleges and universities; Canadian Association of University Teachers, *Status of Women Supplement* (1991) on enrolment and faculty gender distributions in 1989-90 by discipline and province; Arthur Levine & Jeanette Cureton, "The Quiet Revolution: Eleven Facts About Multiculturalism and the Curriculum" (1992) 24:1 *Change* 25 (availability of multicultural or gender studies content, courses and programs in U.S. universities and colleges: where curricular change is occurring, overwhelmingly it is by adding new material to existing courses); Richard Chused, "The Hiring and Retention of Minorities and Women on American Law School Faculties" (1988) 137 U. Pa. L. Rev. 537.

men and most whites, particularly those who publicly opposed reforms; freedom to go about business as usual without being called on to take sides, especially against chronically abusive colleagues; and the right to be privately tutored but not publicly confronted for their own inegalitarian comments or practices.

The script is not playing as expected for such conditional egalitarians because they are now being challenged from two sides to take a stand on the politics of change. The students and faculty behind institutional change call oppressive practices wherever they see them, particularly in business as usual by self-appointed progressives who are more fond of appearing than being egalitarian.<sup>74</sup> If one genuinely supports equality, one does not react with outraged denial, resentment or a bruised ego when advised one's conduct has been experienced as oppressive by members of a class one recognizes as oppressed; one changes. Feel-goodism is not a politics, let alone a politics of change, and proponents of substantive equality have been prepared to say so even at the cost of antagonizing erstwhile allies.

Business-as-usual moderates are also under considerable pressure to support formalists in the anti-PC campaign, but at a cost. The anti-PC literature characterizes faculty moderates as unprincipled for failing to express publicly their real reservations about campus reforms and for failing to defend liberal education and liberal values like freedom of expression.<sup>75</sup> Administrators are portrayed as chronic appeasers who caved in before protesters' unreasonable demands.<sup>76</sup> According to conservatives, the reason liberals have so often capitulated is their wish to appear fashionable<sup>77</sup> and their fear of being "denounced" as sexist, racist or heterosexist.<sup>78</sup>

The faculty and administrators so unflatteringly portrayed face a dilemma in choosing sides. They can concede they were unprincipled because they wanted to look good and/or were cowardly in the face of actual or threatened

<sup>74</sup>As MacKinnon speculates, "[m]aybe one reason liberalism accomplishes so little is that it is designed to serve those who want to think or say or imagine they are doing good more than they want to do it" (*supra* note 59 at 218). By way of illustration, see Parts VI and VII, below.

<sup>75</sup>See e.g. the way D'Souza portrays faculty who support affirmative action in admissions and who back campus speech codes (*supra* note 10 at c. 2, 5).

<sup>76</sup>The concessionary politics of administrators is a running theme in D'Souza: "[U]niversity officials feel physically and morally intimidated by minority activists; as a result, the activists set the agenda and timorous administrators usually go along" (*ibid.* at 256-57). See also, George A. Panichas, "Afterword" (1992) 34 *Modern Age* 165, who urges awareness of "continuing Munichs," and the "cumulative process of compromise and betrayal" by modern educational administrators: "We need, surely, to be concerned with connection and continuity at a time when educationists surrender, indiscriminately and expediently, to disconnection and discontinuity — and, in the end, to decivilization" (*ibid.* at 167); Bok, *supra* note 5 at 7-8.

<sup>77</sup>See e.g. Kimball, *supra* note 10 at xiii, 7, 10-11, 29, 80, 120, 149, 157; Adler in *Newsweek*, *supra* note 8 at 50; Professor Vince Sarich's work linking brain size with racial intelligence is described as "wildly unfashionable."

<sup>78</sup>See e.g. Charles Sykes, *The Hollow Men: Politics, Corruption and Higher Education* (Washington, D.C.: Regnery Gateway, 1990) at 56; Kimball, *supra* note 10 at 20, 69-70; D'Souza, *supra* note 10 at 6, 100, 107, 124-56, 241; Jenish in *Maclean's*, *supra* note 8 at 44-45; Adler in *Newsweek*, *supra* note 8 at 52.

name-calling, and then recant on reforms they previously supported, join forces with conservatives they previously labelled reactionary and try to distance themselves from the overt misogyny, racism, homophobia and red-baiting endemic in the anti-PC literature.<sup>79</sup> The embarrassment of this option can be reduced by adopting the anti-PC line that the PC lobby used coercion, intimidation and storm-troop tactics to secure its initial support,<sup>80</sup> and that being called a racist is worse than being one. Alternately, moderates who supported institutional reform can defend their integrity by defending the people and programs under mounting attack, notwithstanding that to do so will be construed as illiberal and carries the risk that they will join the ranks of the vilified. This option carries significant costs because it requires personally owning up to one's situated power and complicity in an inegalitarian system and the privileges and immunities one must cede if one genuinely believes in redistributive justice.<sup>81</sup> At a minimum, this means refusing to allow a small minority of feminist and anti-racism activists — many of them students or junior and/or untenured faculty — to take personal hits as proxies for liberal-backed institutional change, particularly if the institution publicly prides itself on its "diversity" initiatives. To date, moderates have tended to be quoted deploring the excesses on both sides, although a few have responded thoughtfully in print.<sup>82</sup> In American legal circles, the response to the anti-PC campaign is located overwhelmingly on anti-PC terrain: the debate weighs unsettled equality law against the established authority of a formalist First Amendment and typically discovers that established rights trump new claims.<sup>83</sup> This effectively replicates the one-sidedness

<sup>79</sup>See below, Parts V.A. and VI.B.

<sup>80</sup>See e.g. Jean Edward Smith, "The Dangerous New Puritans" *The [Toronto] Globe and Mail* (21 October 1991) A15. See also discussion of the New McCarthyism, *infra* at notes 232-40.

<sup>81</sup>For a brilliant analysis of the costs of this option, see Susan Hardy Aiken, Karen Anderson, Myra Dinnerstein, Judy Lensink & Patricia MacCorquodale, "Trying Transformations: Curriculum Integration and the Problem of Resistance" in Minnich, O'Barr & Rosenfeld, eds., *supra* note 48 at 104.

<sup>82</sup>See e.g. Lesnick, *supra* note 71; Reed Way Dasenbock, "The Multicultural West" (Fall 1991) *Dissent* 550; Louis Menand, "What Are Universities For?" (1991) 283:1699 *Harper's* 47; Adam Yarmolinsky, "Loose Canons: Multiculturalism and Humanities 101" (1992) 24:1 *Change* 6. I have now delivered versions of this paper at six different universities, usually to 100-200 people. Each time, I heard from numbers of white women and students or faculty of colour, some of them lesbians, that mine was the first public response they had heard to the anti-PC literature. From this I deduce that no one in their institutions has rushed to the defence of the critical and/or minority scholars or the programs assailed directly or by proxy in the anti-PC campaign.

<sup>83</sup>Conservative and strict civil libertarian pieces include: William Shaun Alexander, "Regulating Hate Speech on Campus: A Plea for Tolerance" (1991) 26 *Wake Forest L. Rev.* 1349; Beth Boswell-Odum, "The Fighting Words Doctrine and Racial Speech on Campus" (1992) 33 *S. Tex. L. Rev.* 261; Kingsley Browne, "Title VII as Censorship: Hostile Environment Harassment and the First Amendment" (1991) 52 *Ohio St. L.J.* 481; Alan Brownstein, "Hate Speech at Public Universities: The Search for an Enforcement Model" (1991) 37 *Wayne L. Rev.* 1451; Alan Brownstein, "Regulating Hate Speech at Public Universities: Are First Amendment Values Functionally Incompatible with Equal Protection Principles?" (1990/91) 39 *Buff. L. Rev.* 1; Paul Carrington, "Freedom and Community in the Academy" (1988) 66 *Texas L. Rev.* 1577; Thomas Cinti, "'Freedom is Slavery': The Thought Police Have Come to America's Campuses" (1991) 1 *Seton Hall Const. L.J.* 383; Hyde & Fishman, *supra* note 11; Robert Sedler, "*Doe v. University of Michigan* and the Campus Bans on 'Racist Speech': The View From Within" (1991) 37 *Wayne L. Rev.* 1325; Rodney Smolla, "Academic Freedom, Hate Speech, and the Idea of a University" (1990) 53 *Law & Con-*

of the formalist attack on substantive equality in anti-PC literature, albeit in far more measured language.<sup>84</sup>

### III. A Substantive Reply

The typical style and substance of the claims made against the so-called PC movement are often so manipulative and misrepresentative that it is tempting to respond simply by exposing the omissions, distortions and internal contradictions in this literature to discredit it. Although I think misinformation should be corrected, to focus principally on rebutting the particulars not only locates the conflict in terms defined by conservatives and leaves its targets in a defensive posture, but continues to divert attention from public discussion of the competing visions of equality which fuel this debate.<sup>85</sup>

More, I doubt such defensive rebuttals will have much impact on the public prejudices<sup>86</sup> tapped by the anti-PC literature. For instance, almost all of the anti-PC articles demonize "deconstructionist" scholars and scholarship as subversive forces undermining both academic excellence and Western culture.<sup>87</sup> I do not think the public, to whom media accounts of the PC phenomenon are

temp. Prob. 195; Nadine Strossen, "Regulating Racist Speech on Campus: A Modest Proposal?" [1990] Duke L.J. 484. Less absolutist readings of the First Amendment include: Jack Battaglia, "Regulation of Hate Speech by Educational Institutions: A Proposed Policy" (1991) 31 Santa Clara L. Rev. 345; Charles Jones, "Equality, Dignity and Harm: The Constitutionality of Regulating American Campus Ethnoviolence" (1991) 37 Wayne L. Rev. 1383; Henry Saad, "The Case for Prohibitions of Racial Epithets in the Classroom" (1991) 37 Wayne L. Rev. 1351. Articles endorsing broad-reaching speech codes include J.M. Balkin, *supra* note 61; Richard Delgado, "Campus Anti-racism Rules: Constitutional Narratives in Collision" (1991) 85 Northwestern U. L. Rev. 343; Patricia Hodulik, "Racist Speech on Campus" (1991) 37 Wayne L. Rev. 1433; Charles Lawrence, *supra* note 61; Mari Matsuda, "Public Response to Racist Speech: Considering the Victim's Story" (1989) 87 Mich. L. Rev. 2320; Alan Borovoy, Kathleen Mahoney, Jamie Cameron, David Goldberger and Mari Matsuda, "Language as Violence v. Freedom of Expression: Canadian and American Perspectives on Group Defamation" (1988/89) 37 Buff. L. Rev. 337-73 (presentations by Mahoney, Cameron and Matsuda).

<sup>84</sup>Those who refer explicitly to "political correctness" in opposing speech codes can be quite intemperate. See e.g. Alexander, Cinti, Hyde and Fishman and Sedler, *ibid*.

<sup>85</sup>As Lisa Kahaleole Chang Hall (*supra* note 62 at 25) argues:

Rather than setting the terms for a real debate about what democratized education should consist of and how to ensure its accessibility to the largest number possible, the academic Left as a whole has merely reacted to conservative attacks. The entire PC/anti-PC media fest has been a straw dog distracting attention from the substance of issues involved into an endless go-around of "I am not!" "You are too!" and all the variations on "Well, sort of."

<sup>86</sup>By "public" I do not mean to draw a sharp distinction between the intellectual community and the general public. The anti-PC literature is authored by academics and journalists alike; media stories quote academics and academic journals adopt a public-spirited stance towards defending the broad cultural values at risk when political correctness prevails. Sometimes the academic commentary caters to anti-intellectualism and sometimes it portrays the new scholars it assails as third-rate scholars eroding academic excellence. My point is that this literature is about far more than conflict within the academy over academic standards and academic freedom. This literature makes a public appeal to public concerns using the academic debates as proxy.

<sup>87</sup>See e.g. D'Souza, *supra* note 10 at 178-81, 184-85, 191-92; Kimball, *supra* note 10, c. 5, 6; Sykes, *supra* note 78 at 29, 65; Adler in *Newsweek*, *supra* note 8 at 53; Fennell in *Maclean's*, *supra* note 8 at 42.

addressed, much cares about deconstruction and will not be much swayed by a more accurate definition of its origins, diverse strains<sup>88</sup> or intellectual and social significance.<sup>89</sup> The attack on deconstructionism is a fancy stand-in and set-up for an attack on all scholarship critical of the universalist claims and idealized abstractions associated with liberal tradition and systemic social inequality; it manipulates very live fears, resentments and bigotry throughout society about both, and must be addressed as such.

Similarly, although the anti-PC literature is rife with contradictions, disclosing its logical flaws will not touch its symbolic appeal and may be counter-productive given the anti-intellectualism it seeks to tap.<sup>90</sup> Making the obvious point, for instance, that the traditions and truths anti-PC texts present as politically neutral are actually politically partisan will persuade no one who experiences the *status quo* as neutral or objectively good.

Finally, much of the anti-PC literature operates through guilt by association. Distinctive scholarly communities and social groups are collectively maligned by the caricature of a few of their members or by selective excerpting of scholarly works for their sensational value.<sup>91</sup> If the targeted communities seek to defend and rehabilitate themselves by focusing only on what is misrepresented or exaggerated by this technique, they directly or indirectly sell out their radicals and their own radicalism to purchase respectability. For instance, when anti-PC literature discusses feminist scholarship, it concentrates overwhelmingly on texts concerning sexuality<sup>92</sup> and/or on lesbians.<sup>93</sup> Fashioning a reply

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<sup>88</sup>For diverse, critical renderings of deconstructionist jurisprudence, see e.g. Robert Gordon, "Critical Legal Histories" (1984) 36 *Stanford L. Rev.* 57; Thomas Heller, "Structuralism and Critique" (1984) 36 *Stanford L. Rev.* 127; Stephen Brainerd, "The Groundless Assault: A Wittgensteinian Look at Language, Structuralism, and Critical Legal Theory" (1985) 34 *Am. U. L. Rev.* 1231. For feminist accounts, see e.g. Linda Alcoff, "Cultural Feminism Versus Post-Structuralism: The Identity Crisis in Feminist Theory" in Minnich, O'Barr & Rosenfeld, eds., *supra* note 48 at 257; Judith Grbich, "The Body in Legal Theory" in *At the Boundaries of Law: Feminism and Legal Theory*, Martha Fineman & Nancy Thoniadsen, eds. (New York: Routledge, 1991). For criticism of deconstructionism by women of colour, see Barbara Christian, "The Race for Theory" in Anzaldúa, ed., *supra* note 4 at 335; Tey Diana Rebolledo, "The Politics of Poetics: Or, What Am I, A Critic, Doing in This Text Anyhow?" in Anzaldúa, ed., *ibid.* at 346; Norma Alarcón, "The Theoretical Subject(s) of *This Bridge Called My Back* and Anglo-American Feminism" in Anzaldúa, ed., *ibid.* at 356.

<sup>89</sup>The same is true about the attacks on feminist scholarship, critical race theory, tenured Marxists, lesbian and gay scholars and so on.

<sup>90</sup>On the longstanding history of American anti-intellectualism, see Richard Hofstadter, *Anti-Intellectualism in American Life* (New York: Knopf, 1966).

<sup>91</sup>Although Kimball, *supra* note 10 at 143, argues, "it is perfectly legitimate to ridicule ridiculous titles — of which, as we have seen, there is a seemingly inexhaustible supply," the same titles and authors are ridiculed repeatedly in popular press coverage of "political correctness."

<sup>92</sup>See e.g. the sub-section entitled "The Gender Feminists and Date Rape" by John Taylor, "Ate You Politically Correct?" *New York* (21 January 1991) 32 at 37-39; D'Souza's version of "representative" Women's Studies teaching, *supra* note 10 at 208-14; and Rob Martin, "Proposed Sex Assault Bill an Expression of Feminist Hatred" *The Lawyers Weekly* (31 January 1992) 9.

<sup>93</sup>The absolutely favorite target of lesbian-baiting is Professor Eve Sedgwick. Though it is not stated that Sedgwick is a lesbian, the denigrating references to her and her work promote such a conclusion. Kimball, *supra* note 10 at 145-46, tells his readers that Professor Sedgwick's graduate course entitled "Gender, Sexuality, and Power in Victorian Fiction" focused on "among other

which notes that not all feminist scholarship focuses on sexuality, that not all feminists are lesbians or that the sensationalized excerpts misrepresent a particular text or body of scholarship as a whole, caters to the heterosexism of this style of anti-feminism. Though such corrective responses would place the political divide at issue on a more honest footing,<sup>94</sup> they would also be politically dishonest insofar as, by intent or result, they would serve to discount the centrality of sexuality to feminist critiques of male domination and of lesbians to feminist community.<sup>95</sup>

My aim in this paper is not primarily to defend the distinctive scholarly, political and social communities that anti-PC literature lumps together and condemns by correcting the record about the objectives and achievements of scholars who reject the formal equality tradition. It is, rather, to affirm the merits of a substantive equality approach by applying its insights and method to anti-PC literature and illustrating what distinguishes the vision and political consequences of formalist ideology as it is presented in anti-PC writings from the substantive egalitarian initiatives under attack.

My stance, then, is no more neutral than that of the anti-PC lobby. Because anti-PC literature has advanced relatively homogeneous political themes which are substantiated by a small number of widely repeated anecdotes drawn from a very short period of time in the histories of a few academic institutions, I believe it is neither unfair, inaccurate nor inappropriate to analyze it as a distinctive literature containing distinctive characteristics. Nonetheless, to mitigate the possibility that my admittedly partisan analysis of this literature will be assumed to be unfairly selective or misrepresentative, I have supplied several sources and/or extensive quotations from anti-PC writings wherever I claim that a particular rhetorical technique or descriptive claim is characteristic of the literature.

My substantive reply begins by describing the concept of formal equality and what it promises. I then outline what I consider core elements of a substantive equality approach and illustrate how they fundamentally challenge the

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things, 'female and male homosocial, homosexual, homophobic, and cross-gender relations.'" He does not describe what "other things" her course addresses. Rather, he observes that the above course content is not "out of the ordinary for her," citing a panel at the 1989 meeting of the Modern Languages Association called "The Muse of Masturbation" where Professor Sedgwick presented a paper titled, "Jane Austen and the Masturbating Girl." The Austen paper is also mentioned by Taylor, *New York, ibid.* at 36; Charles Truehart, "Profs, Dons and Icons" *Washington Post* (29 December 1989) D-1; and D'Souza, *supra* note 10 at 159. Elsewhere, D'Souza mentions Professor Sedgwick's book, *Epistemology of the Closet*, another of her papers, "How to Bring Your Kids Up Gay" and her "plans to introduce a new course on lesbian literature": *supra* note 56 at 62, 64. For other lesbian-baiting, see *infra* note 179.

<sup>94</sup>Given the disproportionate focus on lesbians, it is telling that of 196 American colleges and universities which responded to a survey by *Change* magazine in July 1991, only three (*i.e.* 6%) offered any courses in lesbian and gay studies. By contrast, 40% offered courses in Women's Studies, 43% in African-American Studies, 37% in Hispanic-American Studies, 35% in Asian-American Studies and 33% in Native-American Studies. This is not to suggest that lesbian or gay content is not included in other courses. See Levine and Cureton, *supra* note 73.

<sup>95</sup>I am grateful to Mary Eaton for underlining how corrections can read as denial and dissociation. For an analysis of the impact of anti-PC campaigns on newly emerging lesbian studies, see Toni McNaron, "Life on the Faultline" (1992) 9:5 *Women's Rev. Books* 29.

political arrangements sustained by the ideology of formal equality. The basic substantive argument is that the liberal legal order never did transcend the status systems it succeeded, and remains premised on legalizing the unequal status of those classes of people formally deemed legal non-persons by the founding constitutional orders in Canada and the United States. Second-class legal status is maintained, in part, by an ideology which bifurcates liberalism's rational, self-interested individual. Powerholders are rational and fitted to rule in a disinterested way to the good of all; the disempowered are unruly, irrational, biased and ill-fitted for full citizenship let alone rule-making. This is a fancy way to say that formal egalitarians never did and still do not live up to their own stated principles. They never intended all citizens to be formally, much less substantively, equal. As a result, when, against all (liberal) reason, some second-class citizens gain sufficient political power to secure some real egalitarian change, formalists insist — with some accuracy — that liberal democratic traditions are imperilled. At such moments, the authoritarian and coercive face of formalism is revealed. I refer to this as the anti-democratic face of formalism.

I attempt here to illustrate this substantive critique of formal equality by reference to the characteristic content and rhetorical methods of anti-PC literature: its reliance on status arguments, its hierarchy of dualisms, its anti-democratic bottom line. It is always a difficult choice whether to divert political energy into responding to the propaganda of backlash or simply to proceed with the work of egalitarian change. My hope is that this analysis does both in a way that reminds those who pursue redistributive justice that we are not and need not be answerable to powerholders whose interests lie in discrediting and undermining our project. We are answerable to those whom liberalism systematically disempowers<sup>96</sup> and then banishes from the conceptual framework of what distinguishes the "Western civilization" invoked in anti-PC literature. We are answerable to those legally contained outside the framework of rights that liberal legalism is said to advance.<sup>97</sup> Remembering whom we serve is urgent because, whoever is winning in the elite world of the universities, there is no doubt who is losing in society at large.

#### IV. Formal vs. Substantive Equality

##### A. Formal Equality

The political coalition behind the anti-PC campaign champions the principle of formal equality — the conception of the polity as a community of individual citizens who do or should stand as formal equals in the assignment and

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<sup>96</sup>The dozens of women who participated in consultations before and after the tabling of Bill C-49, *An Act to Amend the Sexual Assault Provisions of the Criminal Code*, Criminal Code, R.S.C. 1985, c. C-46, as am. by S.C. 1992, c. 38, honoured the spirit of this accountability in the collective enterprise of conceiving rape legislation to serve those women most vulnerable to abuse and least contemplated as worthy of the law's protection. In this regard, the leadership of Lee Lakeman was indispensable and extraordinary.

<sup>97</sup>For eloquent elaborations on this point, see *e.g.* Catharine MacKinnon, "Reflections On Sex Equality Under Law" (1991) 100 Yale L.J. 1281; Williams, *supra* note 18; Bell, *supra* note 73.

exercise of the political and legal rights and freedoms of citizenship. In this vision, rights and freedoms attach to individuals, not groups, and may not be legally defined or socially ascribed by immutable personal characteristics such as race, national origin or sex or by social status, caste or other group affiliation.<sup>98</sup> The formalist's working conception of the individual citizen is idealized and, hence, abstract: the citizen is possessed of rational freewill and, because formally equal to all, is entitled to self-determination in pursuing his or her rationally determined self-interest but is responsible for the rational choices she or he makes.<sup>99</sup> Although the basic unit part of this worldview, then, is the individual, his or her constitution is universalized, conceptually stripped of particularity. The only formal constraint on individual self-determination is the duty to respect and not to interfere with the rights to security of the person and property of other self-determining, self-interested equals. The tension between liberty and security is understood as the basic contradiction in a liberal order.

Because, within this conception, it is inevitable that self-serving individuals will come into conflict, institutional mechanisms are necessary to maximize freedom of choice and minimize interference from others in each individual's pursuit of self-interest. The role of the state is to establish formal, written rules of universal application impartially and equally applied to all citizens so that they may know with some certainty the boundaries of their individual freedom of choice. The ultimate rule, the rule of law,<sup>100</sup> is the legal expression of formal equality: every citizen is equal before and under the law; no one is above the law; and the law must be applied without fear or favour by an impartial judiciary.<sup>101</sup> This is not to say that law cannot draw distinctions, but that distinctions

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<sup>98</sup>For a conservative formalist's account of these core principles, see Bloom, *supra* note 68 at 109-12, 157-72. For a feminist critique, see Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988). For an analysis of their operation in integrationist approaches to racial justice, see Peller, *supra* note 6. For a description and critique by a critical legal historian, see Robert Gordon, *supra* note 88, especially at 59-67. In the anti-PC context, the implication of a formalist approach is that "victim" status should not define rights any more than economic, sexual and/or racial privilege. Books should not be assigned or excluded on the basis of the race or sex of their authors; hiring should be race- and sex-neutral, etc.

<sup>99</sup>For an elegant synopsis of what distinguishes formalists and feminists on "choice," see Lucinda Finley, "Choice and Freedom: Elusive Issues in the Search for Gender Justice" (1987) 96 *Yale L.J.* 914.

<sup>100</sup>For a sense of the range of ideals and meanings seen in the rule of law, see Allan Hutchinson & Patrick Monahan, eds., *The Rule of Law: Ideal or Ideology* (Toronto: Carswell, 1987). In the academic context, universal standards for student admission and evaluation, faculty hiring and promotion, and for determination of works worthy of being taught, perform the same function as universal legal rules of general application. "By applying the same standard to everyone, natural talent and hard work are permitted and expected to distinguish individuals on the plane of achievement" (D'Souza, *supra* note 10 at 55).

<sup>101</sup>Judith Shklar has argued that, in response to the Cold War and post-colonial challenges to the European world, the rule of law has come to stand as the core and unique identifying feature of "the West" in its defence against competing ideological traditions. She also argues that the rigid insistence on the rule of law as a singular Western political tradition (or, indeed, on any single tradition as Western) is a historical untruth which expresses "the nostalgia of a liberalism that has ceased to look to the future and which seeks to maintain itself not as a hope but as an ancient possession, to be valued more for its familiarity and age than for its intrinsic merits" (*Legalism* (Cambridge: Harvard University Press, 1964) especially at 20-23). In the anti-PC literature it is the

must be rationally drawn such that likes must be treated alike. Because by definition, the rule-makers themselves are also individuals motivated by self-interest, legal orders defined by the rule of law are governed by constitutional checks and balances on those who make laws and those who interpret them to ensure they govern according to positive public law and not private self-interest.<sup>102</sup>

The state's proper function is facilitative, not prescriptive: it exists to protect and promote individual freedom of choice, not to dictate how or to what end choice may be exercised.<sup>103</sup> A rational electorate will ensure the state's neutrality in preserving public order according to the rule of law and towards a simple end: creating and maintaining equality of opportunity in and for the exercise of private freedom of choice by individual rights holders. Rules do not presume equal endowment of, for instance, intelligence, motivation, means, industriousness, talent or virtue, and hence do not anticipate that the outcomes of individual choice will be equal; they do presume that respect for the individual autonomy and formal equality of all mandates rules ensuring equality of opportunity, and project that such rules best spur individual achievement to the benefit of society as a whole.<sup>104</sup>

Individuals are credited with the rational capacity to weigh the costs and benefits of competing options and to choose what best serves their self-defined self-interest in light of their individual circumstances. It is here that the ideal-

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canon of Western classics and neutral admissions and hiring standards under and before which all are equal, and scholars who perform the disinterested role of the judiciary. See *e.g.* D'Souza, *ibid.* at 50-55; Kimball, *supra* note 10 at 61, 74; Sykes, *supra* note 78 at 137-38, 181-82.

<sup>102</sup>Anglo-American legal systems have quite different mechanisms of checks and balances. For my purposes, these constraints on legal power fall into three types: rules concerning the constitutional division of legal powers within the polity; constitutional authority in an independent judiciary to review the legality of the exercise of power by the various divisions of government; and mechanisms to ensure accountability of powerholders to those who elected or appointed them. See John Whyte, "Legality and Legitimacy: The Problem of Judicial Review of Legislation" (1987) 12 *Queen's L.J.* 1.

<sup>103</sup>This principle is central to charges against the so-called proponents of political correctness: PCers seek to impose their vision of The Good (substantive equality) on others. As George Will puts it, political correctness amounts to "a war of aggression against the Western tradition and the ideas that animate it. The aggressors, having been trounced in the real-world politics of the larger society, are attempting to make campuses into mini-states that do what the Western tradition inhibits real states from doing: imposing orthodoxies" ("Curdled Politics on Campus" *Newsweek* (6 May 1991) 72). The problem with this claim is that Will and other conservatives seek to elevate the Good of free expression or equal opportunity over the good of redressing social inequality. Will opposes a multicultural curriculum because the Western classics ought "to affirm this fact: America is predominantly a product of Western tradition and is predominantly good because that tradition is good," (quoted in Janet McNew, "Whose Politics? Media Distortions of Academic Controversies" (1992) 68:1 *Virg. Q. Rev.* 1 at 5). Calling a value judgment a "fact" does not overcome the contradiction. "Value relativism supports liberalism at one level because it undercuts any claim to absolute or divine preference for any one value system. The corresponding problem is that it undercuts any such claim for 'liberal' values as well. That is why the value choices have to be hidden, why liberal rationalism must always seem to be invoking only reason, or values like 'liberty,' 'equality,' or 'tolerance,' that seem so uncontroversial because they are so vague" (Phillip Johnson, "Do You Sincerely Want To Be Radical?" (1984) 36 *Stan. L. Rev.* 247 at 278).

<sup>104</sup>D'Souza, *supra* note 10 at 250.

ized free marketplace functions as a compelling metaphor: ideas, goods and opportunities are offered to free and equal individuals; their merits are rationally weighed and the best available choices are selected. Flawed goods will be rationally rejected in favour of superior products; lack of superior products will spur private enterprise to supply rationally identified gaps in market supply, just as lack of personal fortune will spur individual achievement.<sup>105</sup> Supply and demand determine merit in the political arena, in the realm of ideas and in commerce. The measure of merit is the demand by rational and formally equal choosers, so long as the supply of competing goods is not illegitimately restricted.<sup>106</sup> Longevity of demand confirms objective merit.<sup>107</sup>

Now, although the marketplace ideal presumes the survival of the fittest, formal egalitarians categorically reject the claim that fitness is determined by social, economic or political power.<sup>108</sup> On the contrary, fitness is determined by rationality, by the rational persuasiveness of competing options to self-interested individuals. If you credit individuals equally with rational freewill, you should credit the rational merit of their choices. From inside this worldview, claiming that such choices are coerced rather than freely consensual sounds like elitist sour grapes because it discounts the rationality of individual citizens and the merits of their rational choices.

### B. *Substantive Equality: The Critique*

Thinkers in the substantive equality camp<sup>109</sup> do not start with the formal equality of citizens in the abstract but with the material conditions which construct and constrain individual choice, merit and freedom, and which channel their outcomes. This method discloses whose inequality is systemically enforced in whose interest by a state whose primary function is enforcement of formal equality.<sup>110</sup> It also demonstrates how situated power shapes individual perspective and, in particular, how the perspectives of the powerful define and shape individual and cultural definitions of value in a way which rationalizes existing unequal distributions of power.<sup>111</sup> Both projects collapse the distinction

<sup>105</sup>To conservatives, "[a] diversity and deprivation are goads to achievement; protection is an inducement to lassitude" (Lesnick, *supra* note 71 at 421).

<sup>106</sup>"Reason cannot accommodate the claims of any kind of power whatever, and democratic society cannot accept any principle of achievement other than merit" (Bloom, *supra* note 68 at 96).

<sup>107</sup>Virtually all defenders of traditional liberal education invoke expressions like "enduring," "lasting" or "timeless" truths and values, "time-honoured" classics, works which have "withstood the test of time," etc. The texts and the scholarship they impugn are "ephemeral attractions," "fads," "au courant," "fashionable," "trendy," etc.

<sup>108</sup>William Pfaff, "Universities Burdened with Pressures of Changing Values" *London Free Press* (28 May 1991) A7: "The equation of power with value is ... fascist." See also Redish and Lippman, *supra* note 71.

<sup>109</sup>I again wish to acknowledge the diversity of perspectives, strategies and priorities among substantivists even while generalizing what distinguishes the formal and substantive positions.

<sup>110</sup>Critical race scholars "do not claim a privileged status for our experience. Instead, we offer an essential rejoinder to the 'false universalism' prevalent in the myth of equality of opportunity" (Robin Barnes, "Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship" (1990) 103 *Harv. L. Rev.* 1864 at 1865).

<sup>111</sup>There are many renderings of this insight. Some of my favorites are: Catharine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) especially at

between public and private, political and personal by revealing the degree to which what counts as rationality depends on and serves the interests of those who have power. Law rationalizes power. In the words of Catharine MacKinnon:

Objectivity is liberal legalism's conception of itself. It legitimates itself by reflecting its view of society, a society it helps make by so seeing it, and calling that view, and that relation, rationality. Since rationality is measured by point-of-viewlessness, what counts as reason is that which corresponds to the way things are ... Objectivist epistemology ... ensures that the law will most reinforce existing distributions of power when it most closely adheres to its own ideal of fairness.<sup>112</sup>

The critique of the ideology, practice and outcomes of formal equality adopted in this article addresses three related substantive concerns: formal egalitarians violate their own first principles by presuming and enforcing the unequal status of citizens; they rationalize the resulting inequality through false, status-based dichotomies; and, when seriously challenged, they rely on authoritarianism to stifle democratic social change.

The liberalism defended by formal egalitarians has always constructed laws on the basis of status, not on the basis of the civil equality of all citizens.<sup>113</sup> Before liberal law balances the competing claims of formally equal citizens, it has first to recognize the legal personhood that is a precondition to citizenship. Liberal law long denied legal personhood to many individuals on the basis of class, race, sex and nationality — *i.e.* on the basis of status.<sup>114</sup> Even when overt violations of formal equality such as disenfranchisement were repealed, positive law continued to allocate and balance entitlements by status.<sup>115</sup> Meanwhile, the

106-25, 237-46; Adrienne Rich, "Compulsory Heterosexuality and Lesbian Existence" (1980) 5 *Signs* 631; Williams, *supra* note 18 especially at 55-79.

<sup>112</sup>MacKinnon, *ibid.* at 162-63.

<sup>113</sup>On the "culture of constitutionalism" by which the inegalitarian classical republicanism of the Framers of the U.S. Constitution secured property and individual liberty rights over equality rights, and largely immunized the conservative bias of the constitution from popular challenge, see Joyce Appleby, "The American Heritage: The Heirs and the Disinherited" (1987) 74 *J. Am. Hist.* 798. See also Jennifer Nedelsky, "Law, Boundaries, and the Bounded Self" (1990) 30 *Representations* 162; Elizabeth Mensch, "The History of Mainstream Legal Thought" in Kairys, ed., *supra* note 24, 18 at 19-26.

<sup>114</sup>The most obvious public rights of legal citizenship, the right to vote, hold public office, practise or adjudicate law, and even sit on juries were long restricted to white, propertied men. The personhood to own enforceable private legal rights was also restricted to white, propertied men. See *e.g.* Bell, *supra* note 73, especially c. 1 (ten clauses in the U.S. Constitution protecting slavery) and c. 3 (continuing limits on Black vote); Pateman, *supra* note 98 (omission of women from social contract theory and women's civil slavery); Bolaria & Li, eds., *supra* note 36 (slavery, indenture and/or disenfranchisement of First Nations people, and of Chinese, Japanese and East Indian immigrants in Canada); Bruce Ryder, "Racism and the Constitution: The Constitutional Fate of British Columbia Anti-Asian Immigration Legislation, 1884-1909" (1991) 29 *Osgoode Hall L.J.* 619 (over 100 provincial statutes enacted between 1872 and 1922 discriminating against people of Chinese or Japanese race); Mary Jane Mossman, "Feminism and Legal Method: The Difference It Makes" in Fineman & Thomadsen, eds., *supra* note 88 at 283 (women not "persons" admissible to bar); Ngaire Naffine, *Law and the Sexes: Explorations in Feminist Jurisprudence* (London: Allen & Unwin, 1990) (legal "person" is a middle class man evincing middle-class style of masculinity).

<sup>115</sup>See *e.g.* Bell, *ibid.* on legal obstacles to the exercise of voting rights and school segregation; MacKinnon, *supra* note 111, especially at 123, 168-69, 172-83, 209-11 (laws legitimating violence

social inequalities generated by now-repealed exclusionary laws have continued to accrue both materially and in socio-cultural devaluations that rationalize the present inequality of groups the law formally subordinated.<sup>116</sup> Similarly, the privilege accumulated through benefit of unequal laws also accrues.<sup>117</sup>

The accrual of substantive inequality in a regime of formal equality works this way. If pursuit of rational self-interest drives the liberal society, those with the power to make law create laws which reflect their rational self-interest. This is no conspiracy, it is merely interested rationalism at work. Powerholders view, name and order the world according to their perspective. This perspective, because it makes sense of their world and because they have the power to impose it on their world, appears rational and natural, particularly in the absence of competition. When they perceive individual members of a class of people as less than fully human, the laws they establish and interpret (re)construct such classes as less than fully human. Such laws justify and rationalize unequal treatment on the basis of the second-class legal status they so construct.<sup>118</sup> Accordingly, for instance, unequal pay for women and men performing formally identical work can appear just because the actual workers are considered unequal — *i.e.* women as women are considered worth less than men. The work women do is also devalued because women do it, while the work men do is more highly valued because women don't do it. By the same logic, manual or dirty work overwhelmingly done by immigrants and people of colour merits lower pay than intellectual or managerial work overwhelmingly monopolized by white men.

And when the powerholders who thus construct social inequality then entrench a legal order whose merit turns on disregarding social status by decreeing as its first principle that individuals should be treated abstractly as formal equals responsible for the choices they make, it can then attribute to women, immigrant men and men of colour responsibility for choosing low-paid work and responsibility for driving wages down by clustering in job ghettos,<sup>119</sup>

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against women and/or discounting women's credibility). Consider, *inter alia*, laws that still formally bar women from some combat roles and bar "practising" lesbians and gays from all military service, and laws that restrict immigration on the basis of disability and employment on the basis of age.

<sup>116</sup>See Williams, *supra* note 18 at c. 4, 10, on "spirit murder" and "disownedness" — *i.e.* the subservience of self to other without reciprocity — which are the legacy of legal non-personhood. See also dissenting judgment in *R. v. Seaboyer*, *supra* note 32, on the relation between women's subordinated status and rape myths which undercut reporting and prosecution of rape.

<sup>117</sup>Sheila McIntyre, "Equality and Accountability in Education" (Closing Address, Conference of Employment Equity School Board Provincial Network, February 1989) [unpublished, on file with author].

<sup>118</sup>See MacKinnon, "Difference and Dominance: On Sex Discrimination" in *Feminism Unmodified*, *supra* note 59 at 32.

<sup>119</sup>For examples of this reasoning, see *Equal Employment Opportunity Commission v. Sears, Roebuck & Co.*, 628 F.Supp. 1264 (N.D. Ill. 1986), *aff'd* 839 F.2d 302 (7th Cir. 1988); Stephen Peitchinis, *Women at Work: Discrimination and Response* (Toronto: McClelland & Stewart, 1989). For two of the many feminist critiques of this approach, see Alice Kessler-Harris, "The Just Price, the Free Market, and the Value of Women" in Karen Hansen & Irene Philipson, eds., *Women, Class, and the Feminist Imagination: A Socialist Feminist Reader* (Philadelphia: Temple University Press, 1990) 476; Ronnie Steinberg, "Radical Challenges in a Liberal World: The Mixed Successes of Comparable Worth" in Hansen & Philipson, eds., *ibid.* at 508.

as well as biological propensity for work which is menial or is deemed menial because white men do not do it.<sup>120</sup> The neutral market of supply and demand, not the constructed worth-less-ness of white women, immigrants and people of colour, is then responsible for wage inequality.

Formalists do not deny that liberal political and legal history is marred by violations of its first principles; they simply discount the significance of past wrongs to present rights. Indeed, in their view, liberalism is not discredited by past wrongs, but affirmed because the eventual recognition of irrational, status-based prejudices followed by the repeal of discriminatory laws and the prohibition of discriminatory practices rooted in false stereotypes demonstrates the progress of reason over irrationality, the triumph of truth over superstitious bias, the extension of universal standards over arbitrary distinctions.<sup>121</sup> Deviations from principle and underinclusivity can and have been corrected. The principles remain the measure of civilization.

The problem with this posture is that the principles so affirmed foreclose redress for their violation. In a formalist regime, only likes must be treated alike such that difference, even if manufactured by discriminatory laws, justifies different — *i.e.* unequal — treatment.<sup>122</sup> At the same time, once status-based group distinctions based on race, religion, sex and so on are legally designated irrational or invidious, group remedies to redress actual inequalities imposed by devalued status become impermissible. Time stands still for a moment. Formalist principle thereafter mandates that the actual inequalities that define wrongfully imposed social status be abstracted from consciousness before legal equality can operate. Asymmetrical power relations between groups are thus converted ideologically to false symmetries between abstract individuals such that status-based distinctions are discriminatory whether they operate to favour law's historically favoured groups or to reverse history's disfavour.<sup>123</sup> Discrimination becomes an idea which levels dominator and dominated conceptually. Actual social inequality remains, but the idea of social inequality is gloriously transcended along with the idea of social accountability for unjustly secured status and resources.<sup>124</sup>

Substantive egalitarians perceive another inconsistency between formalist claims and practice. Although the formalist world is constructed around a uni-

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<sup>120</sup>For judicial reliance on gender essentialism to defeat sex discrimination suits on the basis that women prefer traditionally "feminine" jobs and show a lack of interest in non-traditional, high paid ("male") jobs, see Vicki Schultz, "Women 'Before' the Law: Judicial Stories about Women, Work, and Sex Segregation on the Job" in Judith Butler & Joan Scott, eds., *Feminists Theorize the Political* (New York: Routledge, 1992) 297.

<sup>121</sup>Peller, *supra* note 6 at 768-69.

<sup>122</sup>MacKinnon, *supra* note 59.

<sup>123</sup>Peller, *supra* note 6 at 771-75.

<sup>124</sup>The law's hostility to systemic remedies underlines the degree to which it treats privilege as a vested property right. See Kimberle Crenshaw, "Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law" (1988) 101 Harv. L. Rev. 1331; Freeman, *supra* note 24; Williams, *supra* note 18 at 216-36 ("On Being the Object of Property"). Hence, the law's hostility to the concept of reparations should be no surprise. See *e.g.* Tyron Sheppard & Richard Nevins, "Constitutional Equality — Reparations at Last" (1991) 22 U.W.L.A. L. Rev. 105; Roger Daniels, "Afterword: The Struggle for Redress," in Adachi, *supra* note 36 at 371.

versal individual motivated by rational self-interest, the self-referential perspective of the powerful is actually construed as rational and neutral, not self-interested and partial, while the perspective of the disempowered is characterized as self-interested, biased and irrational.<sup>125</sup> This ideological dynamic ensures that even if one's constructed second-class status *per se* does not preclude one's opportunity or perceived standing to speak,<sup>126</sup> the bias attributed to those with second-class standing will undercut the credibility of what one says. Hence, when women name conduct sexist, they are considered inobjective rather than qualified to speak; and the men who so discount women's determinations of what counts as sexism presume (or, at least assert) their own disinterestedness and their authority to judge. Similarly, when scholars of colour seek to alter systematically racist standards of merit, their self-interest in such reform, though utterly rational, is seen to discredit the project instead of illustrating liberal enterprise at work. And, tellingly, those substantive egalitarians whom the anti-PC literature lumps together are routinely labelled "nihilists": to challenge traditional "truths" and expose their partiality is deemed the end of reason and ordered civilization.<sup>127</sup>

What is at work here is a series of dichotomies endemic to Western philosophy and liberal law: rational/irrational; objective/subjective; logical/emotional; abstract/personal; predictable/arbitrary; order/chaos; civilized/primitive; law/politics etc., whose positive pole has long distinguished the dominant from those they subordinate, and the dominant regime from alternatives more hospitable to substantive equality.<sup>128</sup> In this scheme, stereotypes attached to the subordinated and rationalizing their subordination typically suggest inherently defective reason and/or excessive emotionality and sexuality. Hence, the inter-

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<sup>125</sup>As MacKinnon has written:

This defines the task of feminism not only because male dominance is perhaps the most pervasive and tenacious system of power in history, but because it is metaphysically nearly perfect. Its point of view is the standard for point-of-viewlessness, its particularity the meaning of universality. Its force is exercised as consent, its authority as participation, its supremacy as the paradigm of order, its control as the definition of legitimacy (*supra* note 111 at 116-17).

See also Williams, *supra* note 18 at 221: in the fragmenting and fragmented worldview of the bourgeoisie and of white culture, "will" personifies the burgermeister, "purity" of will — *i.e.* wisdom, control and aesthetic beauty — signify the whole white personality and irrationality, lack of control and ugliness signify the whole slave personality.

<sup>126</sup>I am thinking here of the bitter observation that when a white woman or person of colour makes a point it isn't taken up but when the same point is subsequently made by a white man (or the boss), then, and only then, does it get serious credit.

<sup>127</sup>For the nihilism charge, see *e.g.* Kimball, *supra* note 10 at xii, 40, 74, 164; Sykes, *supra* note 78 at 5, 25, 65, 138; Bloom, *supra* note 68 at 155; D'Souza, *supra* note 10 at 190; Carrington, *supra* note 7 at 226-27.

<sup>128</sup>See *e.g.* Mary O'Brien & Sheila McIntyre, "Patriarchal Hegemony and Legal Education" (1986) 2 C.J.W.L. 69 at 80-81; Sandra Harding, "Is Gender a Variable in Conceptions of Rationality? A Survey of Issues" in Carol Gould, ed., *Beyond Domination: New Perspectives on Women and Philosophy* (Totowa, N.J.: Rowman & Allanhead, 1983) 43 (especially on relation between racism and sexism in male models of rationality); Caroline Whitbeck, "A Different Reality: Feminist Ontology" in Gould, ed., *ibid.* at 64; MacKinnon, *supra* note 111; Peller, *supra* note 6 at 768-69, 774, 803-07.

related labels negatively defining female, aboriginal, Black, Latin, lesbian and gay deviations from the rational norm: sentimental, hysterical, intuitive, instinctive, moody, unpredictable, unstable, unreliable, shiftless, feckless, fickle, promiscuous, rash, wanton, hotblooded, flamboyant, intemperate, disorderly, naïve, childlike, primitive, apelike.

Against this backdrop it is no great leap to defend the disinterestedness of traditional scholarship, the timeless authority of Western classics and the neutrality of law simply by labelling campus reformers irrational, critical scholars propagandists, student activists immature and students or faculty of colour incompetent. These, too, are status arguments structured around the rationality of domination.<sup>129</sup> Put another way, the ideology of dominance is entirely circular. It is not so much inconsistent as self-referential. It meets the challenge of difference through the otherness it has imposed, viewing the different as inferior and irrational. It finds resistance to its order unaccountable because subordinates are not conforming to the logic of dominance. Having conceptually as well as legally de-selfed the other, dominators reconstruct that resistance which arises from self-respect as evidence of dangerous irrationality.<sup>130</sup>

Finally, critics of formal equality note that when, against all odds, those substantively disempowered by law and its social consequences, and discredited by the powerful as biased and irrational, secure through democratic processes not only the right to formal equality but substantive egalitarian reform, power-holders cry foul. Substantive equality is dynamic. It, too, accrues. At this juncture, which is the juncture generating anti-PC literature, the myth of formal equality is most baldly revealed. When the dominant lose the power to dominate those they have subordinated, they protest that The System — *i.e.* their system — is not working. And, of course, this is true. What is telling, however, is the way they illustrate the failure of The System/their system. Minority hiring *per se* equals a failure of the merit system;<sup>131</sup> the high demand for a scarce supply of Black scholars reflects a skewing of the market system;<sup>132</sup> critical skepticism toward established “truths” subverts the university’s intellectual mission;<sup>133</sup> describing someone or something as racist undermines the marketplace of

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<sup>129</sup>As Elisabeth Young-Bruhl, speaking of sexual oppression, puts it, “Male rationality ... has been supplying reasons — for centuries — for the oppression of women; why emulate it?” (“The Education of Women as Philosophers” in Minnich, O’Barr & Rosenfeld, eds., *supra* note 48, 9 at 13). The same rationality has supplied reasons for white supremacy, heterosexism and economic inequality.

<sup>130</sup>As Lawrence remarks (*supra* note 61 at 454, note 93), part of the culture of domination is the paradoxical expectation that members of subordinated groups will accept insult from the dominant group (because they are inferior and at a power disadvantage) and will commit violence unprovoked (because they are less rationally self-governing).

<sup>131</sup>For a further discussion of the formalists’ rejection of affirmative action, see *infra* notes 155-59, 170-86 and accompanying text.

<sup>132</sup>See D’Souza, *supra* note 56 at 69-70 (“frenzied competition for the tiny group of new Black Ph.D.s ...” has led to a “so-called black market”).

<sup>133</sup>On formalists’ anti-intellectualism, see Scott, *supra* note 11 at 33.

ideas<sup>134</sup> and cannot be cured through a right of reply;<sup>135</sup> minority dissent coerces the powerful while democratically secured reforms amount to totalitarianism;<sup>136</sup> holding liberal society to its stated ideals<sup>137</sup> subverts Western culture, and so on.

Most of these claims reduce to status arguments and the anti-PC camp uses them with a vengeance. These claims explicitly concede that power shapes what is accepted as cultural "truth" and value. All the complaints about "silencing," "thought control" and "censorship," whether defined as a product of dominant fashion or of domineering "victim" classes, concede that the marketplace of ideas cannot ensure that truth will prevail if words are backed by social or political power. But this is what the substantive equality camp has been saying all along, for instance, in supporting the criminalization of hate propaganda<sup>138</sup> and in tracking how rights are unequally established, distributed, exercised and enforced.

## V. Who Are the Politically Correct? The Status Argument

### A. *Who Poses the Threat? A Group Portrait*

Critics of so-called political correctness take the position that freedom of expression should not be curbed, particularly within the university, even in the cause of equality; that true scholarship is not and should not be political; that academic and cultural standards emerge from objectively determinable values or transcendent universal truths; and that to centre liberal education on the study of the greatest artists, thinkers and statesmen of Western culture is not to promote a political agenda but to educate students in the best that (the best) civilization has to offer.

It is difficult to summarize where those they censure stand on each issue because the anti-PC literature sweeps up and conflates three distinct critical scholarly communities in its attack. The first target group is "former 60s radicals" who now have tenure.<sup>139</sup> They are generally labelled "Marxists" or "leftists," even though the term is often more emotive than descriptively accurate.<sup>140</sup>

<sup>134</sup>It is significant that professors feel that they *can't talk* about [racist exam hypotheticals] without interfering with the first-amendment rights or the academic freedom of their colleagues" (Williams, *supra* note 18 at 90).

<sup>135</sup>See Stanley Ingber, "The Marketplace of Ideas: A Legitimizing Myth" [1984] Duke L.J. 1 especially at 36-49.

<sup>136</sup>"The campaign against multiculturalism ... is actually a campaign against policies that have allowed the previously speechless to speak. It is in effect a crusade to suppress a conversation about the social order. Because they cannot stop the conversation, opponents of multiculturalism have caricatured it as an attempt to destroy the foundations of Western civilization" (Betty Jean Craige, "The Old Order Changeth" (1992) 9:5 Women's Rev. Books 14 at 15).

<sup>137</sup>For instance, tolerance of diversity, cultural pluralism, civil equality, equal protection of the laws, etc.

<sup>138</sup>See remarks of Kathleen Mahoney and Mari Matsuda in Borovoy, Mahoney, Cameron, Goldberger & Matsuda, "Language as Violence v. Freedom of Expression," *supra* note 83.

<sup>139</sup>Roger Kimball has adopted this tag for his book's title: *Tenured Radicals*, *supra* note 10.

<sup>140</sup>To be fair, I have noticed that Americans tend to use the term "leftist" very loosely as a synonym for "progressive" or "anti-establishment" groups.

By definition, the radical left seeks to subvert the West and liberal values, including liberal education. The second group, "deconstructionists" and/or "postmodernists," appears to contain any scholar who explores the social construction and hence the contingency of such "realities" as cultural or scholarly standards of excellence.<sup>141</sup> The insistence on cultural relativism and the relation of power to the definition of value is seen to be not only subversive of the deserved pre-eminence of liberal cultural and academic traditions but of values as such.<sup>142</sup>

The third contains three sub-groups who are the primary targets of the anti-PC literature: feminists, scholars of colour and lesbian and gay scholars. They are generally mentioned in an incantatory string, and directly or indirectly portrayed as the underqualified beneficiaries of affirmative action.<sup>143</sup> Because affirmative action is understood as a violation of the formal ideal of objective merit determined independently of race, sex or class, their presence personifies the subversion of scholarly excellence, while their research and institutional activism illustrate the dangers of relativism in practice: these second-rate scholars study, teach and demand inclusion of second-rate works selected "simply because of" the race, sex or sexual preference of the author<sup>144</sup> — rather than because of the intellectual or cultural merit of the work.

Although individual scholars can and do fall into more than one of these scholarly camps, and although there are intellectual no less than political affinities among leftists, deconstructionists and feminist and/or racial minority and/or gay and lesbian scholars, it is equally true that there are significant differences within and between each community<sup>145</sup> which are often, but not always,

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<sup>141</sup>See *supra* note 88.

<sup>142</sup>In decrying the displacement of some Western classics from the canon, Ron Grossman argues, "the saint and Hitler, Sophocles and a peasant's songs, all fade together against the gray background of nihilism where good and evil, truth and falsity, are no longer considered the kinds of issues that students ought to grapple with" (quoted in Sykes, *supra* note 78 at 65).

<sup>143</sup>See *supra* note 3. Although the formalists' rejection of affirmative action typically includes paternalistic concern for the truly qualified minority scholar who meets regular merit criteria but who is stigmatized by others' assumptions that s/he received preferential treatment, no feminist/non-white/lesbian or gay scholar singled out as a PCer is ever described as credentialed.

<sup>144</sup>See e.g. Bloom, *supra* note 68 at 94, who argues that the Black Studies movement gave universities a way out of the "dilemma" created by affirmative action — *i.e.* failing or passing unqualified and unprepared Black students — either of which meant "blacks would be recognizably second-class citizens." By arguing that universities only teach the myths necessary to support the system of domination, Bloom reasons, Black activists could claim "Black students are second-class not because they are academically poor but because they are being forced to imitate white culture. Relativism and Marxism made some of this claim believable." I hope it is clear that the "simply because-of" claim implies that those who assign such texts (no less than those who criticize their assignment) do not consider them great works in their own right, or cannot distinguish genuine cultural and scholarly excellence from mediocre work.

<sup>145</sup>There is now a substantial literature on the politics of difference criticizing equality theories which falsely universalize problems of subordination by ignoring or erasing the compound and/or distinctive character of intersecting inequities of race, gender, class and sexual identity. White lesbians have challenged both the heterosexism of feminists and the sexism of gay men; women of colour have criticized generalizations about "race," the sexism of men of colour, the erasure of lesbians of colour, and the racism of white lesbian separatists. More positively, see the sheer range

erased in the anti-PC literature.<sup>146</sup>

The conflation of the three targeted groups allows for extremely effective guilt by association. Fear-mongering that leftists now are poised to dominate university administrations — including hiring and promotion committees — lends visceral force to claims that minority scholars are ousting the Western classics by undemocratic means. The revelation that feminist scholars endorse openly “political” teaching and writing, the content of which is rarely described,<sup>147</sup> suggests that the “politics” in question are leftist, dogmatic and propagandistic. Caricatures of individual scholars said to be “typical” of their discipline blur with similarly sensational exposés about others, linking all critical scholars according to common faults: relentless propagandizing, far-fetched interpretations of great works, exaggerated grievances and preoccupation with sexuality. The refusal to individuate the distinctive constituencies said to compose the PC movement permits readers to draw on negative cultural stereotypes about women, feminists, lesbians, Blacks, Marxists and so on, such that the indicia of non-personhood attached to each form the patchwork deviance of all. Equally, trivialization of the claims of one group diminishes the distinctive harms to all. Consider John Taylor’s sneer:

In fact, the politically correct have concluded that virtually anyone with any sort of trait, anxiety, flaw, impediment or unusual sexual preference qualifies for membership in an oppressed group.<sup>148</sup>

This kind of put-down is a running theme in anti-PC literature, most commonly in derisive references to the so-called “victim’s revolution” composed of losers who concoct grand conspiracy theories about the oppressiveness of liberalism to excuse their own inadequacies.<sup>149</sup> This characterization of campus ferment makes quite clear Marxists and deconstructionists are not the real focus of anti-PC alarms. For anti-PCers, Marxists are simply reflexively championing the new underdogs now that Communism has failed as a political system elsewhere,<sup>150</sup> and deconstructionism dignifies victimology with a theory and discourse. The real belly-dread, hence the primary target, is a changing world in

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of perspectives, strategies, pedagogies and participants in Women’s Studies by reference to Minnich, O’Barr & Rosenfeld, eds., *supra* note 48; Gaskell & McLaren, eds., *supra* note 6. Similarly, on the diversity of perspectives, writings and politics of women of colour, see Anzaldúa, ed., *supra* note 4. For an equally diverse sampler of writings by lesbians of colour, see Silvera, ed., *supra* note 4.

<sup>146</sup>Jerry Frug has made the same point about attacks on Critical Legal Scholars of the mid-1980s (*supra* note 7 at 676-77, 680).

<sup>147</sup>By contrast, most anti-PC literature at least purports to define deconstruction.

<sup>148</sup>Taylor in *New York*, *supra* note 92 at 37.

<sup>149</sup>D’Souza’s introductory chapter is entitled “The Victim’s Revolution” (*supra* note 10 at 1). See also Taylor in *New York*, *ibid.* at 38 (feminist “eagerness to see all women as victims”); Adler in *Newsweek*, *supra* note 8 at 52 (derision of a course as “Oppression Studies”); Sykes, *supra* note 78 at 4 (the “burgeoning field of victim studies”); Kimball, *supra* note 10 at xv-xvi (“officially designated victims” secure protection against “speech or action deemed offensive”).

<sup>150</sup>See e.g. D’Souza, *supra* note 10 at 79, 214; “Politically Correct?” *Wall Street Journal* (26 November 1990) A10; Adler in *Newsweek*, *ibid.* at 53; George Carey, “Political Science: A Split Personality” (1992) 34 *Modern Age* 102 at 107.

which Black and Hispanic,<sup>151</sup> lesbian<sup>152</sup> and feminist scholars (in that order)<sup>153</sup> not only gain influence over white, heterosexual children, but also power to displace white, heterosexual men. From this vantage point, it does not matter that there are deep theoretical, material and tactical divisions within feminism, between white or heterosexual feminists and women and men of colour, lesbian and gay. All that matters is that the inferior classes seek to change male dominance and Eurocentrism.

### *B. What Threat Do They Pose? Bias Revealed*

Notwithstanding the headlines about censorship, the clear demon in anti-PC literature is affirmative action in admissions and hiring practices, and, therefore, in curricular design. Most anti-PC writers claim that quotas are in place without either describing what they mean by quotas or acknowledging the exclusionary admissions and hiring practices which led to affirmative action.<sup>154</sup> They sound typical alarms about erosion of academic excellence and accepted criteria of merit and reverse discrimination.<sup>155</sup> Previously, these arguments baldly equated active recruitment of women and minority scholars *per se* with lowering standards and displacing more qualified whites and men. That claim

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<sup>151</sup>Although aboriginal students and scholars are occasionally mentioned in enrolment statistics, they are not featured as targets of critique. And although Asians (lumpenly) are mentioned, it is generally in the context of their over-exclusion from prestigious universities by virtue of quota systems which set aside places for less qualified Blacks and Hispanics.

<sup>152</sup>Although this literature refers often to "homosexuals," the only named "homosexual" scholars tend to be lesbians. There is about an even split between white lesbians and lesbians of colour.

<sup>153</sup>See e.g. Taylor in *New York*, *supra* note 92 at 39, who states "[f]or all their fury, the gender feminists are surpassed in ideological rage by an even more extreme wing of the politically correct: the Afrocentrists." Similarly, although D'Souza's book is sub-titled "The Politics of Race and Sex on Campus," he focuses overwhelmingly on admissions, hiring and curriculum policies benefiting Black and Hispanic students and faculty. His conclusion portrays feminists and "homosexuals" as jumping on the anti-racism bandwagon to advance their own interests (*supra* note 10 at 235-36).

<sup>154</sup>D'Souza uses Duke University as a case study. Duke's Committee on Black Faculty developed a hiring resolution modelled on a court order imposed on the University of North Carolina at Chapel Hill that would require each of 56 "hiring units" to hire one Black scholar during the next five years. If successful, the plan would have raised the Black faculty complement from 31 out of 1400 to 87. If departments failed to comply, the only consequence was that they would have to show why. The compromise proposal adopted by the faculty council only provided "incentives" for minority recruitment. The University President defended the compromise arguing that a department might be moved to hire unqualified applicants who "may not be motivated to carry out the research activity ... required for a tenure appointment" and then the university would "run into the awkward situation of not granting them tenure." The Committee on Black Faculty then resigned en masse, 2,500 students signed a petition demanding the faculty council reconsider the "compulsory-hiring" proposal, and at a small protest rally, President Brodie apologized for his remarks and signed the petition. The original resolution was passed 35-19. This is not described as a democratic process, but as an illustration of the ascendancy of politically correct coercive tactics. (D'Souza, *supra* note 56 at 64-67).

<sup>155</sup>See especially D'Souza, *supra* note 10. Tom Fennell in *Maclean's*, *supra* note 8 at 43, reports that "some male academics claim that hiring quotas are destroying merit as the principal basis for hiring and promotion. As a result, about 200 Ontario academics signed a petition asking Premier Bob Rae's NDP government not to include Ontario universities in its employment-equity program."

is still made, but with carefully selected statistical backup.<sup>156</sup> In addition, anti-PC literature seeks to demonstrate the unworthiness of the new scholars by denigrating the content of their scholarship.

There are two related grievances about the new scholarship. First, it questions the possibility of objective knowledge, methodology, teaching and criteria of academic or cultural excellence, by exploring the social construction of all values and of the people, including white men, who express them. Second, it documents, analyzes and criticizes the patterns and dynamics of systemic inequality which both construct Eurocentrism and white, male supremacy and rationalize their perpetuation. Academic research on the relativity and contingency of knowledge and standards, standing alone, can reduce to a matter of esoteric verbal and theoretical wordplay — which is disrespectful and potentially disruptive of the scholarly approaches of an earlier generation, but which hardly warrants the outcry against deconstruction in the anti-PC literature. However, deconstruction of objectivist claims and their links to distribution of race, gender and economic power in the Western tradition can be profoundly disruptive of power relations throughout society. Once accepted history, tradition and social wisdom are placed alongside forgotten or marginalized players, voices, historic texts and political debates, reconstruction becomes possible, perhaps inevitable, absent wilful blindness to the meaning of omission. This prospect would seem to account for the hyperbolic rhetoric and weaponry of the formalist contingent.

The formalist response to critiques of objectivity actually substantiates the critique. The logic is utterly circular and self-referential: objectivity is asserted by proclaiming its challengers to be defective in rational detachment; their irrationality is implied by departure from white, male norms. Because those mounting the challenge are or represent white women and racial minorities, they are partisan; because their critique of objectivity seeks to expose sex and race bias in order to end it, it is political, not disinterested; because it is not disinterested, it is subversive of the university's mission. By contrast, it is no reflection on their detachment that a white, male intellectual elite so adamantly defends as timeless, universal truths what is to be found in study of Western civilization's greatest thinkers, artists, law-makers and political figures, or that those greats just happen to be white men whose greatness has been declared, studied and taught by white men. The authority of great works lies "not in any class or race or sex, but in a tradition before which all are equal."<sup>157</sup> Taking the high, impersonal line then, the defence of disembodied knowledge and disinterested inquiry

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<sup>156</sup>See D'Souza, *ibid.* at c. 2 where Berkeley is examined. Compare the selectivity of his statistics with those cited by Troy Duster, "They're Taking Over! And Other Myths About Race on Campus" (1991) 16:5 *Mother Jones* 30 at 31-33.

<sup>157</sup>Kimball, *supra* note 10 at 61. Or as D'Souza puts it:

It seems unlikely that being white and male are the reasons for anyone's greatness of thought; rather, those are features, historically accidental, that happened to coincide with great minds ... [I]nstead of denouncing the classics, minorities and women might do a lot better to challenge the *proprietaryship* of books which are not white male property but the common heritage of civilization (*ibid.* at 85-86).

is a defence of the formalist's version of what distinguishes Western thought and civilization.<sup>158</sup>

The wilfully blind moment in anti-PC literature appears when those who challenge the objectivity of dominant traditions are convicted of asserting the impossibility of any standards at all.<sup>159</sup> This "without us, nothing" posture is a telling instance of the self-referentiality of dominance. From a liberal point of view, revealing the self-interest behind the mask of objectivity offers an opening for pluralism in the classroom, as in democratic institutions. From the substantivist camp, it offers the possibility of transformative egalitarian change. Both positions promote values; both are consistent with genuine democracy. The substantive position may even be wildly optimistic about the power of ideas over the power available to the powerful to suppress liberatory ideas. Yet formalists consistently equate egalitarian critiques of disinterested knowledge and of the enduring truths celebrated by conservatives as the route to nihilism,<sup>160</sup> whose end product is private "bribery and intimidation"<sup>161</sup> and malignant political fanaticism.<sup>162</sup> Dinesh D'Souza writes:

The new critics go beyond the assertion of contingent knowledge to suggest that the very ideal of objectivity is a mirage, and that it is therefore perfectly legitimate, for teachers to cast aside pretensions of impartiality and to impose their politically preferred ideas on students. When the traditional norms of scholarship no longer rein in the instinct for activism, license is given for uninhibited ideological proselytizing.<sup>163</sup>

It is not, of course, the "ideal" of objectivity which is most besieged by the new critics, but the actual objectivity of scholars, scholarship, curricular designs and criteria of academic excellence self-defined as impartial. By reducing scholarship which anatomizes white, male supremacy to "preferred ideas," and the scholars who study and teach such "ideas" to proselytizing activists, anti-PC voices also reduce the existence of systemic racism and sexism to the personal opinions of anti-intellectuals: "Central to PC-ness ... is the *view* that Western

<sup>158</sup>D'Souza, *supra* note 56 at 79.

<sup>159</sup>For claims that the new scholarship means "anything goes," see *e.g.* D'Souza, *ibid.* at 58; Bloom, *supra* note 68 at 30, 32-33, 38, 55-56, 64-65, 143; Kimball, *supra* note 10 at 155-57.

<sup>160</sup>See sources listed above, *supra* note 127. See also Robert Gordon's response to the nihilism charge in "Letter to Dean Carrington" (1985) 35 *J. Legal Ed.* 13 at 14-16 (bizarreness of attributing nihilism and the teaching of cynicism and corruption to "the only people around who have any hope the situation can be changed and the commitment to changing it").

<sup>161</sup>Carrington, *supra* note 7 at 227 ("nihilist teachers are more likely to train crooks than radicals"). See also William Frank, "Controversy in the Philosopher's Academy" (1992) 34 *Modern Age* 155 at 162 (the anarchic trends prevailing in the academy will culminate in denial of "the justice of all differentiation between the hero and the pervert"); E. Christian Kopff, "The Classics and the Traditional Liberal Arts Curriculum" (1992) 34 *Modern Age* 136 (scientific training devoid of education in Latin and Greek and the humanist traditions they founded is "directly related to the massive amounts of fraud which now typify scientific publication" in the U.S.).

<sup>162</sup>D'Souza, *supra* note 56 at 78-79; Kimball, *supra* note 10 at 40; Smith, *supra* note 80; Jenish in *Maclean's*, *supra* note 8 at 44, in which Glenn Ricketts, research director of the National Association of Scholars states "[t]he politically correct people want to change the entire curriculum. Race and gender have to be integral to every subject. The movement is sinister because of its flat-out totalitarianism."

<sup>163</sup>*Ibid.* at 76.

society has for centuries been dominated by *what is often called* 'the white male power structure' or 'patriarchal hegemony'... [and] the *view* that Western civilization is inherently unfair to minorities, women and homosexuals ..."<sup>164</sup> And, as *Newsweek* describes the "experiments" at hundreds of U.S. universities, the opinions being foisted on students are preposterous:

The goal is to eliminate prejudice, not just of the petty sort that shows up on sophomore dorm walls, but the grand prejudice that has ruled American universities since their founding: that the intellectual tradition of Western Europe occupies the central place in the history of civilization. In this context it would not be enough for a student to refrain from insulting homosexuals or other minorities. He or she would be expected to "affirm" their presence on campus and to study their literature and culture alongside that of Plato, Shakespeare and Locke.<sup>165</sup>

In this rendering, the only men at risk from campus activism are long dead and the worst they have to fear is coexistence in the same syllabus as Audre Lorde or Alice Walker.<sup>166</sup> The living white men who must study alongside self-affirming white women or racial minority scholars, including lesbians and gay men, and who have long benefited from both Eurocentrism and male supremacy can purport to take an entirely disinterested scholarly approach to the canon debate, by defending, not their stake in the politics of (in)equality, but time-honoured apparently neutral values — the principles of liberal education,<sup>167</sup> the pre-eminence of the great works of Western civilization<sup>168</sup> and liberal democracy itself.<sup>169</sup>

What draws particular fire, then, are academic institutions which have replaced some traditional classics with "Third World," "minority" and/or

<sup>164</sup>Bernstein, *The [Kingston] Whig-Standard*, *supra* note 26 [emphasis added]. See also D'Souza, *supra* note 10 at 60 ("Protest against alleged Western exclusiveness in the classroom ...").

<sup>165</sup>*Supra* note 8 at 48.

<sup>166</sup>The late Audre Lorde, a Black lesbian feminist and author of thirteen books, taught English at Hunter College in New York. Alice Walker is a prolific Black feminist author whose novel *The Color Purple* won the Pulitzer Prize and American Book Award for Fiction. Both are American born. Their inclusion in the new curriculum is presented as problematic. See *e.g.* D'Souza, *supra* note 10 at 62, 68, 70, 185.

<sup>167</sup>See *e.g.* Bok, *supra* note 5 at 2. Bok writes that "[a] genuine commitment to education and research also means that universities accept a common set of standards in evaluating the academic work of faculty and students." New ideas must be tested "by accepted standards of logic, internal consistency, clarity of expression, and correspondence to known facts." Scholars must "gather evidence with care, take account of opposing arguments and facts, and present their case clearly, persuasively, and insofar as the nature of the work permits, objectively." Bok's article conveys that many new scholars cannot meet this standard. See also Kimball, *supra* note 10 at 74-75, 164; Sykes, *supra* note 78 at 24, 138, 209.

<sup>168</sup>It is notable that in anti-PC literature, the term "non-Western" is often associated with works by Black Americans such as Alice Walker and Zora Neale Hurston, lesbians of colour such as Gloria Anzaldúa, Pat Parker and Audre Lorde, and the politics of Marxist and/or feminists and/or lesbian and/or critical race scholars. See *e.g.* D'Souza, *supra* note 10 at 59-93 (Chapter 3), 147, 172-73, 207-10; Sykes, *ibid.* at 50, 64-65, 207-11.

<sup>169</sup>See *e.g.* President Bush's comments, *supra* note 13. The final paragraph of Allan Bloom's defence of the civilizing force of classical learning begins: "This is the American moment in world history, the one for which we shall be forever judged. Just as in politics the responsibility for the fate of freedom in the world has devolved upon our regime, so the fate of philosophy in the world has devolved upon our universities, and the two are related as they have never been before" (*supra* note 68 at 382).

women authors.<sup>170</sup> Some anti-PC voices insist that they have no serious objections to adding the "classics" of other cultures to the curriculum so long as such texts do not "dilute" the intellectual quality of the curriculum or "displace" the best of Western culture in the interest of politics.<sup>171</sup> The overt arguments against an inclusive curriculum, in short, are identical to those against affirmative action in admissions and hiring:<sup>172</sup> erosion of excellence; reverse discrimination against white, male texts; and politicization of traditionally neutral education. The unstated argument is antimiscegenationist: protect the sexual and racial purity of the curriculum to prevent its nongrelization; and supremacist: change is fine so long as the top remains top.

But, of course, a simple adding on of token minority teachers or a sprinkling of non-Western texts leaving systemic inequality unaltered falls far short of meeting the critiques of objectivity and Eurocentrism. It is half-truths, partial history, the ignorance of privilege and the privilege of ignorance which are displaced when old truths share the pages with what and who have been erased.<sup>173</sup> The aggressive self-defence provoked by such displacement consists of pathologizing substantive egalitarians as deviants or malcontents: they have a "hatred" for Western traditions and works,<sup>174</sup> and are bent on exposing Western traditions as "hopelessly bigoted and oppressive in every way."<sup>175</sup> This is an old ploy; it resembles the longstanding reduction of women's pursuit of sexual equality to evidence of "man-hating," and the vindictive desire to make all men look bad. The point of unmasking inequality, however, is neither to vent private animosity nor to pursue revenge.<sup>176</sup> It is to identify the structures, rhetoric and

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<sup>170</sup>I think Judith Frank gets it right when she unpacks conservatives' animosity about the canon wars. She writes "[t]he very act of analyzing [Western classics] somehow, curiously, brings devaluation with it. Perhaps [the] logic is that 'Western' books might be devalued, just as your property might, by contact with black hands" (*supra* note 45 at 16).

<sup>171</sup>On Stanford's changes to its Western Civilization course to encourage greater inclusiveness of non-Western cultures and civilization as well as at least one text each quarter to address race, gender or class, Kimball observes, "it is not said whether any of the [new] works must address issues of literary merit, aesthetic excellence, philosophical sophistication, or historical importance" (*supra* note 10 at 27-28). See also, D'Souza, *supra* note 10 at 68-75; Sykes, *supra* note 78 at 64-65, particularly for the metaphors of dilution and displacement.

<sup>172</sup>Indeed, opponents of substantive curricular change explicitly decry this as "affirmative action" in text selection. See *e.g.* D'Souza, *ibid.* at 60, 65.

<sup>173</sup>For illuminating accounts of the ways teaching a racially inclusive anthology of American literature enriches and transforms learning, see Paula Bennett, "Canons to the right of them ..." (1991) 8:12 *Women's Rev. Books* 15; Lauter, *supra* note 6 at 48-113. For a brilliant and complex account of race-conscious legal education and its full reply to critics of "political correctness," see Frances Lee Ansley, "Race and the Core Curriculum in Legal Education" (1991) 79 *Cal. L. Rev.* 1511. For multi-disciplinary readings on the dynamics and transformative impact of feminist teaching, see Culley & Portuges, eds., *supra* note 6.

<sup>174</sup>See *e.g.* Adler in *Newsweek*, *supra* note 8 at 53; Fennell in *Maclean's*, *supra* note 8 at 43.

<sup>175</sup>See D'Souza, *supra* note 56 at 52.

<sup>176</sup>See *e.g.* Ray Conlogue, "PCness and the Roots of Rage" *The [Toronto] Globe and Mail* (27 June 1991) C1 who writes:

Women, gays and blacks have been systematically scapegoated in our culture for centuries. But like the girls of Salem [who fingered innocent women as witches] they know that one doesn't get far by itemizing the rotten deal one has had. Far better, and more satisfying, to demonize the privileged. This will not only get you your share of the pie, but it also takes care of the (unacknowledged) need for revenge.

dynamics of inequality in order to change them.<sup>177</sup>

The anti-PC literature attacks those who would “dilute” Western traditions and displace Western classics by scare-mongering about the faddish (as opposed to timeless) topics being taught and the bizarre sub-cultures (rather than Culture) being promoted. The method of choice is to cite provocative snippets primarily from feminist, Black and/or lesbian writings to sound alarms about the texts being substituted for civilized scholarship. Sometimes sensational passages are quoted.<sup>178</sup> But a more typical approach is simply to list the titles of articles considered damning in themselves. All of the essays which use authors’ titles to put new scholarship down include at least one explicitly sexual title and one lesbian or gay title.<sup>179</sup> At least three anti-PC essays mention a paper entitled “Jane Austen and the Masturbating Girl”<sup>180</sup> without further comment. In aggregate, the impression fomented is that minority scholars are anything but detached, dispassionate intellectuals. Women academics in particular are apparently preoccupied with sexuality and, worse, the sexuality in question is associated with that great heterosexist dread: recruitment and conversion of the young by their “homosexual” teachers.<sup>181</sup>

<sup>177</sup>A substantive equality approach “allows critique of the social partiality of standards as well as opportunity to live up to existing ones” (MacKinnon, *supra* note 97 at 1326).

<sup>178</sup>See e.g. Taylor in *New York, supra* note 92, for synopses of feminism: “‘To know is to fuck’ has become a radical feminist rallying cry”; the work of Allison Jaggar: any woman who goes on a date with a man is a prostitute; and Afrocentrism: “The human race, according to [Leonard] Jeffries, is divided into the ‘ice people’ and the ‘sun people’”; the former are “materialistic, selfish, and violent”; the latter, including Black people, are “nonviolent, cooperative, and spiritual” as well as “biologically superior to whites ... because they have more melanin” (all at 39). Dinesh D’Souza includes a similar profile of Jeffries in the introduction to *Illiberal Education*, claiming “such extreme views are now frequently expressed by black scholars and activists” (*supra* note 10 at 7).

<sup>179</sup>In addition to the spotlight on Professor Eve Sedgwick (see *supra* note 93), D’Souza mentions a Modern Language Association [hereinafter M.L.A.] panel entitled “Literary and Critical Theory from a Lesbian Perspective” (*supra* note 56 at 62). Taylor in *New York, supra* note 92 at 36, refers to an assigned text called *Stars in My Pocket Like Grains of Sand* which, “like many contemporary speculative fictions finds conventional heterosexuality absurd.” Charles Sykes, *supra* note 78 at 207–09, devotes a small section of his book to *SIGNS: Journal of Women in Culture and Society*, one of the most prestigious feminist scholarly journals in the U.S., illustrating its “radical” flavour by listing the titles of essays collected in *The Lesbian Issue* published six years before his book. He also mentions other papers delivered at the M.L.A. panel where Sedgwick presented “Jane Austen and the Masturbating Girl,” “Clitoral Imagery and Masturbation in Emily Dickenson” and “Desublimating the Male Sublime: Autoerotics, Anal Erotics, and Corporeal Violence in Melville and William Burroughs.” Bernstein, *The [Kingston] Whig-Standard, supra* note 26 at A2, lists “Brotherly Love: Nabokov’s Homosexual Double” and “A Womb of His Own: Male Renaissance Poets in the Female Body.” *The Wall Street Journal, supra* note 150, singles out “The Lesbian Phallus — Or Does Heterosexuality Exist?” and “Psychological Issues of Lesbians and Gay Males.”

<sup>180</sup>See *supra* note 93.

<sup>181</sup>As Mary Eaton has documented, *supra* note 4, law and society construct gay men as uncontrollable sexual predators with a predilection towards pederasty. Not only is child sexual abuse more commonly a heterosexual than gay crime, and not only do many pederasts prey on girls as well as boys, but women in general and lesbians in particular rarely molest children sexually. Moreover, in law and society, lesbians are often de-sexed or lesbian sexuality rendered invisible. To the extent fear-mongering about “homosexuals” in the anti-PC literature disproportionately sexualizes lesbian scholars and implies that the “proselytizing” or “indoctrinating” being done by

But even more interesting is that spliced among the sexual titles meant to delegitimize the new scholars are course offerings such as: "Strategies for Feminist Team Teaching of Hispanic Women Writers" and "Postcolonial Women Writers."<sup>182</sup> Why are such titles meant to raise eyebrows? Is it racist disbelief that enough meritorious Hispanic or Third World women's literature exists to fill a course? White outrage that such texts could displace the core curriculum? Concern that students might learn the meaning of colonialism or collaborative pedagogy?

Lest the irrational, inobjective and sub-cultural character of PC scholars is not adequately conveyed by these means, there remains the other wing of the dichotomy of subordination to impugn the new scholars: crass self-interest. According to D'Souza, the champions of the victim's revolution have much to gain from assailing formal equality and universal standards:

Because the old notion of neutral standards in scholarship corresponded with a white male regime at American universities, minority and feminist scholars have grown increasingly attached to the new scholarship, which promises to dismantle and subvert these old authoritative systems. They view the new scholarship both as a mechanism to change the structure and content of what is taught in the classroom and as a source of jobs and promotions.<sup>183</sup>

If all standards are arbitrary or imbued with sex and race bias, then the new scholars can excuse their incompetence by arguing that traditional academic standards do not apply to them. More, they can insist that "oppression" studies can only be taught by the oppressed, thereby ensuring for themselves a field in which they will not have to compete with better scholars.<sup>184</sup> Their faculty supporters reap advantages from altering the old "neutral" standards too: they can gain celebrity and distinction by embracing "fashionable" theories without hard work and without having to master or teach sophisticated classics.<sup>185</sup>

## VI. Privilege as Property: Whose Takeover?

### A. *Innocence (Re)Asserted*

Once one understands that hostility to substantive egalitarian change is what animates the anti-PC crusade, the anomaly of conservatives passionately

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feminists-deemed-lesbians or lesbians-deemed-sex-obsessed may corrupt the young, it is promoting a particularly misogynist and homophobic agenda.

<sup>182</sup>Wall Street Journal, *supra* note 150.

<sup>183</sup>D'Souza, *supra* note 56 at 62. He also states that questioning the neutrality of all standards "make[s] it more respectable within the university for minority-group members to be admitted or hired without reference to the reactionary notion of academic merit ... [B]y reducing truth to bias, and knowledge to ideology, some believe they can win greater rewards than they might have by struggling to meet traditional academic-review criteria, such as the publishing requirements for hiring and tenure" (*ibid.* at 76-78). See also Open Letter, *supra* note 7; Amy Friedman, *Nothing Sacred: A Conversation with Feminism* (Ottawa: Oberon Press, 1992) at 43-44.

<sup>184</sup>See Randall Kennedy, "Racial Critiques of Legal Academia" (1989) 102 Harv. L. Rev. 1745. Kennedy warns that a concept of "intellectual standing" in legal scholarship based on race would likely "transform the study of race-relations law into a zone of limited intellectual competition" (*ibid.* at 1795).

<sup>185</sup>See e.g. Kimball, *supra* note 10 at xiii, 7, 157; D'Souza, *supra* note 10 at 65.

defending freedom of expression makes somewhat more sense. Formalists have never supported affirmative action in principle because entitlement is based on group status rather than individual merit, and on actual social and material inequality not abstract equal opportunity blind to "accidents" of race, sex, ethnic origin and so on. But neither, I think, did they ever imagine the degree to which affirmative action would seriously challenge their world. Insulated in their self-referential superiority, they expected the actual or deemed beneficiaries of affirmative action to be grateful for token inclusion at the margins of university life, all the while mindful of their presumptively second class minds and credentials, deferential to their seniors, in short, knowing their place. When the privileged construct their subordinates as less than fully human, they confuse disrespect for others with lack of self-respect in others, assuming the subordinated lack the will to resist conditions no self-respecting person, certainly no self-respecting white man, would tolerate.

The maintenance of systemic inequality turns on more than the power of the dominant to sell the rational merits or, at least, the necessity of dominant norms. It also turns on the self-assurance of the dominant in their own disinterestedness and in the legitimacy and rational merit of their ideological and social positions. Both conditions depend on powerholders' exclusive and exclusionary interpretive domain. However modest the real yield of affirmative action, the self-legitimizing authority of male supremacy and Eurocentrism as universally civilizing goods is subverted by direct contact with the lives and knowledge of the excluded. Because it was assumed that token women and minorities would undertake to be seen and not heard, their refusal to comply has profoundly shocked those who view them with lofty and benign disregard.

Changes to admissions, hiring and the curriculum have invariably been hard-fought and hard-won. They have also been modest because proponents of change are clearly outnumbered and unranked,<sup>186</sup> such that the boundaries of institutional change can be contained. What cannot be contained is the informal life of the community. It takes only one brave or desperate student to name the racism, misogyny or heterosexism in a course syllabus, in a textbook or in classroom conduct; only one leak to expose the open or veiled bigotry in hiring committee deliberations; only one impassioned student or faculty caucus to challenge administrative practices. Although effective control of university decision-making power can determine the institutional outcome of such moments, it cannot determine their personal impact on those challenged.

In anti-PC literature, the social, economic and professional power accrued by imposed inequality is treated morally and legally as a vested right. Although the running argument that affirmative action amounts to unjust expropriation is an obvious illustration, it is an old theme. What is new is the degree and quality of outrage expressed against the simple naming of inequality in concrete terms at the local level. Piercing through the grand abstractions and ringing symbols one can hear the unmistakable howls of wounded egos. The expropriation which really hurts is the shake up of that systemically constructed personal self-regard

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<sup>186</sup>See *infra* notes 218, 242 and accompanying text.

which turns on viewing one's own privilege abstractly and ahistorically as innocent and individually deserved, on having one's perspective constantly reaffirmed as rational and meritorious, and on feeling superior to those isolated individual bigots conveniently designated the authors of discrimination.<sup>187</sup> When disempowered individuals or groups name names, books, syllabi, and local policies as oppressive, those whose innocent self-regard is implicated react as if attacked personally and without provocation, as if forceful self-defence were the only appropriate response.<sup>188</sup> Anti-PC literature transforms the resentful outbursts of wounded egos into public-spirited defence of Western tradition. Innocent Mr. Nice Guy is restored even while No More Mr. Nice Guy takes revenge.<sup>189</sup>

The overt charge levelled against feminist and/or anti-racist and/or anti-heterosexist scholars<sup>190</sup> is that their work and praxis amounts to political "thought control" inconsistent with and fundamentally hostile to the tradition of intellectual freedom cherished in the university. Their enterprise is categorically labelled propagandistic,<sup>191</sup> closed-minded,<sup>192</sup> totalitarian,<sup>193</sup> intolerant of dis-

<sup>187</sup>Freeman, *supra* note 24 at 96.

<sup>188</sup>See e.g. Williams, *supra* note 18 at 55-79, on the way that the mere presence of three Black men in the white neighbourhood of Howard Beach was seen as provocation sufficient to justify their savage beating. See also how a wife's assertion of independence from her spouse reduces her murder to manslaughter on the ground of provocation (Andrée Côté, "La rage au coeur: rapport de recherche sur le traitement judiciaire de l'homicide conjugal au Québec" (Baie Comeau, Qué.: Regroupement des femmes de la Côte-Nord, 1991) [unpublished]).

<sup>189</sup>It is not only full professors who bitterly resent being injured in their self-regard as a result of encounters with insubordinate social subordinates. In my view, the only possible explanation for the rapidity with which alarms against "political correctness" saturated the media and were so widely and enthusiastically embraced is the outlet and relief anti-PC logic offers for injured innocence. Those who resent any and all movements towards egalitarian change, particularly the experience of having their relative privileges or internalized prejudices named as such, may now rationalize feminist, racial minority and lesbian and gay bashing as a public-spirited, and even courageous, defence of liberal values in the face of PC intolerance and intimidation.

<sup>190</sup>Not all feminists are white, heterosexual women; not all women of colour fighting for equality on campus identify themselves as feminists and not all men of colour are pro-feminist; not all lesbians, Black, aboriginal or Asian students or faculty are feminist or committed to the struggle against racism; not all gay men are white or pro-feminist or anti-racist. By my "and/or" structure, I intend to acknowledge here not only that the membership within oppressed groups overlaps, but that the priorities of oppressed groups sometimes collide and that privilege is relative.

<sup>191</sup>As David Toogood states:

[T]here is in [Canada] a clear limit to [the] level of propaganda tolerable in our educational system. We [cannot], now or in the future, offer a cloak of respectability to individuals or organizations wishing to have an exclusive, unchallenged right to give their version of current and historical events in our schools and universities, especially where these views attempt to vilify identifiable sections of the community with conspiracy and oppression myths. We take this to be a self-evident truth regardless of whether those involved are fascists or feminists (*Queen's Journal*, *supra* note 7 at 11).

<sup>192</sup>Taylor in *New York*, *supra* note 92 at 40, claims that if labelling something racist makes debate impossible, "that is just as well according to the new fundamentalists. Debate, and the analytic thinking it requires, is oppressive." See also Bok, *supra* note 5 at 8-9.

<sup>193</sup>See e.g. *Wall Street Journal*, *supra* note 150 at A10. The editorial states:

Students and others just emerging from the grip of political and cultural dictatorship elsewhere in the world must look with astonishment at the eagerness with which the

sent<sup>194</sup> and self-righteously moralistic.<sup>195</sup> These are extreme, even risky, claims to make unless one is confident about one's leverage to make the charges stick. A one-sided debate helps, of course, as does one-sided reporting. But so does the appeal to and promotion of that sense of outraged innocence made possible by formal equality's refusal to recognize systemic harms and their systemic consequences.

### B. *Intolerance (Re)Claimed*

Most anti-PC literature refers to bitter and polarized campus debates over egalitarian reform of admissions, curriculum content, pedagogy, hiring and promotion. However, without exception, these articles single out as voices of intolerance only those who name curricular content, classroom discourse, or administrative decisions racist, sexist or heterosexist.<sup>196</sup> With very few exceptions,<sup>197</sup> the "victims" of campus intolerance profiled in the literature are those accused or fearful of being accused of sexism or racism.<sup>198</sup> Typically such accusations are presented as outrageous,<sup>199</sup> often on the basis of the credentials of the person accused.<sup>200</sup> Not once does someone faulted for racist or sexist conduct admit

people charged with managing American universities have embraced thought control, political re-education and other basics of totalitarianism.

See also Adler in *Newsweek*, *supra* note 8 at 51: "PC is, strictly speaking, a totalitarian philosophy."

<sup>194</sup>This is the nub of the "censorship" claim. Interestingly, in the anti-PC literature, expressing racism or heterosexism or misogyny is construed as dissent. See *e.g.* Hyde & Fishman, *supra* note 11 at 1478-92; the discussion of censorship, *infra* notes 228-30 and accompanying text.

<sup>195</sup>This charge is made by Allemang in *The [Toronto] Globe and Mail*: "Self-important, guilt-tripping, holier-than-thou and unforgiving. ... The new Puritans indulge in relentless moralizing. Preaching tolerance of diversity, they foster intolerance and conformity" (*supra* note 27).

<sup>196</sup>One explanation is that historically subordinated groups are expected to accept insults or, at least, spare offenders the discomfort of being accountable. See Williams, *supra* note 18 at 64-65.

<sup>197</sup>In the few exceptional cases, those subjected to what is conceded to be racist or sexist abuse are students, not feminist faculty or scholars of colour.

<sup>198</sup>See *e.g.* the remarks of Professor Judy Wubnig reported by Fennell in *Maclean's*, *supra* note 8 at 40, 41. As well, see the often-repeated story of Harvard Professor Stephen Thernstrom, who was called "racially insensitive" by three students of colour for his approach to teaching slavery and affirmative action. According to the lead paragraph by Taylor in *New York*, *supra* note 92, Thernstrom was "haunted" for weeks by "denunciations, hissed in tones of self-righteousness and contempt, vicious and vengeful, furious, smoking with hatred." It was a "hellish ... persecution." In *Maclean's*, *ibid.* at 45, Thernstrom remarks that being accused of racial insensitivity is like "being called a cominie in the 1950s. Once accused, you're always suspect." See also D'Souza, *supra* note 10 at 194-97, 200, 226-27 (when Harvard did not rush to his defence, Thernstrom claimed "I felt like a rape victim ..." (at 196)). For a very different account of the story from a Harvard student, see *e.g.* Rosa Ehrenreich, "What Campus Radicals?" (December 1991) *Harper's* 57 at 57-58. For an account from a scholar with serious criticisms of Thernstrom's defence of his own ignorance, see Judith Frank, *supra* note 45 at 20-21.

<sup>199</sup>D'Souza's chapter profiling a number of scholars challenged for biased teaching begins with a quotation from Kafka: "Somebody must have been telling lies about Joseph K., for without having done anything wrong he was arrested one morning" (D'Souza, *ibid.* at 194).

<sup>200</sup>*Ibid.* For instance, Taylor in *New York*, *supra* note 92 at 35, describes Thernstrom as "one of the preeminent scholars of the history of race relations in America" who has "won prizes and published numerous articles and four books"; Jerish in *Maclean's*, *supra* note 8 at 45 describes him as a "respected author and historian of racial and ethnic relations"; D'Souza notes Thernstrom "had a good reputation as a progressive" (*ibid.* at 194).

there could be any validity in the judgment, or that he or she learned from the encounter, let alone altered what at least some students or colleagues considered offensive or oppressive.<sup>201</sup> Nowhere does the literature present an unexpurgated account of what triggered a complaint, for instance, by reprinting the entire text of a student letter criticizing teacher bias. Rarely is a complainant interviewed — let alone profiled in the sympathetic detail reserved for faculty subject to criticism — about the impacts of the conduct which triggered a complaint.

Small wonder, then, that in anti-PC literature it is far worse to be called racist or sexist, even by a student, than to be subjected to racism or sexism, even by a grading instructor.<sup>202</sup> For Charles Sykes, “even though they are often utterly without merit, charges of ‘racism’ can take a terrible toll”: people are “pilloried,” “denounced,” and “assigned into the academic gulag of ‘sensitivity training seminars’.”<sup>203</sup> For Judy Wubnig, many faculty are frightened of “attack”: “If I give a bad grade to a student from a minority group, then I could be assailed as a racist.”<sup>204</sup> For Congressman Hyde,

It is not a pleasant experience to be branded by one’s peers and professors as “racist,” “sexist,” or “homophobic.” Students witness the creation of inquisitorial star chambers dedicated to the eradication of political and cultural insensitivity ... They know that to be brought before such a tribunal means possible career-jeopardizing punishment.<sup>205</sup>

On its face, this is hardly disinterested non-partisan reportage. Less obvious to the reader of isolated accounts is the air-brush treatment received by “victims” of bias allegations. For instance, to illustrate his claim that “hostility to free expression in the name of race and gender sensitivities is now the norm” on American campuses, Dinesh D’Souza relates the case of Nina Wu. We learn that Ms Wu was expelled from her dormitory and dining hall after she

put up what she considered to be a humorous poster on her dormitory door. Among the categories of people who were “unwelcome” in her room, the poster allegedly listed “bimbos,” “preppies,” “racists,” and “homos.” She was brought up on charges by the administration and found guilty of using the word “homos” in violation of a policy which prohibits “making slurs or epithets based on race, sex, ethnic origin, religion or sexual orientation.”<sup>206</sup>

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<sup>201</sup>Indeed, some faculty criticized for discriminatory practices have responded by refusing to teach the course in which they were criticized. For instance, Michigan’s Robert Farley withdrew his course on race relations after Black and white students criticized its content: “I experienced considerable hostility from a small number of people. It was too much of a hassle to teach the course” (Jenish in *Maclean’s*, *supra* note 8 at 45). The same route was adopted by Harvard’s Stephen Thernstrom and Ian Macneil. See D’Souza, *ibid.* at 194-99. What is astonishing is that even D’Souza’s sympathetic portrait of these “victims” reveals they deserved criticism.

<sup>202</sup>Interestingly, in all the profiles of faculty reportedly devastated by being told their pedagogy or research was oppressive to some people, none deals with the devastation of being challenged for anti-lesbian or anti-gay conduct. Perhaps heterosexism is still so normalized that such challenges do not yet undermine self-regard.

<sup>203</sup>*Supra* note 78 at 56.

<sup>204</sup>As reported by Fennell in *Maclean’s*, *supra* note 8 at 40, 43.

<sup>205</sup>Hyde & Fishman, *supra* note 11 at 1484.

<sup>206</sup>D’Souza, *supra* note 10 at 145. Kevin Doyle’s editorial (“The Evil of the Nons” in *Maclean’s*, *supra* note 8 at 4) refers to the poster as “ridiculing homos” *et al.* Todd Pettigrew leads his column

In fact, the poster said "homos" *et al.* are "people who are shot on sight."<sup>207</sup> It is true, that the term "homo" is considered denigrating by lesbians and gay men, and conveys, at a minimum, their unwelcomeness. It is not true that the slur complained of reduces to the word "homos." And the term "unwelcome" does not accurately capture the injury of a poster which publicly jokes about shooting "homos" on sight.

D'Souza also claims that the University of Michigan's speech code has "resulted in the harassment and punishment" of those whose views fall "outside the range of acceptable orthodoxy." By way of illustration, he cites a Social Work student censured for expressing in class his view that homosexuals could be "cured." Even though the student was cleared of violating the speech code, the panel which heard the complaint suggested the student should be reviewed by "appropriate social work professionals in considering his suitability as a professional social worker."<sup>208</sup> What D'Souza fails to mention is that it was not the student's ideas which concerned the panel (which is why they found no speech code violation) but his conduct outside of the classroom. He not only stated that he believed homosexuality was a disease, but that he was developing a counseling plan to cure lesbian and gay "patients" and was already treating several of his "patients" accordingly.<sup>209</sup> At a minimum, this amounts to imposing his private views and/or bigotry on others in a potentially coercive context without professional accreditation or academic permission and despite medical opinion that homosexuality as such is not a disease.<sup>210</sup>

Another often reported example of PC intolerance is the expulsion of a Brown student. As Congressman Hyde tells the story, "[s]ometimes such speech seems nothing more than mean-spirited: At Brown University, a student was expelled for drunkenly shouting a number of anti-Black, anti-Semitic and anti-homosexual epithets the night of his birthday."<sup>211</sup> In fact, after shouting the string of epithets, he directed anti-Semitic slurs towards an individual Jewish student. On a separate occasion he also directed racist slurs toward an individual Black student. Only after the second offence was he expelled.<sup>212</sup>

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entitled "Tyranny of Goodwill Presents a Real Danger" *London Free Press* (5 October 1991) E5, with the story of Wu's "lighthearted notice ... which campus homosexuals found offensive."

<sup>207</sup>Adler in *Newsweek*, *supra* note 8 at 48. When Ms Wu filed a federal lawsuit protesting her expulsion, she was allowed to return.

<sup>208</sup>*Supra* note 10 at 148.

<sup>209</sup>Hyde & Fishman, *supra* note 11 at 1476, citing *Doe v. University of Michigan*, 721 F. Supp. 852 at 865 (E.D. Mich. 1989). A separate complaint against the same student concerning sexual harassment was upheld.

<sup>210</sup>In 1973, the American Psychiatric Association agreed that homosexuality *per se* is not a disease and removed it from its official catalogue of mental illnesses, the *Diagnostic and Statistical Manual (DSM)*. Indeed the *DSM* now contains a condition called "ego dystonic homosexuality" which describes as maladjusted the lesbian or gay man who wishes to convert to heterosexuality. See Celia Kitzinger, *The Social Construction of Lesbianism* (London: Sage Publications, 1987) at 43, 53-54. This is not to elevate psychiatrists or other medical professionals as reliable authorities on lesbian and gay well-being. It is to suggest that a social work student who unilaterally undertakes to "cure" lesbians and gays is not a victim of "censorship" and is clearly in need of supervisory review.

<sup>211</sup>Hyde & Fishman, *supra* note 11 at 1488.

<sup>212</sup>Jones, *supra* note 83 at 1398, note 62. For another tilted report, see the discussion of Professor

In these accounts, media reports of dramatic increases in campus racism and anti-Semitism are said to be inflated by the hypersensitive reactions of women and racial minorities to "ambiguous" incidents, and even by faked incidents initiated by their alleged victims to prove bigotry is a problem.<sup>213</sup> But even unambiguously hostile incidents are said to be the natural and justifiable backlash to affirmative action. It is nothing so simple as a privileged elite's resistance to sharing space with society's historic outsiders, whose very presence as well as distinctive life experiences and perspectives challenge previously uncontested truths. It is rather what Dinesh D'Souza calls the "new racism" based, not on the prejudice of ignoramuses, but on rational observation, notions of fairness and principled reaction to hypocrisy.<sup>214</sup>

The anatomy of the new racism goes like this. First, elite universities lower their entrance standards and admit racial minority students whose intellectual abilities are unequal to unaltered academic standards. Soon, such students fall so far behind that even tutorials cannot help them cope. Dislocated from their old communities and troubled by academic inadequacy, they gravitate to race-specific student caucuses or theme houses where they find "a novel explanation for their difficulties": subtle, even "deceptively polite" racism in everyone around them, and deep-rooted institutional racism in the administration. Affirmative action is not to blame for their personal failures, pervasive racism is. "Meanwhile feminists and homosexual activists" exploit the "moral momentum of the race issue" and complain that they too are victimized by the same oppressor. And administrators "eager to deflect frustration and anger" from themselves agree to narrow "re-education efforts" to "target the white, male, heterosexual element" so that in a "Kafkaesque turn of events, the academic inequality of minority students is blamed on the social prejudices of their white male peers."<sup>215</sup> The end result is the new racism emanating from white and Asian students who enter college open-minded and tolerant until they are confronted by the inherent unfairness of admissions policies which restrict entry of well-qualified people like themselves in favour of underqualified Black and Hispanic students, snubbed by those minorities who cling to separatism and censured if they then try to discuss their concerns about both.

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Therstrom's story, *supra* note 198.

<sup>213</sup>See e.g. Hyde & Fishman, *supra* note 11 at 1471-74; D'Souza, *supra* note 10 at 132-36. On "ambiguity," compare D'Souza's account of a white student who painted an Afro haircut and thick lips on a Beethoven poster (*ibid.* at 133-34) with the analysis of the same incident by Williams, *supra* note 18 at 110-15. On faked incidents, see D'Souza, *ibid.* at 134-36.

<sup>214</sup>D'Souza, *ibid.* at 240-41.

<sup>215</sup>*Ibid.* at 230-36. See also Taylor in *New York*, *supra* note 92 at 40: "instead of increasing self-esteem, schools that offer an Afrocentric education will only turn out students who are more resentful, and incompetent, than ever"; Bloom, *supra* note 68 at 95 says: "And everywhere hypocrisy, contempt-producing lies about what is going on and how the whole system is working. This little black empire has gained its legitimacy from the alleged racism surrounding it and from which it defends its subjects." At 96, Bloom continues: "A disposition ... of shame and resentment has settled on many black students who are beneficiaries of preferential treatment. ... White students do not really believe in the justice of affirmative action, do not wish to deal with the facts, and turn without mentioning it to ... non-black society. Affirmative action (quotas), at least in universities, is a source of what I fear is a long-term deterioration of the relations between the races in America."

Nina Wu's poster, the Social Work student who imposed his personal cure on his lesbian and gay clients and the Brown student's anti-Semitic epithets are hard to reconcile with D'Souza's victim-blaming rationales for campus racism, or his trivialization of feminist and lesbian and gay equality struggles. So are the students who hung up posters celebrating "Bestiality Awareness Day" to protest gay awareness programs at Yale, the students who published a column describing an administrator as a "feminazi" suffering from "penis envy," or D'Souza's own bigotry at Dartmouth.<sup>216</sup>

### C. *Omission (Re)Constructed*

Even if one strips backlash to affirmative action of its blame-the-victim dimensions, the anti-PC account of campus turmoil reveals the errors of omission paradigmatic of a formalist worldview. Women's struggles to replace the formalist regime of equal pay for equal work with comparable worth legislation make no sense without a historic account of the origins and consequences of sex-based wage inequalities and occupational segregation. Similarly, campus initiatives to alter admissions standards, curriculum content and hiring and promotion procedures make little sense without a historic account of the discriminatory practices in universities which led to calls for change.

To the extent that this literature alludes to exclusionary practices in universities at all, the point made is that the present underrepresentation of men of colour and women on faculty is the result of past wrongs now eliminated, and that the cure should not be present wrongs against the best qualified candidates or against academic standards.<sup>217</sup> That the bad old days did not end when admission and hiring were formally opened to men of colour and women is utterly ignored in the anti-PC literature. This erasure gives credence to claims that reports of a dramatic increase in racism and sexism on campus are exaggerated by hypersensitive complainants and that affirmative action is primarily to blame for the problem, while it simultaneously shores up the credibility of the eminent men who claim to have been unfairly victimized by bias allegations. But it is not only history and context which are erased. People are disappeared, too: all those feminist and minority students and faculty who have experienced, documented and/or litigated academic discrimination disappear without a trace in this white-washed defence of traditionalism.

The catalogue of what has been erased in the telling gives a different meaning to the metaphor of "thought control." There is no reference to long-standing and continuing preferential hiring of white men over white women and minorities in violation of merit criteria,<sup>218</sup> and little or no reference to admissions prac-

<sup>216</sup>See Hyde & Fishman, *supra* note 11 at 1483. See also *supra* note 10 and accompanying text.

<sup>217</sup>See e.g. D'Souza, *supra* note 10 at 162-66; Bloom, *supra* note 68 at 89-97.

<sup>218</sup>On racism in hiring, see comparative credentials of minority and non-minority faculty hired in 1987-88 by American law schools noted by Leslie Espinoza, "Masks and Other Disguises: Exposing Legal Academia" (1990) 103 Harv. L. Rev. 1878 at 1882-83. On sexism, see Constance Backhouse, Roma Harris, Gillian Michell & Alison Wylie, "The Chilly Climate for Faculty Women at University of Western Ontario" (November 1989) at 6-8 [unpublished, on file with author]; Sheila McIntyre, "Promethea Unbound: A Feminist Perspective on Law in the University" (1989) 38 U.N.B.L.J. 157 at 159-61 and sources cited therein.

tices which relax standards for the children of alumni/ae.<sup>219</sup> There is no reference to the extensive academic writing on the "chilly" or openly hostile academic climate faced by white women, women and men of colour, or lesbians and gay men on faculty.<sup>220</sup> None of this literature refers to the extensive and sorry litigation history of feminist or other critical scholars denied renewal or tenure on discriminatory grounds, or the degree to which academic freedom has been used to justify termination.<sup>221</sup> The pervasiveness of sexual harassment in universities, the history of institutional inaction and/or faculty resistance to anti-harassment regulations and the reasons for and problems of under-reporting never appear in this literature.<sup>222</sup> Where sexual harassment is mentioned at all, it is in the context of male professors' fear of or anger at being "falsely" charged for making sexist remarks or jokes and being unable to clear their names.<sup>223</sup> Finally, in anti-PC writing, not one feminist or minority scholar receives any air time to describe in his or her own words his or her personal experiences of discriminatory treatment by colleagues or administrators, or the adverse impact of such treatment on their work, career ambitions and well-being.

In aggregate, these compound omissions present a one-sided picture that is both false and utterly indulgent of the property of privilege. Perhaps some of the

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<sup>219</sup>In 1988, children of Harvard alumnae/i exceeded the number of students admitted through affirmative action (Duster, *supra* note 156 at 33, 63).

<sup>220</sup>See sources listed *supra* notes 41, 218. As well, see generally Katharine Bartlett & Jean O'Barr, "The Chilly Climate on College Campuses: An Expansion of the 'Hate Speech' Debate" [1990] Duke L.J. 574; Bell, *supra* note 73; Anne Innis Dagg & Patricia Thompson, *MisEducation: Women and Canadian Universities* (Toronto: Ontario Institute for Studies in Education, 1988); Richard Delgado, "The Imperial Scholar: Reflections on a Review of Civil Rights Literature" (1984) 132 U. Pa. L. Rev. 561; Richard Delgado, "Minority Law Professors' Lives: The Bell-Delgado Survey" (1989) 24 Harv. C.R.-C.L. L. Rev. 349; Charles Martin, "The Origins of Racial & Ethnic Conflict on U.S. College and University Campuses" (1991) 37 Wayne L. Rev. 1363; Nellie McKay, "Black Woman Professor-White University" in Klein & Steinberg, eds., *supra* note 16 at 36; Athena Theodore, *The Campus Troublemakers: Academic Women in Protest* (Houston: Cap and Gown Press, 1986); Jeri Dawn Wine, "Outsiders on the Inside: Lesbians in Canadian Academe" in Sharon Dale Stone, ed., *Lesbians in Canada* (Toronto: Between the Lines, 1990) 157.

<sup>221</sup>For a summary of the scholarship and caselaw on academic sex discrimination suits, see Mary Gray, "Academic Freedom and Nondiscrimination: Enemies or Allies?" (1988) 66 Texas L. Rev. 1591. Gray notes that the only cases in which discrimination suits prevailed over an institution's claims of academic freedom involve white plaintiffs against Black institutions. Otherwise, courts have been "extremely deferential" to the academic power structure and rarely find for the plaintiff in sex discrimination suits. For personal accounts of some of the human casualties, see Phoebe Haddon, "Academic Freedom and Governance: A Call for Increased Dialogue and Diversity" (1988) 66 Texas L. Rev. 1561 (events following summary discharge of Black Dean of Temple Law School); *Newsletter of the Conference on Critical Studies* (July 1988) (containing brief articles, letters and circulars describing renewal and tenure denials of feminist and critical legal scholars at Harvard, Yale, University of Pennsylvania and City University of New York at Queens).

<sup>222</sup>See e.g. Phyllis Crocker, "Annotated Bibliography on Sexual Harassment in Education" (1982) 7 Women's Rts. L. Rep. 91; Kathleen Storrie, Pearl Dykstra & Kelleen Wiseman, "Bibliography on Sexual Harassment" (1981) 10:4 *Resources for Feminist Research* 25; L. Cammaert, "How Widespread is Sexual Harassment on Campus?" (1985) 8 Int. J. of Women's Studies 388. On under-reporting, see Arjun Aggarwal, *Sexual Harassment in the Workplace*, 2d ed. (Toronto: Butterworths, 1992) at 127-29, especially note 3 which cites three cases in which women students faced defamation suits after filing complaints.

<sup>223</sup>See Fennell in *Maclean's*, *supra* note 8 at 42; D'Souza, *supra* note 10 at 199.

authors of the anti-PC version of campus conflict really believe that the academics most at risk of professional reprisal for their views are conservatives or white men accused of sexism or racism. Yet even in their own accounts, none of the men named as casualties of the PC menace has been disciplined let alone discharged. Only one tenure denial is even cited and it dates from the 1970s; the more common story is of male scholars sufficiently marketable to move to institutions they find more congenial<sup>224</sup> or sufficiently senior to refuse to continue teaching courses in which they have been challenged.<sup>225</sup> More, none of the great names reportedly devastated by student complaints or paralyzed by the possibility they might be criticized comes close to being as personally or professionally vilified, misrepresented and trivialized as the feminists, lesbians and scholars of colour featured in anti-PC books and articles which play to an audience of millions, not to the readers of student papers. As for students, the newly elected editor of the *Harvard Crimson* has said:

People call the *Crimson* and ask what we "did to that man" [Professor Thernstrom]. It's important to remember who has the power here, because it's not students. Who would dare criticize a professor for political reasons now? In addition to fearing for your grade, you'd fear being pilloried in the national press.<sup>226</sup>

Slanted reporting and factual omissions support the fiction that inequality's victims have turned the tables on history and now victimize white men. The widespread currency of this fiction also illustrates the way power can dictate what becomes accepted cultural knowledge. Another illustration is the way anti-PC literature appropriates the discourse and experience of marginalized groups to reassert and legitimate control.

#### D. *Discourse (Re)Appropriated*

The most obvious appropriation is of the term "political correctness" itself.<sup>227</sup> Adopted initially by activists of the 1960s, sometimes ironically, sometimes self-mockingly, sometimes self-critically, it targeted dogmatism, preachiness and uncritical embrace of any party line. To be sure, within the New Left, anti-racism, feminist and lesbian and gay movements, strategies, theories and political principles have been debated passionately, divisively and sometimes

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<sup>224</sup>University of Toronto political philosophy professor Thomas Pangle claims Yale denied him tenure in the late 1970s (*i.e.* well before the "PC menace" existed) because he was regarded as too conservative (Jenish in *Maclean's*, *supra* note 8 at 45); Professor Paul Bator left Harvard Law School for the University of Chicago Law School because of the alleged political disruption caused by Critical Legal Scholars (Frug, *supra* note 7 at 679); Professor Ian Macneil chose not to seek an extension of his Visitorship at Harvard after being criticized for sexism, but to move on to Northwestern (D'Souza, *supra* note 10 at 199). More commonly, discrimination against white men is simply proclaimed as a fact. See *e.g.* Open Letter, *supra* note 7; Sykes, *supra* note 78 at 21.

<sup>225</sup>See *supra* note 201.

<sup>226</sup>Ehrenreich, *supra* note 198 at 61. As to the claim that multiculturalism has displaced the core curriculum at Harvard, Ehrenreich, who majored in English and American literature and history, had only two women teachers in thirty-two courses, was never assigned a single work by a Black woman, and never even saw a Black or Hispanic professor. Compare D'Souza's chapter, "Tyranny of the Minority: Teaching Race and Gender at Harvard" (*supra* note 10 at c. 7).

<sup>227</sup>For a history of the origins of the term, see Ruth Perry, "Historically Correct" (1992) 9:5 *Women's Rev. Books* 15.

dogmatically. But when some stance was or seemed self-righteously dogmatic, someone was sure to urge a more textured critical analysis by warning against political correctness.

Opponents of affirmative action portray all proponents of substantive egalitarian reform and all critics of racism, misogyny or heterosexism as a powerful unitary movement devoted to imposing its own political orthodoxy on others through campus demonstrations, intimidating labels and anti-harassment policies intolerant of "dissent." The catchphrase "political correctness" is wonderfully efficient in discrediting (and trivializing) commitment to equality of results. It converts all criticism of oppressive practices into anti-democratic, even totalitarian, thought control, and inclusive pedagogy encouraging critical thought about accepted wisdom into indoctrination for closed-mindedness. At the same time, minority activism against majoritarian "truths" claiming universal appeal and neutral origins and impacts is converted from political dissent into a moralizing crusade. This ascription of radicalism and puritanism to substantive egalitarians conveys illiberalism writ large.<sup>228</sup>

In a related move, critics of political correctness, despite their power and majority within universities and their pages and pages of media attention, insist that their voices have been "silenced."<sup>229</sup> The anatomy of oppression as silencing and the project of claiming voice as an act of liberation originated in and continues to animate feminist, anti-racist and lesbian and gay scholarship.<sup>230</sup> The metaphor comprehends both the manufactured invisibility of subordinated peoples from cultural and political history manifest, for instance, in William F. Buckley's assertion that "from Homer to the nineteenth century no great book has emerged from any non-European source,"<sup>231</sup> and the literal silence of those who know the dangers of talking back in the context of unequal power. Striving to be seen and not heard; seeming sullen, servile, deferential, obsequious or stupid; failing to report harassment or rape — all these are spirit-destroying options visiting contempt on subordinated classes, but they may be less self-destructive than being lynched, gassed, battered, bashed or electroshocked, or merely fired, demoted, denied tenure, failed or expelled.

In labelling the silenced the silencers, anti-PC literature simultaneously creates a false symmetry between powerholders and those they disempower and

<sup>228</sup>See, *supra* notes 103, 136, 160-69, 193.

<sup>229</sup>Philosopher Cameron MacKenzie from the University of Alberta claims that only 137 faculty members signed a petition demanding the university hire and promote solely on the basis of merit because "[l]ots of people with tenure are scared to speak up" (Fennell in *Maclean's*, *supra* note 8 at 43). *Maclean's* cover story of 27 May 1991, is called "The Silencers."

<sup>230</sup>See e.g. Nancy Jo Hoffman, "Breaking Silences: Life in the Feminist Classroom" in Culley & Portuges, eds., *supra* note 6 at 12; Lawrence, *supra* note 61 at 453-55, 471-77; Audre Lorde, *Sister/Outsider* (Freedom, Calif.: The Crossing Press, 1984) ("The Transformation of Silence into Language and Action"); MacKinnon, *supra* note 59 at 39, 206-13; Tillie Olsen, *Silences* (New York: Delacorte Press, 1978); Adrienne Rich, *On Lies, Secrets and Silence: Selected Prose 1966-1978* (New York: Norton, 1979).

<sup>231</sup>Quoted in McNew, *supra* note 103 at 6. See also Williams' observation that when non-whites achieve recognized greatness they are either counted as exceptions to their race, or erased of their Blackness like Beethoven, Dumas and Pushkin in order to be claimed as Western (*supra* note 18 at 113-14).

a hierarchy of injury elevating the interests of the powerful above those of the disempowered. By insisting that calling someone a racist is as intimidating, chilling of speech and harmful to education as being racist, racism becomes an idea whose articulation becomes dissent. At the same time, having promoted the belief that racism is not systemic in educational institutions or society and that allegations of racism are often self-serving fabrications to excuse personal failure, anti-PC literature portrays the books, practices and teachers who have been criticized as innocent underdogs bravely defending the virtues of educational and democratic tradition against outsider attack.

The final appropriation is as ironic as it is outrageous. In the anti-PC literature, calling a professor on racism or (hetero)sexism, especially anonymously, is to engage in “McCarthy-like” tactics. This was the denunciation levelled against the authors of the “Chilly Climate” report at the University of Western Ontario by President Pedersen.<sup>232</sup> Another spin is that calling someone racist, sexist or anti-lesbian “is like being a commie in the 1950s. Once accused, you’re always suspect.”<sup>233</sup> Ironically, the new McCarthyism accusation coexists with pervasive red-baiting throughout anti-PC literature. New scholars are routinely described as “left-leaning” or Marxist,<sup>234</sup> their praxis is labelled “re-education” or “thought control” and their deviance is highlighted by reference to the decline of communism in Eastern Europe.<sup>235</sup>

The McCarthyism metaphor only works if one holds that anti-racist, feminist and gay and lesbian activists have powerful institutional backers or command a monopoly over institutional opinion. And indeed, this is a common assertion. Dinesh D’Souza writes that the influence of these new scholars “is in many places dominant; soon they will displace the old guard,” and that “[m]ost university presidents and deans cooperate in the project to transform liberal education in the name of minority victims. This group includes an overwhelming majority of presidents of state universities and of Ivy League schools.”<sup>236</sup> The literature paints a picture of tyranny achieved. *Newsweek* speaks of the “march of PC across American campuses” where “no aspect of university life is too

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<sup>232</sup>Backhouse *et al.*, *supra* note 218; Alan Bass & Wendy McCann, “Pederson Assails Anonymity” *London Free Press* (17 November 1989) B2.

<sup>233</sup>The quotation is from Professor Thernstrom, referring to a student letter in the *Harvard Crimson* about his lack of “racial sensitivity” (Jenish in *Maclean’s*, *supra* note 8 at 45). In D’Souza’s account, Thernstrom’s letter of reply to the complaint named it “McCarthyism of the left” (*supra* note 10 at 195). *Newsweek’s* feature story is subtitled “Is This the New Enlightenment on Campus or the New McCarthyism?” (*supra* note 8 at 48). See also Judge Gee, *supra* note 42 at 1617, who remarks that “reverse McCarthyism” against conservatives “occurs almost daily.”

<sup>234</sup>I have read no anti-PC book or article which does not contain red-baiting language. Even one of the only intentionally discrediting portraits of conservatives in anti-PC writing is also red-baiting. Adler in *Newsweek*, *supra* note 8 at 49, reports that Professor James D. Barber, a member of the National Association of Scholars, “stalked into the political-science section [of the Duke bookstore] one day last spring and turned on its spine every volume with “Marx” in its title — about one out of seven by his count, a lot more attention than he thought it warrants — and angrily demanded their removal.”

<sup>235</sup>See *e.g.* Adler in *Newsweek*, *ibid.* at 53; *Wall Street Journal*, *supra* note 150; D’Souza, *supra* note 10 at 79, 214; Carey, *supra* note 150 at 107; Meyer, *supra* note 50 at 115; George Will, as quoted in McNew, *supra* note 103.

<sup>236</sup>*Supra* note 56 at 55, 57.

obscure to come under [PC] scrutiny."<sup>237</sup> The *Wall Street Journal* declares that "[i]n colleges and universities the country over, political re-education has been institutionalized."<sup>238</sup> *Maclean's* cover story called "The Silencers" is sub-titled "A New Wave of Repression is Sweeping through the Universities."<sup>239</sup> Anonymous members of the Canadian legal profession declared that "[a] most powerful network of supporting feminist groups commanding often unchallenged influence at the highest levels of government and the public media stand by ready to destroy the career of any non-conforming male faculty." The root of the problem, they wrote, is "a dangerous one-view domination by self-styled feminists of the recruitment process, belying the paucity of their numbers. People are afraid to criticize their feminist wisdom. No one dares speak the truth openly."<sup>240</sup> Why? "This is a new McCarthyism. It is more frightening than the old McCarthyism, which had no support in the academy. Now, the enemy is within."<sup>241</sup>

Leaving aside the plain untruthfulness of the takeover myth in terms of faculty demographics and power,<sup>242</sup> or of universities' non-collaboration during the McCarthy era,<sup>243</sup> the case for McCarthyism turns primarily on the allegedly chilling effect of campus anti-discrimination policies on intellectual inquiry and the heightened consciousness against discriminatory conduct they provoke. Although it is true that anti-discrimination policies and/or anti-harassment codes have been implemented at many colleges and universities,<sup>244</sup> the number of complaints processed under such policies or codes appears tiny compared to estimates of the expression of bigotry on campus. For instance, one 1990 U.S. study estimates that 800,000-1,000,000 minority students (about twenty per-

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<sup>237</sup>*Supra* note 8 at 49, 51.

<sup>238</sup>*Supra* note 150.

<sup>239</sup>Fennell in *Maclean's*, *supra* note 8 at 40.

<sup>240</sup>See *supra* note 7.

<sup>241</sup>Professor Thernstrom, quoted by Jenish in *Maclean's*, *supra* note 8 at 45. But for ample refutation, see Frug, *supra* note 7.

<sup>242</sup>D'Souza states that 2.2% of American faculty members are Black (*supra* note 10 at 167); in Canada, by 1989, 17.2% of tenured or tenure track faculty positions were held by women (Canadian Association of University Teachers, *Status of Women Supplement* (1991) at 13); in the U.S., Scott states that 31% of U.S. faculty are women, but does not indicate what proportion of those are not tenure track (*supra* note 11 at 36); as of 1988, only 47 of 5,860 full-time law faculty in the U.S. were Latino/a (Espinoza, *supra* note 218 at 1882); a recent poll of 35,478 American faculty members disclosed they self-identify as follows: "far left" (4.9%), "liberal" (36.8%), "moderate" (40.2%) and "conservative" (17.8%) (Duster, *supra* note 156 at 63); the number of four-year American universities requiring some racial content in their mandatory Western or world civilization course was 20%: Phyllis Franklin, Bettina Huber & David Laurence, "Continuity and Change in the Study of Literature" (1992) 24:1 *Change* 42 at 51.

<sup>243</sup>See Frug, *supra* note 7 (review of Ellen Schrecker, *No Ivory Tower: McCarthyism and the Universities* (New York: Oxford University Press, 1986)).

<sup>244</sup>Although the American Civil Liberties Union publicized reports that 70% of U.S. colleges and universities have adopted restrictive speech codes, the survey it relies upon indicated only that 60% of respondents had a written policy on "bigotry, racial harassment, or intimidation." Policies are not speech codes. Note, too, 40% had no policy in place at all at that time (Collins, *supra* note 5 at 15). In Canada, the Federal Contractor's Program conditions eligibility to bid on federal contracts of \$200,000 on written commitment to employment equity. Virtually all Canadian universities have now drafted written policies endorsing employment equity. Few have yet been reviewed. See Canadian Association of University Teachers, *Bulletin* (October 1990) 19.

cent) are subjected to at least one “ethnoviolent” incident every year.<sup>245</sup> By comparison, consider that the University of Wisconsin, which has more than 160,000 students state-wide, received a total of thirty-two complaints about all forms of harassment during the first eighteen months its anti-harassment code was in operation. Of the first twenty-five cases processed, fifteen were dismissed, and only one resulted in suspension.<sup>246</sup> Similarly, the gap between sexual harassment or sexual assault on campus and complaints reported is huge, notwithstanding policies to process complaints.<sup>247</sup>

My point is not that so few members of the university community are actually reprimanded or disciplined that campus speech is not significantly chilled by harassment codes, although it does appear that far less hateful speech is chilled than one might hope; it is that the potential chilling effect of anti-discrimination policies on arguably discriminatory speech and conduct occupies the whole anti-PC landscape. The frightening or degrading impact of racist, misogynist and/or heterosexist harassment in an already chilly climate is discounted directly or indirectly.

The direct method involves referring to hostile, denigrating or abusive conduct as isolated “sophomoric humour,” “insensitivity” or “inprudent” slip-ups which cause “hurt feelings.”<sup>248</sup> This is to be contrasted with “devastation” and “violation” caused by the “denunciation,” “pillorying,” “persecution” and “excoriation” of “allegations” about the insensitivity or humour of speech code offenders.<sup>249</sup> The indirect method involves back-of-the-bus logic: historically subordinated groups should subordinate their claim to freedom from harassment and to equality in the interest of the freedom of expression. The targets, in short, are expected to pay a price — their own equality, dignity, expression — for the good of that larger society whose history is marked by securing privilege at their expense. The privileging of the universal value of free speech, even of racists and misogynists, over the equality of groups that law has so long constructed

<sup>245</sup>See Charles Jones, *supra* note 83 at 1389-90 and notes.

<sup>246</sup>Patricia Hodulik, *supra* note 83. Of ten disciplinary orders, one required a written apology, one resulted in a warning letter, and seven led to probation. The probation and suspension orders resulted from breach of the harassment code plus another breach of conduct such as assault or threats (*ibid.* at 1441). Epithets disciplined included calling a woman “fucking cunt” and “fucking bitch”; calling a Black employee “a piece of shit nigger,” and sending a computer message to an Islamic professor saying “Death to all Arabs!! Die Islamic scunbags” (*ibid.* at 1443). Ms Hodulik also notes that the Madison campus alone processes between 1,000 and 1,200 cases of student discipline annually for other violations of university rules.

<sup>247</sup>See *e.g.* Dagg & Thompson, *supra* note 220 at 94-112 (Chapter nine, relating numerous instances of sexism and sexual harassment on campuses); Lyn Kathlene, “Beneath the Tip of the Iceberg” (1992) 9:5 *Women’s Rev. Books* 30. When the University of Massachusetts added sexual orientation to its non-discrimination policy, heterosexist backlash (“hang a homosexual in effigy” posters, “kill all gays on sight” graffiti) led to a survey of lesbians, gays and bisexuals to identify their concerns. Fifty percent of respondents reported having been verbally harassed on campus. See Felice Yeskel, “The Price of Progress” (1992) 9:5 *Women’s Rev. Books* 21 at 21.

<sup>248</sup>See Mari Matsuda, “Public Responses to Racist Speech,” *supra* note 83 at 2327-31, listing true “just kidding” stories that have been dismissed as harmless, random and isolated, and concluding at 2331 that for targetted communities “it is logical to link together several thousand real life stories into one tale of caution.”

<sup>249</sup>See *e.g.* Smith, *supra* note 80, for an extreme illustration.

as second-class or non-persons,<sup>250</sup> says a lot about the privilege served by universalism. Similarly, the invocation of established legal precedent to prove that no existing exceptions to free speech cover hate speech, says a great deal about the constitutional omissions which remain at the heart of democracy-according-to-formalism. The timeless truths defended by formalists in invoking either academic freedom or freedom of expression tell a one-sided story which serves partisan interests and relies on omission for its stature.

## VII. The Anti-Democratic Face of Formalism

There is little doubt that the attack on the intolerance of equality-seeking groups has met with an enormously sympathetic reception. Used to a different kind of backlash within the universities, those of us who are lumped together as totalitarian have yet to mount an effective response. Partly, I think this is because our energy has been consumed for years in proving sexism, racism and heterosexism actually exist systemically within universities, and in struggling for painfully slow and modest incremental changes. As a result, the claim that we have successfully secured quotas, silenced intransigent opposition and effectively taken over the university has seemed too ridiculous to refute. Partly, I think we grossly under-estimated how little change those accustomed to unaccountable power and hegemonically enforced eminence are prepared to tolerate.

In the discourse on political correctness, small inroads towards inclusion amount to a takeover, describing remarks or policies as racist or sexist amounts to censorship, critique amounts to propaganda and dissent and protest amount to intimidation or totalitarianism, whether they change nothing or persuade a majority. The perplexing question is how one can rebut any of these allegations without simply confirming the charges our opponents are so eagerly crediting. To state the obvious, there is a grotesque inversion of reality taking place when powerholders are victims, when opposing bigotry is intolerant and when closed-mindedness is attributed to those who challenge traditions presented as sacrosanct. As Pat Williams has observed in trying to explain this ideological topsy-turvy, being called an activist in these conservative times has become a slur in a culture where the 1988 presidential election was won by denouncing Dukakis as a liberal.<sup>251</sup>

Since the ferment of the 1960s, opponents of top-down egalitarian change have consistently maintained that inequality is a matter of private, bigoted attitudes which are based on irrationality, myth and false stereotype, and which cannot and should not be changed by legislation.<sup>252</sup> Education, not state action, was proposed as the appropriate route to ending discrimination. No one ever explained who, in an educational system overwhelmingly dominated by white,

<sup>250</sup>See Lawrence's brilliant analysis of the way privilege operates here (*supra* note 61 at 472-76).

<sup>251</sup>Williams describes a student coming to her office in tears after a school administrator called her an "activist" for complaining about an exam which gratuitously incorporated racist stereotypes. Williams writes that she initially couldn't understand what was so distressing about the activist label and then remembers "we're in the middle of a presidential election in which the word 'liberal' has become a synonym for 'better dead' ..." (*supra* note 18 at 80).

<sup>252</sup>See e.g. Peller, *supra* note 6; Peitchinis, *supra* note 119; Finley, *supra* note 99.

male heterosexuals, would be the educators to change all these attitudes.<sup>253</sup> However exaggerated, all the accounts of the campus takeover by the politically correct movement suggest that, at least in some universities, the educational system has become a catalyst and site of egalitarian change. The men of colour and the women being admitted or hired are doing more than merely changing the demographics of the university population. They are, as D'Souza puts it, diluting and displacing the old core curriculum, and thereby subverting its claimed neutrality and universal relevance, creating space for alternative perspectives, affirming difference, accounting for domination and integrating the lived experience of disadvantage into what and how they teach. This should be heralded as a triumph of liberal democracy, not a fundamental assault on its foundations, unless those foundations presuppose perpetuation of white, male supremacy.

Those who have been struggling for such egalitarian change have often been stonewalled by opponents who demand that terms such as feminism, racism, misogyny, ethnicity, heterosexism and so on be precisely defined before reforms can be approved and formulated. And white liberals, mostly men, have placed the burden on egalitarian activists to help them understand the nature and consequences of inequality by teaching them (giving examples, explaining the harm, displacing skepticism about its systemic dynamics). Yet in the anti-PC literature, a Smith college handout which defines oppressions such as heterosexism, ableism and ageism is mocked by most of these articles as an instance of thought control.<sup>254</sup> In Derek Bok's swan-song as President of Harvard, "zealous" proponents of egalitarian change have assembled

a daunting list of ideas, words, and phrases — some of them quite familiar and seemingly innocuous — that one can utter only at the risk of being labeled racist, sexist, hegemonic, homophobic, patriarchal, gynophobic, or worse.<sup>255</sup>

Because it would be preposterous for a Harvard President to claim that professional educators are unable to absorb new ideas, words and phrases, the implication is that it is the labelling which is preposterous, arbitrary, incomprehensible. In Bok's rendering, campus struggles over oppressive practices are reduced to protocols about linguistic usage. This posture of innocent bewilderment trivializes not only the extensive scholarly and non-scholarly literatures which offer highly articulate elaborations of systems and practices labelled racist, sexist, hegemonic and so on, but also the "zealots" who use such identifying labels. What is conveyed is that egalitarian activists call *everything* oppressive, that

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<sup>253</sup>On white, male dominance of educational institutions, see Patricia Hill Collins, "The Social Construction of Black Feminist Thought" in Micheline Malson, Elisabeth Mudimbe-Boyi, Jean O'Barr & Mary Weyer, eds., *Black Women in America: Social Science Perspectives*, 2d ed. (Chicago: University of Chicago Press, 1990) 297; Dale Spender, *Invisible Women: The Schooling Scandal* (London: Writers and Readers Publishing Cooperative, 1982); Dorothy Smith, "An Analysis of Ideological Structures and How Women Are Excluded: Considerations for Academic Women" in Gaskell & McLaren, eds., *supra* note 6 at 249.

<sup>254</sup>Taylor in *New York*, *supra* note 92 at 36, prefaces his description of the Smith handout as follows: "This obsessive tendency to see oppression everywhere is creating a sort of New Age caste system." See also Adler in *Newsweek*, *supra* note 8 at 53-54; *Wall Street Journal*, *supra* note 150; Jemish in *Maclean's*, *supra* note 8 at 44.

<sup>255</sup>*Supra* note 5 at 7.

they are incapable of distinguishing real racism from innocuous traditions, that they are too intellectually lax to fathom the real meaning of hegemony. Anyone who cared to read the literatures in question would not advance such ignorant claims. That so many anti-PC voices so unapologetically disclose this kind of ignorance underlines, on the one hand, how little they care to know or learn about systemic inequality, particularly from those expert in or experienced about the topic, and on the other, how much the academy is in need of precisely the forms of affirmative action deplored throughout the anti-PC writings.

Everything about this literature denouncing the changers and the changed suggests that powerholders never really wanted to be educated and deeply resent the assertion that they have anything to learn from those they have subordinated as their inferiors or from the texts they can find no room for in the core curriculum. It would seem that liberals and conservatives alike never believed the educational system would or should actually become a vehicle of consciousness-raising, particularly their own.

Liberal ideology has always been that "The System" is basically sound and that effective and lasting social change can be better achieved by reforming the system from within than by destructive revolutionary protest. Now, in the anti-PC literature, the institutional transformations wrought by faculty committed to substantive equality are portrayed as illegitimate, the work of infiltrators who have deviously secured tenure and administrative posts unobserved and who now wield their power to compel change.<sup>256</sup> It seems that working from within the system for incremental change is valid only in the abstract. When change actually ensues with majority backing, it is explicable only as the result of bullying and intimidation rather than rational persuasion based on the substantive merits of egalitarian change.<sup>257</sup>

Similarly, in the anti-PC literature student complaints against faculty or administrative policies invariably amount to intimidation. Letters to the student press (signed or unsigned), petitions, protest rallies, sensitivity workshops during orientation, criticism of guest speakers — all count as coercive. But one has to wonder what other vehicles powerholders imagine students realistically have available to them. Students' grades, scholarships, summer employment and

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<sup>256</sup>See e.g. D'Souza, *supra* note 56 at 52, where he states that "[t]his alteration of the principles of liberal education ... is occurring with little public scrutiny." See also D'Souza, *ibid.* at 55-58; Bernstein, *The [Kingston] Whig-Standard*, *supra* note 26 at A2, citing Allan Bloom's complaint about "a hidden radical agenda in university curriculums"; *Wall Street Journal*, *supra* note 150 at A10: "When the campus upheavals of the late 60s and early 70s ended, a relieved nation supposed that learning would be restored to its rightful place. Who, though, would have imagined in the wildest days of that era that 20 years later the universities would be given over to ... ideological zealotry ... that would make the 60s militance seem like play by comparison? Today, though, it is college presidents, deans and faculties — not students — who are the zealots ..."

<sup>257</sup>For Adler in *Newsweek*, *supra* note 8 at 48, the PC agenda is the program of a generation of campus radicals who grew up in the '60s and are now achieving positions of academic influence. If they no longer talk of taking to the streets, it is because they now are gaining access to the conventional weapons of campus politics: social pressure, academic perks (including tenure) and — when they have the administration on their side — outright coercion.

future letters of reference depend on faculty. In a classroom debate, most competent faculty, by virtue of their superior knowledge and communication skills, can make student challengers look stupid. In institutional decisions about hiring, teaching assignment and curriculum change, students only have token representation in public processes; their representatives are not often radically inclined; and faculty still have potent behind-the-scenes networks to torpedo change.<sup>258</sup>

Although all accounts of the proliferation of PC ideology explain campus change as a product of the tyranny of a minority over the majority that silences the voices of reason, the illustrations provided are unpersuasive. Leaving aside the fact that the so-called silenced voices are getting phenomenal air time, this literature equates consciousness-raising with censorship. As *New York* puts it, "making people *watch what they say* is the central occupation of politically correct students."<sup>259</sup> Waterloo's Judy Wubnig complains that in the new climate of intolerance, teaching staffs are careful not to make jokes or unguarded statements about women, homosexuals or members of racial minorities for fear of being "denounced."<sup>260</sup> Berkeley's David Littlejohn, who initially sounded alarms about similarities between the "intimidation tactics" of current activists and the red-baiting on campuses of the 1920s, 40s, 50s and 60s, later backtracked: "It's people at the top who are often feeling intimidated. It isn't so much a matter of getting a job or even getting in print, as something in the air, that you just don't say some things."<sup>261</sup>

It should be astonishing when teachers equate thoughtfulness about what they say with censorship or publicly admit fear about being held accountable for classroom jokes about women, homosexuals or racial minorities. If one believes that equality is desirable but far from achieved, it is hard to understand how change will occur unless those who, consciously or unconsciously, manifest and reproduce oppressive practices and attitudes become self-conscious about the harms they cause. Ending unconscious (hetero)sexism and racism will be especially problematic if educators themselves are content to be unmindful about what they say and journalists go along with them.

For professionals whose published theories and interpretative analyses are esteemed by the amount of critical attention and debate they generate, the display of outrage and resentment toward student critics and the animosity toward feminist and anti-racist scholarship evident in anti-PC literature is dumbfounding. It is difficult not to conclude that status accounts for the extremity of the reaction. The problem seems less that the new minorities in the academy are intent on imposing some unitary version of political correctness on the majority,

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<sup>258</sup>Berkeley's Professor David Littlejohn, who has written of the dangers of the PC takeover, admits he does not openly criticize colleagues he considers propagandists, but opposes them "by sitting on promotion committees, by getting messages through to the budget committee, or the provost or the department chairman. That's how you shoot down what you think is wrong." See Brian Hill, "Diversity Wars: The Empire Strikes Back" *Berkeley Graduate* (April 1991) 14 at 30.

<sup>259</sup>Taylor in *New York*, *supra* note 92 at 36.

<sup>260</sup>As reported by Fennell in *Maclean's*, *supra* note 8 at 41.

<sup>261</sup>Hill, *supra* note 258 at 29-30.

than that members of the majority should be corrected at all, particularly by their juniors or presumptive social inferiors.

### VIII. Epilogue

Anti-PC literature and its extraordinary proliferation make sense only if you start from the premise that systemic inequality is a myth propagated by its victims and/or that the privileged should be unaccountable for the harms they do and from which they benefit.

If, as I do, you start from the premise that the systemic sexual, racial and economic inequalities which structure Canadian and American society have been empirically documented, you have to marvel at this portrait of powerholders as egos so frail that they will silently yield power rather than risk being called racist or sexist, even with justification. I think of pervasive violence against women and children, of slavery and its aftermath, of the residential schools and system of adoption that nearly exterminated First Nations cultures and the lack of jobs, adequate shelter and running water that threatens survivors, of the growing numbers of the working poor, unemployed and homeless and food banks in a decade of tax reform benefiting the rich, of gay bashing and lesbian custody battles. I also think of the under-representation of white women, people of colour and out lesbians and gay men on police forces, in higher education, in government, in corporate decision-making. I think of Bonnie Robichaud, Anita Hill, Rodney King, Wade Lawson, Harvey Milk, Patricia Ireland, Donald Marshall, Tawana Brawley, Sofia Cooke, Jane Stafford, the literally countless prostitutes missing and presumed dead — all their kin, violated, discredited and/or dead from racial and/or (hetero)sexual violence. Then I think that if the worst that can happen to white or male or heterosexual or rich or temporarily able people is that someone calls them on their conscious or unconscious prejudices, or expects them to study histories and texts which correct partial truths of liberal progress, or abstain from expressing subordinating “jokes,” then privilege is privileged indeed. To endorse the rhetoric or content of anti-PC literature, whether silently or openly, is to endorse a particular politics premised upon status inequalities and their maintenance. It is to endorse democratic double-talk perpetuating the second-class status of real people deemed formally equal only so long as they acquiesce in their own subordination. It may be that formal equality can be defended against the substantive critique without resort to status arguments or claims to neutrality, and without the exploitation of superior material power in a public debate on the merits. If so, supporters of formalism should respond accordingly. Substantive egalitarians, however diverse in identifying, expressing, prioritizing and implementing their politics, and however distinctive their constituencies, share a common belief that social, economic and political inequalities are growing dramatically both domestically and globally, that such inequalities are not biological, but are enforced and reinforced systemically by private and public liberal institutions and that they are indefensible and changeable.

In the anti-PC literature, formalists argue that substantive egalitarian reforms violate formalist principles. This is true. Indeed, it is the whole point:

as a matter of principle, formalists disregard actual inequality; as a matter of practice they presume it. It follows logically that defence of formalism is a defence of the substantively indefensible. The as yet unanswered substantive challenge to formalists remains: do formalists actually, rather than rhetorically, wish to end status-based inequalities, and, if so, how do they propose to do so within a formalist regime?

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