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DISCRIMINATION IN ACADEMIA AND THE CULTURAL PRODUCTION OF INTELLECTUAL CACHET

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ABSTRACT

In this Article, Annalise Acorn examines the unique features of discrimination against women in academia, a workplace that is primarily concerned with the cultural production of intellectual cachet and scholarly authority. Acorn argues that one's scholarly authority is an end product of collaboration by all members of academia, students, and colleagues alike, who make deeply private — and at times arbitrary — choices whether to withhold or extend participation and assistance in the creation of the intellectual aura. Acorn then explores ways in which this collective practice of the creation of intellectual cachet works to discriminate against women in academia.

TABLE OF CONTENTS

I. INTRODUCTION.....	360
II. THE INTELLECTUAL APPROPRIATENESS OF ANGER.....	363
III. EROTICIZATION OF THE CONTRIBUTIONS OF WOMEN	364
IV. DE-EROTICIZATION OF WOMEN AND “MOM- IFICATION”	366
V. ANXIETY AROUND “POLITICAL CORRECTNESS” ...	367

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VI. TECHNO-CENTRISM.....	367
VII. TOKENISM.....	368
VIII. CONCLUSION.....	369

I. INTRODUCTION

In attempting to define the problem of discrimination against women in academia, it is important to identify those specific features of the academic endeavor that give a particular twist to discrimination *in the Academy*. Discrimination in universities is different from discrimination in other workplaces because of the distinctiveness of what we do as scholars. In particular, the Academy has as a primary function the cultural production of intellectual cachet and scholarly authority. We can most effectively theorize the pathology of discrimination in the Academy if we understand it as intimately related to and bound up with these other preoccupations of academic institutions.¹

A significant function, among many, of the Academy is the creation and shaping of the aesthetics of intelligence: the identification and recognition of the intellectually "excellent," "meritorious," "rigorous," "sophisticated," and so on. Likewise, we are involved in the creation and shaping of the aesthetics of their devalued others: "fluff," "polemic," "dabbling," and the like. The academic endeavor is pervasively constituted by the project of identifying these two categories. We all participate in the project of "pedigree-ing" — anointing what is to be taken as valuable and honorable knowledge. We also participate in the process of condemning and deriding the simplistic, the derivative, and the unsophisticated. Thus, the academic endeavor has at its core a sense of pride in its capacity for *discrimination* between the rigorous and fluffy and discernment of the brilliant over the banal.

Further, the Academy is understandably committed to a fairly essentialist understanding of that distinction. We want to believe that those whom we anoint as brilliant really *are* brilliant and those whom we deride as lesser lights really *are* inferior. However, while these exercises of discernment have some objective basis, they also have arbitrary and necessarily conservative elements. This conservatism arises in part because the academ-

1. For an extremely interesting discussion relating to the practice of race discrimination to other pathologies of institutions and organizations, see Devon Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000).

ics, understandably prone to anxiety about their own brilliance, have an obvious interest in using their institutional power to pedigree others whose skills, methodology, credentials, and intelligence resemble their own. Each professor is likely to be most easily seduced into participation in the task of mythologizing the credentials of another scholar where the enhancement of that scholar's reputation also reflects well on his or her own credentials. Thus the natural tendency of the culture is to replicate itself in what it identifies as worthy. Again, this promotes not only discrimination against people with unfamiliar credentials and unconventional methodologies but also promotes a kind of stagnation of ways of achieving recognition and should therefore be of concern even to the most conservative of scholars.² If it is only possible to achieve "brilliance" by being just like the people who are already seen as "brilliant," we will have a great deal of difficulty in making space for innovation of any kind.

Of course, it is not just professors who participate in this endeavor of the production of intellectual cachet. Students also have the power to extend or withhold this mythology of brilliance in relation to their teachers. They have the power to determine who is and who is not "awesome," who does and does not "know their stuff."

One's authority in the Academy then is created by both colleagues and students and, most importantly, is always a collaborative effort. It is not enough in the Academy to "do the job." We need the assistance and collaboration of others in extending to us this pedigree of scholarly excellence, merit, brilliance, rigor, and sophistication.³

Significantly, we need the assistance of others to convince *ourselves* of our own authority. As an academic, one has to pass through a transition from thinking of oneself as a kid whom nobody takes seriously to thinking of oneself as a credible bearer of valuable knowledge and a serious citizen of the Academy. We need to be listened to and taken seriously by other people who are already credible authorities in the Academy in order to bridge that distance in our own mind and our own self-understanding. Confidence and freedom in the Academy are sup-

2. EDMOND CALLAN, *CREATING CITIZENS: POLITICAL EDUCATION AND LIBERAL DEMOCRACY* 108 (1998) (explaining that even conservatives should be worried about the stagnation promoted by sentimental education which recommends emulating heroes from the past as the only way to achieve present greatness).

3. See Anonymous, *Barbecue of the Vanities*, 10 UCLA WOMEN'S L.J. 1 (1999) (noting examples of the types of "brilliance" used here).

ported by security in the assumption that enough significant others will be willing to collaborate in the creation of one's intellectual cachet and in the mythology of one's brilliance.

In looking at discrimination against women and minorities in the Academy, I want to focus on the dynamics of this deeply private choice made by all members of the Academy to either withhold or extend participation and assistance in the creation of the authority of others. The practice of withholding participation in the creation of women and minority professors' scholarly cachet has its ramifications at absolutely every turn in an academic career. It affects hiring, the decision whether to give tenure track or limited term appointment, tenure and promotion, publication opportunities and citation in other work,⁴ student evaluations, salaries, speech invitations, and work loads. In other words, it affects everything.

The appropriateness of this particular focus is further supported by statistical surveys on the perceived source of discrimination against women in the Academy. In 1993, the Canadian Bar Association formed a Task Force on Gender Equality in the Legal Profession which issued a report that included in-depth studies of the experience of women law professors.⁵ Interestingly, women professors identified "students not giving appropriate weight to opinions" as the number one source of gender bias in law schools.⁶ Of the women professors surveyed, 69.1% agreed that this bias existed in the Academy.⁷ The second most perceived bias, with 66.9% of the women professors agreeing, was "other professors not giving appropriate weight" to female professors' opinions.⁸ These perceptions were more common among less established women faculty. A remarkable 96.8% of the contractually-limited appointees and assistant professors who identified themselves as feminists felt that students did not give

4. See Frances Olsen, *Affirmative Action: Necessary But Not Sufficient*, 71 CHI.-KENT L. REV. 937, 937 (1996).

5. TASK FORCE ON GENDER EQUALITY IN THE LEGAL PROFESSION, CANADIAN BAR ASS'N, TOUCHSTONES FOR CHANGE EQUALITY, DIVERSITY AND ACCOUNTABILITY (1993).

6. See *id.* at 157. See also Table 1, *Percentages of Women and Men Law Professors Who Perceived Selected Sources of Gender Bias Against Women Faculty in Legal Academic Settings*.

7. See *id.* In contrast, only 44% of the male professors surveyed perceived this bias against their female colleagues. See *id.*

8. See *id.* Only 34.5% of the male professors felt that this was a source of gender bias. See *id.*

appropriate weight to their opinions.⁹ Within the same group, 80.7% of the feminist women responded that their colleagues did not give appropriate weight to their opinions.¹⁰ The third most significant source of gender bias against women law professors was identified as “unwanted teasing, jokes, and comments.”¹¹ Thus, the root of women’s experiences of discrimination in the Academy is this collective refusal to engage in the task of establishing women’s intellectual authority and cachet.

Beyond the natural tendency toward conservatism in this endeavor that I have already referred to, there are also other ways of analyzing the nature of academic culture and identifying further factors that contribute to this form of discrimination against women. This withholding of cultural respect for the authority of women and minorities is fueled by many characteristics of the academic world, and I shall discuss these now in turn.

II. THE INTELLECTUAL INAPPROPRIATENESS OF ANGER

Women and minorities, especially if their scholarship focuses on equality issues, disproportionately have to negotiate and navigate the treacherous terrain of genuine, authentic, personal, and visceral anger. Feminist issues such as pornography, sexual assault, domestic violence, and child sexual abuse, which raise questions about the law’s male-centered indifference to harms suffered by women and children in these contexts, often provoke extreme anger on all sides. Likewise, issues of racism and racial inequality are charged with anxiety and anger. Thus, feminist and critical race scholars provoke uncomfortable conversations. Joanne St. Lewis, a Black woman law professor at the University of Ottawa, notes that dealing with issues of race and gender requires a professor to reject the comfort of so-called “safe space” in the classroom and venture into the danger zone where issues

9. *See id.* at 167. *See also* Table 8, *Percentages of Women and Men, Feminist and Other Law Professors Who Perceive Students and Faculty Giving Inappropriate Weight to Opinion as a Source of Gender Bias Against Women Faculty in Legal Academic Settings*. While 30.8% of the full professors who were women perceived this disadvantage, 84.2% of the associate professor women feminists also perceived this bias. *See id.*

10. *See id.* Of the female feminist associate professors, 73.7% perceived this bias, while 38.5% of the feminist women full professors agreed. *See id.*

11. *See id.* at 157. In contrast, only 36.2% of the male professors perceived this bias against their female colleagues. *See id.*

are charged with the energy of anger and resentment.¹² The introduction of real uninhibited anger into the academic space does not sit well with an established culture that values adversarial "hurly burly" but only within an ethic of objective intellectual detachment and an overriding value of collegiality.

Angela Harris notes that pressure to be collegial results in women and minority professors having to suppress their own anger about inequality in the Academy and suppress discussions of issues that engage that anger.¹³ Further, the anger behind feminist and critical race scholarship is not just anger about injustice in the abstract or on someone else's behalf. Women and minorities engage anger on behalf of *themselves*. One is implicated in the injustice one is analyzing and describing. In a discussion of queer citizenship, Shane Phelan points out that while the liberal tradition of democracy gives legitimacy to discussions of equality, the taking up of these issues on one's own behalf as a victim of inequality introduces a dangerous element of vulnerability into the mix.¹⁴ Instead of being seen as a champion of a right-thinking cause, one is potentially perceived as a self-righteous whiner advocating for one's own special and limited interests.

Thus, the introduction of unseemly and emotive anger into the otherwise purportedly detached culture of academia can be seen as an annoyance that others react to by withholding assent to authority from women or minority professors.

III. EROTICIZATION OF THE CONTRIBUTIONS OF WOMEN

While the strong connections between erotic energy and intellectual striving have been recognized for centuries, Plato's *Symposium*¹⁵ of course being an obvious acknowledgment of that connection, the erotic element in women's scholarship and scholarly self-presentation very often becomes grounds for disqualification of her intellectual contribution. For straight male professors, by contrast, erotic energy often reads as charisma and acts as a foundation for the emotions of discipleship. Indeed, the

12. Joanne St. Lewis, *Beyond the Comfort Zone: Race & Racism in the Law School Classroom*, in *LAW TEACHING AND EMOTION* (Annalise E. Acorn & Robert Howse eds.) (forthcoming 2001).

13. Angela P. Harris, *On Doing the Right Thing: Education Work in the Academy*, 15 *VT. L. REV.* 125, 128 (1990).

14. See Shane Phelan, *Bodies, Passions and Citizenship*, 2 *CRITICAL REV. OF INT'L SOC. & POL. PHIL.* 56, 72 (1999).

15. PLATO, *SYMPOSIUM AND PHAEDRUS* (Benjamin Jowett trans., Dover Publications 1993).

erotic energy of a straight male scholar often gives a kind of momentum to the process of mythologizing his brilliance. We may even go along with Judith Butler who draws on Freud to conclude that the civic bond itself is constituted by a subverted and de-sexualized homo-erotic bond.¹⁶ This does not, of course, make space for openly gay male erotic and intellectual bonds but rather is a web of bonds between straight men charged with a disowned or repressed homo-erotic energy.

However, the erotic energy of women is more often seen, not as a charismatic enhancement of their intellectual cachet, but as a confirmation that a woman's ultimate and primary contribution to any context is erotic or sexual. Further, the dynamics of the erotic often interact with and compound the dynamics of anger to disqualify women's intellectual work. Anger generated by feminist issues is often sexualized, and women law professors' scholarly or political performance of anger is often viewed through an eroticized lens by male onlookers. Thus, anger and eros commingle to further motivate the decision to abstain from participating in legitimating women's scholarly authority.

Further, with respect to straight women professors, their male *and female* colleagues may often assess their accomplishments on the basis of the "When-Harry-Met-Sally"¹⁷ presumption: that there is never any reason whatsoever for a man to have anything to do with a woman unless he wants to sleep with her. Thus a man's interest in a woman's scholarship is too often read by others, men and women, as pretext for erotic interest in the woman's body.¹⁸ Though such interest would normally be read as participation in the construction of the woman's authority, it is disqualified and discounted as having an ulterior motive.

16. See JUDITH BUTLER, *THE PSYCHIC LIFE OF POWER: THEORIES IN SUBJECTION* 140 (1997).

17. *WHEN HARRY MET SALLY* (Castle Rock Entertainment 1989).

18. I should acknowledge that my whole discussion here is hetero-centric. I would have liked to have explored more of the dynamics of lesbian sexuality and intellectual cachet, but I am quite uncertain about the nature of what is going on there. My sense is that being lesbian often de-eroticizes women in the Academy from the male and female perspective. Lesbian sexuality is seen as exotic in the sense of being kind of weird and misplaced. Nevertheless (and this is where many lesbian academics might rightly take issue with me), my sense is also that being lesbian can, at this moment in the Academy, be a significant benefit in the project of creating an aura of intellectual seriousness and prestige.

IV. DE-EROTICIZATION OF WOMEN AND "MOM-IFICATION"¹⁹

Women unable to participate in the eroticized energy of straight male scholarly performance come up against a double-bind.²⁰ Knowing that their contributions may be devalued if they infuse their scholarly way of being with either a heterosexual or lesbian erotic energy, women may seek to fit themselves into a de-eroticized trope of the female professor. The most familiar de-eroticized way of being a woman professor is to occupy the maternal space — motherly femininity neutralizes sexual tension otherwise "on the loose." However, while performance of the mother figure may be a successful strategy in protecting the woman from having her contributions devalued by way of sexualization, the "mom-ification" of one's scholarly persona holds other equally serious risks of tarnish to the luster of one's intellect.²¹

To make it into the de-sexed mom category, one must naturally strike a maternal pose in relation to students and colleagues. Being a mother in real life makes almost inevitable one's membership in the category of the "mom-ified." Certainly, if a woman has children the presumption of pervasive "mom-ness" of character and contribution must be actively resisted and strategized against. Once a woman is seen to be in this category, it is assumed that the purpose of her presence in the Academy is to take care of the needs of others — students and colleagues alike. Cheerfulness and accessibility are the main character traits of the "mom-ified" professor. She is available to give pastoral care to her students. She will gladly pick visiting speakers up from the airport, organize faculty dinners, and take responsibility for the faculty image on issues of hospitality and protocol. Once a woman professor has been slotted into the "mommy" category, it is exceedingly difficult for her to regain a prestigious scholarly image. As a teacher, she is likely to be seen as competent but not rigorous, clear but not challenging. Her publications may be seen as "solid" and even prolific, but it is highly unlikely that she will be able to occupy both maternal and "brilliant" space at the same time.

19. The ideas in this section belong to Robert Howse. He generously shared these insights with me around maternal de-eroticization of women in his comments on an earlier draft of this paper.

20. See Carbado & Gulati, *supra* note 1, for a tremendously interesting discussion of double-binds for minority employees strategizing around racial stereotypes in their performance of identity at work.

21. *See id.* (discussing the performance of strategic identity in the workplace).

V. ANXIETY AROUND "POLITICAL CORRECTNESS"

Scholarly contributions of women and minorities have been subject to disqualification as mere examples of political correctness. As Sheila Mac Intyre notes, mainstream media has been extremely effective in disseminating the myth that universities have been "taken over" by leftist, feminist, queer, and critical race scholars.²² Specifically, the myth accuses these scholars of using undemocratic tactics such as indoctrination through compulsory left wing and feminist content in the curriculum; censorship through speech codes; and prohibition of free speech by powerful equity committees, intimidation in the classroom, and exercises of administrative power. The idea that women and minority professors have secured sufficient power in universities to ensure that their views and power are unchallenged has gained astonishingly widespread credibility with no convincing basis in fact.

In many Canadian law schools, this has been exacerbated by compulsory programs such as "Perspectives Days" or "Bridging Weeks," which are separate from the core curriculum and deal with issues of diversity and the law. The initial intention of such programs was to promote awareness of equality issues in the law. However, such programs have had the undesired but significant side effect of marking women and minority faculty involved in the programs as the "thought police" of political correctness. The report of Canadian Bar Association Working Group on Racial Equality in the Legal Profession notes that minority students and faculty suffer disproportionately from the emotional pain of divisive controversies over the legitimacy of these programs.²³

VI. TECHNO-CENTRISM

Margaret Thornton notes that the overwhelming power of corporatism has impeded efforts by feminist, critical race, and queer scholars to transform legal culture to be more inclusive and to value diversity.²⁴ Corporatism focuses on technology as an overriding and purportedly neutral value. As Pamela Smith

22. Sheila Mac Intyre, *Backlash Against Equality: The 'Tyranny' of the 'Politically Correct'*, 38 MCGILL L.J. 1 (1993).

23. See JOANNE ST. LEWIS, VIRTUAL JUSTICE: SYSTEMIC RACISM AND THE CANADIAN LEGAL PROFESSION, A REPORT BY THE CO-CHAIR OF THE WORKING GROUP ON RACIAL EQUALITY IN THE LEGAL PROFESSION 65 (1995).

24. Margaret Thornton, *Technocentrism in the Law School: Why the Gender and Color of the Law Remain the Same*, 36 OSGOODE HALL L.J. 369, 369 (1998).

points out, however, the aesthetics of technology are resolutely white and male.²⁵ This presumption of incompetence of women in technological fields runs so deep that it is often good-naturedly assumed by male students that women professors will need male assistance in operating simple technological equipment like video machines and overhead projectors. This deeply held presumption of women's inability to function in a technologically-sophisticated culture combines with the increasing belief in the overriding importance of technology in the intellectual world to create further grounds for withholding the mark of authority from women.

Further, law schools are presently investing vast amounts of resources in technological equipment: creating the capacity for on-line courses, "smart" classrooms, and so forth. The willingness of faculties to spend staggering amounts of money on impressive "to the minute" computer equipment and the lack of willingness to expend resources fostering diversity sends a strong message what the Academy *really* values.

VII. TOKENISM

The stigma of tokenism remains a significant factor in the withholding of intellectual authority from women and minority professors.²⁶ While the Canadian Bar Association's Working Group on Racial Equality stressed the importance of hiring law professors from racialized communities so there would be more mentors and role models in the Academy for racialized students,²⁷ the idea that one has been hired primarily in order to serve as such a role model detracts from the perception that one was hired for one's brilliance and intellectual ability as an individual. Likewise, where a woman or minority professor is seen as *representing* a particular group, the conclusion easily follows that their intelligence is fettered by group allegiance — that they are tied in advance to the party line of the group they represent. These perceptions, of course, provide seemingly legitimate reasons for not placing such a professor in the prized category of "the brilliant."

25. Presentation by Christine Littleton at *UCLA Women's Law Journal Symposium, Textbook Sexism: Discrimination Against Women in Academia* (Mar. 3, 2000) (presenting studies conducted by Pamela Smith).

26. See generally Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349 (1989).

27. St. Lewis, *supra* note 23, at 65.

VIII. CONCLUSION

These are just some aspects of the often uneasy fit between traditional academic culture and women and minority faculty that facilitate the withholding of participation in the production of intellectual cachet for women and minorities. Other factors would include the privileging of the category of "hard law" over "soft law." Likewise, the de-centered perspective of many women and minorities often results in tentativeness about one's conclusions and knowledge base rather than bravado. This is a further characteristic that makes the contributions of women and minorities read as less well-informed, even though they may actually be grounded in greater empathic understanding for a wider range of perspectives on an issue.²⁸ Further, the fatigue factor for women and minorities, whose committee loads and pastoral care duties are often much heavier, is significant.²⁹ Professors who are haggard and frazzled from having to cope with an unreasonable workload arising out of a token status, where one is hired not only to do the usual job but also to deal with all matters arising in relation to one's "group," are far less likely to fit the picture of the robust and energetic brilliant scholar.

Attachment to place is also a factor. In hiring decisions, women and minorities who have commitments to particular places and communities are often seen as less intellectually credible because they are unwilling to move to any university or the university most able to support an illustrious career. This factor is particularly significant for aboriginal professors who may have very strong ties to community and land and who are not willing to move to a different place. Hiring committees may not work as hard to give secure academic positions to such scholars. If the committee believes a candidate is at the university's mercy or already "on hand" because of her geographical commitment to a place, the committee may feel they can get away with offering her a less attractive position or salary. Where it is known that the candidate is committed to an academic career and that she is unwilling to move to another city, the university may attempt to get her services for minimal exchange value. This diminishes the perception of her value to the institution.

28. See Jennifer Nedelsky, *Communities of Judgment*, in THEORETICAL INQUIRIES IN LAW (forthcoming 2000).

29. See Delgado, *supra* note 26, at 355.

Of course, none of this is to suggest that women and minorities have not made significant gains in increased credibility and authority. Feminist and critical race scholarship has achieved significant intellectual credibility over the last ten years.³⁰ However, I would suggest that at the root of discrimination against women and minorities is the fact that the center of gravity within the Academy remains unwilling or reluctant to participate in the cultural construction of the authority of women and minority professors.

Before concluding, I would like to return to the question of essentialism and intellectual authority. Must we now be cynical about brilliance itself?³¹ Is the inevitable upshot of the foregoing discussion that authority and reputation in the Academy are always matters of mere hype and buddy-boosting? Are determinations of "brilliance" arbitrarily grounded in purely political decisions about whose thoughts are to be promoted? I strongly resist these conclusions. I believe that there are people who have, and who work very hard to cultivate, wonderfully exceptional intellects. I also believe that those people deserve generous recognition and accolade. Thus, in some cases, all the scholarly cachet the Academy can muster is both richly deserved and helpful in enhancing that scholar's power to inspire and motivate others. We do discover brilliance rather than simply fabricating it out of thin air. While we, as colleagues, use our scholarly power to construct the aura of others' brilliance, we do not, at least in the best of circumstances, concoct mere fictions of talent and achievement.

That is not to say that the rhetoric and egotism of brilliance that pervade the Academy are particularly helpful in fostering a climate in which brilliant minds and ideas can flourish. A decline in the preoccupation with intellectual cachet would open up vast new spaces for academics to freely develop and put their ideas forward. However, for the moment and the foreseeable future, intellectual cachet remains the dominant currency of the Academy. While the question of who *really is* brilliant may be answered on some objective basis, determinations of whose

30. Olsen, *supra* note 4, at 937 ("for the first time, 'outsider' scholarship is being cited with significant frequency. . . . The question arises whether this increased citation will serve to legitimate the scholarship, or rather de-legitimate citation tallies as a source of prestige.").

31. Shino Komine, Comments at the *UCLA Women's Law Journal Symposium, Textbook Sexism: Discrimination Against Women in Academia* (Mar. 3, 2000).

intellect is to be nurtured, validated, and given congenial conditions within which to flourish, and whose is to be neglected and questioned remains one that is at the whim of both arbitrary forces of luck and political forces of institutional power. As long as academics fail to engage in critical self-reflection about how the factors discussed here influence their choices about when and where to assist in creating the scholarly aura of brilliance around women and minority colleagues, we will continue to see a disheartening replication of the white male face of scholarly prestige.

