

PROMETHEA UNBOUND: A FEMINIST PERSPECTIVE ON LAW IN THE UNIVERSITY

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Introduction

When I began thinking about this colloquium, what came to mind when contemplating the role of law in the university is that academic institutions see themselves as above the laws of fair employment practices and particularly above human rights laws. Universities not only remain male-dominated and defined in their bureaucratic structures, their personnel decision-making and their academic programs, they also practise and reproduce pervasive systemic sex discrimination on a grand scale. Yet they continue to operate as if they should be immune from both public law and external review of their discriminatory practices on the ground that the autonomy of the universities and their educational mission sets them apart from other workplaces and public facilities.

Having said that, I must also concede that the universities have been indispensable to women's achievements in securing greater equality in the public and private spheres. The massive influx of women enrolling in higher education since the second world war, and the growing number of women graduating with professional degrees have clearly empowered women--primarily white, middle class women--in challenging barriers to their economic advancement and in resisting their social, sexual and intellectual subordination to men.

More importantly, the universities have been home to a vital Women's Studies community whose research and social activism have both fueled and drawn upon women's equality struggles at the grassroots level. Feminist scholarship in all academic disciplines is revealing and then deconstructing the processes and injurious consequences of male domination, and is generating the theory, knowledge and strategic skills for combatting sexism in all social institutions.

As well, feminist scholarship is helping shape the jurisprudence that is giving substantive legal clout to women's struggle against systemic sex discrimination in a variety of social institutions, including the universities.¹ For instance, in the ongoing challenge by a male teacher's union of the legality of the Federation of Women Teachers' Associations of Ontario, the only all-woman union in the country, the litigation team is composed of feminist legal scholars as well as feminist

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¹The Legal Education Action Fund (LEAF), a national organization which initiates and intervenes in litigation defining equality rights under the *Canadian Charter of Rights and Freedoms*, has relied extensively on feminist scholars in workshopping litigation strategies and in substantiating its legal arguments through expert evidence. For an account of the use of feminist scholars on opposing sides of a sex discrimination suit, see: Alice Kessler-Harris, "Equal Employment Opportunity Commission v. Sears, Roebuck and Company: A Personal Account," (1986) 35 *Radical History Review* 57.

lawyers, and the trial record was built on the affidavit evidence of twenty-three witnesses, thirteen of whom are feminist scholars from Canada and abroad in such disciplines as economics, sociology, psychology, organizational behaviour, labour history and legal history.² The legal approach developed through this feminist interchange has significantly shaped subsequent *Charter* equality litigation.³

Feminist critique is particularly subversive of academic and legal orthodoxy because it exposes the partiality of institutions which claim and aspire to impartiality in the form of detached and pure reason unsullied by subjective bias, self-interest or political influence. Imperviousness to ideology is regarded as one of the foremost conditions of sound scholarship, not to mention sound law.⁴ Feminist scholarship not only reveals the male bias of what has traditionally counted as knowledge, as scientific method, as academic merit and as justice, it challenges the very existence of objectivity and unmasks the power politics promoted by dressing up partisan ideas, values and interests as objective and universal truths. As Thelma McCormack has argued, Women's Studies "is not just a group of courses with nonsexist pronouns, not just another new program that progressive universities like to float; we are a visible reminder of the myth of value-free objective knowledge."⁵

More, the feminist challenge has not been merely academic in the sense of offering a purely intellectual critique of the history and politics of knowledge. Feminism is a practice, not a theory. Feminist scholars apply their knowledge to change women's lives in the world. Accordingly, we expose and oppose sex discrimination wherever we are located. Male bias in pedagogy, in curriculum content, in staff and faculty hiring and in university administration are increasingly subject to challenges made possible and substantiated in large part by the scholarship produced by feminists within the university. And although feminist research is not widely credited within universities either as a legitimate discipline in its own right or as "scholarship,"⁶ hostility to feminist scholarship is most undisguised where the critique focuses on the processes and consequences of sex discrimination within the university. If feminist scholarship in the form of theory is discounted, feminist scholarship embodied as praxis that is applied in the house of learning to secure concrete egalitarian change is shrilly denounced.⁷

In a sense, then, Prometheus in this context is a woman, a feminist, challenging the authority of the dual powers of law and academe, denying their godhead

²Federation of Women Teachers' Associations of Ontario, *The FWTAO Papers*, (forthcoming).

³See the Factum LEAF filed as intervenor in the appeal before the Supreme Court of Canada of *Re Andrews and the Law Society of British Columbia* (1986), 22 D.L.R. (4th) 600 (B.C.C.A.).

⁴Judith Shklar, *Legalism* (Cambridge: Harvard U. Press. 1964), at 2.

⁵Thelma McCormack, "Feminism, Women's Studies and the New Academic Freedom," in Gaskell and McLaren, eds. *Women and Education: A Canadian Perspective* (Calgary: Detselig Enterprises, 1987), at 293. See also, Roberta Hamilton, "Feminists in the Academy: Intellectuals or Political Subversives?," (1985) 92 *Queen's Quarterly* 3.

⁶See text at notes 55 through 71 *infra* for discussion of the claim that feminist research is not "scholarly."

⁷See text at notes 56, 61, 66 and 71 *infra*.

and self-proclaimed transcendence of earthly nature and wresting from men their monopoly over the instruments of cultural determination--production, dissemination and control of knowledge and its powers.

Critique

Like other liberal institutions, both law and the university foster through their own ideals the seeds of opposition to their hegemony. And like other liberal institutions whose promise is belied by their undemocratic and inegalitarian reality, their self-defence turns on self-contradiction.⁸ I said earlier that universities seek to operate above or beyond laws prohibiting discrimination. This is not an unusual stance for institutions intent on maintaining the subordination of women. What is striking is the form taken by universities' resistance to equality. They have defended anti-feminism and inegalitarianism in the name of academic freedom. Malestream academics⁹ have justified and promoted close-mindedness to feminist scholarship and its implications by treating work they have not read and with which they assume they disagree as a threat to free inquiry. In hiring and promotional decisions, universities have rejected women candidates who are equal to or better than men in the name of academic excellence.¹⁰ And they have manipulated the so-called peer review system to ensure that their subordinates remain subordinate.¹¹

⁸Much of the work of Critical Legal Scholars ("CLS") addresses this dynamic. See, e.g. Roberto Unger, *Law in Modern Society: Toward a Criticism of Social Theory* (New York: The Free Press, 1976). See also Duncan Kennedy and Karl Klare, "A Bibliography of Critical Legal Studies," (1984) 94 Yale L.J. 461 and periodic updates in the Newsletter of the Conference on Critical Legal Studies, most recently published out of the State University of New York at Buffalo. For internal contradictions in liberal equality theory, see Jill McCalla Vickers, "Equality-Seeking in a Cold Climate" in Lynn Smith, Gisele Cote-Harper, Robin Elliot and Magda Seydegart, eds. *Righting the Balance: Canada's New Equality Rights* (Canadian Human Rights Reporter, Saskatoon, 1986).

⁹By "malestream," I mean male-defined and male-centred people of both sexes, most of whom deny they are gendered let alone sexist, anti-feminist or misogynist, but who exhibit the values and are invested in the oppressive outcomes of male domination.

¹⁰This is a difficult truth to substantiate other than by statistical bottom lines (see, e.g. text at notes 15-22), because the criteria of merit applied in a given case are so unarticulated by individual evaluators and by hiring committees while being considered so self-evidently above critical scrutiny. Notwithstanding over ten years of verbal administrative undertakings to address the under-representation of women on university faculties, the result of search committees' efforts has been only a very marginal increase in the continuing faculty complement of women. The official reason given is the lack of "qualified" women. Even where women were short-listed, the explanation is that "it-just-happens-the-male-candidate-was-better-than-any-available-women." There is a reason why "peer" reviews by predominantly male evaluators systematically just happen, in a way that is never seriously critically examined, to value male candidates' self-presentation, styles of discourse and teaching, research interests, academic references and other indicia of merit more than women's. It will be said that it is my femaleness and my feminism which leads me to this conclusion. If I were a man, I'd see the it-just-happens reproduction of male hegemony as the neutral, if regrettable, outcome of job competitions in which, for some reason, men make a better impression on men.

¹¹For comprehensive and disheartening substantiations of these claims, see: Athena Theodore, *The Campus Troublemakers: Academic Women in Protest* (Houston: Cap and Gown Press, 1986); and Marjorie Heins, *Cutting the Mustard: Affirmative Action and the Nature of Excellence* (Boston: Faber and Faber, 1987). For a comprehensive guide to ending such practices, see: *Employment Equity for Women: A University Handbook*, prepared by the Committee on the Status of Women of the Council of Ontario Universities (Toronto: COU, 1988).

As for the courts, they have tended to legitimize such practices, deferring to the autonomy of the university and holding that "domestic" (i.e. private) matters like faculty assessment should be settled internally.¹² Except in cases of "flagrant violations" of procedural fairness" such as denial to the complainant of the information on which an adverse decision was based and/or a right to some form of hearing, courts hold universities to minimal standards of natural justice and decline to scrutinize substantive bias in university employment decisions.¹³ Some courts, in fact, have held that such decisions should not be subject to public law via judicial review at all.¹⁴ The rationale appears to be that a "collegial" review system negotiated and administered by sound academic minds with specialized expertise and knowledge concerning academic excellence ought not to be questioned by mere judges. It should be noted that judges adopt no such deference in wrongful dismissal litigation, no matter their unfamiliarity with the industry or the personnel practices of the respondent employer.

To develop these arguments further, I want to begin with a brief picture of the nature of systemic discrimination within the university system. From here, I intend to shift from describing sexism in academe to analyzing the university community's responses to campus women's struggle for equality. My focus will be an exploration of anti-feminism within the universities to expose the operating ideological assumptions of male hegemony in the academic community. Finally, I will scrutinize the methods currently used in recruitment and promotion decisions to demonstrate that universities do not even offer liberalism's most minimal safeguards against arbitrary abuse of power.

My conclusion is not that if only liberalism were truly delivered, equal opportunity in the universities would be secured, though reduction of discretionary procedures and criteria of merit would radically improve women's access to all university offices. It is rather that egalitarian change will not come from a *system* that refuses to be accountable for the discrimination it institutionalizes. And the system will not be accountable until the men who constitute the university community are forced to acknowledge and be accountable *as men* for their maleness within their male system, it being understood that "maleness" means that which systematically subordinates women to men to the benefit of men. Forcing such an accounting is the primary task of feminist educators.

Systemic Discrimination

"At each point of the hierarchy of control over the educational process, the proportion of women declines."¹⁵ In the Ontario elementary school system, al-

¹²See, e.g., Theodore, note 11, *supra*, Part IV; Marcia S. Cohen, "Sex Discrimination in Academic Employment: Judicial Deference and a Stricter Standard," (1985) 36 Labor LJ. 67; and David Mullan, "'Fairness' in the Employment of University Faculty," (1986) 11 Queen's LJ. 264 at 269-275.

¹³Mullan, *supra*, note 12.

¹⁴See David Mullan, "The Universities and the Principles and Remedies of Public Law: Case Comment" (1987) 25 Administrative Law Reporter 212.

¹⁵Dorothy Smith, "An Analysis of Ideological Structures and How Women are Excluded: Considerations for Academic Women," in *Women and Education*, *supra*, note 5 at 249

though 67% of all teachers are women, men hold 86% of all principalships and vice-principalships. Put another way, only 2% of women elementary teachers are principals or vice-principals while nearly a quarter of their male co-workers occupy such leadership positions.¹⁶ Women represent 33% of full-time secondary teachers in the province, but hold only 11% of all principalships and vice principalships.¹⁷

Across Canada, excepting Quebec, women hold 16% of full-time faculty positions.¹⁸ These are not necessarily continuing appointments. In Ontario, where women represent 16% of all full-time faculty, only 13.5% of such appointments are non-terminal contracts.¹⁹ Among all full-time women faculty in Ontario, 46% hold unranked lectureships; only 5% of the full professors in the province are women.²⁰

A wage gap persists across all sectors in the educational system.²¹ In the universities, the salaries paid to women faculty are lower than men's in every academic field, in all academic ranks and in every age group.²² Notwithstanding the continuing wage gap, in 1987 the Council of Ontario Universities presented a brief to the Standing Committee on Ontario's pay equity bill, seeking an exemption from the law for university faculties.²³

A division of labour applies to greater or lesser degrees in the work assignments of women and men faculty, influencing their relative abilities to concentrate on the research that grounds promotional advancement.²⁴ Not least because women disproportionately hold junior and/or short-term positions, they tend to have heavier teaching loads and to teach fewer seminars functioning as re-

¹⁶Ontario Ministry of Education Statistics Department, "Teachers in Ontario by Full-Time/Part-time Employment Status, Sex and Type of Duty," Table 20-20.01 (May, 1985).

¹⁷*ibid.*

¹⁸The percentage is 20% in the Atlantic region: Somer Brodribb, *Women's Studies in Canada*, A Special Publication of *Resources for Feminist Research*, Nov. 1987, at 3.

¹⁹OCUFA Forum, March 1987, at 3. What these numbers mean is that about 3% of the female faculty pool is constantly turning over. The result is a generation of itinerant woman scholars and lost opportunities for women students to develop mentoring relationships with women faculty.

²⁰University Relations Branch, Ministry of Colleges and Universities, Jan. 1986, Table XIII. For a national (excepting Quebec) breakdown of full-time faculty women by rank and field, see Anne Innis Dagg and Patricia Thompson, *MisEducation: Women and Canadian Universities* (Toronto: Ontario Institute for Studies in Education, 1988), Table 7-3.

²¹Statistics Canada, *Salaries and Qualifications of Teachers in Public Elementary and Secondary Schools, 1984-85*; Council of Ontario Universities, *Employment Equity for Women*, *supra*, note 11 at 7.

²²OCUFA Forum, March 1987, at 3. For a comparison of median salaries of full-time university teachers by field and sex across Canada (excepting Quebec), see Dagg and Thompson, *supra*, note 20 Table 7-4.

²³OCUFA Forum, *ibid.*

²⁴Empirical research substantiating my claims about a disparate division of labour does not exist to my knowledge, perhaps because the scholars most likely to consider such research worth doing are women, and women are already overburdened. However, if one accepts as I do that women's accounts of their own experience are credible, my claims constitute common observation and knowledge.

search vehicles than men do.²⁵ And the minority of feminists in senior ranks have truly frightening numbers of theses in the Women's Studies field to supervise, referee or read. Because there are so few faculty women, and because they are perceived to be and generally are more accessible to students, women tend to put in unusually high office hours as mentors, resources for feminist research, career counsellors and advisors on redressing classroom discrimination. In many campuses, women also have a heavier committee load given the need for token women on specified committees, but the quantity of their work may be discounted because they tend not to serve on the most powerful university-wide decision-making bodies.²⁶ What often amounts to volunteer service on women's issue committees or in launching and staffing Women's Studies programs,²⁷ is routinely discounted or held against women in decisions on merit pay and promotion.

The anecdotal evidence of scores of feminist academics suggests strongly that research in Women's Studies is devalued as scholarship,²⁸ and that women's teaching is subject to much greater critical scrutiny than men's--i.e. negative student evaluations, however, misogynist, can block a promotion in a merit system within which teaching ability otherwise plays little material role.²⁹ And women's professional advancement is not infrequently influenced by adverse judgments of their lifestyles, appearance and personalities.³⁰ Commonly such judgments are based on unsubstantiated rumour.³¹

Although women students now make up one-half of all full-time undergraduates and a clear majority of all part-time undergraduates, traditional sex

²⁵Theodore, *supra*, note 11 at 35-37, 69, 73-76; Smith, *supra*, note 15 at 249-50.

²⁶Theodore, *supra*, note 11 at 59-63, 75. In my view, one of the most telling confirmations of the overburdening of the female minority on faculty is the alarming incidence of serious illnesses among feminist scholars--illnesses generally linked with acute stress and exhaustion.

²⁷In my experience, legal academics are called on far more than most other academics to sit on community boards and agencies as legal advisors and to sit on panels to address the legal ramifications of laws or governmental policies affecting community and administrative organizations. In the case of feminist legal scholars, this service is particularly burdensome because we are so few in number and because so much recent law reform and social policy change focuses on or affects the unequal status of women. Unless such routine service results in publications, it is largely discounted in our professional evaluation notwithstanding that it is our professional expertise which leads to such demands.

²⁸Theodore, *supra*, note 11 at 49-51, 74, 78-80; McCormack, *supra*, note 5 at 292.; Aiken, Anderson, Dinnerstein, Lensink and MacCorquodale, "Trying Transformations: Curriculum Integration and the Problem of Resistance" (1987) 12 *Signs* 255; Sheila McIntyre, "Gender Bias in a Canadian Law School," *CAUT Bulletin*, Jan. 1987, at 7-11;

²⁹Elyce Zenoff and Kathryn Lorio, "What We Know, What We Think We Know, and What We Don't Know About Women Law Professors," (1983) 25 *Arizona L. R.* 869, at 879-80. For a concrete case history, see *Vinogradov v. The Board of Governors of the University of Calgary* (1988), 9 C.H.R.R. D/5171, especially at 5175-5177.

³⁰Theodore, *supra*, note 11 at 18, 31-34, 51-53, 162-63; Linda Nielsen, "Sexism and Self-Healing in the University," (1979) 49 *Harvard E.J. Rev.* 467; Sheila McIntyre, "Gender Bias in a Canadian Law School: The Memo and Its Impact," (1987-88) 2 *Canadian J. of Women and the Law* 362.

³¹The most common rumours involve the sexuality of the woman being discredited. It is said that she is a lesbian, and/or her credentials were secured by sleeping with her male superiors and/or she sleeps with her students.

differences in educational streaming remain.³² Women predominate in arts and science, education, fine arts, the humanities and all social sciences except economics; they represent a growing but significant minority in engineering, physical sciences (except biology) and mathematics.³³ In every discipline, the proportion of women to men declines with each successive graduate degree.³⁴ Nonetheless, except in health science, there were at least two times as many women in the pool of doctoral students as there were women faculty in that discipline.³⁵

At the staff level, extreme occupational segregation prevails. The vast majority of support and library staff are women; while maintenance and technical positions are largely filled by men.³⁶ Women are overwhelmingly clustered in the lowest paid clerical ranks.³⁷ At Queen's University, for instance, over 80% of support staff are clustered in the lowest 5 of 17 staff classification and only 1% in the top five ranks. Although men make up only 27% of all support staff, they fill 83% of the positions in the top five grades.³⁸

Throughout the university community, sexual harassment of women students, staff and faculty remains as endemic as in other workplaces,³⁹ with the exception that non-assaultive harassment is routinely excused as a component of academic freedom of expression: I refer here, to universities' general reluctance to implement non-sexist language policies, to discipline faculty known to harass or denigrate women faculty and students or to censure sexist and pornographic campus newspapers.⁴⁰

³²Gaskell and McLaren, *supra*, note 5 Ch. 4, 5, 6, 7 and 10.

³³University Relations Branch, Ministry of Colleges and Universities, Jan. 1986, Tables IV and V.

³⁴*Ibid.*, Table XVII.

³⁵*Ibid.* In Ontario, for instance, since 1979-80 over 50% of the doctoral candidates in faculties of education have been women, (in 1984-85, the figure was 58%), but women make up only 21% of the faculty in that discipline. Since 1979-80, women have remained 8% of all doctoral candidates in engineering, but only 2% of engineering faculty have been women throughout that period. For comparable national figures, see Innis Dagg and Thompson, *supra*, note 20, Tables 1-1 and 7-2.

³⁶COU, *Employment Equity for Women*, *supra*, note 11 at 6.

³⁷*Ibid.*, Chart 6b.

³⁸David C. Smith, "Women at Queen's: A Principal's Discussion Paper," February 1988, Table B.

³⁹See generally, Constance Backhouse and Leah Cohen, *The Secret Oppression: Sexual Harassment of Working Women*, (Toronto: Macmillan, 1979); Catharine A. MacKinnon, "Sexual Harassment: Its First Decade in Court," in *Feminism Unmodified: Discourse on Life and Law*, (Cambridge: Harvard U. P., 1987); and Elizabeth Stanko, *Intimate Intrusions: Women's Experience of Male Violence*, (London: Routledge and Kegan Paul, 1985) Ch. 6. For a recent Canadian bibliography on this issue, see Ontario Ministry of Labour Labour Topics, Vol. 11, No. 7, July 1988. There have been several individual campus studies of on-site sexual harassment. For more general reviews, see National Advisory Council on Women's Education Programs, *Sexual Harassment: A Report of the Sexual Harassment of Students* (Washington, NACWEP, 1980), L. Cammaert, "How Widespread is Sexual Harassment on Campus?" (1985) 8 *Int. J. of Women's Studies* 388; and Ann Field, "Harassment on Campus: Sex in a Tenured Position," *Ms* Sept. 1981, at 70.

⁴⁰Engineering publications from the University of Saskatchewan ("The Redeye"), the University of Toronto ("The Toike Oike") and Queen's University ("Golden Words") come to mind. Women students have lodged complaints against all three newspapers, both internally through university sexual harassment procedures and press councils, and through human rights tribunals. The publication of sexism, racism and homophobia continues not least because of a refusal by university administrations to censure or cut off the funds or other institutional supports for such discriminatory vehicles. For examples of the types of verbal and behavioural misogyny exhibited and tolerated

Although some of the patterns revealed in this overview are the results of gender socialization before women and men enter higher education, universities are doing little or nothing by way of affirmative action to redress systemic discrimination on site, perhaps because many of the men in leadership positions deny there is any discrimination to be remedied. To my knowledge, no Canadian university has an affirmative action plan containing goals and timetables for redressing discrimination in the employment of women staff and faculty. At best, the universities have declared their commitment to equality of opportunity on site and a willingness to remove discriminatory barriers, "if any," to women's advancement.⁴¹ Professor Backhouse's recent analysis of the status of women faculty at the University of Western Ontario reveals how empty such equal opportunity pledges have been in operation.⁴²

By way of an aside, it is my view that women on university faculties *ARE* the institutions' affirmative action program. Our very presence is used to affirm that equal opportunity is operating,⁴³ and our initiative and labour have secured every gain for women that can be counted as progress.⁴⁴

within universities, see Dagg and Thompson, *supra*, note 20 at 95-107.

⁴¹"Universities Fudge on Affirmative Action," OCUFA Forum, Nov. 1986, at 7, and "Affirmative Action Policies Vary Across Campuses," Forum Feb. 1987, at 4. As of February 1987, all but three of eighteen institutions of higher education in Ontario (the exceptions were Brock, Guelph and the Ontario Institute for Studies in Education) had applied for grants of up to \$20,000 to pay for up to 75% of the cost of hiring an Employment Equity Officer to develop and implement employment equity programs. In order to qualify for these funds, the governing body of the applicant institution was required formally to adopt a policy of affirmative action for its women employees specifically identifying women as the target group for special measures. Several of these formal policy statements do not comply with the criteria for funding. Most institutions merely declare a commitment to equal opportunity with little or no reference to endorsement of special measures specifically aimed at women's advancement; a number assert that considerations of "individual merit" will continue to govern personnel policies and practices; and a few of the formal statements undertake only to identify "any possible" inequities in the treatment of women and men. None refers to goals and timetables. See also, Dagg and Thompson, *supra*, note 20 at 60-61.

⁴²"Women Faculty at University of Western Ontario: Reflections on the Employment Equity Award," unpublished, April 1988. For an equally damning analysis of hiring practices at the University of Manitoba, see Michele Pujol, "The Employment Status of Female Academic Staff in the Faculty of Arts in 1988-89," paper presented at the "Learning Women" conference, University of Manitoba, January 13, 1989. See also Theodore, *supra*, note 11 at 181-193.

⁴³For a cautionary critique of feminist efforts to integrate feminist research into the mainstream curriculum, see: Mary Childers, "Women's Studies: Sinking and Swimming in the Mainstream" (1984) 7 *Women's Studies International Forum* 161.

⁴⁴Women have had male supporters, but with very few exceptions, women have first educated them, then nurtured them, and then observed wryly that reformist initiatives are not seriously entertained until a man schooled by a woman endorses them or until a man repeats what a woman has already said.

For most faculty women, hard choices are constantly made between controlling our workloads and agreeing to volunteer for additional committees because women's presence is vital. Women continue to carry the burden of reminding colleagues to include women and women's issues in speakers programs, courses and conferences, and then tend to be assigned responsibility for locating such resources. The launching, staffing and administering of Women's Studies offerings depends on considerable unaccredited volunteer labour. In order to present a modestly integrated face to outsiders, departments specifically solicit women's attendance at guest lectures and seminars, receptions, alumnae gatherings and other extra-curricular events. And women make a point of attending guest appearances by other women as an act of solidarity. It's not that women shouldn't participate in such extra work; it's that per capita, women's participation vastly exceeds men's while giving the appearance that women are well

Feminist Scholarship

There is now a vast body of feminist scholarship documenting the nature and consequences of routine gender bias in the processes of teaching and learning. There are studies, for instance, on sexism in language and language use;⁴⁵ in classroom and other mixed-sex interactions;⁴⁶ in academic evaluation;⁴⁷ in curriculum materials;⁴⁸ in research and teaching methodology;⁴⁹ and the social construction of knowledge.⁵⁰ All of these studies reveal that in education, as in society at large, women, women's experience and achievements, and women's contribution to academic interactions are devalued and marginalized.

The generic finding of these studies can be captured in Mary Ellman's observation that "the male body lends credence to assertions, while the female body takes it away."⁵¹ Another way of framing their import is to state that the educational process and curriculum content demonstrate that

Men attend to and treat as significant only what men say. The circle of men whose writing and talk was significant to each other extends backward in time as far as our records reach. What men were doing was relevant to men, was written by men about men for men. Men listened and listen only to what one man says to another.⁵²

represented on faculty.

⁴⁵Dale Spender, *Man Made Language*, 2nd ed. (London: Routledge and Kegan Paul, 1985); Martel and Peterat, "Naming the World: Consciousness in a Patriarchal Iceberg," in Jill McCalla Vickers, ed. *Taking Sex Into Account: The Policy Consequences of Sexist Research* (Ottawa: Carleton U.P., 1984) at 43-70; Thorne, Kramarae and Henley, eds. *Language, Gender and Society*, (Rowley, Mass.: Newbury House, 1983); Mary Vetterling-Bruggin, ed. *Sexist Language: A Modern Philosophical Analysis*, (Littlefield Adams, 1981).

⁴⁶Spender, *ibid.*; Catherine Krupnick, "Women and Men in the Classroom: Inequality and Its Remedies," (1985) 1 *On Teaching and Learning* 18; Taunya Lovell Banks, "Gender Bias in the Classroom," (1988) 38 *J.Leg.Ed.* 137;

⁴⁷Dorothy Smith, *supra*, note 15 at 253-254; Thomas Divine, "Women in the Academy: Sex Discrimination in University Faculty Hiring and Promotion," (1976) 5 *J. of Law and Ed.* 429 fn.23.

⁴⁸There are numerous studies on the topic. Recent contributions include: Federation of Women Teachers' Associations of Ontario, *The More Things Change. . . The More They Stay the Same*, (Toronto: FWTAO, 1987) (elementary school readers); Vickers, *Taking Sex Into Account*, *supra*, note 45; Mary Joe Frug, "Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook," (1985) 34 *American U.L.Rev.*1065; Nancy Erickson, "Sex Bias in Law School Courses: Some Common Issues," (1988) 38 *J.Leg.Ed.* 101.

⁴⁹Vickers, *Taking Sex Into Account*, *supra*, note 45; Angela Miles and Geraldine Finn, *Feminism in Canada: From Pressure to Politics* (Montreal: Black Rose Books, 1982); Margo Culley and Catherine Portuges, eds. *Gendered Subjects: The Dynamics of Feminist Teaching*, (Boston: Routledge and Kegan Paul, 1985); Spanier, Bloom and Boroviak, *Toward a Balanced Curriculum: A Sourcebook for Initiating Gender Integration Projects*, (Cambridge: Schenkman, 1984); Gloria Bowles and Renate Duelli Klein, eds. *Theories of Women's Studies*, (London: Routledge and Kegan Paul, 1983); "Symposium: Women in Legal Education—Pedagogy, Law, Theory, and Practice," 38 *J.Leg.Ed.* No. 1 and 2.

⁵⁰Smith, *supra*, note 15; Roberta Hamilton, *supra*, note 5 Miles and Finn, *ibid.*; Catharine MacKinnon, "Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence," (1983) 8 *Signs* 635; Carol Gould, ed., *Beyond Domination: New Perspectives on Women and Philosophy*, (New Jersey: Rowman and Allenheld, 1984).

⁵¹Mary Ellman, quoted in Smith, *supra*, note 15 at 253.

⁵²Smith, "An Analysis of Ideological Structures," *supra*, note 15 at 241.

Within this closed circle,⁵³ men define and construct the world in their own image, and in the absence of alternate viewpoints--which viewpoints would, in any event, not be valued--both declare and believe the male viewpoint to be universal, neutral and objective. This monopoly over cultural construction is wedded to power such that those excluded from men's circle have little option but to assimilate this male view of the world. Which explains the fact that gendered women may also attend only to what men say, devalue what women say, disclaim the omnipresence of sex discrimination and view their femaleness as a stigma.⁵⁴

The feminist project in the universities involves more than exposing the hegemonic dynamics of male domination and the fiction of its claims to objectivity, it also prioritizes the inclusion and validation of women's experiences, perspectives and history in the classroom, in course materials and in educational decision-making. Both projects are profoundly disruptive to the unreflectively male-centred status quo. And so the anti-feminist backlash.

The primary charge against feminism in the university is that it is "unscholarly."⁵⁵ Conflated in this criticism is the view that feminists are propagandists (rather than, say, intellectual dissidents) seeking to convert rather than impart knowledge to students;⁵⁶ that feminist research is pro-active rather than reflective; that its subject matter is "soft"--in the sense that it is opinionated and subjective rather than the product of hard, disembodied analytic inquiry;⁵⁷ that it is anecdotal and impressionistic in its study and citation of women's experience rather than rigorous in its canvassing of real scholarly authorities (read: famous men); and that it is unserious in the sense that it has "popular" appeal for lay readers rather than being of interest only to an exclusive academic elite.⁵⁸ I also think the label,

⁵³The best articulation of this is Catharine MacKinnon's:

"... male dominance is perhaps the most pervasive and tenacious system of power in history ... 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." from "Feminism, Marxism, Method, and the State," *supra*, note 50 at 638.

⁵⁴See Catharine MacKinnon, "Not by Law Alone: From a Debate with Phyllis Schlafly" in *Feminism Unmodified*, *supra*, note 39 at 21.

⁵⁵For a rich analysis of the forms and politics of male resistance to feminist scholars and scholarship, see Aiken, Anderson, Dinnerstein, Lensink and MacCorquodale, "Trying Transformations," *supra*. See also, Theodore, *supra*, note 11 at 46 and McCormack, *supra*, note 5 at 292.

⁵⁶For a paradigmatic diatribe against feminist scholarship, see: "Recruitment of Feminists Curbs Academic Freedom," letter to the editor of the *Queen's Journal*, Jan.30, 1987 by Assistant Professor David Toogood. He states: "We regard [Women's Studies] as a blatant and entirely unacceptable attempt to politicize legitimate academic activity at Queen's and we wish to take this opportunity of urging you to exercise your influence in redressing an intolerable distortion of our academic system." In addition to linking feminism with fascism, he refers to feminist scholars as dogmatists, propagandists and "ideologues ... conspicuously anxious to jettison the whole university ethic."

⁵⁷See Kathleen Rockhill, "The Chaos of Subjectivity in the Ordered Home of Objectivity," (1987) 8 *Canadian Women's Studies*. The unscholarly label is particularly common where the author writes in the first person, citing her own and other women's experience as authority for analyses of how oppression gets lived out in the body. I refer here to studies of women's sexuality, of sexual abuse, of eating disorders, and of illness.

⁵⁸See, for instance, reviews of Shere Hite's *Women and Love: A Cultural Revolution in Progress* (New York: Alfred Knopf, 1987) in *Time* magazine, October 12, 1987 and in *The New York Times Book Review*, November 15, 1987.

"unscholarly" is code for "womanish."

At the risk of belabouring the point, it can be seen that implicit in these criticisms are several ideological assumptions about current conceptions of academic merit no less than of woman-identified research: that orthodox scholarship is pure, objectively discoverable and objectively articulated knowledge; that non- or anti-feminist teachers bring no perspective to their selection of course materials, their pedagogy or their evaluation of student performance and do not use their authority to propagate their individual judgments about what counts as knowledge, as sound reasoning, as good authority for a proposition, as valid critique. There is not a little ivory towerism in the contempt for the popular appeal and the intended social application of feminist scholarship. Above all, the message is that research that does not look like conventional male scholarship and does not appeal to male scholars is not scholarship.⁵⁹ Implicit in this judgment is also men's omnipresent presumption that they have the standing and credentials to pass judgment on work by, about and for women.⁶⁰

A related charge is that feminists are unqualified to teach, having secured employment by false allegations of sexism that intimidate universities into making them job offers, and excusing their substandard credentials and performance as the product of sexism or the judgment of sexists.⁶¹ Typically, those mounting such

Time, having declared Hite's seven year analysis of surveys of 4500 American women "character-istically grandiose in scope" and "murky in methodology" emphasizes the profit earned by the "coolly glamorous author" on her first two books and the "commercial appeal" of the book being reviewed. The NYT also finds Hite's methodology flawed and its content non-scientific, though "worthwhile" for its anecdotal richness.

⁵⁹ A related charge is that feminist scholarship is not a "discipline." This criticism implies that disciplinary status equals scholarly status. It also assumes the overwhelming compartmentalization of knowledge into discrete "disciplines" is meritorious. A feminist might argue such compartmentalization is counter-educational reification.

⁶⁰ Thelma McCormack has argued that "academic freedom means the right to determine standards and performance. One of the major findings of the new feminist scholarship is the extent to which women have been judged by male standards, by norms standardized on male populations, by the male gatekeepers of professional journals and granting agencies. This has led to a certain overreaction on the part of women academics who insist upon the recognition of female norms which may be as inadequate as the male standards. Nevertheless, it is incumbent on women who set performance standards, to insist with their Senates that the standards being used are those of the larger community of feminist scholars and are not personal." *supra*, note 5, at 300.

⁶¹ See, e.g., Jeanne Phelps-Wilson, "Viewpoint" in the CAUT Bulletin, Feb. 1987: "Revolutionary movements attract into their following those whose ability has proven unequal to their ambition. . . . [Feminists] have cozened or coerced university administrations into humouring their views that sexual numerical balance is equality, and that, since equality of opportunity will not achieve this equity for many years, discrimination in favour of women, whatever their professional qualifications, promotes equal opportunity. It is clear that any change in the *status quo* by the appointment of more women of high calibre, who have no need of a leg-up to bolster a large incompetence, would take away from these mediocre academicians their *raison d'être*." See also "Open Letter to Canada Law Books Ltd. and Canadian Law School Deans," n.d., whose anonymous authors--"concerned lawyers, law students and law teachers"--claim: "Our collective and personal experiences confirm a hiring and promotions process at Canadian law schools that is rapidly becoming an open scandal and a public disgrace. It is a process where the politics of sexual discrimination, strong arm tactics and out-right intimidation by female faculty combine to regularly exclude the best qualified candidates--often male--from recruitment or promotion. . . . Once hired, these teachers all too often attempt to hide their relatively inferior qualifications by mis-using the law classroom as a pulpit for feminist-thumping doctrine and personal propaganda. . . . 'Male-dominated,' 'male-centred,' 'male-defined,' 'anti-woman,' become the all encompassing catch-words hiding teaching inadequacies and poor knowledge of the subject matter taught."

charges also assert that feminists have a monopoly on hiring policies and practices, exert coercive control over deans and university principals who are cowed into submission by feminist organizations, and even command "unchallenged influence at the highest levels of government" which fund and shape university policy.⁶² Given the continuing minority presence and status of women within university faculties,⁶³ and given universities' general resistance to reviewing the disparate sexual impact of the entrenched merit criteria by which academic excellence is measured,⁶⁴ it is difficult not to view such charges as analogous to those of white supremacists, anti-semites and English language rights lobbies, seeing a takeover conspiracy in the modest social changes eroding their exclusive hegemony.

By declaring feminist work unscholarly and feminists unqualified, the university can justify the non-renewal, refusal to promote and termination of feminists.⁶⁵ In particular, the characterization of feminist scholars as dogmatic propagandists whose minds are closed to evidence and ideas that run contrary to feminist ideology,⁶⁶ exempts feminist scholars from the largely rhetorical guarantees of academic freedom. The purging of feminist scholars becomes a virtue, a reaffirmation of the intellectual mission of the university.

This approach was precisely the tactic adopted by universities who pandered to McCarthyism by purging leftists and deemed leftists from their faculties. Leftists, they argued, were ideologues bound by adherence to Communist dogma

⁶²Open Letter to Canada books, *ibid.* It is difficult to decide whether this common form of anti-feminism is more or less unsavoury than the misogyny with which it still coexists wherein women are said to have been hired because they slept with their male sponsors. In both cases, women are presumed incapable of advancement through their own merit.

⁶³See text at 7-10, *supra*.

⁶⁴See the employment equity statement of the University of Toronto, OCUFA Forum, February 1987, at 4: "While remaining alert and sensitive to the issue of employment equity for all, the University has an immediate and special concern with the role and experience of female staff. *Without diluting its commitment to individual merit as the prime criterion*, the university will undertake a number of positive initiatives in the short-term to enhance and diversify the participation of women." (Emphasis added) What is begged, of course, is such questions as who determines individual merit, how it is defined, whether women have any voice in determining merit criteria, whether the administrators in charge of hiring and promotion decisions have, for instance, any scholarly background or expertise in evaluating the work of feminist scholars and whether the scholars who are competent to judge such work have sufficient rank to sit on those bodies which hire and promote faculty.

For a study of the problems in defining academic merit, see Thomas Divine, "Women in the Academy: Sex Discrimination in University Faculty Hiring and Promotion," (1988) 5 J.Leg.Ed. 429. For detailed guides to the implementation of equitable recruiting and evaluating procedures, see Council of Ontario Universities, *Employment Equity for Women*, *supra*, note 11 at 81-142; and Canadian Association of University Teachers, *Policies Concerning the Status of Women* (Ottawa, 1987).

⁶⁵With some 46% of women faculty in teaching positions below the rank of Associate Professor, that is positions likely to be non-renewable or funded with soft money, the potential for abuse is particularly high.

⁶⁶See passages quoted from Professor Toogood, at note 56. Mr. Toogood equates feminist scholars with hatemongers like James Keegstra (who was fired and prosecuted for teaching his students anti-semitic ideology), and with fascists. He argues that "hostility is the only intelligent response to an organization [feminists] bent on the intellectual violation of the professoriate."

whose political mission was incompatible with the free and open inquiry essential to university enterprise. The expulsion of leftists was therefore not only democratic, but a defence of academic freedom.⁶⁷

This has also been the tactic of those of Dean Carrington's ilk⁶⁸ in denouncing Critical Legal Scholars and urging that they should voluntarily resign from law faculties as a matter of ethics.⁶⁹ The charge is that the Crits are nihilists who, as teachers of law, are insufficiently reverent toward and are subversively critical of law's integrity as a rationally ordered and principled system of justice. According to Carrington, just as atheists ought not to teach in theology schools, Crits ought not to teach law.⁷⁰

And so, the feminist project is antithetical to the university mission: the field of Women's Studies is unscholarly; feminists are dogmatists rather than unencumbered open minds and their propagandizing is anathema to the academic enterprise.⁷¹

A somewhat less damaging charge against feminists common in academic communities is that we are "non-collegial."⁷² Leaving aside the fact that the working conditions and climate governing the lives of many academic women do not lend themselves to congenial co-existence with anti-women or anti-feminist colleagues, I understand "non-collegiality" in this context to mean two different things. Sometimes it means insufficiently deferential to senior male colleagues accustomed to the unchallenged hegemony of their worldview, especially their self-image as egalitarians.⁷³ Sometimes it is proxy for men's recognition that faculty women are an unfamiliar breed whose different teaching stances, ideas, topics of interest and, I think, willingness to speak in the first person, is jarring. "Non-collegial" in this context simply means "not like a man." The unconscious text is that male norms are the standard of collegiality. The label "difficult" is conjoined

⁶⁷ See the brilliant and chilling exploration of this comparison by Jerry Frug, "McCarthyism and Critical Legal Studies," (1987) 22 Harv. Civ. Rights-Civ. Lib. L. Rev. 665. See especially his review of some law schools' opposition to hiring Critical Legal Scholars at 682-685.

⁶⁸ Paul Carrington, "Of Law and the River," (1984) 34 J. Leg. Ed. 222. See also the reaction to his argument in "'Of Law and the River' and of Nihilism and Academic Freedom," (1985) 35 J. Leg. Ed. 1.

⁶⁹ Carrington, *ibid.* at 227: "What [the profession] cannot abide is the embrace of nihilism and its lesson that who decides is everything, and principle nothing but cosmetic. Persons espousing [such views], however honestly held, have a substantial ethical problem as teachers of professional law students. . . . Teaching cynicism may, and perhaps probably does, result in the learning of the skills of corruption: bribery and intimidation. In an honest effort to proclaim the need for revolution, nihilist teachers are more likely to train crooks than radicals. If this risk is correctly appraised, the nihilist who must profess that legal principle does not matter has an ethical duty to depart the law school, perhaps to seek a place elsewhere in the academy."

⁷⁰ Paul Carrington, Letter to Robert Gordon, reprinted in (1985) 35 J. Leg. Ed. 10.

⁷¹ Professor Toogood, *supra*, note 56, wrote: "Feminists at Queen's have relegated the pursuit of knowledge and free inquiry to academic limbo, subservient to a strident, preconceived 'Weltanschauung' - the very antithesis of a university education that we, as academics, extol and are pledged to uphold in a democratic society."

⁷² See, e.g., Theodore, *supra*, note 11 at 20, 57 and 151-179, and McIntyre, note 28, *supra*.

⁷³ See Clare Dalton, "Discrimination in Academe: The Political is Personal Too," Newsletter of the Conference on Critical Legal Studies, July 1988, at 7.

with the label "non-collegial" when non-conformity by women is recognized to be a conscious choice against assimilation of male standards.

The only point I wish to make about the non-collegial designation is that it can be used consciously or unconsciously to block reappointment or non-promotion. I personally believe that genuine collegiality is a rarity within most academic communities, and that its mythological being is invoked only when a group of faculty members close ranks against dissenting views or against initiatives for the reform of traditional practices. But even if collegiality did exist, I do not believe its absence in an otherwise conventional teacher and scholar would materially injure his or her career prospects. I am much less sanguine about its adverse impact on the careers of feminist scholars.

Which brings me to my last point. My argument has been that as employers and as educators universities reflect and practise, and therefore reinforce, the systemic inequality of women. I have also argued that universities' responses to feminist research documenting this reality and to feminist faculty committed to changing it, have been hostile.⁷⁴ But my critique of the universities goes further. Universities prefer to study the problem of discrimination--preferably in a decontextual, abstract and objectified way--rather than redress it.⁷⁵

Even where the actual, contextual experience of the objects⁷⁶ of such study is considered relevant, rather than tainted by subjectivity, the conditions under which women are expected to demonstrate their oppression are unconducive to candour. When the purpose of the study is to determine empirically whether discrimination exists at all, researchers are unlikely to recognize that those who have the most information to give are the most at risk in giving it or that women who state that they have never experienced discrimination have much to gain by saying so publicly.

⁷⁴The first Supreme Court of Canada decision defining systemic discrimination and endorsing the need for systemic remedial redress is *Action Travail des Femmes v. Canadian National Railway* (1987), 40 D.L.R. (4th) 193. The Court upheld comprehensive remedies imposed by the Canadian Human Rights Tribunal including an order that 25% of all new hires into blue collar jobs at CN be women until women represented 13% of that workforce. In substantiating the discrimination claim and in justifying such remedies, the Court could have been describing the universities. Compare, for instance, the demographic data, the types of attitudes exhibited and harassment practised by male CN personnel, the sex-differentiated criteria for hiring and promotion, the history of studies commissioned documenting the existence of sex discrimination whose recommendations were ignored or significantly watered down in their implementation, the employer's preference for statements endorsing equal opportunity rather than for concrete measures to achieve it, the refusal of top management to monitor or interfere with the discriminatory practices of subordinate bodies and of course, the decision to litigate the complaint and to appeal its outcome.

⁷⁵Witness the dozens of status of women reports commissioned in house and gathering dust on administrators' shelves. See also the employment equity pledges reviewed in the OCUFA Forum, note 41 *supra*. The common thread is the commitment to study possible problems in staffing policies. In 1986, in the wake of campus-wide protest about male bias within the university, the Principal of Queen's University asked all faculty deans to report to Senate on the matter of gender bias within their faculties. The most astonishing report, filed by the Faculty of Applied Science, asserted that "no serious situations or instances of gender inequality" were uncovered in its inquiry and that women students in the faculty believe that gender equity prevails. In the wake of eight reports, not one single concrete proposal for egalitarian change has been moved in the Senate.

⁷⁶In my experience, women are routinely objectified in these studies, hence, "objects" of study.

However, when pressed to do more than study whether discrimination exists, universities choose to fight, rather than switch, to litigate rather than settle. Sometimes I think this posture bespeaks administrative stupidity; other times I think it reflects calculated political intransigence. In any case, it has been consistently effective in inhibiting complaints and demoralizing or exiling complainants.⁷⁷ The irony is that although activism by feminist scholars against campus sex discrimination not infrequently discredits them as scholars and jeopardizes their professional advancement, active campaigning by male scholars against discrimination suits is creditable and career-enhancing.

Start with stance. When accused of sex discrimination, University administrators, dean's committees and departmental hiring committees invariably flatly deny the allegation, notwithstanding the material evidence of systemic discrimination on site, and notwithstanding that there is no logical reason for universities to be immune from social practices we know to be systemic everywhere else. It is as if gender socialization and its embodied practices are either an abstraction to academics, or considered to shape only people and institutions other than those they know.⁷⁸ This denial typically is mixed with extreme moral indignation. It is as if accusing the administration of discrimination is, per se, outrageous because universities, by virtue of their claims to objectivity, are beyond any form of prejudice. More, university personnel react to formal discrimination complaints as hurtful personal attacks accusing them of intentional prejudice. It is as if constructive discrimination principles and systemic social inequalities do not apply to academics.⁷⁹ And finally, like employers confronted with employees' desire for unionization, university administrators treat discrimination suits as acts of disloyalty by people who mistakenly fail to see and trust in their general beneficence. It is as if women were expected to share men's interests in the profit and productivity of male domination.

Next, consider the procedures being defended. Liberal law turns on some faith in the rule of law--faith in positive rules of general application impartially applied and administered. Among other things, this speaks to a distrust of power and a fear that discretionary standards both permit favoritism and subvert the uniformity and predictiveness the rule of law aspires to establish. In employment

⁷⁷On the penalties faced by complainants, see Theodore, *supra*, note 11, c. 13.

⁷⁸Administrative denials notwithstanding, 40% of the faculty grievances brought before the CAUT committee on Academic Freedom and Tenure are brought by women, even though women represent only 16% of the professoriat. See Dagg and Thompson, *supra*, note 20 at 71. On different forms of denial, see Theodore, *supra*, note 11, c. 12.

⁷⁹For well over a decade, legal understanding of discrimination has extended beyond this conception of individual evil perpetrators victimizing individual members of minority groups through conscious ill will or irrational prejudice. Human rights legislation and courts recognize that discriminatory intent need not be proved in order to establish a discrimination claim where the results of impugned policies or practices have a routinely adverse impact on women or minorities: *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.* (1985), 23 D.L.R. (4th) 321 (S.C.C.). One may not, perhaps, expect ordinary citizens to have grasped this legal principle. Universities, however, have well-informed lawyers on retainer, as well as senior administrators and personnel officers whose business is or should be ensuring that universities know and comply with the law.

and labour law, this translates into rules such as the posting of jobs with clearly defined duties and qualifications and the voiding or rerunning of job competitions in which criteria other than those advertised determined outcomes; the right to fair warning of workplace rules, the penalties for breach and notice of breach before discipline or discharge may be imposed; and a chance to improve one's performance in clearly articulated ways before one is discharged for incompetence.

In the universities, by contrast, not all jobs are posted. The stated qualifications may be so general as to screen no one out (thereby allowing maximum discretion in candidate selection) or may be ignored when someone with other qualifications appealing to the selection committee⁸⁰ materializes. The criteria for advancement--excellence in research, administration and teaching--are undefined, imprecise and unclear as to their weighting.⁸¹ Evaluation follows no rigorously formal pattern: unsolicited information which is not necessarily revealed to the candidate can be and is considered, solicited information may come from evaluators known to be hostile to the candidate or to her/his field of study, and at the departmental, decanal and presidential level people with no expertise in the candidate's field may assess the merits of her/his research. Departments may count or discount the views of students; deans may disregard the views of students, departmental faculty or hiring committees; and university presidents may disregard all of them by substituting their subjective visions of the needs of the university or department for those of the first and second stage evaluators. Confidentiality shrouds most of the process from effective review by the candidate or by appellate bodies.⁸²

My claim is a modest one: not that such structures often mask consciously biased decision-making,⁸³ but that they mandate extremely subjective deliberations in the determination of academic merit. In a gendered world, where the overwhelming majority of the decision-makers in these processes are (unreflectively) gender male, even facially neutral policies and practices universally applied frequently result in sex discrimination. Subjective determinations of individual merit are the more problematic even when applied with the best of faith. When standards are this elastic, the simple allegation that a candidate's work is "unscholarly" or that the candidate was hired only as a sop to feminists or that

⁸⁰Not all universities require that hiring or promotions be done through a formal committee process. At Queen's, for instance, the Senate promotions policy provides that "if a department decides that a collegial system of consultation other than a standing committee is preferable for promotions review, it may propose its own system. Such a proposal shall provide for broad consultation between the department head, its members and students, and shall be fully described in written regulations. "Statement on Promotion Policy," Supplement to the Queen's Gazette, Vol.18, No.19, June 24, 1986.

⁸¹See Theodore, *supra*, note 11, Part III; and Divine, *supra*, note 47. The promotion policy at Queen's, *supra*, identifies teaching, research and scholarship, and service as the three categories of work to be considered in all matters of promotion. It then states, "The weighting to be given to each of these criteria will naturally vary from rank to rank and among the faculties and schools. . . . In matters of promotion, guidance as to the appropriateness of that balance are primarily the responsibility of the faculty boards."

⁸²On this point, see Mullan, "'Fairness' in the Employment of University Faculty," *supra*, note 12 at 274-75.

⁸³It does appear, however, that the procedures can effectively mask deliberate sex discrimination: see Theodore, *supra*, note 11, especially c. s 8 through 15.

the candidate is "difficult" to work with or that the candidate received some hostile student evaluations may inordinately prejudice hiring and promotional decisions. The potential damage is compounded by the scarcity of faculty members of either sex occupying high academic ranks who are sufficiently literate in specialized fields of feminist scholarship to assess feminist research competently.

Short of declaring illegal the entire process by which merit is evaluated in universities, courts not surprisingly defer to academic tradition even at the risk of legitimizing suspect outcomes. In a few individual cases, complainants may prevail, but when discrimination is systemic, token successes do nothing to redress structural inequalities.

An obvious but limited remedy is massive revision of hiring and promotion criteria and processes to reduce the degree of discretion entrenched in professional evaluations. Status of Women committees in both the CAUT and COU have drafted credible and detailed guidelines to this end.⁸⁴

Such guidelines, however, will not be adopted or enforced until male academics acknowledge that discrimination is not intentional bias practised by a minority of evil perpetrators in communities which are otherwise thoroughly egalitarian. We are all gendered. Men as well as women. There is no outside of gender. It is long since time that the gendered human beings populating universities accept accountability for the inequalities they routinely reproduce. The pity of it is, this has all been said before. Women have said it tirelessly. And the very best we have come to expect of our colleagues is a complacent but tolerant hearing. Which is only to confirm one more time, that in academe as elsewhere, women's voice and experience are not credited and women's concerns remain excluded from the male agenda.

⁸⁴ COU, *Employment Equity for Women*, *supra*, note 11; and CAUT *Policies Concerning the Status of Women*, *supra*, note 64.