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UNIVERSITY OF CALGARY MUST FREE ITS STUDENTS

Peter Bowal

Public universities are the last sanctuary to abide, if not stimulate, the free flow of ideas, debate and controversy. Punishing and banishing students, staff and faculty who express their ideas and opinions (much as I am doing here) must not be tolerated if universities are to remain relevant and effective.

Over the past five years, we have watched students being disciplined for their thoughts, consciences and beliefs and their expression of them on the campus of the University of Calgary. This has been peaceful activity protected by the charter for 30 years in the public realm. The student speech did not come close to the disturbances of the Occupy activities last fall that our public authorities tolerated.

Nevertheless, student tuition money and taxpayer money, likely in the order of hundreds of thousands of dollars, has been spent to silence and evict individuals from university property because someone might be offended by their honest beliefs about abortion, same sex marriage, the helpfulness of their professor, or whatever.

Free the students. Let them speak and argue. Let the best ideas prevail in the campus square. This is the lifeblood of democracy.

I have heard three reasons stated for university control of student speech. With respect, they are all flawed.

The first argument is that certain graphic images, like aborted fetuses, or words must be suppressed because they might incite others to violence. The public peace needs to be preserved. Should we limit public

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discourse by appeasing all who would choose to respond with violence? We cannot allow violence to be justified merely on the ground that it was provoked.

The problem with the incitement to violence argument is that it erroneously focuses on the expresser, when rather we ought to restrain the aggressor.

The second argument is that the Charter of Rights and Freedoms does not clearly apply to public universities. This remains an open legal question. But why does the University of Calgary have to run the test case, arguing that it should not apply? Why not respect freedom of student expression on campus as a value, even if the Supreme Court of Canada has not yet compelled it as a matter of law?

The third argument relates to universities being at arm's length from government. Academic freedom means that professors should pursue truth and knowledge free of government meddling. We are not to be mouthpieces for partisan politics. The university administration (more than faculty members doing actual research) are concerned if we are in the same legal category as government, regulated by the charter, our own research and teaching functions will suffer political interference.

If we were a mere branch of government, without academic freedom, we could never criticize government and its policies. Then we would never cure cancer or discover new alternative fuel sources or interpret Shakespeare correctly because we are symbolically an arm of government burdened by its own political agenda.

Well, universities are already influenced by government, which incorporates and funds them. It legislates for them. Government monitors and regulates universities through ministries and policies and it makes appointments to the board and senate.

It is strange reasoning that universities need to operate beyond the reach of the charter, and to suppress free speech, so researchers might have a better chance to cure cancer. Being subject to provincial human rights, privacy and employment law has not hindered academic freedom. The charter will not destroy Canadian universities. Academic administration fetters academic freedom more than government.

There are also non-legal reasons to free the students.

The University of Calgary has endeavoured to improve its "student experience" ranking. Riding herd on students by curtailing their speech and demanding they sign statements contrary to their personal convictions are not endearing, student-friendly gestures. The university cannot litigate its way into students' hearts and use the courts to soar in the rankings.

A university can't begin to control speech in all its forms. Even a $1-billion budget cannot monitor the blogs, forums, e-mails, texts, websites and conversations on and off campus.

I've had unspeakably worse things said and written about me over the years, than that which came to light in the Pridgen case. I've faced threats. No action was taken by administration. I've also been disciplined for far less wrong than described in that case. If disciplinary action is politicized, none is better.

The academic leadership utterly misjudged the issues at stake and they mismanaged their response. Caught off guard, it responded with a heavy hand. The university should have had an hour-long conversation with the Pridgen family back in 2007. The matter could have been quietly resolved.

Instead, the university dug in and offered up untenable arguments. It gambled that its huge financial advantage might extract a win by attrition, but it did not. Intractable litigation against its own students is failed leadership.

So what now? If the university learns nothing from these judges and their ruling, it will apply for leave to the Supreme Court of Canada.

If, on the other hand, the university is humbled by this public embarrassment, it will immediately reclaim this dispute from the lawyers, reconcile with (and try to win back) the Pridgen family, come clean on what this battle has cost and ensure accountability. And the university will free the students.

Peter Bowal is a University of Calgary law professor.

The Calgary Herald, May 16, 2012.

JOHN CARPAY: A VICTORY FOR FREE SPEECH AT THE UNIVERSITY OF CALGARY

John Carpay

This week, in the case of Pridgen v. University of Calgary, the Alberta Court of Appeal affirmed that the Charter of Rights and Freedoms protects the free speech rights of university students on campus.

The case arose from a Facebook page called, "I no longer fear hell, I took a course with Aruna Mitra," wherein some U of C students described their "Introduction to Legal Studies" professor as inept, awful and "illogically abrasive." When students on the site compared the marks they received on an assignment, Steven Pridgen wrote: "Somehow I think she just got lazy and gave everybody a 65 … that's what I got. Does anyone know how to apply to have it remarked?"

Many students in the class appealed their grades, and all succeeded in getting a higher grade. Eight months after the course was concluded, Keith Pridgen (Steven's brother) wrote on Facebook that Mitra was no longer teaching at the University of Calgary: "Remember when she told us she was a long-term prof? Well actually she was only sessional and picked up our class at the last moment because another prof wasn't able to do it. Lucky us."

The University of Calgary prosecuted the 10 students who had joined the Facebook page, and found all of them guilty of "non-academic misconduct"— including students who had not posted any comments.

The university accused the students of defaming Mitra with "unsubstantiated assertions," yet refused to hear any evidence from the students about the professor. Nobody testified to deny that the professor had asserted, bizarrely, that Magna Carta was a document written "in the 1700s for native North American human rights purposes."

The University of Calgary threatened the Pridgen brothers and the other eight students who'd joined the Facebook page with expulsion if they failed to write an abject letter of apology.

Having been found guilty of non-academic misconduct, Keith and Steven Pridgen took the university to court, which declared in 2010 that, "the university is not a Charter-free zone." That judgment was upheld this week by the Court of Appeal.

While the ruling is a victory for the free-speech rights of university students, it is disheartening that the University of Calgary needs a court order to compel it to fulfill its own mission statement: To promote free inquiry and debate.

Ironically, the university argued that it had a legal right to muzzle the Pridgen brothers and other students in order to preserve academic freedom. In response, Justice Marina Paperny noted that academic freedom and freedom of expression are inextricably linked. Both serve the same goals: "the meaningful exchange of ideas, the promotion of learning and the pursuit of knowledge."

Some will decry the Charter's protection of campus free-speech rights as more government control over universities. But this complaint ignores the reality that the Charter merely follows government into domains — such as health care and post-secondary education — that the government has first taken over through legislation, regulation and funding.

Which is to say: The Charter follows the government's expansion into new realms; it does not cause it. In these realms, the fundamental freedoms guaranteed by the Charter — religion, conscience, expression, association — serve to protect individuals from the abuses of administrators whose power stems, in large

part, from government.

If universities were private, they would not be engaging in "government action" so as to invite the Charter's application. But when the University of Calgary obtains over $600 million from taxpayers each year by claiming to be a forum for free expression for all people and for all views, it forfeits its right to censor speech it dislikes. Holding the U of C to account, as this court ruling does, is good news for students and for taxpayers.

In particular, this precedent will help the students in Ontario and Alberta who have taken Carleton University and the University of Calgary to court in regard to the censorship of pro-life viewpoints. But that is a subject for another column.

Calgary lawyer John Carpay is president of the Justice Centre for Constitutional Freedoms, which defends the free speech rights of all Canadians.

National Post, May 11, 2012.

UNIVERSITY FACES HEAT FOR KHOMEINI EVENT

Karen Chen

OTTAWA An event at Carleton University that celebrated the religious and political teachings of Iran's former theocratic ruler Ayatollah Ruhollah Khomeini has come under fire for ignoring the his dismal human rights record.

Ten Iranian-Canadian academics wrote a letter to Carleton's president Roseann O'Reilly Runte outlining their objections to the June 2 event titled "The Contemporary Awakening and Imam Khomeini's Thoughts."

Fourteen other prominent figures from Canada's sizable Iranian population, including Nazanin Afshin-Jam, wife of Defence Minister Peter MacKay and a former Miss Canada, addressed a separate letter also voicing concerns about the positive portrayal of the late Khomeini at the conference.

The event was organized by a student group, the Iranian Culture Association of Carleton University, in collaboration with the Culture Centre of the Islamic Republic of Iran to honour the 23rd anniversary of Khomeini's death. According to the Iranian Culture Centre's report of the event, the three speakers "provided the perfect image of how great the founder of the Islamic Republic of Iran truly was."

What was not discussed at the event, the letter writers contend, was Khomeini's human rights record, including his mass execution of political prisoners and minority groups and the many scholars and activists who were imprisoned under his regime, as documented by United Nations sanctions and Amnesty International reports. Among the signatories to the academics' letter is Ramin Jahanbegloo, a University of Toronto professor who was detained without charge by Iranian authorities in 2006.

"We think reputable academic institutions have a moral obligation not to turn a blind eye on atrocities committed against their colleagues in other countries," the letter reads.

The second letter states: "Carleton University, one of the leading academic institutions in this country, negligently permitted its campus to become the site of a celebration of human rights violations, gender inequality and anti-Semitism."

Carleton's response was brief. Mr. Runte replied with a one-line email to the academics that read, "Thank you and your colleagues for your recent letter. Carleton University did not sponsor or act as host to the event you mention."

A Carleton spokesperson later stated that the university hosts many events on its campus, and though subjects are sometimes controversial, views expressed do not reflect the university as a whole and Carleton, "like all other Canadian universities, encourages a culture of debate and free expression."

Although Carleton's statement said it played no role beyond hosting the event, campus security kept some students and protesters from participating.

National Post, June 27, 2012.

THERE'S NOTHING LIBERAL ABOUT COMPELLING LIBERALISM

George Jonas

At just about any social gathering, a dimwit is sure to explain that free speech isn't absolute. There are limits. Chances are he'll tell you about a person yelling "fire!" in a crowded movie theatre, then look at you as smug as a parrot, expecting a treat for having figured things out.

I usually resist asking "Polly wants a cracker?" but it's an effort. His "Fire!" example isn't merely shopworn but silly. It doesn't demonstrate that people's right to free speech isn't absolute, only that free speech neither precludes nor excuses barmy behaviour. Free speech doesn't legitimize criminal conduct and it probably doesn't cure leprosy, either. So?

In practice, few defendants use society's guarantee of free speech against a charge of public mischief, and even fewer try to answer charges of fraud, defamation, conspiracy, impersonation, espionage, or any of the scores of crimes or civil wrongs that may be committed through the medium of speech. Recently a blogger — a professor, no less — called me "very confused" for thinking free speech is "absolute" yet listing "familiar ways in which it can be restricted: defamation, fraud, etc." Of course, a fraud-conviction only shows that using words to commit a crime doesn't excuse it, not that free speech has limits, but maybe the professor thinks that if his right to drive to Chicago were absolute enough, it should entitle him to hit pedestrians on the way.

Most people don't. Mobility rights aren't raised as a defense against a charge of trespassing or home invasion, not because mobility rights aren't "absolute" but because they confer an entitlement to mobility, not criminality. If an American shows his gun to the clerk in a milk store and says: "Give me the cash," invoking his First and Second Amendment rights at his trial for robbery will amuse the court and avail him little. The reason isn't that the right to free speech (First Amendment) or the right to bear arms (Second Amendment) isn't "absolute" enough, but that the Bill of Rights entitles Americans to speak freely and to bear arms, not to rob milk stores.

Talk about freedoms not being absolutes usually masks an agenda of statist opposition to free speech. By mixing up speech as an instrument of conduct (sometimes unlawful) with speech as a conveyor of ideas (sometimes heretical) statists can piggyback arbitrary restrictions on consensual practices. The state that can outlaw bad cheques can outlaw bad poetry. I don't just mean that the state has the power; that goes without saying. The state has the power to do anything, except to continue viewing itself as a liberal democracy if it indulges in authoritarian practices. After it has grabbed society by the short hairs (as they used to say in the 1960s) the state must make sure our hearts and minds follow. That's a breeze for a tyranny, but a tough call for a liberal state.

Compelling liberalism, hard as it may be, is the smaller problem. The bigger problem is that it's illiberal to do so. In 1977, the year human rights commissions and "hate literature" legislation started in Canada, such laws seemed progressive. Those of us who had trouble believing that liberalism would be achieved by wiping liberalism out were in a minority.

"We can never be sure that the opinion we are endeavouring to stifle is a false opinion; and even if we were sure, stifling it would be an evil still," wrote John Stuart Mill 150 years ago. To my contemporaries this sounded like gibberish. Come again, sir? Stifling a false opinion, evil? Is the man crazy? Boy, he wouldn't last long on the staff of Human Rights Commissioner Jennifer Lynch.

The Western mainstream, having hit rock bottom around the time George Orwell predicted in his prophetic novel 1984, started its long, cautious climb back towards Stuart Mill's heights. A January 1999 editorial in the National Post viewed Canada's hate-speech legislation as "potentially sinister" whose proposed new provisions "could be put to authoritarian and illiberal purposes." That was quite a difference from mainstream press reactions 22 years earlier when the first HRCs hit the ground running in an atmosphere of self-congratulations, proclaiming as achievements some of the very features that were among their worst flaws, such as convicting "offenders" with near-criminal consequences on civil standards of proof.

The rebound occurs just when theocrats and terrorists, those the poet W.B. Yeats called "the worst" are "filled with passionate intensity," are on the prowl. A pity — but that's the hand we're dealt. "What is 'hate speech'?

It's speech the authorities hate," I wrote a few years ago. "No doubt, it is often worth hating. It may be speech that every right-thinking person ought to hate, but it is also, by definition, speech that falls short of [being] unlawful."

Hate-speech legislation can only ban free speech. Prohibited speech is already banned. Crime is hemmed in by strictures against slander, official secrets, perjury, fraud, incitement to riot and so on. When laws go beyond suppressing crimes, they suppress opinion and creed. There's nothing else for them to suppress. And a society that suppresses opinion and creed isn't liberal. I wonder which part of that sentence requires a tutorial for some professor.

National Post, August 22, 2012.

JONATHAN KAY: GOOD RIDDANCE TO SECTION 13 OF THE CANADIAN HUMAN RIGHTS ACT

Jonathan Kay

Five years ago, during testimony in the case of Warman v. Lemire, Canadian Human Rights Commission (CHRC) investigator Dean Steacy was asked "What value do you give freedom of speech when you investigate?" His response: "Freedom of speech is an American concept, so I don't give it any value."

Those words produced outrage. But there was a grain of truth to what Mr. Steacy said: For decades, Canadians had meekly submitted to a system of administrative law that potentially made de facto criminals out of anyone with politically incorrect views about women, gays, or racial and religious minority groups. All that was required was a complainant (often someone with professional ties to the CHRC itself) willing to sign his name to a piece of paper, claim he was offended, and then collect his cash winnings at the end of the process. The system was bogus and corrupt. But very few Canadians wanted to be seen as posturing against policies that were branded under the aegis of "human rights."

That was then. Now, Section 13 of the Canadian Human Rights Act, the enabling legislation that permits federal human-rights complaints regarding "the communication of hate messages by telephone or on the Internet," is doomed. On Wednesday, the federal Conservatives voted to repeal it on a largely party-line vote — by a margin of 153 to 136 — through a private member's bill introduced by Alberta Conservative MP Brian Storseth. Following royal assent, and a one-year phase-in period, Section 13 will be history.

While Mr. Storseth and the MPs who voted for the bill (including Liberal MP Scott Simms) are to be applauded, the fact is that government action on this file is a trailing indicator of popular opinion, which has shifted against human-rights-justified censorship over the last five years for two main reasons.

The first reason: the legacy of 9/11, and the associated realization that speech codes have been actively hampering our ability to respond to the threat from militant Islam.

In 2006, most notably, many Canadians were shocked when *Maclean*'s magazine was dragged before Canada's human-rights apparatus, and forced to justify its decision to publish an allegedly Islamophobic excerpt from a book by Mark Steyn. Till that point in time, it was casually assumed that anyone caught up in human-rights quasi-litigation was a fringe commentator scribbling out unfashionable, retrograde views on race-mixing, or the Jewish "bacillus," or some such. But Mr. Steyn was an internationally acclaimed commentator writing on a real, modern threat that, in its most virulent form, had destroyed a large chunk of Manhattan, and which our troops were fighting against in Afghanistan.

The second factor that turned the tide against the human-rights industry was the blogosphere.

Till the middle part of the last decade, the Canadian punditariat was dominated by professional columnists who were socially, ideologically, and sometimes professionally, beholden to the academics, politicians, and old-school activists (from Jewish groups, in particular) who'd championed the human-rights industry since its inception in the 1960s. But in the latter years of Liberal governance, a vigorous network of right-wing bloggers, led by Ezra Levant, began publicizing the worst abuses of human-rights

mandarins, including the aforementioned Dean Steacy. In absolute numbers, the readership of their blogs was small at first. But their existence had the critical function of building up a sense of civil society among anti-speech-code activists, who gradually pulled the mainstream media along with them. In this sense, Mr. Levant deserves to be recognized as one of the most influential activists in modern Canadian history.

The battle against human-rights speech codes is far from won: The worst cases of censorship, such as the muzzling of Christians who proselytize texts that contain anti-gay themes, occur at the provincial level. Yet the tide clearly has turned: The Canadian Human Rights Commission received only three hate speech complaints since 2009, two of which were dismissed. And at the provincial level, bureaucrats know that any censorious verdict they deliver instantly will be pounced upon by Mr. Levant and his blogging allies (including some at this newspaper), and thereby become a lightning rod for legislative reform.

The pattern extends to other areas of human-rights law, too: Just this year, an Ottawa woman became a (well-deserved) object of mockery when she went to the Human Rights Tribunal of Ontario to speed up her demand for a parking pad in front of her house, on the basis that navigating the driveway to the back of her house was too tricky.

Canada's human-rights law is a product of the 1960s, when much of our society truly was shot through with bigotry and prejudice. Those days are gone, thankfully, and laws such as the Canadian Human Rights Act now comprise a greater threat to our liberty than the harms they were meant to address. The repeal of Section 13 of the CHRA represents a good, albeit belated, first step at reform. Let us hope it provides suitable inspiration for Mr. Storseth's principled counterparts in provincial legislatures across the country.

Jonathan Kay is Managing Editor for Comment at the National Post, and a fellow at the Foundation for Defense of Democracies.

National Post, June 7, 2012.

SOMETHING WORSE THAN HATE SPEECH

Andrew Coyne

Hardly was there time to celebrate the demise of Section 13, the infamous provision of the Canadian Human Rights Act prohibiting "communication of hate messages," before we were reminded this was not the only unwarranted restriction on freedom of speech on the books.

Section 319.2 of the Criminal Code, for example, forbidding the "willful" promotion of hatred "against any identifiable group," is currently getting a workout in a Regina courtroom in the case of Terry Tremaine, a sometime math lecturer and avowed neo-Nazi. While Mr. Tremaine will have available to him the sorts of due process rights denied to those hauled before the human rights tribunals – the defence of truth among them – the end result is much the same: the suppression of speech society finds objectionable, for the sole reason that it is objectionable. If convicted, he faces up to two years in jail.

The National Post, in an editorial, made the case that such prosecutions only provide a platform for the promotion of the very ideas that were supposedly so toxic as to require suppression. In the age of the Internet, moreover, only a tiny fraction of such material is ever likely to be caught in the state's web, raising questions as to what, if anything, is being achieved.

But these are practical arguments. I want to raise a more fundamental objection. Societies that maintain such laws, after all, are making a statement about who and what they are, the sorts of principles they value and why.

I'll make the customary disclaimer here: freedom of speech is indeed not absolute. But the classical exceptions developed over the centuries - libel, fraud, and so on - typically find justification in the concept of harm. It isn't enough that the speech is considered offensive. It must be shown to have caused, or be likely to cause, some demonstrable harm to some identifiable person.

This begins from the recognition of what an extraordinary thing it is, in a free society, for the state to stop up people's mouths. Speech is not merely useful

for debating political ideas. It is innate to us as human beings, built into our very thought processes: to prevent us from speaking is the next thing to preventing us from thinking. The burden of proof must therefore be on those who would seek to restrict freedom of speech, and not on those who wish merely to enjoy that freedom. And that burden must be a heavy one.

How heavy? In a criminal trial, as everyone knows, the accused enjoys the presumption of innocence. The state is required to prove his guilt "beyond a reasonable doubt." What is more, there are no exceptions. Often the law requires the courts to weigh one principle against another, most famously via the Charter's "reasonable limits" clause. But in a criminal trial, the requirement to prove guilt beyond reasonable doubt is absolute.

To deprive someone of their freedom of speech is perhaps not so grave a matter as to deprive them of their physical liberty. But it is not that far off. It is defensible in certain limited cases, and only with the most rigorous justification. The harm asserted, therefore, cannot be vague or subjective. It must be of a kind that others can agree is harm. That is why the classical exceptions have tended to focus on individuals, and on the more tangible forms of harm.

Physical injury is an obvious example. And indeed, the ban on hate speech is often justified by invoking the threat of violence. But there are other areas of the Criminal Code to deal with that. For example, Sect 319.1, the section just before the one in dispute, outlaws inciting hatred against an identifiable group "where such incitement is likely to lead to a breach of the peace." The purpose of 319.2, then, can only be to cover cases where no such breach is likely.

Is there another kind of harm that would justify its imposition? Hurt feelings, as I've said, aren't enough: all sorts of things can cause subjective offense, with no objective basis for distinguishing between them. Attempts have been made to draw an analogy to libel, on the grounds that hate speech amounts to defamation of an entire group. But the broader and more abstract the claim of harm, the harder it is to show.

Probably the strongest case is that recently made by the American legal theorist Jeremy Waldron, in his book The Harm in Hate Speech. Hate speech, he argues, is nothing less than an assault on the dignity of the targeted groups, robbing them of the "implicit assurance" a just society owes to all of its citizens: that they are accepted as members of that society. Without such assurance, it becomes difficult, if not impossible, for them to participate fully in the community.

I can see that applying, in a society where such views were dominant. But a handful of neo-Nazis? How is anyone's membership in society threatened because somebody, somewhere, has an Adolf Hitler decoder ring? Perhaps it might be argued that it is only the law that prevents the few from becoming the many: that in its absence, hatred would be, not the exception, but the rule.

Yet that is not the experience of free societies. Rather, it is in backward dictatorships that hatred of minorities is most virulent. How, indeed, does the impulse arise to protect vulnerable groups in this way except amid the general climate of tolerance of others that is the very basis of freedom of speech? Is it the ban on hate speech, then, that protects them, or the broader absence of such limits?

National Post, July 10, 2012.

BOYCOTT KILLS AN ANTHOLOGY

Scott Jaschik

For many scholars, a fitting way to honor a deceased colleague is to produce an anthology of related work. At the Center for Middle Eastern Studies at the University of Texas at Austin, that was the thinking behind plans for a volume of fiction and other writing by women in the Middle East. The anthology was to honor the late Elizabeth Fernea, who in her years at Texas had helped build up the study of the region and who promoted the publication in translation of works from the many countries there.

In the last week, however, the project fell apart -- as the movement to boycott Israel in every possible way left Texas officials believing that they couldn't complete the work.

The anthology was to have been published in conjunction with the University of Texas Press, and 29 authors agreed to have works included. Then one of the women found out that two of the authors were Israelis. She then notified the others that she would withdraw her piece unless Texas excluded the two Israelis. When the university refused to do so, a total of 13 authors pulled out. A few others wouldn't tell the center whether they were willing to go ahead with the project, and without assent from those authors, it was not clear that the anthology would include a single Arab author. (The other authors besides the Israelis were from non-Arab parts of the Middle East.)

Kamran Scot Aghaie, director of the center at UT, said that it "would not have been academically sound" to do the book without any Arab authors, but that it wouldn't have been academically or ethically sound to exclude the Israelis. Since the Arab authors wouldn't participate, the book was scrapped.

Aghaie said that several of the authors who pulled out told him that they objected to his not telling them in advance that there would be Israelis in the volume. He said he rejected that idea -- not only for this book but for any future work.

"My view is that it's not proper to single out individual contributors for other contributors to veto. We were not willing to give any group special treatment," he said.

Further, Aghaie said that he does not believe academic institutions should be involved in boycotts of academics or writers in other countries. Aghaie said he understands the idea behind boycotts generally. He describes himself as someone who is "highly critical of the tactics Israelis and Palestinians have been using against each other." But whatever one thinks of Israel, he said, there is no reason to refuse to work with Israeli academics or authors -- or to expect other universities to assist in such a boycott -- as some of the authors expected Texas to do with regard to calls by some pro-Palestinian groups to boycott anything or anyone connected to Israel.

"As an academic institution, we cannot censor people for the country they are from," he said. And he also noted that the boycott of Israel is a boycott of Jewish Israelis, not other Israelis, whose participation does not raise objections. Even if one feels boycotts are appropriate for, say, companies that engage in particular activities, "academics need to be an exception," he said. "As a publishing press or as a program, it's not appropriate for us to single out anyone based on religion or national origin," he said. "To do so is simply discrimination, and it's wrong."

"The last thing you want to do is cut off dialogue. That's the stupidest thing one would do," he said. Not only should academics and authors be talking across borders, they should recognize that they don't necessarily represent their governments' views. Many American academics, for example, opposed the U.S. invasion of Iraq, and would not want to be boycotted because they couldn't prevent that invasion from taking place. Academics need to be seen as individuals, he said, including Israeli Jewish academics.

"When Iran executes a gay man, I'm not guilty of that," said Aghaie, an Iranian-American. "I didn't do that. I would never support that."

Aghaie said that, as leader of a center that tries to involve people from many countries and perspectives in its programs, he worries about intolerance. He said that he has, in the past, fended off complaints from some people who view with distrust Muslim speakers he has invited to campus. The idea that the academic boycott of Israel is taking hold in ways that affect places like the University of Texas bothers him. "That's what really worries me," he said. "It's so self-

defeating on so many levels to try to keep people out. We have to have academic engagement with all sides." Aghaie views the events of the last few weeks with sadness, but others view them as a victory.

Gulf News ran an editorial praising Huzama Habayeb, the Palestinian writer who organized the boycott from Abu Dhabi, where she lives. The editorial describes her as smiling upon finding out that the anthology had been called off.

"Habayeb's actions are those of a resistance fighter -- never giving an inch to Israel, which has illegally occupied her homeland," says the editorial. "But there's also a bigger issue — one whereby academics the world over need to ensure that Israel is isolated for its immoral and illegal actions in occupying Palestine and repressing the Palestinian people. The pen is mightier than the sword."

In an interview with *Gulf News*, Habayeb said she was thrilled that her efforts had killed the anthology. "I am so proud of having the book canceled," she said. "I am a Palestinian and to achieve this, to be able to resist the illegal Israeli occupation of my homeland is something that I will cherish forever. It is my own victory in the struggle."

Inside Higher Ed, May 31, 2012.

THE SACRIFICE OF CAPT. ZERO FOR NOTHING: TEACHER MAY LOSE JOB BECAUSE HE REFUSED TO LET KIDS SKIP ASSIGNMENTS

Joe O'Connor

Edmonton high school teacher Lynden Dorval has been suspended for going against his school's no-zero policy. Under that policy, a student who completed only six of 15 assignments was only graded for what he did - and got a 63% average.

Lynden Dorval tried to talk himself out of it. He understood the stakes.

You push back against school administrators, swim against school policy and you become a marked man, an "insubordinate" problem teacher with a bull's eye on your back.

But the problem was the more he thought about it, the more Mr. Dorval, a physics teacher at Ross Sheppard High School in Edmonton with 35 years' experience, became convinced of what he had to do – even if it cost him his job.

"I knew it was going to be a lot of stress," he says. "But I just couldn't talk myself out of it. It was the right thing to do."

What he did, over the past 18 months, was what he had done for over three decades when a student didn't submit an assignment, skipped a test or missed an exam: he pulled out his red marking pen and gave them a zero.

It was a lesson in consequences, one contrary to the school's no-zero policy, an official dictum Mr. Dorval willfully ignored.

After repeated warnings from the principal to toe the line, the renegade was hauled before a school board hearing. Three days later, on May 18, he received a letter informing him he had been suspended indefinitely. He suffered the consequences.

Mr. Dorval fully expects to be fired in the coming months.

"It was against my principles not to give zeros," the 61-year-old says. "Through experience, I found that giving a zero – a temporary zero; the students could come to me to make arrangements to do something to erase that mark – was the most effective way to get students to do the work.

"It put the onus on them. I could see some other method working with younger kids. But these are high school students. They are becoming adults. They are getting ready to step out into the real world and it is time for them to start taking responsibility for their own actions."

The anti-zero argument goes something like this: Getting a goose egg discourages students. Zeros are not a measure of intelligence but a matter of behaviour. Kids should only be graded for what they do – not for what they don't do.

So - why do anything?

Mr. Dorval gives the example of a student who transferred to his class from a nonzero class. The student completed six of 15 assignments for his previous teacher and, since he was only graded for what he did, had a 63% average. Mr. Dorval made it clear to the boy that missed work meant zeros on his watch.

"With me, he did seven of seven assignments," he says. "It is right there in black and white."

Other teachers at Ross Sheppard expressed support for Captain Zero, telling him they wished they had the courage to do what he did.

And he understood why they didn't. Being younger, they had a career to think about. After 35 years, his career was nearing its end.

Ron Bradley, principal of Ross Sheppard and the man responsible for adopting the No Zero Rule, declined to take my phone call Friday. A school secretary directed me to the local school board. The board did not return messages.

In the vacuum, however, is the voice of common sense. We all have it, those of us who somehow survived high school. And we all know the voice speaks the truth: Life is about consequences.

It is a series of tests.

Don't submit the job application and you won't get the job. You get a zero. Skip work, tell the boss to shove it, neglect to file your taxes, miss a mortgage payment, bounce a cheque or get a speeding ticket, and what happens? You pay for it.

It is Newton's Law: for every action there is an opposite and equal reaction. Unless, of course, you are a student at Ross Sheppard high or some other institution where every missed assignment is met with an excuse.

And not from the kids, but from an apologist administration that encourages serial irresponsibility by offering second, third, fourth – and 10th chances – but not zeroes, never a zero.

Lynden Dorval knew it was wrong. He had had enough. So he picked up his red marking pen and stayed true to his conscience. It is a choice, he says, he would make again.

"When I was a student it never occurred to me that if you did not do something that you wouldn't get a zero," he says.

"Things like exams – I would never think about not writing an exam. I would never think about asking a teacher to write it later.

"It was just assumed, even if you were sick, that you went to school and wrote the exam. You went to school and you did the work."

National Post, June 2, 2012.

SAFS AND OTHER RESPONSES TO THE SACRIFICE OF CAPT. ZERO FOR NOTING

Joe O'Connor

The story of the Edmonton high school teacher who was disciplined for refusing to give marks to students who did not turn in assignments is another glaring example of how merit is being subverted as a principle for rewarding academic performance. The school's dictum means that students will be graded only for work they turn in, with no penalty given for work they avoid, thereby inflating the marks of these students. As an organization of largely Canadian professors, we do not look forward to the day that these intellectually disengaged students enter our universities, having been taught they deserve good marks even for subpar course work. The school's principal and board have failed their own students. This counterproductive policy should be repealed at once.

Clive Seligman, president, Society for Academic Freedom and Scholarship, London, ON.

Congratulations to Edmonton teacher Lynden Dorval, and a pox on the administrators in his school. Mr. Dorval has taken a sensible approach toward his role in education, and no student will suffer from his action. The same can not be said for those who are handed an un-earned diploma, a lesson they will surely learn to

their disappointment later in life. Mr. Dorval can always make a dollar or two as a tutor on "civvy street."

Good on you, Sir.
Doug Stallard, New Glasgow, N.S.

The zero should be for Ross Sheppard High School in Edmonton for promoting irresponsibility. I wish more teachers were like Mr. Dorval.
Nancy Vella, Abbotsford, B.C.

I spent two wonderful years in Grade 9 in Newmarket High School back in the mid-'60s. At some point in the midst of my second attempt, I decided that I would never fail at school again. In time I gained a graduate degree with almost all A's.

I have often reflected on and blessed the discipline levied back then — it was one of the most important lessons I ever learned. I am very thankful I was educated in a system that had the internal fortitude and backbone to prepare me for the realities I would face.
David Brandon, Aurora, Ont.

Students at Ross Sheppard High School in Edmonton can skip assignments and tests without being penalized, as "zeros may not be given" is school policy. This example of "no consequences" for shirking work and dodging responsibility does not prepare youngsters for the real world. And the "real world" begins at university. I am confident that the University of Alberta is more than ready to give zeros for work not done, and I can tell you for sure that at McGill University we give zeros for work not done.

Why does Ross Sheppard High School encourage bad work habits?

Philip Carl Salzman, professor of anthropology, McGill University, Montreal.

National Post, June 2, 2012.

EDMONTON TEACHER FACES TERMINATION HEARING FOR 'OBVIOUS NEGLECT OF DUTY' AFTER GIVING ZEROS TO STUDENTS

Jake Edmiston

When students, as they sometimes do, decide they don't like a school policy and make a show of defiance — showing up in the T-shirt they were told to leave at home, or with the pink punk haircut that violates the dress code — my general reaction is that they should quit making a spectacle of themselves and do what they're told. There are rules in society; if you object there are established procedures for communicating and dealing with that fact. It's hogwash to argue, as is too often done, that any hindrance on an individual's ability to do whatever they please is somehow a violation of fundamental rights.

Mr. Dorval's view on the policy was correct: it's ridiculous to teach students that they can fail to do the work and still get the reward. But respect works both ways: you want it from the students, you have to give it to the principal.

Before the courier came to his suburban Edmonton home this week with a letter explaining that his boss wants him fired, high school teacher Lynden Dorval thought his principal had bowed to the media firestorm.

Three months ago, Mr. Dorval went public with his struggle against Ross Sheppard High School's no-zero policy, making him a lightning rod for a debate on how to teach a generation often billed as having a sense of entitlement.

But on Tuesday, the letter from the superintendent of Edmonton Public Schools informed him his principal, Ron Bradley, requested his termination for "his obvious neglect of duty as a professional teacher, his repeated insubordination and his continued refusal to obey lawful orders."

Mr. Dorval, 61, is scheduled to appear before superintendent Edgar Schmidt to plead his case next month.

"I had convinced myself with all the publicity that I wasn't actually going to get fired," he said. "From the very beginning, I kept telling myself that this was

going to be the outcome. But I guess I convinced myself that something else might happen."

The physics teacher, who colleagues called Captain Zero, spent 18 months disobeying the school's rule against doling out zeros to students who didn't complete assignments or tests, which school management sees as a discipline issue, not an academic one.

Mr. Dorval was put on an indefinite suspension after refusing to heed several warnings and reprimands from the school principal — according to the principal's recommendation, the teacher once went as far as going into the school's grades database and reentering zero marks that had been changed by a department head.

News of Mr. Dorval's suspension prompted a public outcry.

"The students need to develop that intrinsic motivation to do it on their own," said Mr. Dorval, who has been teaching for 35 years.

Mr. Bradley, who spearheaded the school policy, was unavailable for comment Thursday. But according to letters from the principal about Mr. Dorval's case, the impetus of the program was to avoid discouraging students and to "hold students accountable for completion of work."

The Edmonton Public Schools board voted in June to review its policies on student assessment "to ensure clarity, consistency and to ensure that students are held to high standards." That investigation is scheduled for this fall.

But ahead of that review, Mr. Dorval is scheduled to appear Sept. 10 before the superintendent to address the principal's calls for his termination.

Edmonton school board spokeswoman Cheryl Oxford couldn't comment on the specifics of Mr. Dorval's case due to privacy issues. But Ms. Oxford said the dismissal is an employment issue — unrelated to the board's review of its grading policies.

In his letter to the superintendent, the principal said Mr. Dorval was repeatedly absence in staff meetings — a claim Mr. Dorval says is untrue.

The veteran teacher also sent a staff-wide email condemning the no zero policy, Mr. Bradley said.

"I advised Mr. Dorval that I was not disputing his professional right to express his opinion but … I found his tone and method of communication insubordinate," Mr. Bradley wrote.

Following the suspension, the principal reported that Mr. Dorval entered the school without requesting permission — part of the terms of his suspension — twice to return unmarked quizzes and assignments, and once to voice concerns about his replacement teacher, Mr. Bradley wrote.

In June, Mr. Dorval told the *National Post* he chose to fight the policy, in part, because he was planning to retire anyway. But he has decided to continue teaching, regardless of the Sept. 10 decision — because when he was told to clear out his office, he was in the midst of the best semester he'd had in a decade.

"It's kind of ironic, I had thought about retiring many times until last semester," he said. "I've reconsidered my retirement plan for at least a couple of years."

National Post, Aug 30, 2012. □

HARVARD CHEATING PROBE UNDER WAY FOR ABOUT 125

John Lauerman

Harvard University pennants in Cambridge, Massachusetts.

About 125 Harvard University undergraduates are being investigated for cheating on a final exam earlier this year, the most widespread academic misconduct scandal known at the school, college officials said.

All of the students, who were in a class of more than 250, will face hearings before Harvard's Administrative Board, Jay Harris, dean of undergraduate education at the Cambridge, Massachusetts-based school, said today in an interview.

Harvard professors probed the incident with months of

reading through the take-home exams beginning in May, Harris said. Students found to have violated university rules may be required to withdraw from school for a year, Harvard said in a statement.

"These allegations, if proven, represent totally unacceptable behavior that betrays the trust upon which intellectual inquiry at Harvard depends," Harvard President Drew Faust said in a statement on the college's website.

The Administrative Board's actions are confidential, and Harvard won't reveal the identity of the students or the name of the course, Harris said. Harvard is using the incident to increase student awareness of the importance of academic integrity, he said.

"This is a national problem – an international problem – a technologically enabled problem," he said.

Government Class

Several students familiar with the investigation said the class in question was Government 1310: Introduction to Congress, taught by Matthew Platt, the Harvard Crimson student newspaper reported today. There are 279 students in the class, according to Harvard's website. Platt declined to comment when reached by telephone.

The incident came to light when a teaching fellow noticed similarities among a number of exams in mid-May and brought it to the attention of the professor in charge of the course, Harris said. That led the Administrative Board to begin a review of every exam, he said.

While he wouldn't discuss specifics, Harris said school officials believe that electronic communication was part of the apparent rule violations. Students who have been raised in the Internet age may view all kinds of media differently than past generations, he said.

"Technology has shifted the way people think about intellectual property, the way people think about communicating with each other," Harris said.

Administrative Board

All the students suspected of being involved in the cheating have been informed that they will be asked to come before the Administrative Board, Harris said. Penalties may include a warning or probation, and some students may be exonerated, he said. No specific cases have been heard yet, he said.

The College Committee on Academic Integrity, which Harris leads, is preparing recommendations for reminding students of the importance of "academic honesty," the school said. Harvard has orientation programs that focus on research and writing practices, such as integrity and appropriate citation, he said.

"We always stress academic integrity with our students," he said. "It's very hard to explain to someone that this raises ethical concerns and that it's not OK."

The committee will look at practices of other institutions that have faced cheating scandals, Harvard said. Security at sites administering the SAT and ACT tests in Nassau County, New York, was stepped up this year after students were found to have hired stand-ins to take the college entrance exams for them.

In 2010, Harvard senior Adam Wheeler was found to have faked his way into a spot at the college using forged recommendations, and then applied for scholarships with plagiarized essays.

To contact the reporter on this story: John Lauerman in Boston at jlauerman@bloomberg.net

Bloomberg.com, August 30, 2012.

SUBMISSIONS TO THE SAFS NEWSLETTER

The editor welcomes articles, case studies, news items, comments, readings, local chapter news, etc. Please send your submission by e-mail attachment.

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'UNEMPLOYED PROFESSORS' WEBSITE HELPS STUDENTS CHEAT

Karen Seidman

As an associate dean of academic services, Catherine Bolton spends a lot of time studying, lamenting and worrying about cheating in universities – but a Montreal-based website that propels cheating to a new level made even her wince.

Professors writing custom papers for students? Heresy! But that is the very idea behind the self-described academic prostitutes at unemployedprofessors.com, which unabashedly defends its actions on the grounds that education has already become overly commodified and academia is downsizing the tenure system. So what's a poor unemployed prof to do?

Sell essays on demand to over-wrought students with a catchy tag line: "So you can play while we make your papers go away."

"The idea that it could be legitimate for any professor to sell their brain, when they know better than anyone that papers are assigned for students to learn," said Bolton, an associate dean for the faculty of arts and sciences at Concordia University. "There are for sure teaching assistants and graduate students who do this, but professors?" Schubert Laforest, president of the Concordia Student Union, found the concept both ironic and reprehensible.

"It's the first I've heard of professors doing students' work," he said. "It just seems to hinder the academic process. The focus should be on acquiring skills, not trying to get an easy A. But I'm sure some students will take advantage of it."

The problem is not confined to Montreal or this group of arguably unethical professors. Cheating in university is an old problem – and it is only get-ting worse.

A recent Pew Centre survey of 1,055 college presidents showed that plagiarism is viewed as a growing problem on campus.

As described on the website of turnitin.com, a leading online plagiarism checker: "We live in a digital culture where norms around copying, reuse and sharing are colliding with core principles of academic integrity."

The professors' service started last fall and has about 30 professors involved.

While they don't guarantee an A (because they're not supposed to be providing a final product), they do guarantee high-quality work and turn away about 15 applicants for every one they hire.

There is no set price, as the ghost-writers bid on the projects and the market then dictates the price.

Vancouver Sun, September 13, 2012. □

SUBPRIME COLLEGE EDUCATIONS

George F. Will

Many parents and the children they send to college are paying rapidly rising prices for something of declining quality. This is because “quality” is not synonymous with “value.”

Glenn Harlan Reynolds, a University of Tennessee law professor, believes that college has become, for many, merely a “status marker,” signaling membership in the educated caste, and a place to meet spouses of similar status — “associative mating.” Since 1961, the time students spend reading, writing and otherwise studying has fallen from 24 hours a week to about 15 — enough for a degree often desired only as an expensive signifier of rudimentary qualities (e.g., the ability to follow instructions). Employers value this signifier as an alternative to aptitude tests when evaluating potential employees because such tests can provoke lawsuits by having a “disparate impact” on this or that racial or ethnic group.

In his “The Higher Education Bubble,” Reynolds writes that this bubble exists for the same reasons the housing bubble did. The government decided that too few people owned homes/went to college, so government money was poured into subsidized and sometimes subprime mortgages/student loans, with the predictable result that housing prices/college tuitions soared and many borrowers went bust. Tuitions and fees have risen more than 440 percent in 30 years as schools happily raised prices — and lowered standards

— to siphon up federal money. A recent Wall Street Journal headline: "Student Debt Rises by 8% as College Tuitions Climb."

Richard Vedder, an Ohio University economist, writes in the Chronicle of Higher Education that as many people — perhaps more — have student loan debts as have college degrees. Have you seen those T-shirts that proclaim "College: The Best Seven Years of My Life"? Twenty-nine percent of borrowers *never* graduate, and many who do graduate take decades to repay their loans.

In 2010, the New York Times reported on Cortney Munna, then 26, a New York University graduate with almost $100,000 in debt. If her repayments were not then being deferred because she was enrolled in night school, she would have been paying $700 monthly from her $2,300 monthly after-tax income as a photographer's assistant. She says she is toiling "to pay for an education I got for four years and would happily give back." Her degree is in religious and women's studies.

The budgets of California's universities are being cut, so recently Cal State Northridge students conducted an almost-hunger strike (sustained by a blend of kale, apple and celery juices) to protest, as usual, tuition increases and, unusually and properly, administrators' salaries. For example, in 2009 the base salary of UC Berkeley's vice chancellor for equity and inclusion was $194,000, almost four times that of starting assistant professors. And by 2006, academic administrators outnumbered faculty.

The Manhattan Institute's Heather Mac Donald notes that sinecures in academia's diversity industry are expanding as academic offerings contract. UC San Diego (UCSD), while eliminating master's programs in electrical and computer engineering and comparative literature, and eliminating courses in French, German, Spanish and English literature, added a diversity requirement for graduation to cultivate "a student's understanding of her or his identity." So, rather than study computer science and Cervantes, students can study their identities — themselves. Says Mac Donald, "Diversity,' it turns out, is simply a code word for narcissism."

She reports that UCSD lost three cancer researchers to Rice University, which offered them 40 percent pay increases. But UCSD found money to create a vice chancellorship for equity, diversity and inclusion. UC Davis has a Diversity Trainers Institute under an administrator of diversity education, who presumably coordinates with the Cross-Cultural Center. It also has: a Lesbian, Gay, Bisexual, Transgender Resource Center; a Sexual Harassment Education Program; a diversity program coordinator; an early resolution discrimination coordinator; a Diversity Education Series that awards Understanding Diversity Certificates in "Unpacking Oppression"; and Cross-Cultural Competency Certificates in "Understanding Diversity and Social Justice." California's budget crisis has not prevented UC San Francisco from creating a new vice chancellor for diversity and outreach to supplement its Office of Affirmative Action, Equal Opportunity and Diversity, and the Diversity Learning Center (which teaches how to become "a Diversity Change Agent"), and the Center for LGBT Health and Equity, and the Office of Sexual Harassment Prevention & Resolution, and the Chancellor's Advisory Committees on Diversity, and on Gay, Lesbian, Bisexual and Transgender Issues, and on the Status of Women.

So taxpayers should pay more and parents and students should borrow more to fund administrative sprawl in the service of stale political agendas? Perhaps they will, until "pop!" goes the bubble.

Washington Post, June 8, 2012. □

THE FACE OF IDENTITY STUDIES ON CAMPUS

Barbara Kay

Academics I trust assure me the scourge of political correctness in the universities is on the wane. Specifically, I've been told by an English literature professor at one Canadian university, and a PhD history candidate at another, that their respective departments are abandoning the impenetrable jargon of postmodernism and returning to the scholastic sobriety of yore.

Encouraging, but don't put the champagne on ice quite yet. If Literature and History are indeed resuming their

traditional mandates, they are, after all, real academic disciplines with a true scholarly base to return to.

This is regrettably not the case with Identity Studies — Womens/Gender/Men's Studies (identical triplets), Queer, Black, Disability, Chicano — which are pseudo-disciplines. That is, they did not spring from a rational, disinterested spirit of inquiry into objective phenomena, but from revolutionary beliefs and theories about society. Identity Studies are to evidence-based scholarship as astrology is to astronomy. With astrology you buy the whole irrational, unsubstantiated package or leave it. So even if they wanted to moderate their perspective, with no authentic scholarly tradition to resume, they must, like sharks, keep swimming ahead vigorously or die.

All Identity Studies arose from the disastrous philosophy of multiculturalism, which teaches we are a nation of groups, not individuals. All were forged in a politically activist crucible wrought from Marxist ideology superimposed on particular group grievances, most of them by now superannuated in this highly inclusive era. All are soft on other cultures' vices, but demonize Western civilization. All are primarily centres of recruitment for a socially transformative agenda. None offers a diversity of interpretive opinion in its readings or tolerates students' dissent from its party line.

And none is "on the wane."

You're skeptical? I urge you to take a walk through all these pseudo-disciplines in their natural habitats — their annual conferences, in which the latest "scholarship" is presented to the hardcore academic faithful — at the side of courageous international journalist and anti-Islamist whistle-blower, Bruce Bawer, via his latest book, *The Victims' Revolution: The Rise of Identity Studies and the Closing of the Liberal Mind*.

As a gay man and a classic liberal, Bawer cannot be accused of insensitivity to minorities. And as a PhD in English Literature, he is well equipped to analyze the Ur-texts that nourish the pedagogical group-victimhood industry. Bawer's book combines research into the seminal texts of each program with direct experience auditing industry spokespeople.

If what passes for intellectual content at these annual conferences were not so culturally influential — there is not a public school teacher in the West today whose education is untainted by Identity Studies rubrics — this book could be recommended for its entertainment value alone. For no satirist could possibly top the unremitting comic flow of hypocrisy, ignorance and fatuous narcissism that Bawer describes in his anthropological sojourn from conference to conference — those programs mentioned above, plus Fat Studies, Whiteness Studies and Cultural Studies.

Bawer shines a revealing light on gurus in these fields who run the gamut from odious to merely bizarre. Venerated queer theorist Judith Butler, for example, supports terrorist groups Hamas and Hezbollah, and denounced a gay organization in Germany as Islamophobic for criticizing Muslim violence against gays.

Another example — more amusing than shameful — comes from "Men's Studies" (not to be confused with the nascent Male Studies, a bona fide program), which is "a wholly owned branch of Women's Studies," and premised, without irony, on the operative question, "Why are men so awful?" Men's Studies' founder, Robert Connell, became "Raewyn" in a 2008 sex-change operation. The anomaly of a man trapped in a woman's body heading up a domain called Men's Studies has yet to be discussed by Men's Studies "scholars."

The road to these academic Hells is paved with bad ideas. If you haven't time for the whole book, at least read pages 14 through 38. Here Bawer provides a succinct and cogent primer on the three toxic texts that form the foundation not only for Identity Studies, but "for the political mentality that undergirds the humanities today," namely: *Prison Notebooks*, by Antonio Gramsci; *Pedagogy of the Oppressed* by Paulo Freire; and The Wretched of the Earth, by Frantz Fanon. Once you grasp these ideological Svengalis' essence and the anti-Western revolutionary agenda their works promote, all that ails our riven culture is illuminated.

This is an informative, credible and even shocking book in which all Identity Studies programs are hoisted to justified ridicule by their own intellectually corrupt petards. Read it and — when you stop laughing — weep.

National Post, September 5, 2012. □

RESEARCH WAR ON AFFIRMATIVE ACTION

Scott Jaschik

With the U.S. Supreme Court about to hear arguments in a case that could decide the fate of affirmative action in admissions, a research war has broken out. Defenders and critics of the consideration of race are releasing new studies (some of which were submitted in briefs to the court) on the impact of affirmative action.

Several studies presented Friday at the Brookings Institution suggested that eliminating the consideration of race would not have as dramatic an effect on minority students as some believe, and that the beneficiaries of affirmative action may in fact achieve less academic success than they would otherwise. The studies were criticized by some present for being one-sided.

Yield Rates After a Ban

One of the studies explored the impact on the yield rate – the proportion of admitted students who enroll – of black, Latino and Native American students to the University of California after the state barred the consideration of race in admissions. Minority enrollments fell after voters adopted the ban, in part because greater proportions of white and Asian applicants, on average, have the academic and other credentials required for admission.

But the paper focused on a subset of minority students: those who gained admission after the ban on affirmative action. Many observers at the time predicted that these students would be less likely to enroll, as they would perceive the system to be hostile, and news articles quoted minority students to this effect.

But a paper by Kate Antonovics, an economist at the University of California at San Diego, and Richard Sander, a law professor at the University of California at Los Angeles, found that the ban on affirmative action didn't produce "chilling effects," but actually produced "warming effects" on the likelihood of minority students' accepting offers of admission.

The paper examined the yield rates by students in the three years after Proposition 209 (the ban) took effect. Across the system, the yield rate increased by about 10 percent. The increase was the greatest at Berkeley and UCLA. At Berkeley, the pre-Proposition 209 yield rate for underrepresented minority groups was 37.9 percent, and that increased by 5.7 percentage points after affirmative action considerations were barred from the admissions process. At UCLA, a 38.8 percent yield rate increased by 3.9 percentage points.

Antonovics, who presented the paper, said that the findings were important. She said that critics of affirmative action might expect (and accept) that the end of the consideration of race would lead to an overall decline in minority enrollment rates, but that there would be "a layer of concern" if some of that drop could be attributed to students who met race-neutral admissions standards opting not to enroll. She said that she and Sander expected to find this "chilling effect," and were surprised to find "no evidence for it" and instead see evidence showing the opposite impact.

'Mismatch' Theory

The fear Antonovics expressed is that minority students might not be enrolling at highly competitive institutions at which they would be a good academic match. Another kind of "mismatch" has also been the focus of much research on affirmative action in recent years -- and that idea (hotly debated) is that minority students who are admitted to better institutions because of affirmative action may end up with lower academic achievement as a result. (Sander, who helped organize the Brookings program, has been a leading proponent of the idea.)

On Friday, Doug Williams, chair of economics at the University of the South, presented a paper arguing that law schools provide solid evidence for the existence of mismatch. He said that because of the requirement that lawyers pass a bar exam, there is an independent measure of successful learning in law school. Because some minority students with similar academic credentials (judged by undergraduate grads and LSAT scores) enroll at more or less competitive law schools, he said it is possible to see whether there is a mismatch.

There has long been a gap between black and white law graduates on bar passage rates, he noted. Currently, about 97 percent of white law school graduates pass the bar, with 92 percent passing on the

first try. For black law graduates, the figures are 78 and 61 percent, respectively. But Williams said that these gaps are partly explained by the differing academic credentials of black and white law students, and so by themselves don't back mismatch theory.

But in comparing minority law graduates of comparable academic preparation who enroll in more or less competitive law schools, Williams said that those (from among those with comparable academic credentials) who enroll in the bottom two tiers of law schools pass the bar at a rate that is 14 percentage points higher than that of those who enroll at the top law schools. And he said that suggested a statistically significant mismatch.

Williams said that he would like more detailed information about law students – including the law schools that they apply to and are admitted to – but based on the information he does have, he said that he had "strong evidence" to back mismatch.

A One-Sided Presentation?

In the question period after those two presentations, Richard O. Lempert, an emeritus professor of law and sociology at the University of Michigan, criticized not only those papers, but the entire way the program at Brooking was organized. "All of the papers are on one side of the debate," Lempert said. He questioned why "first rate" scholars who support affirmative action were not presenting work, and said that the papers presented had "serious methodological" issues. He also said that the papers were not peer-reviewed. Antonovics responded by saying that she had mixed feelings about affirmative action and did not do this research with any outcome in mind. Further, she said that the paper she presented has just been accepted for publication by a peer-reviewed economics journal.

In terms of the substance of the papers, Lempert said that a greater chilling effect would be seen on applications than in yield. (Antonovics said that application volume did not change much after Proposition 209.) And Lempert said that the analysis by Williams ignored the way most black law students cluster in the middle tiers of law schools, not the top or bottom tiers, and he said that one key factor in the bottom tiers was that they included historically black colleges.

Williams acknowledged that the success of black students at historically black law schools could be attributed to a number of factors. But he said it would be wrong to exclude those institutions from the study.

Sander said that panelists at the program were "ideologically diverse" and that there was no attempt to include only scholars of one point of view.

The debate will likely continue Thursday when a coalition of social science groups -- the American Educational Research Association, the American Sociological Association, the American Statistical Association, the Association for the Study of Higher Education, the Law and Society Association and the Linguistic Society of America -- hold a briefing on research those organizations cited in their brief to the Supreme Court encouraging the justices to uphold the legality of the consideration of race and ethnicity in admissions.

Inside Higher Ed, September 24, 2012.

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Clive Seligman, President

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