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Marjorie M. Shultz
Berkeley Law

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Debating P. C. on “PC”

Marjorie M. Shultz

In choosing the title “The Boalt Affair,” Paul Carrington perhaps hopes to evoke the intrigue of a spy thriller, but alas, his piece purports to be only a dressing down of the AALS executive committee for its “increasing involvement . . . in specific matters of accreditation.”¹ Despite this rather bureaucratic focus, Carrington is not shy in announcing broader targets. In his closing paragraphs he decries “the repressive moral zeal—now generally described as ‘political correctness’—spreading through higher education in the United States” (370) and observes that “the Boalt Affair” is “perhaps its strongest manifestation”² in higher education today.

There are many excellent reasons for me not to respond to his comments, even though I am, along with my colleague Eleanor Swift, the subject of disputes to which Carrington refers. I am not inclined to add to the ideological cant and rhetorical self-justification that dominate the current “PC” debate, nor am I eager to be tagged as “hypersensitive,” “nitpicking,” or “whiny.” I would unquestionably have preferred that Carrington leave Boalt (together with the various constituencies to whom it is legitimately accountable) to its own growing efforts to reknit its institutional fabric. But Carrington chooses to illustrate what I must assume is a preconceived position by reference to events at Boalt. His polemic typifies flaws in “anti-PC” commentary generally. Because he makes his argument on terrain where he is at best a tourist (while I am a long-term resident), the opportunity to reply is too tempting to resist. There is much at stake—not simply in personal terms or in this particular exchange but in the underlying matters of fundamental justice that give rise to such debates in the first place.

Carrington’s complaint stems from a letter sent by the AALS executive committee following Boalt’s accreditation review in 1988. The letter expressed concern about Boalt’s climate for junior faculty generally and its record on diversity and nondiscrimination in faculty hiring and promotion particularly. Carrington’s professed point is that the AALS should not meddle in such internal school matters. In his view the executive committee made egregious procedural errors. Were he right, their lapses would

Marjorie M. Shultz is Professor of Law, Boalt Hall School of Law, University of California at Berkeley.

1. Paul D. Carrington, *The Boalt Affair*, 41 *J. Legal Educ.* 363, 370 (1991). Further page references will be incorporated parenthetically in the text.
2. *Ed. note*: The author is responding to Carrington’s wording in the version of his article that the *Journal* originally accepted for publication. Carrington has since altered the passage to read: “perhaps its first (but not the last) notable manifestation” (370).

further reinforce his point. Betsy Levin has responded to these charges by reviewing first the institutional history and procedures of the AALS and then the executive committee's information and actions in relation to Boalt Hall. My concern is with other matters.

As a central tenet of his commentary, Carrington purports to sever the legitimacy of the executive committee's action from the substantive issues raised by its letter to Boalt. He says he expresses no opinion about "the merits" of two disputed tenure cases at Boalt: "The disputes are irrelevant to an evaluation of the performance of the executive committee" (367). He does not even mention other disputed matters in the school's hiring and promotion record. Carrington's claim that he is concerned only with proper authority and procedure within the AALS has two unarticulated functions. It serves to excuse his failure to inform himself and his readers about the facts at Boalt to which the AALS was responding. It also allows him to excoriate others for being politically craven while implying that the issues *he* raises are resolvable by "reasonable people" on "neutral" grounds that avoid the messiness and complexity of substantive dispute. Carrington's claim about the irrelevance of substance is illegitimate; his disavowal of an opinion on the merits is false.

One would think that modern philosophy would have exploded the notion that there is any such thing as point-of-viewlessness. But Carrington is innocent of such insight. His claim reminds me of a comment attributed to Thomas Reed Powell of Harvard: "If you can think of something which is connected with something without thinking of the something it is connected to, you have a 'legal mind.'"³ Although Powell describes an important analytic skill, that skill, untempered, is one of the main reasons lawyers are distrusted. By severing the AALS's action from the underlying facts at Boalt, Carrington ignores a point that we expect even first-year law students to master: procedure can never be wholly severed from substance. Views about underlying substance—in this case, about diversity and discrimination—inevitably play a central role in judgments about whether accreditation bodies (or anyone else) should concern themselves with faculty hiring and promotion decisions.

Carrington seems not even to notice the most basic problem in his claim to neutrality on the issues at Boalt. How can he select an incident as an instance of capitulation to political correctness, as an expression of "repressive moral zeal" (370), or as "the product of the secular Calvinism now apparently infecting so much academic discourse" (370) without making judgments about the issues involved? Carrington's characterizations, his selection and omission of information, and his coy rhetorical devices all betray judgments about the very issues he purports to avoid. Thus, he editorializes through an aside that it was "not without reason"⁴ that Dean Choper viewed the executive committee's expression of concern as "factually unfounded" (369). According to Carrington, the AALS accreditation committee reviewed the report on Boalt rather quickly because it had other

3. M. D. Green, *It's Legal to Laugh: A Collection of Humor About the Legal Profession* 25 (1984).

4. *Ed. note*: The phrase appears in the earlier version of the article.

reports on the agenda that revealed “genuinely troublesome problems” (368). He resorts to threadbare innuendo: “A reader could derive from this [comment in the site report] a possible concern that the university’s action in the first tenure dispute had been an instance of a university administrator’s relieving political pressure on himself by imposing it on the law school” (367).

Carrington’s account is severely distorted not only through slanted characterization and rhetorical indirection but also by omission. He observes that one explanation for the university’s action in overruling Boalt is “that Boalt’s tenure standard was simply too high,” an estimation with which (he generously volunteers) he “tend[s] to agree” (367). The implication is unquestionably one about the merits—both of the tenure cases and of the allegations about gender discrimination. Wittingly or not, Carrington seriously misleads his readers. The allegation was not that Boalt’s tenure standard was “too high” but that the standard was differentially and more strictly applied in women’s cases.

Although Carrington brings his Boalt story up through Dean Jesse Choper’s announcement in August 1990 of his resignation as dean effective July 1992, he omits vital earlier facts that are far more integral parts of the story to which the executive committee was responding. Thus, referring to my case, he notes that after the university reversed the law faculty’s vote of a final tenure denial, Boalt’s faculty “voted unanimously to elevate their colleague to full rank” (366–67). He does *not* explain that the vote came more than three years after the university’s decision but a mere eighteen days after Eleanor Swift’s press conference announcing that, for the first time in its roughly fifty-year history, the Academic Senate Privilege and Tenure Committee had made in her case against Boalt a *prima facie* finding of a pattern of gender discrimination. He also fails to state—as does the final AALS site evaluation report⁵—that Swift had been granted full tenure in August 1989 pursuant to a settlement of the *prima facie* finding on her complaint. Under this settlement, a blue-ribbon panel evaluated Swift’s tenure case. After comparing her record with the records of six males who were granted tenure by the law school, the panel unanimously recommended that she should be granted tenure.

Carrington’s presentation also betrays his nearly instinctive—and probably not wholly conscious—identification with the views of people he knows, people who are like him in important ways. It is an *ad hominem* argument that draws heavily on reputation, cronyism, and shared allegiance, and that attributes innocence by association. “Boalt is, after all, the school of Gary Trudeau’s Joanie Caucus and sits at the epicenter of the ‘activism’ of the Vietnam era” (363–64); it is a school, Carrington assures us, for which “the disincentives to the practice of racial or gender discrimination . . . are especially strong” (364). He presents a poignant recital of Boalt’s connections with diversity since the 1920s, ending with an invocation of Chancellor Heyman’s reputation as “notably aggressive in seeking to

5. The information was public and therefore available to the site evaluation team and to the executive committee at the time of its action letter.

diversify its students and faculty" (364).

Next we are advised that the site visitation team for Boalt concluded—in the words of their report—"that a pattern or policy of gender discrimination has not and does not characterize the School's appointment and promotion decisions" (367) and that the team was "unusually distinguished" (366).⁶ In contrast, the excoriated executive committee members who "attack[ed]" Boalt "without basis in any information that was before the AALS" (364) are not described as either distinguished or undistinguished—nor as having comic-strip fame or aggressive records for diversity. A careful reader might note from Carrington's recital that the "unusually distinguished" site visitation committee was made up of six white males, whereas a bare majority of the executive committee assailed in Carrington's article were women—probably for the first time in AALS history. His readers are not told that the distinguished site team did not speak with *any* of the eight women on the Boalt faculty or with Eleanor Swift on the issue of gender discrimination before reaching the conclusion that Carrington quotes.⁷ Yet, paralleling his implication that Boalt's reputation made the allegations against it virtually unthinkable, Carrington's unbalanced description of the two AALS bodies suggests that the executive committee should have deferred to the "distinguished" site team and its quoted conclusion.⁸ My inference is not that white males could not legitimately play a role in assessing alleged gender discrimination. If, however, fair procedure and adequate information are Carrington's primary concern, the site team's failure to gather information from or reflect the views of the women on the faculty is plainly improper. The implication of such behavior by accreditation bodies (and of those who uncritically accept it) is that when women's issues are involved, men's views are "neutral," while women's are biased or irrelevant.

The marks of Carrington's truncated empathy are evident elsewhere. He repeatedly puts his readers in the shoes of Boalt's dean. It was Dean Choper

6. Carrington also applies the personal testimonial approach to establishing his own bona fides in an early footnote (365 n.8).
7. The site committee reports that it reached its quoted conclusion "after hearing from many members of the faculty." Site evaluation report at 9). The claim is repeated in a letter from Roger Cramton (site committee chair) to Betsy Levin stating that the team's conclusions "were based on meetings with nearly all members of the [Boalt] faculty." Letter from Roger Cramton to Betsy Levin (Jan. 16, 1990). At the time, Eleanor Swift and I objected to the site evaluation committee's asserted conclusion that Boalt Hall was free of gender discrimination, particularly in the light of the committee's failure to speak to any women faculty specifically about this issue. Letter from Eleanor Swift and Marjorie Shultz to Betsy Levin (executive director of the AALS) and James White (consultant on legal education to the ABA) (Jan. 22, 1990). We requested that the AALS and the ABA delete from the report the very sentence Carrington quotes on the grounds that it was the product of grossly insufficient investigation and would invite later distortion and misuse—exactly the sort of use Carrington makes of it.
8. Ironically, Carrington seems not to notice a non sequitur in his attack on the executive committee for failing to defer to the site committee report. He enumerates multiple reasons for not regarding site evaluation reports as particularly illuminating—most notably that they are arranged documents negotiated to serve the political convenience of a sitting dean. The burden of his argument, however, is that the executive committee had no business disagreeing with the site team's evaluation of a range of factual data about a dispute—a dispute to which the dean was very much a party.

to whom the AALS letter came as “a very unpleasant surprise” (369) and who was denied the opportunity to “present the views of the Boalt faculty to the executive committee or to anyone responsible for a decision that he regarded, not without reason, as factually unfounded” (369).⁹ We are asked, implicitly, to sympathize with Dean Choper, who “foretold” the letter’s “incendiary effect,” who has since confronted a Boalt at which “there has been little peace . . . in the months following,” and who has now “announced his resignation” (370). Essentially, Carrington says to us: I know these people. They’re my friends. I visited there. They have a good reputation. They’re hurting. They couldn’t have done anything wrong. I say so. Trust me.

Unlike the “unusually distinguished” site team and the “unpleasantly surprised” dean, Eleanor Swift and I are not named in Carrington’s article. Neither during his visit at Boalt nor later did he speak to either of us about our disputed tenure cases or about the AALS’s concerns or intervention. I am “the first tenure dispute” (367), and Swift is “the second case” (367). Together we are the “two female candidates[] who contested the decision,” the source not simply of objections but of ensuing “recriminations” that “one would almost expect given the character and traditions of the Boalt community” (366). Probably Carrington would claim that in failing to name us, he genteelly spares our (delicate) feelings. Far from sparing us, he turns us into invisible objects while personalizing the assorted powerful men in his story, with whom he shares status, friendship, and history. He thus underscores not only the limits of his information and perspective but also the limits of his empathy. He decisively demonstrates whose viewpoint he absorbed in fashioning his version of “The Boalt Affair.”

I resent the superficial way that Carrington manipulates events that have occupied the central part of a decade of my life to serve his own political viewpoint. Had he researched and written an article about whether there was discrimination at Boalt, or had he genuinely confined himself to debate about the authority and procedures of the AALS, I might have disagreed, but I probably would not have been moved to comment. But when he purports to argue merely procedural points by tossing off innuendos about substantive disputes over discrimination, all in the name of exposing shameful capitulation to political correctness, I feel compelled to object. I am not only angry about the personal issues involved but also saddened by the insularity of viewpoint that Carrington exhibits. No side has a monopoly on misplaced moral zeal. Despite his protestations to the contrary, Carrington’s argument extends far beyond procedure, deep into substance. Our dispute is in fact about excellence and fairness in the old-fashioned sense as well as about exclusion and power in the argot of new constituencies. It is a dispute about how the attenuation or the expansion of our capacity to imagine the lives and viewpoints of others affects even our most basic pursuit of truth.

9. *Ed. note:* The phrase “not without reason” appears in the earlier version of the article.

