

TOWARD IMPROVED INTELLECTUAL DIVERSITY IN LAW SCHOOLS

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The organizers and supporters of the conference on “Intellectual Diversity and the Legal Academy”—the Federalist Society, Harvard Law School, and Milbank, Tweed, Hadley & McCloy LLP—deserve great credit. Law school faculties tilt heavily to the political left,¹ and there is no plausible explanation for this tilt other than discrimination against scholars who are politically incorrect. This is a serious problem for students, who do not get the full range of views in important current debates. The problem is of special concern because advocates must understand the positions of their opponents, beginning with their fundamental premises.

Some participants in the Harvard Federalist Society’s conference argued that the views of the instructor are unimportant because good teachers explain both sides of each case.² No doubt many teachers try to do so, but, as Professor Robert George has observed, opponents usually cannot justify a viewpoint as well as its supporters can.³ Moreover, the experience of

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1. See James Lindgren, *Conceptualizing Diversity in Empirical Terms*, 23 YALE L. & POL’Y REV. 5, 8–10 (2005) (documenting underrepresentation of Republicans, conservatives, and evangelical or fundamentalist Christians). See also *infra* notes 14 & 36 and accompanying text.

2. See Victoria Nourse, Professor of Law, Georgetown Univ. Law Ctr., Remarks on Panel II: Effects: should law schools care about intellectual diversity?, at the Harvard Federalist Society’s Intellectual Diversity and the Legal Academy Conference (April 5, 2013), available at <http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/>.

3. See Robert P. George, Professor of Jurisprudence, Princeton Univ., Remarks on Panel III: Solutions: encouraging intellectual diversity, at the Harvard Federalist Socie-

students suggests that many instructors do not even try to give both sides. Many students say that they rarely hear conservative or libertarian viewpoints from their instructors and that, indeed, those viewpoints are often ridiculed in class.⁴

The ideological imbalance of law faculties is also a problem for legal education and legal scholarship. Our adversarial judicial system is built on the premise that the truth is best discovered through a structured contest between parties to a dispute, and the free speech commitment of the First Amendment rests in part on the belief that the truth best emerges through competition in the marketplace of ideas.⁵ In law faculties, however, views are largely limited to a fairly narrow range on the left of our national political spectrum. The ideological imbalance produces a kind of partisan chain reaction or echo chamber. As Professor Cass Sunstein has noted, “When people talk to like-minded others, they tend to amplify their preexisting views, and to do so in a way that reduces their internal diversity.”⁶ This is not a situation that best cultivates the discovery of truth, or even an accurate understanding of contemporary reality. Academics have often failed to predict judicial decisions because they could not understand views opposed to their own.⁷ Furthermore, an ideological imbalance in academia tends to perpetuate itself. “Given what we know about the psychological tendency to favor arguments that support our preexisting beliefs, concerns about political bias in the hiring process may be warranted.”⁸

What should be done about this state of affairs? Unfortunately, exposing the problem will not prod law faculties to change their ways. Many legal academics claim either that the absence

ty’s Intellectual Diversity and the Legal Academy Conference (Apr. 5, 2013), available at <http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/>.

4. See *infra* notes 26–28 and accompanying text.

5. *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

6. CASS R. SUNSTEIN, *GOING TO EXTREMES: HOW LIKE MINDS UNITE AND DIVIDE* 8 (2009).

7. See, e.g., Jonathan H. Adler, *Why Did Legal Elites Underestimate the Case Against the Mandate?*, *THE VOLOKH CONSPIRACY* (Mar. 30, 2012, 11:53 AM), <http://www.volokh.com/2012/03/30/why-did-legal-elites-underestimate-the-case-against-the-mandate> (discussing failure of most legal scholars to predict several Supreme Court decisions); Randy E. Barnett, *No Small Feat: Who Won the Health Care Case (and Why Did So Many Law Professors Miss the Boat?)*, 65 *FLA. L. REV.* 1331 (2013).

8. Robert Maranto & Matthew Woessner, *Diversifying the Academy: How Conservative Academics Can Thrive in Liberal Academia*, 45 *PS: POL. SCI. & POL.* 469, 470 (2012) (internal citation omitted).

of conservatives and libertarians is irrelevant or that it is not a result of discrimination, or both. As long as this is the majority view, there is a limit to what can be achieved. This Essay suggests a few possibilities.

I. THE ASSOCIATION OF AMERICAN LAW SCHOOLS

The Association of American Law Schools (AALS) holds a unique position in higher education.⁹ Although membership is not required for accreditation of a law school, the AALS works together with the American Bar Association, whose approval is necessary for accreditation. AALS membership is necessary for respectability; only a handful of strictly local schools eschew it. Thus AALS standards are de facto mandatory for serious law schools.

Although its members are schools, not scholars, the AALS also serves (in its own words) “as the academic society for law teachers.”¹⁰ There is no other umbrella organization of law scholars. The AALS has over ninety subject matter sections, which facilitate networking among scholars, and which also run programs that both offer a prestigious speaking platform for scholars and inform academics of the current thinking in their fields.¹¹

None of this would be a concern if the AALS were apolitical, but it is not. Rather, it is highly and openly politically partisan. On politically contentious issues it is common for programs to include speakers from only one side of the political spectrum.¹² This may seem surprising since one might imagine that political partisans, like athletes, would want to train against the strongest possible opponents. Although many legal academics are political activists, however, they are still academics and somewhat inclined to treat the ivory tower as if it were the whole world. In this atmosphere scholarly programs often be-

9. For a longer discussion of the role of the AALS in the legal academy, see George W. Dent, Jr., *The Official Ideology of American Law Schools*, 24 ACAD. QUESTIONS 185 (2011).

10. *What is the AALS?*, ASS'N AM. L. SCHS, <http://www.aals.org/about.php> (last visited Nov. 25, 2013).

11. *Id.*

12. See, e.g., Peter Wood, *Conferring Privilege: DOJ, Law Schools, and the New Politics of Race*, NAT'L ASS'N SCHOLARS (July 9, 2010), http://www.nas.org/poldoc.cfm?doc_id=1429.

come political rallies in which attendees congratulate each other and try to forget about the conflicting views outside.

It is ironic, then, that the AALS states that it “expects its member schools to value . . . diversity of viewpoints.”¹³ The silver lining in this apparent juxtaposition, however, is that persuading the AALS to practice viewpoint diversity is not a question of changing its principles but simply of convincing it to live up to a principle it has already proclaimed but routinely flouts. For almost two years now I have been working with four other academics (Professors Randy Barnett, Amy Wax, James Lindgren, and Elizabeth Foley) in an effort to do just that. We managed to arrange a meeting in January 2012 with two executives of the AALS. They both seemed receptive to our concerns, but after our meeting I had very little luck with follow-up. I do not know whether we are just being led in circles, but there certainly has not been much progress.

One specific issue we raised was access to the database of the AALS’s Faculty Appointments Register (FAR) for doctoral candidate James Phillips, who coauthored a paper showing the severe ideological tilt of newly hired law professors.¹⁴ That paper drew so much fire that his co-author withdrew from the project. Phillips is continuing his work and would like to get access to the FAR for that purpose.

The AALS is refusing access, allegedly on the ground that it has promised confidentiality to applicants. The AALS’s position is particularly ironic because the FAR resumes are sent to hundreds of law schools and seen by thousands of faculty members with no more guarantee of confidentiality than the AALS’s own guidelines, which do not have the force of law. We have stressed that the research can be structured so as not

13. ASS’N AM. L. SCHS., AALS BYLAWS § 6-1(b)(ii) (2008), available at http://www.aals.org/about_handbook_bylaws.php.

14. “Ideological Diversity and Law School Hiring,” by Phillips and Douglas Spencer, two doctoral fellows at University of California-Berkeley, found that liberals outnumbered conservatives seven to one among newly hired law professors with an identifiable political orientation, and that in constitutional law and related fields with more pronounced ideological concerns, the ratio was eleven to one. The study was posted online. It drew so much fury from the left that it was withdrawn from the Internet and Spencer dissociated from the project. For a report on the study see Paul L. Caron, *Law Schools Overwhelmingly Hire Liberals as Law Professors*, TAXPROF BLOG (Nov. 9, 2010), http://taxprof.typepad.com/taxprof_blog/2010/11/law-schools.html.

to compromise anyone's confidentiality. The safeguards could easily be made much stronger than those in place for distributed resumes, but the AALS still refuses. Of course, access to those data could help to substantiate our claims that conservatives are discriminated against in hiring.

Our initiative has, therefore, not yet borne much fruit and reasonable observers might conclude that it is hopeless; the AALS will never abide by its own principle. If more people were involved, however, the AALS might take the initiative more seriously and provide greater viewpoint diversity on its key committees and scholarly programs. To assist this effort perhaps the Federalist Society could form a committee on the model of its ABA Watch Committee to monitor the AALS, report on its activities, and perhaps facilitate the presentation of formal petitions to it.

II. INDIVIDUAL SCHOOLS

Like the AALS, most universities proclaim a commitment to viewpoint diversity.¹⁵ Most also have offices of diversity. Ironically, almost all the activities of these offices work contrary to that goal.

As with the AALS, at my own school I have worked with a couple of colleagues to arrange a meeting with the Vice President for Inclusion, Diversity & Equal Opportunity and some members of her staff.¹⁶ Among other things we pointed out that the office's "Power of Diversity" speaker series had had only speakers on the left. Two students were also with us, and they spoke very effectively about the paucity of conservative and

15. For example, the Faculty Handbook of my own institution, Case Western Reserve University, says: "The University encourages and values diverse views, thoughts, opinions, experiences, backgrounds, and cultures and strives to provide both the opportunity and a safe environment for diversity to be expressed." CASE W. RESERVE UNIV., FACULTY HANDBOOK ch. 3, pt. I, art. I, § F(9) (2013), available at <http://www.case.edu/president/facsen/frames/handbook/>. A review of the diversity statements of various universities, such as Yale, Harvard, and Princeton, found that "the primary rationale for pursuing racial and ethnic diversity offered by universities is that such a policy will promote viewpoint diversity." Lindgren, *supra* note 1 at 6-7.

16. The recent creation of this position and office is an example of the nationwide proliferation of university diversity bureaucracies. See Heather Mac Donald, *Less Academics, More Narcissism*, CITY J. (July 14, 2011), <http://www.city-journal.org/2011/cjc0714hm.html>.

libertarian faculty members and the bias against and ignorance about conservatives and libertarians and their views among both faculty and students. We also talked about bias against religion and religious people.

This office also monitors faculty hiring. In so doing, it could inquire about viewpoint diversity as well as the other forms of diversity about which it already asks. The office also conducts training sessions for faculty concerning, *inter alia*, unconscious bias.¹⁷ It should include viewpoint bias, and not just bias against certain opinions but also against certain subject matters. For example, many law schools have no faculty member working in law and economics. This is unacceptable. Although some academics wish it were not so, legal scholars, legislatures, and courts often consider the economic consequences of the law. Students who have no instructors in this field will have difficulty understanding much of what happens in the law, and academics who have no colleagues in this field are reduced to criticizing what they do not understand.

Informed alumni and trustees can be critical to the cause of increasing intellectual diversity. The American Council of Trustees and Alumni (ACTA), co-founded by Harvard Law School alumna Anne Neal, works with trustees and alumni to promote academic excellence, freedom, and accountability.¹⁸ The National Association of Scholars (NAS) can also be helpful. The NAS is the leading anti-political correctness organization in academia.¹⁹ It does not hand out names of its members, but it

17. It should be mentioned that the idea of implicit or unconscious racial bias has been largely debunked. See generally Frederick L. Oswald et al., *Predicting ethnic and racial discrimination: A meta-analysis of IAT criterion studies*, 105 J. PERSONALITY & SOC. PSYCH. 171 (2013).

18. Organizations of alumni concerned about politicization and related ills have been formed at a number of schools. See Anne D. Neal, *The Role of Alumni and Trustees*, in *THE POLITICALLY CORRECT UNIVERSITY: PROBLEMS, SCOPE, AND REFORMS* 241, 244–46 (Robert Maranto et al. eds., 2009) [hereinafter *THE POLITICALLY CORRECT UNIVERSITY*] (describing ACTA and the establishment at several universities of centers to promote the study of some aspect of Western civilization). None of these organizations, however, is specifically concerned with a law school, and most are at institutions that do not have a law school.

19. See *Issues & Ideals*, NAT'L ASS'N SCHOLARS, http://www.nas.org/about/issues_and_ideals (last visited Nov. 25, 2013). Membership in the NAS costs only fifty dollars per year, and membership includes a subscription to its journal, *Academic Questions*, which by itself justifies the cost. Membership is a good way to keep up with developments in academia and make connections. See *Join NAS*, NAT'L ASS'N SCHOLARS, http://www.nas.org/get_involved/join_NAS (last visited Nov. 25, 2013).

can contact its members at an institution and ask them to get in touch with someone who is mounting a viewpoint diversity effort at the school.

III. BROADER APPROACHES

Although initiatives with the AALS and at individual schools can be useful, they can achieve only modest gains. A major transformation of academia will require broader approaches. What could persuade law school deans and university administrators to change their ways? Two things they care greatly about are money and publicity. These could be useful concerns because many donors would be appalled if they knew what universities do with their money, and alumni, parents, potential students, and the general public would be angry if they knew how politicized academia has become. Employers may hesitate to hire law graduates who are ignorant of important trends in the law and who have not learned critical thinking because they have not been exposed to it. The problem is how to bring the attitudes of these constituencies to bear to achieve academic change.

If major donors to a university raise issues of political diversity, the administration will listen.²⁰ I have already mentioned that ACTA might be helpful in identifying such people.²¹ It would also be helpful to cultivate new funding that would be specifically directed at enhancing viewpoint diversity.

Unfortunately, it seems that many conservative foundations have given up on academia as a lost cause. They instead fund independent think tanks like the Cato Institute, the Heritage Foundation, and the Manhattan Institute. These organizations are tremendously beneficial, but conservatives and libertarians cannot compete successfully in the national war of ideas if they concede academia to the other side.

Sympathetic foundations need to be persuaded of this. Foundations, however, generally do not fund organizations, they

20. Alumni-funded programs are playing a useful role at several universities. See Neal, *supra* note 18, at 247.

21. It has also produced a volume to help donors, *The Intelligent Donor's Guide to College Giving*. Inter alia it profiles donor-funded academic programs that enhance intellectual diversity. See generally ANNE D. NEAL & MICHAEL B. POLIAKOFF, AM. COUNCIL OF TRS. & ALUMNI, *THE INTELLIGENT DONOR'S GUIDE TO COLLEGE GIVING* (2d ed. 2011), http://www.goacta.org/images/download/intelligent_donors_guide.pdf.

fund projects. The challenge, then, is to design projects that promote viewpoint diversity and can attract financial support. One such project is the James Madison Program at Princeton, headed by Robert George.²² The Madison Program set an example that has been followed at many other universities.²³ These efforts often encounter problems, including gaining institutional acceptance (some colleges have denied any official recognition to the programs) and retaining independence from their institutions. Nonetheless, these are initiatives that should be studied carefully, refined, and reproduced as often as possible.

Trustees can play a crucial role. They are far less subject to the pressures of campus politics than are university administrators. Again, ACTA encourages trustees not to be rubber stamps for the administration (as most are) but to discharge their obligations as the legal governors of the university, responsible for its academic and economic health.²⁴

Law school deans and university administrators also care deeply about publicity, especially rankings. It might be useful to have an annual ranking of law schools in terms of viewpoint diversity and of how welcome conservative and libertarian students will be at various schools. The Federalist Society might be helpful in such a project.

More generally, we need to create more publicity about the politicization of universities and the exclusion from faculties of not only conservatives and libertarians but also of political moderates—indeed, of anyone who is not well to the left on the American political spectrum. The NAS has released studies regarding the politicization of academia and related problems.²⁵

22. See Robert P. George, Professor of Jurisprudence, Princeton Univ., Remarks on Panel III: Solutions: encouraging intellectual diversity, at the Harvard Federalist Society's Intellectual Diversity and the Legal Academy Conference (Apr. 5, 2013), available at <http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/>.

23. See Stephen H. Balch, *The Route to Academic Pluralism*, in THE POLITICALLY CORRECT UNIVERSITY, *supra* note 18, at 227, 237–38; James Piereson, *The American University: Yesterday, Today, and Tomorrow*, in THE POLITICALLY CORRECT UNIVERSITY, *supra* note 18, at 138, 148.

24. ACTA has produced a guidebook for trustees on academic freedom, *Free to Teach, Free to Learn*. Included in this volume are several suggestions specifically geared toward improving intellectual diversity. See generally AM. COUNCIL OF TRS. & ALUMNI, FREE TO TEACH, FREE TO LEARN (2013), http://www.goacta.org/images/download/free_to_teach_free_to_learn.pdf.

25. See, e.g., PETER WOOD & MICHAEL TOSCANO, WHAT DOES BOWDOIN TEACH? HOW A CONTEMPORARY LIBERAL ARTS COLLEGE SHAPES STUDENTS (2013),

But law schools may be harder to expose than other divisions of universities. At least on its face, the first-year curriculum has not been politicized.

Perhaps a survey of upper level courses or a survey asking law students whether they are getting a good balance of views would be useful. In one survey conservative undergraduates and alumni of two colleges reported some isolation, alienation, exclusion, and discomfort, and they avoided particular majors and programs because of the political attitudes of faculty.²⁶ In another survey of undergraduates at fifty top colleges, forty-eight percent complained of campus presentations that “seem totally one-sided” and forty-two percent complained of reading assignments that presented only one side of a controversial issue.²⁷ Professor Jack Goldsmith has reported that conservative law students at Harvard have described “open hostility to conservative views in the classroom.”²⁸

Online coverage of individual abuses could also be useful. The NAS website often publishes stories of outrageous incidents. Of course, faculty members naturally hesitate to criticize their own schools out of fear that the result will damage the institution, not improve it, and that they will incur personal vilification, even if they have not violated any rule. The NAS can sometimes serve as a conduit for academics who wish to remain anonymous whistleblowers. Perhaps the faculty division of the Federalist Society is better positioned to perform such a function for law schools. It could set up a website and invite law professors to post stories of abuses.

When abuses include infringement of free speech or academic freedom, the Foundation for Individual Rights in Education

http://www.nas.org/images/documents/What_Does_Bowdoin_Teach.pdf; RICHARD W. FONTE ET AL., NAT'L ASS'N OF SCHOLARS, RECASTING HISTORY: ARE RACE, CLASS, AND GENDER DOMINATING AMERICAN HISTORY? (2013), http://www.nas.org/images/documents/recasting_history.pdf.

26. Amy J. Binder & Kate Wood, *Conservative Critics and Conservative College Students: Variations in Discourses of Exclusion*, in *DIVERSITY IN AMERICAN HIGHER EDUCATION: TOWARD A MORE COMPREHENSIVE APPROACH* 165 (Lisa M. Stulberg & Sharon Lawner Weinberg eds., 2011).

27. AM. COUNCIL OF TRS. & ALUMNI, *POLITICS IN THE CLASSROOM: A SURVEY OF STUDENTS AT THE TOP 50 COLLEGES & UNIVERSITIES* 2 (2004), http://www.goacta.org/publications/downloads/PoliticsintheClassroom_pdf.

28. Jack Goldsmith, Professor of Law, Harvard Law Sch., Remarks on Panel I: Problem: is there a lack of intellectual diversity in law school faculties? (Apr. 5, 2013), <http://www3.law.harvard.edu/orgs/fedsoc/intellectual-diversity-conference/>.

(FIRE) does tremendous work.²⁹ In written reports and press releases and on its website it publicizes abuses,³⁰ showing how colleges and universities have become islands of repression in a sea of freedom and giving the citizens of academia information about their legal rights.³¹ FIRE also undertakes litigation and has won many important victories against such abuses in court.³²

Getting people into teaching positions might be more difficult. The Federalist Society already performs a great service by offering annual training sessions for scholars interested in an academic career. It would also be useful to offer aspiring academics fellowships to free them from other work so that they could produce the scholarship that is now necessary to get an entry level appointment at most law schools.³³

Many law schools now have one or two Assisting Visiting Professors (AVPs) every year. AVPs are attractive to schools because they are cheap and require no long-term commitment, but they boost the school's faculty-student ratio in the *U.S. News & World Report* rankings. The attraction for the AVP is that the position is a foot in the door; it increases her chance of finding a regular appointment.

One possibility for donors would be to subsidize an AVP year for young conservatives who want to go into teaching. Many law faculties would be wary of being bribed this way, but if it benefits their school and they are making no commitment to the AVP, they might agree to it. Moreover, such arrangements are already common. Universities often inform a school that funding will be provided for a faculty slot if the

29. See *Background*, THE FOUND. FOR INDIVIDUAL RTS. EDUC., <http://thefire.org/about/mission> (last visited Nov. 25, 2013).

30. *Top Cases*, FOUND. FOR INDIVIDUAL RTS. EDUC., <http://thefire.org/cases/> (last visited Nov. 25, 2013).

31. *Know Your Rights*, FOUND. FOR INDIVIDUAL RTS. EDUC., <http://thefire.org/article/15513.html> (Nov. 8, 2013).

32. *FIRE's Programs*, FOUND. FOR INDIVIDUAL RTS. EDUC., <http://thefire.org/about/programs/> (last visited Nov. 25, 2013).

33. Some such programs already exist. For example, the Hayek Fund, administered by the Institute for Humane Studies, provides students and untenured professors grants of up to \$750 for research-related travel, costs associated with presenting at academic conferences, travel to job interviews, and publication costs. See *Hayek Fund for Scholars*, INST. FOR HUMANE STUD., <http://www.theihs.org/hayek-fund> (last visited Nov. 25, 2013). Centers at several universities now offer positions to postdoctoral fellows. See Piereson, *supra* note 23, at 148.

candidate chosen is, for example, African-American.³⁴ In the alternative approach described above, the faculty would be asked to accept a temporary faculty appointment funded by an outside source. In principle this can hardly be considered more objectionable. Of course, the next question is whether such an arrangement would lead to a regular appointment, or whether the scholar would be deemed tainted by the political subsidy.

Another possible avenue is accreditation reform. As the primary accreditor of American law schools, the American Bar Association has in various ways encouraged intellectual conformity rather than diversity. The ABA pressured all law schools to impose racial preferences in faculty hiring.³⁵ This policy has worked indirectly to diminish intellectual diversity. It would be desirable for the ABA (and its sidekick, the AALS) to rescind this directive, but that will not happen any time soon.

Another possible alternative is to approve other accrediting agencies. This has already occurred in other areas. It should also be done in the law.

IV. UNDERSTANDING THE BATTLE

We need to consider practical steps to address political discrimination in legal academia. Even if some of the discrimination is subconscious, the instances of deliberate discrimination show that a substantial minority of law professors work actively to exclude conservatives, libertarians, and even political moderates from their faculties. So long as the majority of a faculty remains indifferent, this minority is likely to get its way. As Marxists like to say, "it is no accident" that nearly all law faculties tilt far to the left.³⁶ This condition exists largely by virtue of a con-

34. See Roger Clegg, *Faculty Hiring Preferences and the Law*, CHRON. HIGHER EDUC., May 19, 2006 ("Colleges sometimes establish special pools of money from which a department can draw to hire underrepresented minority scholars whenever there is an opportunity to do so . . .").

35. Molly McDonough, *See You in 18 Months*, ABA J., Feb. 12, 2007, http://www.abajournal.com/magazine/article/see_you_in_18_months/.

36. See John O. McGinnis et al., *The Patterns and Implications of Political Contributions by Elite Law School Faculty*, 93 GEO. L.J. 1167, 1177 (2005); John O. McGinnis & Matthew Schwartz, Op-Ed., *Conservatives Need Not Apply*, WALL ST. J., Apr. 1, 2003, <http://online.wsj.com/articles/SB104916382927878800.html> (study finding that campaign contributions by law professors overwhelmingly favored Democrats over Republicans).

certed effort by academics on the left.³⁷ In the liberal arts and social sciences, hostility to conservatives is higher in some fields than others.³⁸ The same seems to be true in the law.³⁹

Moreover, unconscious discrimination will not be easy to change—and may not even be all that unconscious. In practical terms, it makes little difference whether an academic opposes a conservative scholar's appointment because she dislikes the candidate's politics even though she knows that the scholarship is brilliant, or because she believes that the candidate's ideas are wrong or the work unimportant. It is inherently difficult to weigh and to reach an objective valuation of scholarship with which one disagrees.

Of course, we do not want any lowering of standards. The last thing we need is the hiring of conservative and libertarian scholars who are less qualified than their colleagues on the left. Fortunately, such measures are unnecessary. There are already many underplaced scholars on the right,⁴⁰ and more would certainly emerge if they thought they could get a fair shake in academia. Accordingly, change will require a campaign both to persuade reluctant (but not exactly hostile) academics to treat conservative and libertarian scholarship more fairly, and to

37. There is anecdotal evidence of discrimination. See, e.g., Mary Grabar, *Exiled: Stories From Conservative and Moderate Professors Who Have Been Ridiculed, Ostracized, Marginalized, Demonized and Frozen Out* (2013); Robert Maranto, Op-Ed., *As a Republican, I'm on the Fringe*, WASH. POST, Dec. 9, 2007, http://www.washingtonpost.com/wp-dyn/content/article/2007/12/07/AR200712070618_pt.html. More generally, conservative scholars tend to have less prestigious positions than progressive scholars with equivalent publishing records. See Stanley Rothman & S. Robert Lichter, *The Vanishing Conservative—Is There a Glass Ceiling?*, in *THE POLITICALLY CORRECT UNIVERSITY*, *supra* note 18, at 60. Nearly a quarter of academics report that they would favor a Democratic candidate over a Republican for a faculty position, and half of sociology professors report unfavorable attitudes toward evangelicals and Mormons, who tend to be politically conservative. See Rachel Alexander, *Suspicious Confirmed: Academia Shutting Out Conservative Professors*, TOWNHALL (June 10, 2013), <http://townhall.com/columnists/rachelalexander/2013/06/10/suspicious-confirmed-academia-shutting-out-conservative-professors-n1616406/page/full>. Social psychologist Jonathan Haidt believes that the political imbalance in academia cannot be explained without a substantial degree of discrimination. See John Tierney, *Social Scientist Sees Bias Within*, N.Y. TIMES, Feb. 7, 2011, <http://www.nytimes.com/2011/02/08/science/08tier.html>.

38. See Maranto & Woessner, *supra* note 8, at 471 (advising conservative scholars to “bypass impenetrable islands of leftism (e.g., sociology, social work, women’s studies, and ethnic studies)”).

39. See *supra* note 14.

40. See Rothman & Lichter, *supra* note 37, at 71.

counter the minority who view their faculties as partisan forces of the left. This effort will require a huge amount of work.

Understandably, most scholars do not wish to undertake such an effort. We are committed to our teaching and scholarship and have no spare time for political maneuvering. There will be no change, however, if the effort is not made. To some extent organizations like the Federalist Society can raise the needed money and do the necessary work, but much of the initiative will depend on individual scholars working for change at their own schools and in the AALS. This Essay has offered a few modest suggestions. But we need much more thinking about how to deal with the problem, and we need action to achieve change.