
Law and the Janus-faced Morality of *Political Correctness*: *an Introduction*

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ABSTRACT

This introduction explores the relationship between Law and Political Correctness (PC), considering different stages (from *culture wars* on campus to narrative *outsider* jurisprudences), as well as diverse (contextually instable and often contradictory) narrative webs. This reflective path opens three main different problems: the first concerns the way how the sensitivity to political correctness is programmatically (contingently) pursued through statutory law; the second identifies the difficulties which plurality and fragmentation create, when we consider Law's vocation for comparability; the third denounces specific institutionalizing

procedures and social effects associable to the *culture of political correctness*. Acknowledging that the integrated discussion of these themes, in their juridical systematic implications, is fundamentally *encore à faire*, the last part of the text introduces in detail the seven chapters which follow, highlighting the stimulant plurality of perspectives and approaches which they manifest.

KEYWORDS

political correctness; juridical comparability; free speech; counterstorytelling; Mark Tushnett; Stanley Fish

Concerning the possibility of juridically relevant responses, is the *culture* and/or the *morality* of so-called *political correctness* a significant *societal challenge*? Although an answer in the affirmative seems obvious, the relevance to be taken into account is not, however, as linear as it seems. Almost thirty years after the publication of Mark Tushnets "Political Correctness, the Law, and the Legal Academy" (1992), the story about Law *and* Political Correctness (PC), even though reduced to its contemporary environment, seems in fact very far from being effectively told and systematically clarified. The trouble with this relationship and its narrative web (if not with the plausible *Law &... movement*

it would be expected to generate) concerns not only the *signifier* PC but also the *interlocutors* Law and Legal Thinking — or the role which these interlocutors are (or have been) allowed to play. Whereas the PC formula opens itself up to a spectrum of diverse contexts of signification and performance —condemning a plausible global reconstitution of its thematic field to the incorporation of tensions that cannot be resolved (with a perplexing number of reversibly positive and negative connotations)—, the treatment given to Law and Legal Thinking, when it does not reduce them to an instrumental (silent) position (due to the expectations of a purely functional regulative performance), allows them only a very concentrated role — as if they intervened exclusively under the mask of the *free speech principle* or in the semantic and pragmatic context surrounding the discussion of this principle and its specific *weight* or *limits*.

1. That contextual instability (wounding the *signifier* PC), combined with this reductive concentration (undermining the corresponding juridical relevance), gives us an irresistible opportunity to try out an exercise of *law in literature* — this one revisiting Philipp Roth’s brilliant *The Human Stain* (2000) —, as well as to return to Mark Tushnet’s exemplary essay; and certainly, and not by chance, since both Roth’s novel and Tushnet’s essay consider the practices of (and the claims to) PC whilst exploring the same (circumscribed) stage: North American university campuses in the last decade of the twentieth century.

As far as this novel is concerned, a very brief note will suffice now, just in order to recall how the experience of ambiguity or ambivalence affecting political correctness is here for once recreated as an intrinsic component of a singular life path and as such (circularly) inscribed in a specific practical-existential condition. This path concerns the protagonist, Coleman Silk, an African-American university professor of Classics, who builds his nuclear family, and his successful career, as an academic and as dean (at a certain Athena College), while choosing to pass as white and thus hiding his origins (assuming the mantle of a Jewish white identity and drastically reinventing his personal history). The painful irony is that this career will end abruptly (with devastating consequences also for his personal life, involving his wife’s death) when, in a class, Coleman uses a seemingly harmless and semantically plausible expression (“spooks”) to address two systematically absent students (“Does anyone know these people? Do they exist or are they spooks?”), an expression that comes to prove *politically incorrect* (and that will thus feed

a relentless accusation of white racism) when it is clarified that the students in question are two young black women (Roth 2000, 16)!

The return to Tushnet's diagnosis, an integral part of the so-called *war of language on campus*¹, is certainly indispensable for other reasons. As the stage is basically the same (circumscribed) one, the specifications which affect the debate are also those we should expect, defining PC as the "enforcement, in some sense, of politically-derived standards of scholarship" (Tushnet 1992, 128) and "teaching" (Brest 1992, 381), and turning *freedom of speech* into institutional and/or individual "academic freedom", more or less strictly identified with First Amendment protection of the professor's rights [Tushnet 1992, 144-153 ("Questions of Academic Freedom")]. This concentration on located normative grids and specific institutional situations does not however contribute to simplifying the dynamic of the interactions to be diagnosed and overcoming the ambiguity of the references which lead to them. Tushnet certainly assumes some dominant representations, the most significant of all being probably the one which, from the very beginning of the essay, associates the "campaign" against PC with an ideologically conservative appropriation². It is in fact this presupposition which gives the text the coherence of an exercise in deconstruction, the goal of which is to show precisely "how overblown or distorted" the "conservative characterization" (Tushnet 1992, 127-8) of the so-called *culture wars*³ has been. Following this purpose means for Tushnet giving due weight to the abundant practices of "coercion" (to conservative "orthodoxy") inflicted on "progressive professors" (most of them classed as "critical legal scholars")⁴, as well as offering the resources to reject the immediate qualification of specific events (which are in fact cases of bad or unhappy pedagogy) as exempla of PC enforcement (this time victimizing right-wing

¹ "The spring squall of 1991 about political correctness on campus has passed, leaving behind a muddy residue in the nation's political rhetoric." (Tushnet 1992, 127)

² "Although the squall initially may have seemed to develop from a detached interest in campus developments, it rapidly became clear that the campaign against 'political correctness' was this year's version of conservative concern about liberalism in the universities..." (Tushnet 1992, 127)

³ Used to identify in general the nineties American academic debate concerning political correctness, this formulation has certainly more directly to do with a part of this debate: the one which, mainly in literary studies, opposes the canon and multiculturalism. See Hughes (2010, 70 ff.), but also the broader contextualization reconstituted by Andrew Hartman (Hartman 2015).

⁴ "In the law schools, Richard Abel offers an 'incomplete list' of twelve people associated with critical legal studies who 'suffered adverse personnel decisions—denials of tenure, contract terminations, and reversals of lateral appointments voted by faculty.' A full consideration of the problem of political correctness ought to take these incidents, and other similar ones, into account..." (Tushnet 1992, 129).

or moderate scholars)⁵. Anyhow, as the agents of coercion, according to these narratives, are almost exclusively university administrators — so much more vulnerable to ideologues and lobbies that are ignorant of the *School's mission*⁶ —, these dominant representations do not exclude outright the possibility of a rhetoric about PC defending political progressive standards or imposing a relativistic approach. And this is evidently enough to ensure that the tangle of arguments and counter-arguments emerging from these institutional situations becomes perplexingly intricate (“what is at issue in the PC discussion is much more complicated than most participants are willing to admit”) [Tushnet 1992, 152] indeed so intricate that the only possible *way out* contemplated by Tushnet —in his evident “aversion to ambiguity” (Brest 1992, 381)— seems to be the defense of an alternative, drawing a distinction between two kinds of universities... as well as demanding that these differences (and their gradation) are transparently assumed as strategic (political) decisions⁷. The polarized radicalization of this basic alternative in fact distinguishes as models or types the universities which aim to take “an extremely active role in moral formation” and those “which treat their campuses as free fire free speech zones”: this means acknowledging that both of them provoke unavoidable conflicts between “institutional” and “individual” freedom, but also admitting (as a congruent but not less perplexing implication) that the former are allowed to adopt “stringent ‘hate speech’ codes” (Tushnet 1992, 162-163)^{8,9}.

Isn't this a frustrating conclusion, more or less explicitly choosing *not to choose* (i.e., not to engage in the discussion)? It is rather a conclusion which, *malgré elle*, i.e., in spite of some marginal discordances explicitly assumed (Tushnet 1992, 152-153), seems irresistibly close to Stanley Fish's

⁵ The case study mainly explored is an incident (reported by Dinesh D'Souza) concerning Ian MacNeil, a Harvard visiting professor criticized for “repeated instances of sexism”: see Tushnet [1992, 131 ff., 137-144 (“Questions of Pedagogy”)].

⁶ “Administrators, lacking a vision of what a university should be, bend to whatever wind happens to be blowing the strongest...” (Tushnet 1992, 128). See in detail the development proposed in the chapter “Problems of University Administration” (Tushnet 1992, 153-162).

⁷ “[T]here are two dimensions on which universities ought to take a position: the degree to which they take their mission to include the moral formation of their students, and the degree to which they are committed to the pursuit of disinterested scholarship” (Tushnet 1992, 162).

⁸ The indispensable development comes with “Universities, Moral Formation, and Academic Freedom” (Tushnet 1992, 154-149)

⁹ “For, if a university can take a position about that, many issues that have come up under the heading of political correctness look very different: rather than enforcing an orthodoxy in violation of academic freedom, the universities are performing their permissible role of helping shape the characters of their students” (Tushnet 1992, 144)

arguments about PC (Fish 1994, 3-11, 102 ff.; 1995, 62-70), arguments whose conclusion(s)-claims allow us to leave aside the idiosyncrasies of the academic stage and risk a global judgement. The knotty point is less the basic (however disputable¹⁰) corroboration of the *origins* — considering the term PC (or at least its strategic reproduction) a stunningly successful product of a conservative point of view, attributable to the “neoconservative participants in the recent culture wars” (Fish 1994, 8), but also to a “consortium of right-wing think-tanks, foundations, (...) well-placed individuals (...) [and] journalists” (Fish 1995, 62-63) — than the deconstruction of a certain binominal counterpoint. Which counterpoint? The one which opposes “*commonly shared*” (“really correct”) *approaches*, reflecting “the biases of no group” — claiming a commitment to the “disinterested search for truth” and as such “eschew[ing] politics” —, and *group specific* (“merely politically correct”) *views* — unavoidably condemned to the biases of specific identities (“feminists, multiculturalists, Afrocentrists, (...) gays (...) and the like”) [Fish 1994, 8]. According to Fish, rejecting (overcoming) this counterpoint means in fact refusing not only the “label” of “politically correct”, but also the “game” of which this label “is a part” (i.e. “denying the game’s central premise”¹¹), which means assuming an unavoidable (globalizing) conclusion-claim: PC is not the “name of a deviant behavior but of the behavior that everyone necessarily practices”, “[d]ebates between opposing parties can never be characterized as debates between political correctness and something else, but between competing versions of political correctness” (Fish 1994, 9). As if, in a very Foucauldian manner, we could say that refuting the label means acknowledging that every human practice (related to urgently, deeply and passionately held positions or agendas) is immanently political (i.e. manifests a *claim to political correctness*) (Butler 1999, 146-147), as well as defending that “there is no such thing as Free Speech” — “[f]ree speech” is just the name we give to verbal behaviour that serves the substantive agendas we wish to advance” (Fish 1994, 102). This is evidently considering both types of difficulties previously alluded to — concerning the signifier PC and its legal relevance —, with a response however which does not overcome them, but

¹⁰ See for instance, explicitly refuting Fish’s arguments, Geoffrey Hughes [2010, 61-65 (“Origins of the phrase”), 68ff., 74ff.]. “The modern origins of the phrase are inextricably bound up with Communist doctrine, although it evolves through various forms and tones...” (Hughes 2010, 62)

¹¹ The premise in question is that “any party to the dispute could occupy a position above or beyond politics” (Fish 1994, 9).

which rather consecrates their “*natural*” (?) insuperability and circularity. Certainly, because every *speech (interpretive) community* has its indestructible *capillary* modes of censorship, which means that everything comes in “political guises”, even our attempted “apolitical abstractions” (including “the market-place of ideas, speech alone” and “speech itself”).

It is not that there are no choices to make or means of making them; it is just that the choices as well as the means are inextricable from the din and confusion of partisan struggle. There is no safe place (Fish 1994, 115).

2. Couldn't we just leave this fascinating reflexive territory (and the troubling web of ironies and perplexities that its ambivalence legitimizes) whilst concluding that, in our present circumstances, facing PC as a *societal* (legally relevant) *challenge* means simply defending an approach in terms of *public policies* (and their legislative prescriptions)? The problem at stake would then concern the (more or less extensively grasped) opportunity to sustain a *new* branch of Politics of Law, the distinctive feature of which would be an explicit progressive sensitivity and responsiveness to the pluralism of *marginalised identities* and their *narrative intersections* — involving gender, race, sexual orientation, economic condition, social status, practical-cultural and geopolitical provenance, health, mental and physical disability, as well as the status of victim, the condition of homelessness, the situation of the refugee, and last but not least, the relationship to our colonial past. In the last quarter of a century —beginning with the exemplary scission introduced into *Critical Legal Studies* by the emergence of *Feminist Jurisprudences* and *Critical Race Theories* (denouncing the *masculine identity* and/or *colour blindness* embraced both by *liberal* theorists and *critical scholars*)¹²—, Legal Theory has actually been vigorously challenged (if not *wounded*) by the blossoming of a wide range of discourses on *marginalised identities*, the core of which is undoubtedly composed of narrative *outsider* jurisprudences and *community-building counterstorytelling*¹³. This has certainly to do with a process of internal differentiation (and subdivision) affecting those two

¹² This means highlighting the fragmentation that has been opened up (or at least aggravated) by the so-called *third* (or *fourth*) generation or stage of Critical Legal Scholars: *third* according to Gary Minda's reconstruction (1995, 123 ff.); *fourth* according to Günter Frankenberg proposal (2006, 101 ff.).

¹³ To use the well-known formulae proposed respectively by Mari J. Matsuda and Richard Delgado (Matsuda 1989, 2320 ff.; Delgado 2000, 60 ff.).

well-known established *fronts* — *Feminist Jurisprudences* and *Critical Race Theories*¹⁴ —, but also with an explosion of other (irreducible) *identities* (with the corresponding promises of *community-experience* and *community-visée*) — the identities explored by *LGBT-GNCcrits* (*Gay, Bisexual, Transgender and Gender Non-conforming Critical Studies*), as well as those constructed by *TWAIL* (*Third World Approaches to International Law*) and by *Postcolonial Legal Theory*, inventing the Fourth World as a certain *South of the North* (Bhatia 2012) or reconstituting “the epistemologies of the global South” as the cultural legacy interrupted by colonialism (Santos 2014) —, all this in addition to the possibilities opened up by the so-called *New Social Movements*, which reconstruct the identities of the *homeless* and *landless* throughout the world, whilst also considering the specific conditions of disabled people, refugees, asylum seekers and sexual violence survivors and which thus go from the Brazilian *Landless Workers Movement* (MTST) to the globalized *#MeToo*. Simple allusion to this process of division and subdivision is, for its part, sufficient to enable us to understand that it is very difficult to conceive of all these “community”-promises as closed (*watertight*) *ways of life*. The intertwining and overlapping that inevitably interrelate them when we consider their legal relevance is, however, less an opportunity to recreate a coherent whole than (paradoxically?) an openness to new divisions. Why? On the one hand, undoubtedly because significant possibilities for connection (or at least overlapping) are due to the (more or less) *external* influence of transversal (much broader and not necessarily critical) *interdisciplinary perspectives or movements* (concerning *legal pluralism* and the mobilization of narrative as the archetypal form of practical rationality, such as *Law and Literature*, *Law and Performance*, *Law and Image*, *Law and film* and *Law and Emotions*) — perspectives which (on account of their internal complexity and the heterogeneity of the leading voices) certainly generate new *foci of incommensurability*, if not new academic thematic specifications (such as *Feminist Literary Criticism*, *Race and Cinema* and the *Queer Politics of Emotions*). On the other hand,

¹⁴ Whereas *FemCrits* contribute to this multiplication simply by exploring the infinite possibilities of their own *cultural, radical* and *postmodern* path, *RaceCrits* intervene decisively here on the one hand by strengthening the specificities (if not the autonomy) of their basic “sub-disciplines” (African-American, Chicano(a)-Latino(a), Asian-American, Indian or Tribal *Legal Studies*), on the other hand by claiming (and projecting) an authentically globalized (and inter-disciplinarily conceived) *Critical Philosophy of Race*.

it is because storytelling in itself, experiencing the “multidimensionality of oppressions” (“what happens when an individual (...) is both gay and Native American, or both female and black?”) faces the permanent challenges of *intersectionality* or “*intersectional*” persons (Delgado & Stefancic 2001, 51). These challenges are certainly an opportunity to examine the “combination” (“in various settings”) of “race, sex, class, national origin, and sexual orientation” (and of fighting against race or gender or class *essentialism(s)*¹⁵), but also an inescapable source of subdivision (generating academic fields such as *Critical Race Feminism*, *Black Queer Studies* and *LGBT International Law Theory*, eventually with the promise of a specific *TWAIL*).

The simple allusion to this complex territory of narrative *outsider* jurisprudences (with its astonishing *vertigo* of hyper-specialized critical possibilities and its precious mass of data) shows that, contrary to expectations of simplification (and promises of overcoming ambiguity), the configuration of the intended *new* branch of Politics of Law is very far from linear, thus introducing new (but no less difficult) sources of contextual instability. In order to map these difficulties, two words will have to suffice. We could say that we have here three main problems or ensembles of problems, involving unmistakably different levels of thematization.

2.1. The first and immediate problem concerns the way how this sensitivity to PC is programmatically (contingently) pursued through statutory law. The understanding of this sensitivity admits at least two different configurations:

(a) a *pragmatic reformist* one, which may be exemplified using Libby Adler’s distributive *decisionism*, “driving toward commitment to tangible law reform tasks” (Adler 2011, 11);

(b) a *deconstructive/reconstructive* one which, following Derrida, may be identified as considering the “interminable” process of “juridico-politicization” as it is (and has been) constantly pursued beyond its “identified territories” (i.e. opening up “areas” that “at first can seem like secondary and marginal”) (Derrida 1992, 28-29)¹⁶.

¹⁵ “[A]ntiessentialism raises such questions as whether the [concerns of women of color are capable of being addressed adequately within the women’s movement, or whether Hispanics and African Americans stand on similar footings with respect to the struggle for racial equality. Are black Americans one group, or several?” (Delgado 1993, 742-743).

¹⁶ We should not forget that this text has been first presented and published in English!

The first of these configurations presupposes the absence of any plausible “meta-theory” in order to justify the use of *cost/benefit analysis* and to defend a contextualized (local) consideration of people living *in the margins* — a consideration which may be able to generate law reform proposals as a kind of *realistic* ensemble of “dispersed” possibilities (Adler 2011, 18)¹⁷. The second configuration faces the challenges of *otherness* by defending an ethic of unconditional and unlimited respect for singularity whilst simultaneously accepting the burden of an unavoidable *aporia* — corresponding to the abstract typification (or violent synchronic *thematization*) of the concrete problems, but also to the conclusion that each “advance in politicization obliges one to reconsider, and so to reinterpret the very foundations of law such as they had previously been calculated or delimited” (Derrida 1992, 28).

2.2. We have however a second (and much broader) problem, concerning the difficulties which this plurality (whilst favoring the fragmentation of perspectives, meanings and semantic values) effectively creates, when we consider Law’s claim for an integrating context — and with this, the vocation for *comparability* (Linhares 2020, 90-98). Do the *discourses of the margins* allow us to go beyond the level where narrative *identities* impose separate perspectives in order to recognize the possibility or the pertinence of reconstituting (either from an internal or an external perspective) the normative centre of *autonomies-rights* and *responsibilities-duties* that is (or should be) globally attributed to each subject as a party in a practical legal controversy? In other words, is the celebration of *narrative incommensurability* — whilst renouncing the relevance of a successful experience of universalizability (*relativizing* the involved subjects) or to the corresponding *tertium comparationis* — still compatible with the significance (or the productivity) of an inter-discursive reference to the *status* or *dignity* of *sui juris* — the latter certainly not as a self-subsistent *hypostasis* but as a specific, historically determined, practical-cultural *artefactus* (inseparable from the claims of *audiatur et altera pars*)?

2.3. Finally, the third problem concerns specific institutionalizing procedures and social effects which the *culture of political correctness* — with

¹⁷ A revised and recontextualized development of this argument is proposed in Adler (2018), specially in its fifth chapter (“Making the distributive turn”).

its succession of euphemistic lexical and semantic (some of them “Orwellian”) changes (Hugues 2010, 11 ff., 18-21, 26-37), its multifarious bewildering guises, but also the unilateral violence of their guardians and lobbies (replacing “reason with emotion”) [Browne 2006, xiii] — has indisputably imposed: the risk of transforming more or less persuasive *counterstories* into stereotyped narratives, with characters and roles that are implacably pre-determined; the hypertrophy of duties and their concentration in apparently trivial strongholds — justifying unresolved tensions between universal and parochial claims; the legitimation of a *limitless responsibility*, with public devastating pre-judicial judgements, destroying lives and careers¹⁸; last but not least, the unconditional celebration of differences as a (paradoxically) ethical homogenizing reference — if not as an effective intolerance factor, generating new and subtle forms of censorship [Browne 2006, 41-58 (“The drawbacks of Political Correctness”)]... and with them a plausible *inversion of hierarchies*¹⁹...

3. We can say that the integrated discussion of these themes (or cluster of themes), in their juridical (dogmatic and meta-dogmatic) systematic implications, is fundamentally *encore à faire*. Concerning this indispensable reflexive path, the essays which follow, with the plurality of perspectives and approaches which they manifest, certainly open some decisive doors.

The adopted sequence follows a kind of free “*arch-form*” *structure*, thus beginning and ending with essays in which the signifier PC is never explicitly dealt with, but which, however, provide enlightening contextual reconstructions — both of them with deliberately parochial “locations” (USA and Brazil respectively), with a meaning which however goes beyond their assumed frontiers. In contrast, the five in-between articles have in common a direct approach to our main thematic connection (PC and Law), even though explored under a remarkably varied spectrum of perspectives and scopes, going from specific problems to global panoramas.

The first chapter is by James Boyd White (our sole invited Author), who, notwithstanding the indisputable autonomy and self-sufficient intelligibility

¹⁸ As far as #MeToo is concerned, see the discordant diagnoses proposed by Elizabeth Bartholet (2018) and Jessica A. Clarke (2019).

¹⁹ “Starting as a reaction to the dominant ideology, [PC] (...) has become the dominant ideology” (Browne 2006, xii).

of the diagnosis he proposes, develops an explicit commentary to his book *Keep Law Alive* (White 2019). The signs which this diagnosis evoke consider recent experiences that are specifically American (“I hope that not much of what I say about the condition of (...) law (...) and democracy (...) in my country (...) would be true of yours”), but they do determine, however, a reconstitution of our global present practical-cultural and political-institutional crisis (“law is in danger of dying”) which in turn requires a fundamental critical reconstruction of Law as a “complex intellectual, ethical and imaginative activity” (Law “at its best”). This reconstruction confirms Boyd White’s inimitable conception of Law as a *form of life* and a *system of meaning*, inseparable from a continuously inventive *culture of argument* and its exercises of *translation*, with “a distinct set of dynamic and dialogic tensions” (“Law as a set of occasions and opportunities for the creation of meaning”²⁰, but also as “a rather fragile piece of our culture, requiring those who live with it to remake it constantly, over and over”). If we bear in mind that our interlocutor is one of the few authentic *Masters-Authors* of our time, this corroboration of an experience of Law “viewed from the inside” (*by someone who lives on its terms*) (White 1999, 103) is certainly not an unexpected one, although its accomplishment does however bring some precious contextual contributions. On one hand, we benefit from a remarkably spontaneous manifestation of the possibilities of an *internal point of view*, experiencing narrative not as a “story of facts” but as a “memory of memories” (“in doing law we must be centers of energy, of invention, and of life”). On the other hand, we recognize some key thematic pieces, without which the puzzle concerning PC & Law would hardly become intelligible (or which, at least, give this puzzle an unmistakable conformation): the irreducibility of Law to a “system of rules” or to an ensemble of “policy choices” or to “a set of institutional arrangements”; the danger of reducing law to economic or political perspectives (“in a way that destroys its essence”); the need to submit the *freedom of speech* principle (and First Amendment constitutional rules), as well as the problem of *discrimination by race*, to the specific contextualized perspective that *legal imagination* and *our sense of justice* significantly warrant.

²⁰ Unlike all the other (unidentified) citations, this one does not come from the text that is published below; it belongs to another work by James Boyd White (White 1999, 52).

American Law Institute's *Model Penal Code Project*, one of the normative materials which Boyd White exemplarily mobilizes in his diagnosis, is also a major protagonist in the second essay, written by Larry Catá Backer. The starting point is actually the discussion raised by the recent revision of Article 213 of the aforementioned project (concerning sexual offenses) — a “long road” which goes “from the initial draft of a definition for consent in 2012 to its final version in 2020” —, the aim is now however to explore semiotically the category of *consent* and the fascinating “ubiquity” (if not “malleability”) which — justifying inextricable bridges between the masks of the subject-individual and the citizen-*socius* (between “interpersonal relations” and “political community”) — the Western Text imposes on its *signifieds*. According to the Author, exploring this ubiquity means in fact acknowledging the constitutive ambiguity which wounds (or benefits?) the *signifians* “political correctness” (“understood” both in its “general” and its “pejorative” senses), if not explicitly defending that the “manifestation” of the signifier *consent* or the corresponding “concept” (this one seriously treated “as object, as symbol and as a cluster of political interpretation”) “contains within it the Janus-faced morality of political correctness” — an approach which, thanks to an incandescent argumentative mobilization of each and every one of its components, clearly brings us back to the hard core of our leading theme.

It is in this central territory that, no less persuasively, all of them further exploring specific connections between Law and language, the next three chapters urge us to *stay*.

The third one, proposed by Silvia Niccolai, considers specifically the problem of *definitions in law* (if not the problem of the *search for the right definition*), as well as the effects of exclusion and inclusion which the different pragmatics of political correctness (with their statutory prescriptive translations) constitutively create (or claim to create) and transform. Following this path means in fact being able to counterpose the *ideals* of “objective” (certain) and “subjective” or “intersubjective” (flexible) *definitions* and the forms of (respectively) *calculating* (analytical or instrumental) *reasoning* and *practical-prudential* (“dialectical, controversial, negative, and refutative”) *rationality* which, throughout the history of Western juridical discourses and practices, have dominantly (even though with a great internal diversity) assumed and specified those *ideals*. It means also being able to trace a fascinating and unusual parallel between a *regulae*-centered practical-dialectical *idea* of Law and juridical rationality (such as the one which Alessandro

Giuliani teaches us to rehabilitate and reinvent) — treating the regula *audiat et altera pars* as a decisive component of Law’s autonomous creation of meaning and its “collective/intersubjective commitment to veracity” — and the reflexive possibilities attributable to “the most important Italian feminist movement, known as The Thought of the Sexual Difference or The Thought of the Symbolic, the Italian ‘radical’ feminism” (which arose in the 1960s). The plausibility of this parallel opens in turn an unexpected door to critically reinvent the problem of *political correctness*, seriously taking the relevance of the case-controversy (and the practical-dialectical perspective it allows), whilst simultaneously denouncing the modern “rationalistic illusion” of a “lonely, omnipotent mind” (“being able to do without the shared experience of current language and common opinion”).

The next step (our fourth chapter), which is due to Macario Alemany, concentrates its development on a very specific question, concerning the demand “to turn ‘functional diversity’ into the sole politically correct expression to refer to the condition of people with disabilities”. The specificity of the question and its deliberately circumscribed context do not however prevent a global productive reconstitution of the problem of PC in its complex connections with statutory prescription and social (and juridical) reality (and the corresponding institutional situations). On the contrary, the specificity of the question it faces (with its disputable semantic substitution) stimulates a decisive global *distinction* concerning the relation between PC and *sensus communis*. (A parallel with Silvia Niccolai’s proposal is here certainly irresistible, notwithstanding a significantly different perspective!) According to this distinction, we have situations in which the perspective demanding the substitution rests on “principles and premises shared by the relevant ‘community of speakers’ and other situations which involve alternative conceptions and premises” (being often even accepted with difficulty by “the discriminated minority”). The signifier *functional diversity* belongs precisely to this second field: according to the Author, its acceptance would in fact “entail an in-depth review” of many shared practices “that are generally deemed to be justified”: “[i]t does not consist of adopting a perspective on disability rights, but of a new premise that is difficult to fit into many other generally accepted ones”. More relevant than this *distinction* is however the judgement it allows: this judgement in fact opens up a critical reassessment of the relation between PC and Law, whilst admitting that this should be

argumentatively treated as a matter of *balance* between “freedom of expression and the interests of other people”.

This is the perfect cue for the interlocutor that follows, Pablo de Lora, whose chapter reinforces the protagonism of the *principle of freedom of expression* (as far as the relationship Law/ PC is concerned), while fulfilling a dazzling close-up on an even more specific problem. This one concerns the alternatives to “refer” to “transgender people” and discusses whether the use of some of these alternatives corresponds to mere duties of civility, or, in contrast, benefits or should benefit from the consecration of specific legal duties (some of them with criminal implications), which means introducing juridically relevant limitations on free speech (does “the mandatory use of ‘preferred pronouns’ conflict with the right to free speech”?). Once again, the particularism of the discussion (namely when it considers academic settings) is only apparent, as apparently specific seem the (very clear) distinctive conclusions at which it arrives: it is “reasonable to require that we address trans people according to (...) the names and conventional pronouns of their choosing”, it is not however “reasonable to compel the use of non-conventional pronouns” (designated pronouns or tailor-made pronouns such as “xie”). This reflexive path wouldn’t in fact be possible without considering a major global issue, precisely the one which discusses the “nature” of PC rules (should they be treated dominantly as “social norms” or “legal standards”?), which means in turn (although only implicitly) reinventing the possibilities and social implications of *free speech*.

Close-up specific approaches seem in contrast far from the leading concerns of the sixth chapter, written by Barbara Sgorbati. And yet, the vertiginous *traveling* that the Author urges us to follow, touching upon almost all the thematic groups and problematic settings covered in the previous texts (concerning the cultural origins, the categories of intelligibility and the ubiquity of PC), is intended less to achieve the homogeneous finish of a synthesis than to open up a multifarious ensemble of questions, involving different perspectives and levels, as well as visiting unmistakably diverse dogmatic grounds.

I have stated that the proposed sequence pursues a kind of free “*arch-form*”. Eduardo Bittar’s essay fits precisely on the last step of this structure, not exactly because (as it happened with Boyd White’s essay, which opened it) the *signifier* PC remains absent, but rather because this signifier is here from the beginning explicitly attached to statutory law and the corresponding arguments of policy (“the issue of political correctness (...) [refers to] the

responsibility of the legislator and the world of politics”). This starting point frees up the Author to explore the signifier *correctness* in its connections with *jurisdiction* (“The issue of *correctness* directly concerns judicial activity”); it gives him, above all, the opportunity to reconstruct *Legal Realism*, whilst defending the idea that, in addition to its better known faces (the Scandinavian and the American ones, the latter assumed through the possibilities of *CLS*), it is also possible to recognize a very specific Brazilian *way*, involving a construction of meaning which, according to the Author, today stimulates (without denying its origins and its history) the development of an authentic *Theory of Realistic Humanism* — the contemporary plausible specification of critical theory, inscribed in the practical-cultural Latin-American environment and thus giving the signifier *social injustices* a decisive role.

References

- Adler, L. (2011). Gay Rights and Lefts: Rights Critique and Distributive Analysis for Real Law Reform, *School of Law Faculty Publications*, paper 36. <http://hdl.handle.net/2047/d20001230> [Also published in *Harvard Civil Rights-Civil Liberties Law Review*, 46 (1) (Amicus). <https://harvardcrcl.org/cr-cl-presents-a-colloquium-of-gay-rights-and-lefts-rights-critique-and-the-distributive-analysis/>]
- Adler, L. (2018). *Gay Priori: A Queer Critical Legal Studies Approach to Law Reform*. Durham: Duke University Press Books.
- Bartholet, E. (2018, January 16). #MeToo Excesses. *The Harvard Crimson*. <https://www.thecrimson.com/article/2018/1/16/bartholet-metoo-excesses/>
- Bhatia, A. (2012). The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World. *Oregon Review of International Law*, 14 (1), 131-175.
- Brest, P. (1992). The Disorderly University: A Reply to Mark Tushnet. *Yale Journal of Law & the Humanities*, 4 (2), 381-389.
- Browne, A. (2006). *The retreat of reason: political correctness and the corruption of public debate in modern Britain*. London: Civitas.
- Butler, J. (1999). Introducing “There’s no such thing as free speech...”. In H. A. Veesser (Ed.), *The Stanley Fish reader* (145-147). Malden: Blackwell Publishers.
- Clarke, J. A. (2019). The Rules of #MeToo. *University of Chicago Legal Forum*, 2019, article 3. <https://chicagounbound.uchicago.edu/uclf/vol2019/iss1/3>
- Delgado, R. (1993). The Inward Turn in Outsider Jurisprudence. *William & Mary Law Review*, 34 (3), 741-768.
- Delgado, R. (2000). Storytelling for oppositionists and others: A plea for narrative. In R. Delgado & J. Stefanic (Eds.), *Critical Race Theory: The Cutting Edge* (2nd ed.). Philadelphia: Temple University Press.

- Delgado, R. & Stefancic, J. (2001). *Critical Race Theory: an Introduction*. New York and London: New York University Press.
- Derrida, J. (1992). Force of Law: The "mystical foundations of authority" (1989). In D. Cornell, M. Rosenfeld, D. G. Carlson (Eds.), *Deconstruction and the possibility of Justice* (3-67). New York/London: Routledge.
- Fish, S. (1994). *There's no such thing as free speech and it's a good thing, too*. Oxford/New York: Oxford University Press.
- Fish, S. (1995). *Professional correctness: literary studies and political change*. Cambridge (Mass)/London: Harvard University Press.
- Frankenberg, G. (2006). Partisanen der Rechtskritik: Critical Legal Studies, etc. In S. Buckel, R. Christensen, A. Fischer-Lescano (Eds.), *Neue Theorien des Rechts* (97-116). Stuttgart: Lucius & Lucius.
- Hartman, A. (2015). *A war for the soul of America: a History of the Culture Wars*. Chicago: University of Chicago Press.
- Hughes, G. (2010). *Political correctness: a history of semantics and culture*. Malden/Oxford/Chichester: Wiley-Blackwell.
- Linhares, J. M. A. (2020). Exemplarity as concreteness, or the challenge of institutionalising a productive circle between past and present, old and new. In A. Condello (Ed.), *New Rhetorics for contemporary legal discourse* (83-100). Edinburgh: Edinburgh University Press.
- Matsuda, M. (1989). Public Response to Racist Speech: Considering the Victim's Story. *Michigan Law Review*, 87, 2320-2381.
- Minda, G. (1995). *Postmodern Legal Movements. Law and Jurisprudence at Century's End*. New York/ London: New York University Press.
- Roth, P. (2000). *The Human Stain*. Thorndike: Thorndike Press.
- Santos, B. S. (2014). *Epistemologies of the South: Justice Against Epistemicide*. London/New York: Routledge.
- Tushnet, M. (1992). Political Correctness, the Law, and the Legal Academy. *Yale Journal of Law & the Humanities*, 4 (1), 127-163. <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1061&context=yjlh>.
- White, J. B. (1999). *From expectation to experience: Essays on Law and legal imagination*, Michigan: The University of Michigan Press.
- White, J. B. (2019). *Keep Law Alive*. Durham: Carolina Academic Press.