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## *Liberal Neutrality and Critical Pedagogy Liberalism in Educational Policy, Practice, and Discourse*

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### **Abstract**

*In spite of the tendencies of neoliberalism, aspects of liberalism still can serve the democracy-advancing goals that should be at the heart of higher education. This article focuses on one of the most promising such principles: the concept of viewpoint neutrality as defined by the Supreme Court. Viewpoint neutrality prohibits public university administrators from censoring or defunding programming sponsored by recognized student organizations, including performances by outside groups invited by said organizations. Viewpoint neutrality mandates official allowance for robust group expression, thereby creating space for student groups to assert critical perspectives in an open forum regardless of what officials, who would be expected typically to favor the neoliberal orthodoxy, would prefer, as the specific case examined in the essay demonstrates.*



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## **Liberal Neutrality, Democracy, and Higher Education**

Coming from within the broad category of “liberal,” I recognize the high likelihood of being held in low esteem by many who hold more radical, critical perspectives. At the same time, I see common objections to disagreeable variants of liberalism, especially neoliberalism, and think that there is ample room for coalition-building among critical viewpoints. In this essay, I identify the faultlines within liberalism that make me think such coalition-building is possible and recount a specific campus controversy that serves as a microcosm for this optimistic assessment. I will provide a specific description of viewpoint neutrality and explain why it was the most useful tool for bringing a performance group to campus to present challenging, critical material. In examining the particulars of the controversy, I will note other, more activist efforts the club made, acknowledge contingencies that limited the role for these more critical engagements, and emphasize that this example does not produce a template for universal application. However, these considerations only strengthen the position that viewpoint neutrality can be useful in certain circumstances. Thus, I will conclude by arguing that viewpoint neutrality, a principle compatible with, if not native to, liberalism, and rooted in equal treatment with respect to the right to free speech, provides a good example of how liberalism need not collapse into neoliberalism and, in fact, can serve interests critical of it.

In sharing alarm at the influence of neoliberalism on contemporary society, including institutions of higher education, I see two major critiques that may be levied at neoliberalism, but that do not strike at necessary beliefs of all liberal viewpoints. The first is that “neoliberalism is a kind of secular faith” (Duggan, 2003, p. xiv). For neoliberalism, this typically manifests itself in a faith in free markets. This is one example of a larger liberal faith in “progress” that has plagued many varieties of liberalism throughout its (Gray, 2000, 2002). The notion that all will get worked out as the motor of progress does its work is not limited to particular liberal perspectives, but it is the neoliberal variant that is currently ascendant. This belief works to diminish the importance of political engagement and devalues democracy as a competing forum for resolving social issues. Such a faith also makes much easier the second error: a universalistic outlook that all too frequently fails to acknowledge that most political victories are partial and contingent. These errors attract each other. The more universalistic the outlook, the likelier one is to view progress as self-fulfilling. The more it appears progress is foreordained, the less need there is to worry about details.

And so the particulars of identity, which historically have affected market access and market power, come to be viewed as inconveniences to be worked around rather than realities to be addressed politically. Historical narratives accentuate consensus and liberal advancement, minimizing conflict and partiality. As an obvious example, the high point of the 20<sup>th</sup> century American welfare state, Franklin Roosevelt’s New Deal, was implemented largely according to the dictates of racist Senators from southern states (Katznelson, 2005). Further, as David Theo Goldberg has argued, these partial political gains in the name of racial equality have given way to an antiracism mindset that has effectively perpetuated, via the narrative of colorblindness, “whiteness by another name” (Goldberg, 2009, p. 22). The consequences of this are easy to see when one examines “de facto” outcomes that persist in a post-Civil Rights era, such as segregated residential patterns and the subsequent inequalities that follow (Massey, 2008; Anderson and Massey, 2004). The rampant inequality with respect to incarceration rates-and of overall treatment by the criminal justice system generally-has reached such an extreme that

numerous conservatives and/or libertarians are calling for reform (Silverglate, 2011; Stuntz, 2011).

The overlapping interests of conservatives and libertarians is a critical element of the influence of neoliberalism. In a theoretical vacuum, libertarian anti-statism has its appeal. The earliest sustained free speech movement in the United States was largely the work of “libertarian radicals” like Theodore Schroeder, whose Free Speech League extended beyond protection of narrow political speech to include criticism of the Comstock Act, advocacy of birth control, and labor activism (Rabban, 1997). Rigorous libertarians oppose state intervention in the economy on several points of tension—such as the use of eminent domain in private development of “blighted” areas and federal bailouts of overleveraged banks—identified by David Harvey in his critique of neoliberalism (Harvey, 2005, pp. 67-73). However, the pure libertarian perspective, with its near absolute belief in the ability of markets to most effectively address concerns of social justice has consigned it to minority status ideologically. Libertarian faith in markets—and opposition to the state—may be the beating heart of neoliberalism, but neoliberalism is about more than just ideological belief. So, as Harvey has shown, “neoliberalism does not make the state or particular institutions of the state...irrelevant.... [Instead] [t]here has...been a radical reconfiguration of state institutions and practices” (78).

The preceding is a necessarily slight engagement of a much larger topic. What is of immediate pertinence is how these larger issues are increasingly replicated at colleges and universities. In particular, how notions of civility and civil society are presented through a neoliberal lens that is universalist in its reliance on market values and distrustful of democratic engagement beyond narrowly prescribed boundaries.<sup>1</sup> At public universities, the state is ever-present. While one may not think of college administrators, from the president on down, as agents of the state, it is true not only to the extent that taxpayer contributions fund operations, but in the broader sense that much of what a university does is “form, fashion, make, and mold—in short...manage—their heterogeneous populations” (Goldberg, p. 328). At the level of higher education, this type of management is captured well by Henry Giroux’s notion of “corporate culture,” the “ensemble of ideological and institutional forces that functions politically and pedagogically both to govern organizational life through senior managerial control and to fashion compliant workers, depoliticized consumers, and passive citizens” and that views “citizenship...as an utterly privatized affair whose aim is to produce competitive self-interested individuals vying for their own material and ideological gain” (Giroux, 2002, p. 429).

In such an environment, institutions of higher learning still do carve out some space for students to pursue their own ideas and lines of inquiry, including through the formation of student organizations that may avail themselves of university funds to help in this pursuit. When these organizations put on programming, including bringing in speakers from off campus, they are usually entering a (limited) public forum that merits particular protection according to the United States Supreme Court. The key principle to the Court is known as viewpoint neutrality. Through the specific example that follows, I argue that viewpoint neutrality should not be viewed as a principle of neutrality that thus homogenizes expression into an individualistic, typically white male perspective of limited scope. Despite the connotation of neutrality, the effect is the opposite. In their holdings, the Court has declared that public universities must leave

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<sup>1</sup> Setting aside, of course, other hugely topics relevant to neoliberalism influence on education such as the funding of primary schools through property taxes, the construction and importance of standardized tests, and the manner in which college admission decisions are made.

space open for organizations to express whatever perspective they wish to express. The right being protected is a group right, and it is the right to public expression of unpopular opinions, a right crucial to resisting orthodoxy of any stripe. As I will show, because the Supreme Court built a specific boundary against state dogma, viewpoint neutrality should be of value to any critical perspective that seeks to counter the influence of neoliberalism.

## **Viewpoint Neutrality**

In early 2010, the Women's Center Club (hereafter club) of a mid-sized regional comprehensive school in Pennsylvania, an officially registered student organization, attempted to bring a spoken word duo to campus to perform. A university administrator (hereafter Administrator X) determined the duo's name—Pussies, Pens & Politics (hereafter PPP)—was offensive and denied the club's request, by refusing to allow expenditure of funds already budgeted to the club. The club believed itself to be a victim of injustice and explored several avenues for bringing PPP to campus. Ultimately, the club was successful in its efforts and PPP performed on campus in December, 2010. Of these approaches, the one that proved most successful was an argument asserting that Administrator X was violating the club's constitutional rights. As a professor of political science who teaches constitutional law, I wrote the analysis making this argument. The core of the argument was focused on a principle of First Amendment law known as "viewpoint neutrality," which is a type of "content neutrality." Content neutrality prohibits any element of the state—including an administrator at a publicly funded university—from making some subjects off limits in an already established forum of discussion. Viewpoint neutrality similarly prohibits the state from prohibiting specific perspectives on a subject under discussion or preventing the participation of groups with an expressive viewpoint. The requirements of content and viewpoint neutrality cover actions such as issuing a parade permit, but often are applied in an educational context, such as when an administrator allows facilities to be used or makes funding decisions. University counsel agreed with this analysis and Administrator X dropped his objections, allowing PPP to perform on campus.

My argument assumes the given-ness of the Supreme Court's broad understanding of the First Amendment, an understanding that protects the free speech rights in an expansive manner that many scholars coming from critical perspectives find objectionable. I, in no way, am arguing that proponents of critical pedagogy would be well-served by comprehensively embracing a strategy focused on constitutional law as a key source of change. Indeed, I recognize that the concept I am promoting, viewpoint neutrality, can have consequences in some situations that many campus activists will disclaim. For example, in *Rosenberger v. University of Virginia* (515 U.S. 819, (1995)), the University of Virginia refused to reimburse printing expenses incurred by a recognized student organization with a Christian viewpoint, Wide Awake Productions (WAP), because the university had deemed reimbursement of the printing costs of WAP's newspaper as constituting funding a religious activity, and would therefore violate the First Amendment's Establishment Clause. However, while the Court upheld the free speech rights of a religious campus group, what is relevant is how the Court conceived of those rights. In the majority opinion, Justice Kennedy emphasized the concepts of content and viewpoint neutrality and the requirements they impose on official actors when making funding decisions:

It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. Other principles follow from this precept. In the realm of private speech or expression, government regulation may

not favor one speaker over another. Discrimination against speech because of its message is presumed to be unconstitutional. These rules informed our determination that the government offends the First Amendment when it imposes financial burdens on certain speakers based on the content of their expression. When the government targets not subject matter but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant. Viewpoint discrimination is thus an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction (p. 828, internal citations omitted).

The university and its administrators, as agents of the state, are forbidden from taking sides. Because universities charge mandatory fees-separate from tuition payments-to fund student organizations, funding decisions are to be made without consideration of the *content* of a group's message (subject matter) or the specific *viewpoint* being taken (ideological position).

A subsequent case, *Board of Regents Univ. Wisc. v. Southworth* (529 U.S. 217, (2000)), strengthened this understanding. In *Southworth*, a group of conservative students challenged the funding of student groups whose messages they found objectionable. The students argued that though UW-Madison was permitted to require them to pay fees to support campus organizations, they still retained the right to dictate which organizations their specific payments would-and would not-fund. UW-Madison argued that this was an onerous requirement and that the fees went into a common fund that was to support the activities of all recognized student organizations. Because this case did not involve the religion clauses-Free Exercise and Establishment-of the First Amendment the Court was unanimous in its decision and more unified in its legal reasoning. Justice Kennedy spoke for six of the nine justices in his majority opinion, where he declared that the "First Amendment permits a public university to charge its students an activity fee used to fund a program to facilitate extracurricular student speech *if the program is viewpoint neutral*" (p. 221, emphasis added). By maintaining viewpoint neutrality the university is able to clearly differentiate between university-endorsed speech (commencement speakers) and speech that is not so endorsed (student group activity). Because student fees are mandatory, are deposited into a common pool, and are allocated according to set university guidelines that respect viewpoint neutrality, there is no legal reason for concluding that any particular funding decision advances a favored position of the university.

Viewpoint neutrality allows student groups to operate free from administrative dictate. Once an organization attains formal recognition from the university, it becomes a speaker with full free speech rights, including the right to use its budget as it chooses. Inevitably, some spending decisions will offend other students. In *Southworth*, the Court took this inevitability seriously, announcing that the constitutionally permissible remedy is not prevention of offensive speech but rather the protection offered by viewpoint neutrality. A viewpoint neutral funding system ensures that no single listener or groups of listeners is being targeted for offense. The alternative for the university would be not to collect such fees at all and to require student organizations to raise their own funding. This alternative would disadvantage organizations with critical voices, those that wish to challenge established perspectives such as neoliberalism. Thus, viewpoint neutrality, even if embedded in a liberal context, is a useful tool for campus groups with critical perspectives.

## **Initial Student Activism**

In Spring 2010 several campus organizations attempted to bring PPP to campus. These organizations didn't anticipate this being a major issue as PPP had already performed at several other universities. However, Administrator X emailed the faculty advisor of the Women's Center Club, noting his concerns about the name of the group. In particular, he cited the group's use of the word "Pussies" in their name and noted "the potential confusion that it might cause when viewed by our student body" (personal communication, February 8, 2010). He concluded his email by indicating uncertainty as to why the university would want to associate with the event, either by advertising the name of the group or by signing a contract authorizing payment. He thus assumed that the expenditure of funds by a student organization somehow implied or equated to formal university endorsement, the very position Supreme Court rejected in *Southworth*. The advisor responded by stressing the importance of context in the deployment of potentially offensive terms. She contrasted the use of a term as an epithet—when scribbled on a student's door—with its use as an attempt at reclaiming the term—such as when used in the title of a performance group. She gave further examples of groups reclaiming verboten terms such as "fag," "dyke" and "queer," and noted that "[i]t can be highly disempowering to censor marginalized people who try to reclaim language for their own empowerment" (personal communication, February 8, 2010). This back and forth continued for some time with no progress being made. Administrator X would note his misgivings and couch his objections in terms of the overall well-being of the university community and the advisor would emphasize the disempowerment explicit in administrative censorship of club activities. At this stage, nobody had invoked constitutional perspectives and, once it was clear no progress was possible, the Women's Center Club decided to pursue a more activist strategy.

This strategy was predicated on publicizing the issue in a way that brought to the fore the paternalism involved in Administrator X telling the students what is and is not offensive. The club expressly refused both suggestions provided by the administrator: asking PPP to change its name and having the club submit its request to an additional layer of bureaucratic review. In a letter to the administrator, the club's executive board noted feeling "silenced and oppressed" and "disempowered as a whole" (personal communication, February 22, 2010). Stating that they were "wary of your ability to determine the offensiveness of the use of the word 'pussy' among the women on campus" (personal communication, February 22, 2010), the board declared that the only viable option they had was cancelling the performance. Also, the organization's president wrote an op-ed for the student newspaper and the organization held a rally that the newspaper also covered. These public actions were well received and other organizations reached out to the group in a spirit of solidarity, including the student body president, who noted that "your program is not the first to be attacked because the choice of words is undesirable to a few select administrators" (personal communication, February 16, 2010) in an e-mail to the club's president.

However, the good will subsided when some posters appeared on campus caricaturing Administrator X as Prince Charming riding to the rescue of the club's members. This upset—or provided a pretext to—the student body president, who now argued that "[p]ersonally, I have been unable to help because of the public attacks on [Administrator X's] character, which I personally think went too far" (personal communication, March 18, 2010). It also troubled the president of the Lesbian, Gay, Bisexual, Transgender, Queer, Questioning and Ally Services Association (LGBTQA). LGBTQA considered Administrator X a valuable ally and the posters

represented a bridge too far. The president communicated that they could no longer completely support the Women's Center's efforts. While noting that he "in no way support[s] acts of censorship," he also made clear that he "do[es] not support demeaning methods of protest" and "ha[s] a personal issue with the fliers" (personal communication, February 24, 2010). With Administrator X having maintained his stance, the club decided to pursue another alternative.

### **Bringing in the Constitution-and Neutrality**

I shared the organization's frustration with the fair weather nature of the statements of support and I respected the organization's activist turn, both because the various actions reflected the considered decision-making of the organization and because I do not think that painting within the lines is always the right choice. As James C. Scott has recently noted, "ingrained habits of automatic obedience c[an] lead to a situation that, on reflection, virtually everyone would agree [i]s absurd" (Scott, 2012, p. 22). In this example, any consideration of the power relations involved would counsel siding with the Women's Center even if the fliers were offensive and I would hope that, at present, the student body president and LGBTQA president would realize this. Overt attempts to prescribe centrally acceptable forms of description are an obvious example of the "authoritarian high modernism" that Scott has detailed and that is crucial to the neoliberal project's goal of minimizing the political (Scott, 1998, 2012). By this point I had been approached by a student affiliated both with LGBTQA and the Women's Center Club who had previously taken constitutional law from me. He had stopped by my office hours, related the details of the controversy, and asked for my thoughts. I had told him it appeared that Administrator X had acted in a way that was obviously unconstitutional. While I made clear that being right on the merits did not guarantee a positive resolution, I was willing to help out however I could.

Subsequent to the op-ed and protest, the club advisor let me know that the club would appreciate it if I could write up my thoughts and lay out why I thought the denial was unconstitutional. The analysis I produced was a specific application of the principle of viewpoint neutrality consistent with what I outlined above. The club's leadership read over what I had written and used the analysis in subsequent communication with Administrator X in hopes that he would reverse his previous decision. When this proved unsuccessful, the club asked another faculty member and me to meet with Administrator X in person. This personal meeting went similarly. Views were discussed and hypotheticals were exchanged, but it was quite clear by the end that no minds were changed. I had brought along a copy of my analysis and he assured us he would pass it along to university counsel, but no action other than that was agreed upon. After the meeting, I e-mailed the club president and related the details. The club weighed their options and decided the best one would be to take the issue up again in the fall. This was the last I heard of the issue until the first week of class of the fall semester, when the Women's Center Club advisor informed me that PPP had been cleared to perform on campus under their chosen name. She did not specify what led to this change in policy but indicated a strong suspicion that university counsel had determined that refusal to allow the performance-and advertisement of it-would open the university up to legal action. Later that semester, PPP, co-sponsored by five organizations, performed before an audience of approximately 150. Their performance was as advertised-skilled, humorous and challenging-and was well-received by almost everyone in attendance.

## **Lessons Learned**

In spite of the ultimate success in bringing PPP to campus, I am not suggesting that the example recounted above provides an object lesson in how to proceed. Rather, I think it is illustrative. It would have been far more preferable if the club had managed to maintain a strong coalition of support and changed Administrator X's mind through public discussion, including protests that called attention to the controversy. Once constitutional argument proved necessary, it would have been better had Administrator X been more open to weighing those arguments when presented by club leaders, instead of acting only after they were presented by a faculty member who specializes in the subject matter. At the same time, to anybody who acknowledges the distinction between neoliberalism and a liberalism rooted in civil liberties, the resolution was a net positive (Giroux, 2004, p. 32). Further, the resolution does reveal a space for real coalition-building, free of litmus tests and maximally responsive to opportunities for application. Liberals can completely share Apple's view that "a particular class fraction-the professional and managerial new middle class-has increasing power in educational and social policy" (as cited in McGrew, 2011, p. 23). A liberal looking to build bridges, such as myself, can second Giroux's argument for "expanding both the meaning of the pedagogical as a political practice while at the same time making the political more pedagogical" (Giroux, 2004, p. 33). Therefore I would hope that any critic of neoliberalism wary of the "narrowing of vision" and "exclusion of those who are not members of their collective" (McGrew, 2011, p. 34) would conclude that there is enough common cause between non-neoliberal liberals and other, more radical critics of neoliberalism, to work constructively in response to the rapidly entrenching educational middle class.

One can prefer that a more radical technique and a more inclusive methodology had proved successful in convincing the administration to recognize that they couldn't keep PPP from coming to campus while still realizing that it's a good thing PPP did, eventually, make it to campus. Now that there is precedent, now that active faculty and staff on campus are aware of viewpoint neutrality and the way it can be of use in certain instances, it can be a tool for challenging a neoliberal status quo. It may not be the first tool used, but it is there nonetheless, more accessible than it was before my concerned student stopped by my office hours. As Giroux noted, the fundamental tension at the heart of the "crisis of public schooling and higher education" is "between those who value such institutions as public goods and those advocates of neoliberalism who see market culture as a master design for all human affairs" (p. 39).

The liberal concept of neutrality has value in such controversies so long as the dominant perspective of the "professional and managerial new middle class" is that of neoliberalism. This is because neutrality, as a legal concept, is used to thwart actions of agents of the state. When used to disadvantage racial minorities by striking down racial balancing plans for primary schools or overturning hate speech laws, neutrality will appear anti-democratic. However the actions of Administrator X are hard to view as an example of meaningful democracy. In a higher education setting, the requirements of viewpoint-neutrality will often favor activist groups because it is applied against the state and the state is typically represented by an official with a vested interest in adhering to what is conventional and avoiding disruption.

This is perhaps easier to understand if we step away from thinking of the concept as one of neutrality alone and instead note the interest neutrality is meant to serve. The purpose of constitutional arguments predicated on claims of neutrality is to require state actors to vacate the area under discussion. Even if neutrality is a questionable, even impossible, aspiration, the



aspiration toward it requires room to pursue it. Consider the following passage from *West Virginia State Board of Ed. v. Barnette* (319 U.S. 624 (1943)), a famous decision declaring unconstitutional a school policy compelling salutation of the flag and recitation of the Pledge of Allegiance:

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us (p. 643).

Set aside, for a moment, any consideration of whether this decision ensures neutrality or even if neutrality is possible. What is important about the quote, whether one sees in it universal truth, soaring rhetoric, or empty promises, is what the Court declares neutrality to require: room for the individual citizen to make such determinations on one's own. This includes Administrator X imposing his understanding of what is offensive on the Women's Center Club. In many situations the state may creep back in elsewhere. Or maybe the room to maneuver will be filled by market forces later. Maybe other structural factors ensure that much of society will never bother to make such important inquiries. Such objections can be raised by radical activists of all stripes. None of these objections diminish the suitability of an appeal to viewpoint neutrality for critics of neoliberalism.

## **Conclusion**

As a consequence of the successful assertion of a viewpoint neutrality-based argument, a provocative group was able to come to campus and speak from an intersectional perspective representing several different marginalized identities. PPP issued a direct challenge to the audience to critically engage themselves and each other and presented political content that was radical, but not in the name of a particular ideological perspective. Instead, PPP offered an affirmative response to the question raised by Heckert, Shannon, & Willis (2012, p. 14): "Can there still be radical alternatives to capitalism and the state if they are not totalizing institutions and if we must also focus elsewhere, perhaps in our everyday lives, in order to alter our social relationships?"

My argument for viewpoint neutrality is not an argument for moving constitutional interpretation to the center of the struggle against neoliberalism. It doesn't belong there. Nor is it even an argument for seeing a broad coincidence of objectives among various critical perspectives. Such a coincidence doesn't exist. Constitutional law is too deeply embedded in standard narratives of our nation-state to serve these purposes. Its recent usage has too often been in support of neoliberal values to be viewed as a reliable tool in any comprehensive way. Further, the concept of neutrality is too problematic even if these other conditions didn't hold. However, a strategic appeal to viewpoint neutrality *can* be of service in a campus setting to those who wish to challenge the existing neoliberal status quo. When used to create room for activist student organizations to explore critical ideas free from state interference, in the form of university administrators, viewpoint neutrality can make a contribution to the vitality of higher education. This is indisputably a worthy pursuit.

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