PETER WOOD

The Illusion of Institutional Neutrality

NATIONAL ASSOCIATION *of* SCHOLARS

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Introduction

Colleges and universities are now at the center of a heated debate over Hamas and Israel. Some supporters of Hamas justify its massacre of Israelis on October 7; some repeat slogans that assert the goal of Hamas to eradicate Israel; some engage in other forms of verbal denigration of Jews; and some proceed to vandalism, assault, and at least in one case, murder. Supporters of Israel decry the anti-Semitism of the Hamas apologists and the broader wave of anti-Semitism which has followed. After Israel began it retaliatory attacks on Hamas in Gaza, an additional confrontation arose between those who support Israel's actions and those who denounce those actions. This second confrontation maps onto the first one, but imperfectly. Some who denounce anti-Semitism also denounce Israeli's action in Gaza.

All of this is painfully obvious, but I restate it to provide the context for the emergence of a deeper debate. Should American colleges and universities take positions on any of these matters? Should they have issued strong public denunciations of Hamas immediately after the October 7 massacre? Should they have repudiated the campus apologists for Hamas who began voicing their delight at the killings less than a day later? Should they, on the contrary, have voiced support for the rights of the students to celebrate these atrocities as justified resistance to "settler colonialism"? Should American universities have expressed disapproval of Israeli retaliation?

These questions continue to roil American higher education and, in that context, an old idea has resurfaced. Some leaders in higher education have called for "institutional neutrality."

Something like "institutional neutrality" appeared early on when the presidents of several major universities responded to pro-Hamas campus demonstrators with muted comments. President Claudine Gay at Harvard, for example, appeared to put Hamas and Israel at the same level of culpability and deplored violence on "all sides." Under pressure, President Gay issued a series of further statements that edged toward condemning Hamas, but each had an undertone of equivocation.

And this was one of the factors that led to the hearing before the House Committee on Education and the Workforce on December 5, in which President Gay, President Sally Kornbluth (MIT), and President Elizabeth Magill (University of Pennsylvania) each evaded a question posed by New York Congresswoman Elise Stefanik: "At [MIT, Penn, Harvard] does calling for the genocide of Jews violate [MIT's, Penn's, Harvard's] codes of conduct or rules regarding bullying and harassment?" Each replied with a variation of, "It depends on context." That widely criticized answer led directly to the resignation of Magill and contributed strongly to the resignation of Gay a month later.

In effect, the three presidents had summoned the principle that colleges and universities should do their best to stand outside or above heated controversies when these break out among students and faculty. Each professed not to endorse Hamas or the pro-Hamas sympathizers, but they were willing to extend some latitude in view of the importance of "free speech," provided the speakers did not proceed to acts of violence.

What is this doctrine of "institutional neutrality"? And is it a good thing?

Academic Freedom's Broken Shield

Surprisingly little has been written about the concept of institutional neutrality. As an idea, it is paired with "academic freedom," but since the early twentieth century academic freedom has been the subject of more than two hundred books, many thousands of articles, and is enshrined in the policies of almost all American colleges and universities. As far as I can tell, only one book has ever been published on institutional neutrality—a book that has been out of print for over fifty years.[1] I have found one law review article, from 1993, a statement from the American Association of University Professors (AAUP) from 1969, and a follow up series of comments in AAUP publications in 1970.[2] No doubt there are gaps to be filled in this inventory, but it is plain that "institutional neutrality" has been far from a central topic in higher education's policy discussions—despite its special prominence in the 1967 Kalven

1 Fritz Machlup, Walter P. Metzger, Richard H. Sullivan, *Neutrality or Partisanship: A Dilemma of Academic Institutions*, Bulletin 34 (New York: Carnegie Foundation for the Advancement of Teaching, 1971). Available as ERIC document ED 052 70.

2 David Barnhizer, "Freedom to Do What? Institutional Neutrality, Academic freedom, and Academic Responsibility," *Journal of Legal Education* 43, no. 3 (September 1993): 346-357; "A Statement of the Association's Council: The Question of Institutional Neutrality." *AAUP Bulletin* 55, no. 4 (December 1969): 488; Donald N. Koster and Winton U. Solberg, "On Institutional Neutrality," *AAUP Bulletin* 56, no. 1 (March 1970): 11-13; Carl Landauer, Denis Cowan, Tyrus Hillway, and Kalman Goldberg, "Further Comments on Institutional Neutrality," *AAUP Bulletin* 56, no. 2 (June 1970): 123-129.

Report from the University of Chicago, which will be discussed later in this essay.

In the last year, however, dozens of articles dealing with the topic have appeared. The *Chronicle of Higher Education*, in particular, has featured numerous essays on it, and other writers in magazines and on Substack have weighed in.[3] This recent spate of material includes both efforts to advance institutional neutrality as a promising approach to today's conflicts and efforts to unseat it or discard it.

The sudden prominence of the concept in discussions over how universities should handle controversial issues warrants an attempt to recover the history of the concept. This essay is in part an effort to trace where the idea came from, but I also am intent on explaining why it never quite has caught on. And I wish to add my own and the National Association of Scholars' critique of the concept.

3 Brian Soucek, "Academic Freedom and Departmental Speech," *Academe* 108, no. 2 (Spring 2022); Brian Rosenberg, "Should Universities Take Political Stands?" *The Chronicle of Higher Education*, March 31, 2022; Richard Shweder, Anna Krylov, et al., "Institutional Neutrality and the Mission of the University," Conference hosted by the James Madison program in American Ideals and Institutions, November 11, 2022, https://www.youtube.com/watch?v=ng1UJUroqCY; Sylvia Goodman, "Can a University Be Politically Neutral?" *The Chronicle of Higher Education*, December 5, 2022; Brian Rosenberg, "The Deafening Silence of Florida's College Presidents," *The Chronicle of Higher Education*, April 6, 2023; David Jesse, "Presidents Are Changing their Tune on Free Speech," *The Chronicle of Higher Education*, May 3, 2023; David A. Bell, "Where Does Your Department Stand on Abortion? Antiracism? Immigration?" *The Chronicle of Higher Education*, June 26, 2023; Jeffrey Flier, "Now Is the Time for Administrators to Embrace Neutrality," *The Chronicle of Higher Education*, October 13, 2023; Tom Ginsburg, "The Case for University Silence," *Persuasion*, October 25, 2023. https://www.persuasion.community/p/the-case-for-university-silence; Len Gutkin, "What is institutional neutrality, anyway?" *The Chronicle of Higher Education*, October 30, 2023; Charlotte Matherly, "College Presidents Debate When to Speak Out — and When to Keep Quiet," *The Chronicle of Higher Education*, November 16, 2023; Jennifer Ruth, "The Uses and Abuses of the Kalven Report," *The Chronicle of Higher Education*, November 16, 2023; Adrienne Lu, "Should College Administrators Take Political Positions?" *The Chronicle of Higher Education*, December 2, 2023; Keith E. Whittington, "Colleges Can Recommit to Free Speech or Double Down on Sensitivity," *The Chronicle of Higher Education*, December 7, 2023; Michael Vasquez, "Is Institutional Neutrality Catching On?" *The Chronicle of Higher Education*, February 8, 2024.

For the reader who is in a hurry to get to the heart of the debate and who doesn't see the need to wade through the history of the idea, I offer the following summary. The concept of institutional neutrality never caught on because fundamentally it is self-defeating. As it was originally framed by Arthur O. Lovejoy in 1915, institutional neutrality was a principle aimed at curtailing the readiness of academic administrations to take sides in disputes in which some of their faculty members were on the other side. Institutional neutrality was meant to be a bulwark protecting academic freedom. But even Lovejoy recognized that the principle could not be absolute. Universities had to stand for something. They couldn't be neutral about essential issues.

This poses a problem: Which issues rise to the level of importance that required an exception to institutional neutrality? It might surprise some readers that Lovejoy himself in 1949 published a substantial article in *The American Scholar* arguing that "to safeguard academic freedom [...] members of the Communist Party should be excluded from university teaching positions." Lovejoy was a progressive and a man of the left, but in his vision, "institutional neutrality" stopped short of universities appointing to their faculty individuals—even highly qualified individuals—who espoused a political ideology that cut against the free expression of opposing views. He wrote "there is one kind of freedom which is inadmissible—the freedom to destroy freedom."[4]

Because the doctrine of institutional neutrality always contained this loophole, it was a frail bulwark. University administrations in the end still had to make prudential judgments whether to take a stand for or against a position or to declare themselves neutral. The value of a principle that disintegrates on contact with reality can be doubted. Later in this essay I will elaborate on this weakness. There are four reasons why institutional neutrality

4 Arthur O. Lovejoy, "Communism versus Academic Freedom," *The American Scholar* 18, no. 3 (Summer 1949): 334.

should be set aside as an approach to dealing with controversial issues. The doctrine:

1. empowers the mob;
2. excuses the college president;
3. undermines rightful authority;
4. confuses the public.

But before we reach these points, let's further examine the origins of institutional neutrality.

Origins

In 1967 the University of Chicago issued a brief document, the "Report on the University's Role in Political and Social Action."[5] It was the results of deliberations of a faculty committee chaired by Harry Kalven, Jr, a highly respected professor in the Law School, and an expert on constitutional law. The report, which has come to be known as the "Kalven Report," is highly unusual in two respects. First, for a report from an academic committee, it is extraordinarily concise: 983 words, not counting the signatures. Second, it has survived as a key document in higher education for more than a half-century. Few academic pronouncements outlive the semester in which they are promulgated.

What makes the Kalven Report special is that it addresses how a university should deal with political controversies in light of its educational mission. The University of Chicago at that time faced several controversies that might together be called *student unrest*. Some students demanded the University divest from companies with ties to the South Africa. Some students were engaged in civil rights protests based on racial grievances. Other students kept the tradition of booing conservative speakers. George Beadle, the president of the university, had declared that the university would comply with a law that required it to provide the government with academic information about students who had registered for the Vietnam War draft. According to the University of Chicago's

5 Kalven Committee, *Report on the University's Role in Political and Social Action* (1967), https://provost.uchicago.edu/reports/report-universitys-role-political-and-social-action.

student newspaper, *The Chicago Maroon*, "a group of over 400 students staged a sit-in at the Administration Building to demonstrate their opposition [to the president's decision]."[6]

In its report, the Kalven Committee named none of these matters, but instead turned back to earlier controversies, including debates over "neighborhood redevelopment" in the 1940s and the National Defense Education Act of 1958. It did, however, mention an earlier dispute "on furnishing the rank of male students to Selective Service." In other words, the Committee sought a historical perspective though which to assess the current dissension.

It then evoked the purpose of the university as a place where "discontent with the existing social arrangements" was to be seen as one of the appropriate results of academic inquiry. The key paragraph, in full, states:

> The mission of the university is the discovery, improvement, and dissemination of knowledge. Its domain of inquiry and scrutiny includes all aspects and all values of society. A university faithful to its mission will provide enduring challenges to social values, policies, practices, and institutions. By design and by effect, it is the institution which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting.

This conception of the university provides no grounds for shutting down debate—at least not debate in the sense of expressing discontent. But the committee stipulated that:

> A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage

6 Marina Fang, "Born amidst '60s student protests, Kalven Report remains controversial," *The Chicago Maroon*, February 21, 2013, https://chicagomaroon.com/16703/news/born-amidst-60s-student-protests-kalven-report-remains-controversial/.

> the widest diversity of views within its own community. It is a community but only for the limited, albeit great, purposes of teaching and research.

A "diversity of views" is hospitable to all sides of a debate, but it doesn't open the door for either side to use violence or other tactics to silence opponents. And the qualifier, "for the limited, albeit great, purposes of teaching and research," puts some boundaries around what a university should be "hospitable to."

My summary of the first five paragraphs of the Kalven Report, however, doesn't reach what made the report famous or why it remains a center of attention. That comes next. The committee observes that the university can't take collective action on "the issues of the day" without contradicting its basic purpose:

> There is no mechanism by which it can reach a collective position without inhibiting that full freedom of dissent on which it thrives.

And in the paragraph following, the committee introduces the idea and the phrase (almost) for which the report is famous:

> The neutrality of the university as an institution arises then not from a lack of courage nor out of indifference and insensitivity.

This is usually summarized as the principle of "institutional neutrality." And, post-October 7, it is all the rage.

For a good many years, academic reformers including the National Association of Scholars have extolled institutional neutrality as a better way for colleges and universities to deal with the heated political issues of our time. NAS objected in 2012 when the president of Bowdoin College instructed its students to vote

in favor of a ballot measure establishing gay marriage in Maine. We objected in 2015 when hundreds of college presidents across the county signed the "College and University Presidents' Climate Commitment," which elevated the importance of fighting climate change to a higher status than education. We objected in 2020, when college and university presidents in the wake of George Floyd's death declared their own institutions guilty of "systemic racism" and in many cases acceded to the agenda of Black Lives Matter. These are but a few of the instances in which we argued that "institutional neutrality" would have been the better course.

We were, of course, generally ignored by the higher education establishment, as were other organizations such as Foundation for Individual Rights and Expression and American Council of Trustees and Alumni that made similar arguments on other matters where college and university administrations were pitching themselves headlong into policy debates where they had no proper role to play.

Before the Kalven Report—and After

My aim in this essay is to critique the concept of "institutional neutrality," which I could do directly based on its current employment in various declarations. But since the term comes with a certain patina of old authority, I think it may be useful to sketch its history, both before the 1967 Kalven Report and its subsequent career. The Kalven report didn't come out of thin air, and neither did the phrase "institutional neutrality," although the phrase had a fugitive existence before the Kalven Report gave it broader currency.

The most important consideration is that "neutrality" came to be treated as a central principle in American higher education during the last third of the nineteenth century, but the neutrality in question was that of individual faculty members. Perhaps most famously, Charles W. Eliot in his 1869 inaugural address as president of Harvard inveighed that "Exposition, not imposition, of opinions is the professor's part." As for the role of university administration. He declared, "The only conceivable aim of a college government in our day is to broaden, deepen, and invigorate American teaching in all branches of learning."[7] Eliot did not use the word "neutrality," but it was soon widespread and paired with the word "competence" as describing the two principal

7 Charles W. Eliot, *Inaugural Address as President of Harvard College*, https://homepages.uc.edu/~martinj/Ideal%20University/5.%20%20The%2019th%20Century%20American%20College/Eliot%20-%20Inauguration%20Address%201869.pdf

duties of faculty members at most secular American colleges and universities.

The signal controversies at the turn of the century, including Stanford University's decision to fire its socialist economics professor Edward A. Ross, were framed as cases of individuals who had violated their institution's norms of instructional neutrality.

The American Association of University Professors was formed in 1915 by fifteen professors who were aggrieved by these dismissals. Their immediate cause of action was the decision by the University of Pennsylvania to fire another radical economics professor, Scott Nearing. Their *Declaration of Principles,* principally written by Arthur Lovejoy, became one of the founding documents of American higher education in the twentieth century. In it, the authors effectively turned Charles Eliot's concept of neutrality upside down. The *Declaration* asserts that it is the academic administration, not the individual faculty member, that has the solemn obligation to refrain from imposing doctrine or authoritative opinion. Again, the word "neutrality" is absent from the key text, but the idea is plainly stated:

> It is obvious that here again the scholar must be absolutely free not only to pursue his investigations but to declare the results of his researches, no matter where they may lead him or to what extent they may come into conflict with accepted opinion.

The authors of the *Declaration* feared that administrative interference with academic freedom would arise from "economic conditions or commercial practices in which large vested interests are involved." They were particularly worried about "the governing body of a university [which] is naturally made up of men who through their standing and ability are personally interested in great private enterprises." They also worried about the influence

of lesser "benefactors" and "the parents who send their children to privately endowed institutions." The *Declaration* proposed as a counter to all these dangers a fierce dedication on the part of universities to the freedom of individual faculty members to express themselves—a freedom that would be compromised if their university administrations were to take official positions on the social, political, and intellectual issues of the day.

It seems likely that this advocacy gave birth to the phrase "institutional neutrality," but I have not succeeded in locating it in the writings of Edwin Seligman, Arthur Lovejoy, or the other signatories, or of John Dewey, who, though not a signatory of the *Declaration*, was a strong supporter of it. Be that as it may, the concept of institutional neutrality, if not the phrase, was in active use one hundred years ago as academics debated how best to balance the need for coherent university administration with the intellectual freedom of faculty.

Journals and books on higher education in this period are silent on the topic, but in 1953 the *Papers of the International Association of Universities* showed a sudden spike of interest in the concept. It is named in four separate papers ("University Education and Public Service," "A Critical Approach to Inter-University Cooperation," "Problems of Integrated Higher Education," and "International University Co-Operation.") One of these papers refers to "the traditional concept of institutional neutrality" as "the product of particular historical circumstance. It is, I suppose, essentially a nineteenth century creation—a product of a pluralistic society where power was diffused and where no one group could easily coerce the other."

Apart from this spike, the term "institutional neutrality" remains invisible in debates about higher education until the 1960s. The Kalven Report inaugurates a renaissance for the term. A Google N-gram generator (which traces usage only in published books) shows no use at all until about 1964, then a sudden spike

followed by a plummet in late 1970s. After 1980 the term had some ups and downs for about twenty years and then subsides into a series of lesser peaks. The pattern suggests a vogue term that has failed to catch on as a key concept—perhaps until now.

The Carnegie Conference

Among the few standout instances in which the concept is salient is a 1971 volume, *Neutrality or Partisanship: A Dilemma of Academic Institutions*.[8] It presents a series of addresses made the year before at the annual meeting of the Carnegie Foundation for the Advancement of Teaching by Fritz Machlup, Walter P. Metzger, and Richard H. Sullivan. Machlup in "European Universities as Partisans" notes that the non-partisan ideal is uncommon in European universities, and he inveighs against faculty groups in American universities issuing official pronouncements. Metzger in "Institutional Neutrality: An Appraisal" narrows the discussion: "to what extent should institutions of higher learning, in their corporate capacities, take sides on mooted public issues?" Metzger observes that the idea of "institutional neutrality" was irrelevant in higher education until the late nineteenth century, and that it did not crystalize as a concept until Lovejoy drafted the 1915 *Declaration of Principles*:

> Lovejoy never asked that the university be neutral in the sense of being impermeable to social values: his sense of the university as a fiduciary, his faith in the openendedness of inquiry, were themselves reflections of social values he hoped to introduce and instate.

8 Fritz Machlup, Walter P. Metzger, Richard H. Sullivan, *Neutrality or Partisanship: A Dilemma of Academic Institutions*, Bulletin 34 (New York: Carnegie Foundation for the Advancement of Teaching, 1971). Available as ERIC document ED 052 70.

After weighing many arguments, Metzger eventually comes out in opposition to the doctrine of institutional neutrality as it had come to be understood, i.e., as a strong prohibition on universities taking substantive positions. He preferred a weak version of institutional neutrality, "distinguishing between issues that are marginal to [the university's] interests and issues that are central to its interests." He admits that this is a difficult decision to maintain in practice, but "A university not willing to make these distinctions may well end up making no distinction and thus relinquish forever the possibility of retaining any distinctions at all."[9]

"The Socially Involved University," Richard H. Sullivan's contribution to *Neutrality or Partisanship: A Dilemma of Academic Institutions*, takes up what the author sees as a coordinated attack on three key concepts in the "internal management and external relations of academic institutions." These are academic freedom, tenure of employment, and institutional neutrality. Sullivan's essay seems particularly apropos to American higher education's current discontents. He points out that the doctrine of institutional neutrality appeals to some who want to weaken the university so as to dampen its "influence on social, political, and economic issues," and is denounced by activists "under various banners" who see neutrality as "a form of protective conservation of the *status quo*." Those activists believe "the university may not remain silent but has an obligation to assume an active role in the achievement of desirable change. To this group, commitment and action are moral; restraint and silence are immoral." Sullivan distinguishes several other positions as well, including the idea that neutrality is "normally justifiable," but should be overridden in matters that "affect the very foundations of our society," and the position that neutrality is "no longer applicable . . . in institutional decision-making." He offers one more view focused on the "sweeping changes in the very

9 Metzger, *Neutrality or Partisanship*, 38, 44, 61, 62.

nature and organization of the university," which have "destroyed the theoretical foundations for institutional neutrality."

All of these positions are recognizable in the current debates on institutional neutrality, which makes Sullivan's essay a potential touchstone for the reopened debate. Sullivan spends much of his essay elaborating his last point: that the "theoretical foundations" of institutional neutrality have been nullified by the size and complexity of modern higher education. The problem as he sees it is that there are no "institutional benchmarks" by which "institutional decision-making and policy formulation may be reliably measured." Institutional neutrality may be a safeguard for "the academic freedom of the individual faculty member" in some circumstances, but in other circumstances exposes the faculty member to "the thumbscrew of the true believer." And as such, neutrality will do nothing to forestall dissent that proceeds from "legitimate and peaceful ways" to "disruptive, forcible, and even violent forms." And what if "the faculty decides to take a position on a social or political issue which is not clearly within the university's domain and competence?"

Such considerations lead Sullivan to a list of six situations in which he thinks it proper for the university to take a substantive position on social and political issues. Anything not under these six headings he suggests should remain in the shadowy realm of institutional neutrality. I will abbreviate his list:

1. To protect the central mission of teaching, learning, and research.
2. To protect the freedom of the university to determine its own standards.
3. To protect its budget.
4. To protect "a broadly accepted activity of the university."
5. To address policies that bear on the self-determination of the university.

6. To guide the use of resources "for beneficial environmental effects."

One of these is not like the others, but it may bear remembering that the Carnegie Conference was held in November 1970, six months after the first Earth Day, and environmental extremism was in its first flush of popularity. Metzger and Sullivan refer frequently to anti-Vietnam War activism in a tone of dispassionate observation, but issues nearer at hand evoke a quiver.

Sullivan concludes that applying his rubric requires "the judgment of individual men and women facing both the constraints and opportunities of particular circumstances." Institutional neutrality provides no easy way out of dealing with controversies. This is not to say it is a useless concept. It has some rhetorical value, but it is Sullivan's view that it cannot provide a comprehensive guide for dealing with continuous issues. [10]

10 Sullivan, *Neutrality or Partisanship*, 63-65, 69-7, 76-78.

Wartime Neutrality

Institutional neutrality in the sense of a call on the governing bodies and administrative authorities of universities to refrain from putting forward official positions on controversial issues is thus a young doctrine in the broader history of higher education. Until now it has enjoyed only two moments of celebrity. The first, during and shortly after World War I, grew out of the divisions in the United States between supporters of the free market and reformers of a broadly socialist persuasion, and it was an auxiliary to a campaign by socialist-inclined faculty who sought to silence what they saw as the capitalist-minded governing bodies of universities. The second moment of celebrity grew out of the social divisions of the 1960s, particularly over the Vietnam War and the ensuing animosity on and off campus between the political right and left. In that instance, the call for institutional neutrality was in effect an attempt by the University of Chicago's administration to sidestep the demand by radicalized students that the administration itself champion their causes.

Today's calls for institutional neutrality bear more resemblance to the controversies of the Vietnam era than to those of 1915. Once again, academic administrations are looking for ways to sidestep demands that they take sides in public controversies. But there are differences as well. This time around there are calls for institutional neutrality coming from conservative organizations both inside and outside the university, as well as some progressive bodies. Some speak with the intent of rescuing the university from

self-destructive forms of political engagement, others in the hope of escaping public wrath.

Several years before this new outbreak of calls for institutional neutrality got underway, the Goldwater Institute issued a white paper, *Campus Free Speech: A Legislative Proposal,* coauthored by Stanley Kurtz, James Manley, and Jonathan Butcher that resurrected the *Kalven Report*. [11] Published in January 2017, this paper did not seem at the time to stir a major response, but it probably should be recognized as a key contributor to the current interest in institutional neutrality, which it mentions fifteen times.

11 Stanley Kurtz, James Manley, and Jonathan Butcher, *Campus Free Speech: A Legislative Proposal*, The Goldwater Institute (January 2017), https://www.goldwaterinstitute.org/wp-content/uploads/2019/03/Campus-Free-Speech-A-Legislative-Proposal_Web.pdf.

Where Things Stand

The concept of institutional neutrality suddenly has many friends. I make no attempt here to provide a comprehensive list of those friends, but here is a collection of recent statements:

Daniel Diermeir. "The Need for Institutional Neutrality at Universities." *Forbes.* Dec 20, 2023.

Daniel Diermeir. "4 Reasons Universities Should Practice Institutional Neutrality." *Forbes.* Feb 6, 2024.

> 1. "Neutrality relieves universities of the pressure to hastily take a stand on complex policy issues."
> 2. "Neutrality is a safeguard against double standards."
> 3. "Institutional neutrality keeps universities from becoming politicized."
> 4. "Institutional neutrality celebrates expertise."

Keith E. Whittington. "A Call for Institutional Neutrality: An open letter released today from the AFA, HxA, and FIRE." *The Volokh Conspiracy*. February 7, 2024.

> Today the Academic Freedom Alliance, Heterodox Academy, and the Foundation for Individual Rights and Expression released a joint open letter calling for universities to adopt a policy of institutional neutrality.

From the joint letter:

> It is time for those entrusted with ultimate oversight authority for your institutions to restore truth-seeking as the primary mission of higher education by adopting a policy of institutional neutrality on social and political issues that do not concern core academic matters or institutional operations.

Michael Vasquez. "Is Institutional Neutrality Catching On?" *Chronicle of Higher Education*. February 8, 2024.

> Amid a polarized political climate and debates about the war in Gaza and hot-button social issues like abortion rights, university leaders' statements about current events have attracted attention and scrutiny. A small but growing number of institutions are responding to the pressure by swearing off such statements altogether.

The *Chronicle* article lists among the universities that have either adopted institutional neutrality or are considering doing so:

- Columbia University's University Senate (approved a resolution)
- Vanderbilt University ("one "pillar" of free expression)
- The University of Virginia (formed a committee to consider)
- North Carolina (all public universities by state law)

Another writer's list of universities that have endorsed institutional neutrality include the University of California Berkeley and Princeton.[12]

"Adopting Institutional Neutrality." Foundation for Individual Rights and Expression.

> FIRE endorses the Kalven Report because it is the best articulation of institutional neutrality.

"ACTA Launches Next Phase in Its Campus Freedom Initiative™, Urges Institutional Neutrality on American College Campuses." American Council of Trustees and Alumni. February 15, 2024.

> . . . a nationwide campaign urging American colleges and universities to adopt and enforce policies of strict institutional neutrality. ACTA's call for institutional neutrality is part of our efforts to encourage colleges and universities to adhere to the ACTA Gold Standard for Freedom of Expression™, a 20-step blueprint for creating a healthier, more intellectually diverse free speech culture on American campuses.

Tilly R. Robinson and Neil H. Shah. "'This Has to Stop': Harvard Set to Consider Institutional Neutrality." *The Harvard Crimson*. February 23, 2024.

> A formal stance of neutrality, in which Harvard would refrain from making political statements as an institution, would be a marked shift from the University's current approach to politics. It would also, in theory, help the University avoid the pressure it's faced in the past to take

12 Adrienne Lu, "Should College Administrators Take Political Positions?" *The Chronicle of Higher Education*, December 2, 2023.

> political positions on contentious issues — such as the Israel-Palestine conflict.

Janet E. Halley. "Institutional Neutrality or Institutional Deception?" *The Harvard Crimson*. February 27, 2024.

> The Kalven principles can be swallowed by their exceptions. Under Kalven, both verbal statements and corporate activities should be kept free of political values and issues. But the University is making a statement about climate change when it fails to divest itself of stock in oil and gas enterprises.

"Institutional Neutrality in a Polarized World: What Should Harvard and Higher Ed Do?" *Harvard Radcliffe Institute.* March 5, 2023.

> "Harvard Radcliffe Institute and the Council on Academic Freedom at Harvard cosponsor a discussion about the idea and application of institutional neutrality. Four leading legal scholars will bring different perspectives and experiences to the conversation and engage in Q&A with one another and the audience." The four scholars: Tomiko Brown-Nagin, Tom Ginsburg, Janet Halley, Robert C. Post

Coco Gong and Judy Gao. "Still no department guidelines as debate over institutional neutrality rages." *The Daily Princetonian*. December 4, 2023.

> "Some professors, especially conservatives and free speech advocates, advocate for a principle of institutional neutrality, the principle that universities should not

> take positions on any issue in order to foster a welcoming environment for all forms of free speech. University President Christopher Eisgruber '83 has instead pursued a policy which he has termed institutional restraint — the principle that universities are not neutral, but instead value-laden institutions that can take positions in rare cases when the core values of the university are under threat. Eisgruber has also defended the right of administrators to speak in their personal or academic capacities."

Danielle Pletka and Marc A. Thiessen. "WTH is Going On at Harvard? Larry Summers Explains." Transcript of a podcast interview with Larry Summers. AEI. March 14, 2024.

> "I think that you are right, and there's been a lot of discussion of the so-called Calvin principles in universities, the idea that universities should be institutionally neutral, that they shouldn't take political positions. And I think that's right, but I think you have to be very careful because universities also need to set a moral tone. They need to make clear that chanting about genocide is very much not what we stand for and something that appalls us. And you don't want to make it impossible to set that moral tone. And the university also has to protect itself from having its prestige hijacked by subgroups within it. And when groups form and start the Princeton Coalition against this and the Harvard Coalition against that, the universities have an obligation to disassociate their name from movements of that kind. So these are things that have to be managed very carefully."

John K. Wilson. "What the Champions of Neutrality Get Wrong: The Kalven Report's New Popularity Rests on a Misunderstanding." *Chronicle of Higher Education.* March 18, 2024.

> "For most of its existence, the Kalven Report was a useful excuse invoked by the University of Chicago administration to repel the demands of left-wing activists. But after the election of Donald J. Trump, right-wing groups angered by campus criticism of Trump began to pursue more aggressive efforts to silence colleges. In 2017, the conservative Goldwater Institute proposed model legislation to enact institutional neutrality on campuses, but no state adopted the plan. That started to change in 2020, when campus antiracism statements in response to the murder of George Floyd spurred a right-wing backlash demanding an end to the expression of political opinions by colleges."

Two observations about this list. First, a fair number of centrist and libertarian-flavored organizations endorse the adoption by universities of "institutional neutrality." Second, more universities are "considering" the concept than have so far adopted it.

Not Yet Policy

At this moment, there is no rush in American higher education for colleges and universities to declare themselves committed to "institutional neutrality." It may be the case that a few major institutions, such as Harvard, will embrace the doctrine. If that happens, some others may follow suit. But "institutional neutrality" right now is more of a discussion topic than a widespread policy.

I join this discussion not out of apprehension that American colleges and universities might bind themselves to a misjudged creed, but out of concern that critics of the leftist orthodoxy in American higher education are misjudging the problem.

Calling for institutional neutrality is not the panacea they think it is. Rather than taking colleges and universities out of the game of propagandizing their students in support of progressive policies, institutional neutrality would provide a convenient rationale for college administrators to accede to faculty activists and student radicals.

"Institutional neutrality" may play out in different ways depending on whether a university is public or private. In principle, both public and private universities could declare themselves institutionally neutral. A public university might invoke its responsibility to the pluralistic American public as a particular reason to commit to institutional neutrality. Whether or not it invoked that principle, a public university is typically more vulnerable to public ire if it takes sides on controversial matters. Private universities have greater insulation, though they are far from invulnerable if they champion an unpopular cause or fail to speak up when the public expects them to.

Mission

Lovejoy and the other founders of the AAUP in drafting their "Statement of Principles" were concerned that university boards and presidents could squash the academic freedom of faculty members by declaring that the university had an official position on some matter. A faculty member who promoted a contrary view could be vulnerable to discipline on the grounds that he was at odds with the university's mission. It is not hard to be sympathetic with Lovejoy's argument. Surely the university's mission should not extend to taking substantive positions on every local election or passing controversy. Wouldn't it be better if university administrations confined themselves to matters of central importance to their institution's educational missions?

The authors of the Kalven Report likewise sought such high ground, though for rather different purposes. They sought to protect the University of Chicago administration from faculty and student pressure to take a stand against the Vietnam War. Lovejoy wanted to protect the faculty; Kalven wanted to protect the administration. But in both cases, the idea was to distinguish between the educational mission of the university and the surrounding pressures to pick sides on non-educational matters.

But as Metzger and Sullivan both observed in 1970, maintaining this principled distinction is practically impossible. How does the college president (or board of trustees) know where the educational mission leaves off and the political concerns begin? Almost anything can be translated into an "educational" matter, and it will in the end be a question of the administration's judgment. That

judgment isn't improved by invoking the institutional neutrality principle.

In any case, it is apparent that institutional neutrality is a doctrine that must either be ineffective or transform a college's institutional mission. The problem is that a college's mission can always be expanded (or interpreted) to accommodate a political interest or ideology. In the 1915 *Statement of Principles*, Lovejoy attempted to evade this problem by defining it away. Lovejoy simply casts out of consideration "a proprietary school or college designed for the propagation of specific doctrines" as beyond the realm where principles of academic freedom can apply. Goodbye to any college committed to fighting climate change, fighting for social justice, fighting for "anti-racism," etc.

Lovejoy's maneuver did not sit well with the AAUP for very long. In the 1940 revision of the AAUP standards it was replaced by a more welcoming attitude toward institutions that uphold particular doctrines, religious or otherwise. But the problem remains. Neutrality is asked to sit side by side with commitment, and as new situations arise, the leaders of the institution must weigh one against the other. The 1967 Kalven Report simply ignores the problem, but in the years that followed various observers such as Metzger and Sullivan pushed it back into view.

I see no way out of this dilemma, though it may be of value to restate some first principles. Colleges and universities often have "social missions" in addition to their educational ends, and these social missions are sometimes treated as sacred cargo and foregrounded at the expense of more fundamental educational goals. But the basic educational goals do not go away. An institution that goes all out to pursue the fight against climate change eventually becomes merely an advocacy group, not a college. To be a college it has to attend to education beyond merely worshipping Mother Earth and casting imprecations at the devil, Fossil Fuels, or his

minions, the capitalists and the consumers. What, at a minimum, are these educational ends?

They are a combination of substantive knowledge ("facts") and intellectual skills; sharpening the discernment of students to tell the differences among efforts to discern the truth, frame an argument, express an opinion, or mislead; encouraging students' moral development; and preparing students for adult responsibilities, which usually entails acquiring basic competence in an area where they can find paid employment. I offer no brief here for how these elements should be weighed against one another. Clearly colleges and universities can put the pieces together in a myriad of contrasting ways. But there is always this kernel: that the education of students must be *more* than mere indoctrination or initiation into the cult of true believers.

The ideal pronounced in the concept of "institutional neutrality" is to protect that educational core from being run over roughshod by the believers, whether the believers are sitting in the C suite or gather in the Faculty Senate. This is what the Kalven Report avers:

> The instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic. It is, to go back once again to the classic phrase, a community of scholars. To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community.

The trouble is that "political fashions, passions, and pressures" are not chased away by such brave words. Even as the Kalven Report is enunciating those words, "political fashions, passions, and pressures" are sneaking in the backdoor.

The campus radicals were immediately aware of the deception. Ostensible "neutrality" meant "You lose." The institution would take a position by not taking a position. The campus conservatives were less astute, but they also lost because the university was forfeiting the high ground if and when the radicals gained power. In 2023, "institutional neutrality" looked like a fine thing to Claudine Gay because it meant she could adopt a bland open-mindedness to the lynch mob camped outside of Harvard's Hillel. If Harvard indeed had adopted "institutional neutrality" as more than camouflage to indifference toward Jew-hatred, it meant that "institutional neutrality" had changed Harvard's mission to include principled moral equivalence between Jews and Jew-haters, and between every approbation of virtue and approbation of vice.

A False Ideal

I am among those who see the superficial attractions of calls for "institutional neutrality," but who also sees that it is a doctrine that serves no real good. Earlier in this essay I gave an abbreviated summary of my objections. Institutional neutrality:

1. empowers the mob;
2. excuses the college president;
3. undermines rightful authority;
4. confuses the public.

Here I will add only modest expansion on the ground that these points should already be reasonably clear.

Institutional neutrality empowers the mob by giving the activists of popular causes the assurance that the university's officials will not get in their way. Activists of less favored causes are seldom treated with such leniency. University officials can easily ignore institutional neutrality to run critics of "diversity, equity, and inclusion" off campus, but they seldom if ever stand up to a large group of excited proponents of, say, Hamas apologists.

Institutional neutrality excuses the college president. If a college or university seeks for its leadership among skilled fund-raisers and temporizers with fashionable causes, it can do well by embracing the elastic doctrine of institutional neutrality. That doctrine will enable the college president to slip away from making the kinds of decisions that might upset important "stakeholders." The educational mission can be left to take care of itself while the

college president decides to sit by and let others redefine the institution's reputation. Or, because institutional neutrality is endlessly flexible, the president can choose to endorse the side he calculates will do him the most good and explain that this is one of the mission-based exceptions to institutional neutrality.

Institutional neutrality undermines legitimate authority. That is because the legitimate authority of the college as well as its leadership derives from its principled commitment to educational excellence, which entails the disciplined use of good judgment. There is no short-cut doctrine of "neutrality" that will get a university out of having to address profound moral and legal issues. Better for the president of the University of Chicago in 1967 to say where he stands and why than to hide behind a false veil of neutrality. Better today for our college and university presidents to say where they stand on anti-Semitism. Not knowing or not saying undermines their authority.

Institutional neutrality confuses the public. Few believe the institution is truly neutral if its professed neutrality clearly favors one side or the other in a dispute. True neutrality is possible and sometimes morally creditable, but it is rare on matters of great public importance. We look to our colleges and universities for intelligent, well-informed counsel on such matters. Or rather, we used to. Many colleges and universities squandered that reputational capital in the last few years through their stands on anti-racism, DEI, COVID, immigration, climate change, and now anti-Semitism. To proclaim themselves neutral in any meaningful sense at this point would be to invite incredulity.

For my part, I would prefer a university to stand for clearly stated values and to defend them forthrightly against whatever "pressures" arise from students, faculty, trustees, politicians, foreign powers, and the general public. But this is not a call for just any values. Those values should be deeply rooted in the educational mission of the university: the pursuit of truth, intellectual freedom,

and the cultivation of virtue, including the virtue of citizenship. There is vastly more that could be said about the educational ideals that ought to animate the university especially in this time, as it has been called, of "cold civil war." I fear that the call for "institutional neutrality" in these circumstances is basically a call for surrender to the forces that are gathering against the civilization that built and that sustains higher education.

Education reformers found it easy to take up the call for "institutional neutrality" because they were in so weak a position vis-à-vis the ever more radical education establishment. "Institutional neutrality," one aspect of procedural liberalism, seemed a useful weapon for the weak—and an attractive ideal in itself. But the ideal has proved delusional, and as a weapon it is as easily used against reform as for it. We must call for universities to espouse substantive ideals of truth, liberty, and citizenship, even though they cut directly against the ideological commitments of many of higher education's administrators and faculty members. This is a challenging task. But Hamas' massacre of Israelis has stripped us of many illusions—and, unexpectedly, one of those illusions turns out to be that there is a shortcut to reforming our universities by way of "institutional neutrality."

We must say forthrightly what virtues we wish our universities to champion. And if we wish our universities to fight once more on the side of the angels, the swiftest way to that goal is to teach them how to speak with courage by speaking so ourselves.