

Article

# Human and Divine Law at the Secular University: The Divide between Classical Liberalism and Post-Classical Liberalism

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**Abstract:** The American university has been guided by classical liberalism in its defense of the freedom of speech and academic freedom. The idea is that a university is a place where all ideas and perspectives can be debated. However, this idea is increasingly being challenged by those who want the secular university to be a place that advances a social philosophy that promises to transform society by dismantling structural racism and providing for greater equity. In this article, I will argue that both of these models have been shaped by democratic legal ideals and both share a common skeptical assumption about the basic questions of meaning that each person must answer. The legal structures developed by Westphalian modernity attempt neutrality on questions about meaning. This can be seen even in recent Supreme Court decisions affirming the individual's right to determine meaning for themselves. This skeptical root has produced the conflict between classical liberals and the social transformation that we are witnessing at our universities. I argue for a third option that I find in the Declaration of Independence, which affirms that we can and should know the answers to basic questions which then provide the foundation for education and law.

**Keywords:** classical liberalism; freedom of speech; universities; legal neutrality; natural law; equity



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## 1. Introduction

The June 2023 Supreme Court Decision, *Students for Fair Admissions v Harvard*, sent shockwaves through American secular universities. Relying on the 14th Amendment, the majority ruled that “Eliminating racial discrimination means eliminating all of it” (*Students for Fair Admissions v Harvard* 2023, p. 4). One of the key premises in their argument is that “respondents’ admissions programs fail to articulate a meaningful connection between the means they employ and the goals they pursue” (*Students for Fair Admissions v Harvard* 2023, p. 6). A look at the dissenting opinions shows that the concern is how to help underrepresented students in a system that is otherwise structured against them. Justice Sotomayor wrote, “By singling out race, the Court imposes a special burden on racial minorities for whom race is a crucial component of their identity” (*Students for Fair Admissions v Harvard* 2023, p. 46). Similarly, Justice Jackson argues, “And it permits, but does not require, them to value James’s race—not in the abstract, but as an element of who he is, no less than his love for his State, his high school courses, and the obstacles he has overcome” (*Students for Fair Admissions v Harvard* 2023, p. 19). She then argues that the ability to use race in admission does help close equity gaps, in direct contradiction to the argument of the majority.

On a much more local scale, my own college at Arizona State University (ASU) is currently the largest state university in the country. As such, it will serve to highlight the increasing conflict between professors and conservative/religious students. Although much attention has been paid to private universities collecting state monies but then teaching a religious perspective, little attention has been paid to the censorship of conservative/religious viewpoints by professors at state universities or of such professors vigorously advancing their own views of politics and sexuality, without taking into account countervailing opinions. The difference with a religious university is that the student freely signs a conduct

statement that includes conservative values, whereas at a state university, the school is to remain neutral on these issues. However, this classical liberal attempt at neutrality is being challenged by those who see the university as a place to remake society along what are self-identified “liberal or very liberal” lines (*Harvard Crimson*). Can classical liberalism survive this challenge, and should we want it to continue as a model of higher education?

Some examples from ASU will be helpful. My school at ASU has proposed changing our bylaws to include encouraging faculty to decolonize their curriculum. Additionally, my school has implemented an annual review question asking faculty to evaluate how well they have “decolonized their curriculum”. The decolonization movement is different from multiculturalism. The latter can fit perfectly well within classical liberalism (Levy 2000, p. 20). It affirms the value of studying all cultures and ideas. But the thinkers (philosophers, sociologists) who developed and advocated for the decolonizing ideology make a case much like what was read above from Justices Sotomayor and Jackson. It is an ideology that says classical liberalism at the university has failed to produce a more equitable society. Philosophers like Anibal Quijano argue that Western thought must be replaced by indigenous belief systems. That is because the Western philosophical system is dualistic, utilitarian, and ultimately relies on distinctions like “God” and “creation”, whereas the indigenous belief systems are holistic and monistic (Quijano 2007). Decolonization, as opposed to multiculturalism, means that my college at ASU is evaluating a faculty member’s performance on how well they have adopted and applied a specific ideology into their classrooms. The justification for this is that it will produce a more equitable outcome.

These instances of national law and college bylaws help illustrate that the American University is at a crisis point. Although the tensions have been brewing for some time, it was the terrorist attack on Israel on 7 October 2023, that brought the issues into great contrast and public attention. Universities became a place for some faculty and student groups to call for genocide against Jews. Three of the most powerful university presidents in the country testified before Congress. When asked if such calls for genocide conflicted with university standards, the president of Harvard was unable to give a simple and straightforward affirmative answer. In this way, the American University has been relying on the legal structures of classical liberalism, which aim at neutrality (Cole 2009, p. 103). The university, in the classically liberal framework, is a place for debate to take place, but it does not take a side. John Stuart Mill famously articulated the classical liberal perspective when he said that no ideas should be censored so that all ideas can be debated, and the weak and worse ideas will be exposed for what they are (Mill 1859, p. 97). However, what we can call the post-classical liberal view sees the university as a place to train advocates to address social injustices. Such a move abandons the neutral framework of classical liberalism.

This article is about how American universities ended up in this condition and what it means for educating American citizens. More specifically, as a philosopher whose work includes the philosophy of law, I will look at the belief system involved in creating this condition with a number of legal implications. It is the philosophy that is expressed by Justices Sotomayor and Jackson when they focus on race as identity and the need for universities to shape society by bringing about economic equity. It is a system that looks for societal inequalities, attributes them to oppression, and then proposes a solution for the radical change of the system. I will contrast it with the system that has ruled the American university for almost two centuries, classical liberalism. Classical liberalism developed out of a time when universities were founded on Christian beliefs and held to the Biblical worldview. Because of the reality of religious pluralism, classical liberalism taught that the university should be neutral with respect to religious claims. This will even take us to consider the educational reforms of Thomas Cromwell, who looked to the Greeks for foundational truths of the university and is the progenitor of what we now call “classical liberalism” (Crumb 2018, p. 9).

I will develop the argument that there is a deep struggle at the heart of the American university about the nature of law and how the law is known. It is expressed from the very beginning in the Declaration of Independence, which states that there are some things

that are self-evident (Anderson 2015, p. 12). Traditionally, this has been understood as a division between divine or natural law and positive law. It comes to expression in the important debates currently dividing the university over social justice programs. Is justice something to which we can appeal as a transcendent reality, or is there only “justice” as described by specific human societies? I will make the case that both the classical liberal model and the more recent social transformation model are rooted in a skepticism about this and other foundational questions. I will offer a third option, which also has its roots in classical thought, but which says that education is about knowing the answers to the basic and foundational questions that humans face and applying these to our social and legal structures. Both classical liberalism and the current social justice liberalism take an impoverished view of the legal system, but I argue that Universities with a restored appreciation for the proper place of both human and divine law are uniquely positioned to restore an authentic spirit of civic engagement and education.

## 2. The Secular American University

Jonathan Cole explains the purpose of the university in *The Great American University*. Cole was a mentor to ASU’s President Michael Crow. The American university was designed and built (through a number of legal instruments) to shape the nation. Cole shows how this was done with intention over many decades. It continues to be true as universities like ASU (calling itself “The New American University”) claim to not simply educate but to provide solutions to the toughest challenges facing humans in our day. In this spirit of American pragmatism, these solutions are about “what works” to make human material existence more comfortable (Cole 2009, p. 65). One will easily see, below, how this can be reinterpreted by the social justice movement into its teaching about oppression and social ills.

Cole emphasizes the value of neutrality in this older model. He tells us, “if the essence of a university is to be open and tolerant of all points of view that can be supported by evidence, then the most basic beliefs must be open to questioning within the academy” (Cole 2009, p. 494). It is the “great teachers” who “challenge the biases and presuppositions of their students and colleagues. They present unsettling ideas and dare others to rebut them and to defend their own beliefs in a coherent and principled manner” (Cole 2009, p. 378). The university is tolerant in that it permits the questioning of any belief system. This value runs into tension when knowledge claims are made and lines are drawn about what can and cannot be questioned. Many of the debates currently raging in the humanities are about whether or not the presuppositions of classical liberalism, especially with respect to neutrality, should be maintained.

Freedom of inquiry, Cole tells us, is the reason for the existence of the university (Cole 2009, p. 386), consistent with this neutral understanding. It is perhaps better to conceptualize this classically liberal freedom of inquiry as the primary means. The actual reason, or goal, of a university constituted along these lines is knowledge. But this calls our attention to an interesting linguistic shift. It is now common at universities (ASU included) to speak of “knowledge creation”. This is in contrast to “discovery”. This might seem like a difference without a distinction. After all, professors perform research to know things and then create articles or books containing that knowledge. But the shift is one of perspective. Is the professor living in an objective world with its own laws that need to be understood? Or is the professor shaping reality itself? This is very important for thinking about law: is there a natural law or is there only positive law? The way a university answers this question shapes its approach not just to law but to reality.

State universities serve a diverse population and fill a great need by providing an affordable university education to as many students as possible. In doing this, they aim to foster common ground among students from diverse backgrounds and perspectives. But there can be a tension between finding common ground and navigating the intense ideological differences that have only become more acute after 7 October. Faculty mem-

bers overwhelmingly identify as liberal or very liberal (*Harvard Crimson*). And yet, state universities are committed to not discriminating based on creed or religion.

In a pluralistic society, state universities are home to faculty and students with numerous religious and philosophical commitments. And yet, the state university has not completely moved into a pluralist space that consistently extends the logic of pluralism, where the value of seeking truth is neither more nor less important than other goals, which may *not* involve seeking truth. Seeking the truth is still a shared value among most faculty. In some cases, objective truth has been exchanged for “my truth”. My own university, Arizona State University, is currently the largest state university in the United States. We do not have a creed of any kind, but we do have a Charter that gives us three core values: access, excellence, and impact. The charter states the following:

ASU is a comprehensive public research university, measured not by whom it excludes, but by whom it includes and how they succeed; advancing research and discovery of public value; and assuming fundamental responsibility for the economic, social, cultural and overall health of the communities it serves.

In one way or another, these goals are common to most state universities. Universities are built on the classical liberal value of tolerance (*Mill 1859*, p. 80). However, federal and state laws prohibit discrimination based on religion or political perspective. This conflict was illustrated in a way that will be etched in public memory when the three presidents representing some of the best universities in the United States testified before Congress and were asked about whether calls for genocide against Jews violated their respective university’s codes of conduct. They could not give a simple “yes, that is a violation” as their answer. While these are not state universities, they do receive significant state funding. A flurry of defenses for their answer quickly hit the home pages of online magazines like *The Chronicle of Higher Education*. A rare criticism of these presidents by an academic, President Ben Sasse of the University of Florida, called for a return to classical liberalism and its legal order, which at the very least aims at neutrality. In order to understand how we came to this place where one philosophical/political perspective dominates the faculty at state universities, let us look at how such faculty came to the defense of the three presidents.

In a recent podcast interview with an ASU professor, Robert George of Princeton described these two competing visions of the American university (*George 2024*). One is the classical model, where the university is aimed at truth. The other is the more recent social justice model, where the university is a vehicle used for social change prescribed by philosophies that have their roots in socialist and Marxist understandings of a good society. I am arguing that there is a third component that underlies both of them and has led to the serious problems we now see at the American university. That shared root is academic skepticism about basic questions. While classical liberals can point to the classical model and say it is aimed at truth, among classical liberals, there has been an agreed upon skeptical truce about the basic questions (sometimes called the big questions) that face humans. The humanities are allowed to explore these but are told to look at all sides and all answers. And why is that? Why not just give a sound argument to prove the correct view as we would in mathematics? This is because when the university is committed to neutrality, that very approach is rooted in skepticism. In the classically liberal model, these are matters of personal conviction, opinion, and faith, not matters of demonstrable knowledge.

The social transformation movement shares this skepticism but pushes for measurable change in outcomes. According to this view, the cause of various education outcomes (grades, retention, job placement, etc.) is systematic racism and sexism. The proof is the disparate outcomes. Even though this reasoning ends up in a logical circle (systematic bias causes disparate outcomes, and disparate outcomes are proof that there is systematic bias), it is given the benefit of the doubt by the vast majority of the professors, who identify as liberal or very liberal, because of a shared skepticism about ultimate meaning. While we cannot settle differences in these areas, we can know (according to these professors) that material benefits will flow to society from DEI (diversity, equity, and inclusion) policies.

We cannot know if there is a divine natural law (and perhaps have reasons to think there is not), and human law must be used to increase material comfort.

The laws governing university conduct are thrown into this tension. On one hand, the classical model says that all viewpoints should be given the chance to rationally defend their position. This is one way to read the answer given by the three university presidents. But on the other hand, the social transformation model says that there are views that should not be given a voice at the university because they are in conflict with the values of the contemporary movement that seeks social transformation (Kendi 2019, p. 27) and are, therefore, classified as bigoted. This is another way of interpreting the three presidents and their inability to give a strong answer in support of Israel: it represents a conflict with the idea that Western colonial powers are the perpetrators of evil in the world. Below, I argue that this conflict cannot be resolved without looking to history to examine the skeptical presuppositions that produce it.

### 3. Neutrality about the Basics in Education and Law

Although polls, such as the one in *The Harvard Crimson* (2022) cited above, tell us that faculty identify overwhelmingly as either liberal or very liberal, the meaning of *liberal* has shifted. It has moved from meaning “neutral” to meaning “advancing a social justice philosophy” (Koyzis 2019, p. 36). Behind both of these is a legal theory. Whereas the classical liberal model wanted a university with representation from all perspectives, some now criticize this view and see no problem in having the vast majority identify as either liberal or very liberal. How did this change occur, and is it a problem or an advance? And what happened to the attempt to maintain neutrality?

The current model of the English university can be traced to reforms made by Thomas Cromwell. He is known for many things, but one of them is that he reformed the English universities.

The changes in the universities which were accomplished, or at least begun, during the ascendancy of Thomas Cromwell touched every aspect of academic life and left them—like the English church itself—a very different phenomenon in spite of an obvious and highly prized institutional continuity. . . . During this period, the student body changed from one composed mainly of graduate students living in halls and inns to one composed mainly of undergraduates living in colleges. Gone was the ‘tonsured clerk destined for service of Church and state’, who had been the typical student until ca. 1540, and in his place appeared candidates for the ministry or secular careers (Crumb 2018, p. 9).

In order to shift the educational structures that were responsible for training churchmen away from Roman Catholicism, the teaching of canon law was forbidden, as were the works of scholastics like Scotus (Crumb 2018, p. 8). The scholastics were criticized as being pedantic and lost in abstracts. In their place, the new curriculum emphasized the Bible and the Greek philosophers. Although both in England and the United States, colleges and universities were tied to specific denominations, the direction of state education was toward non-denominationalism. The Greeks were a helpful resource because it was believed that they were essentially correct about philosophy/natural theology/natural law and they were not tied to a specific Christian denomination. In their way, they were attempting to find neutrality between groups who otherwise have deep disagreements.

The Peace of Westphalia laid the groundwork for how modernity approached religion (Philpott 2000, p. 208). There must be protection of the rights of the minority religions within a country, which itself expresses an ideal of neutrality. This affected state education because the state was compelled to do its best to present a neutral education for its citizens. This combination of the Greek and neutrality became what we call classical liberalism. In classical liberalism, freedom of speech and freedom of inquiry are protected. Faith statements and morality expectations were set aside in the name of such freedom. Tenure protected these freedoms so that professors could pursue their research wherever it led.

Classical liberalism came to its height in the 1950's. One of its most high-profile defenders was Mark Van Doren (University of Chicago), who gave a defense of classical liberalism in *Liberal Education*. He defines a liberal education this way: "Liberal education makes the person competent; not merely to know or do, but also, and indeed chiefly, to be" (Van Doren 1943, p. 67). Here, he is mainly thinking of the humanities side of the liberal arts. This kind of education is for everyone. All people need meaning:

A well-educated person is not merely one who is able to secure a well-paying job. A well-educated person is one who can find meaning. A student to whom this can mean nothing would learn little from any society. The only thing that can teach him its meaning is liberal education—the argument once more is circular. The task of liberal education is to make itself loved so that the end it seeks, excellence, may in turn be loved. The prime occupation of liberal education is with the skills of being (Van Doren 1943, p. 67).

The humanities are supposed to answer the question, "What is it to be human?" Or, "what is good for a human?" Van Doren says the following:

Liberal education tries to be intelligent about virtue; to find and keep the one definition of it that can weather change, that can outlive appearance; and to perfect a way by which it can be possessed. The last aim is practical, and therefore of great importance. Liberal education is nothing if not practical. It studies an art, or a system of arts, designed both by nature and by man to ensure that human beings shall be precisely and permanently human (Van Doren 1943, p. 65).

For Van Doren, there is an urgency to this kind of education. "When the liberal arts fail to do their work, civilization has become a disease. When they are dismissed as a luxury, practical affairs suffer the consequence" (Van Doren 1943, p. 75). And that disease is what Sasse was identifying. Or, at least, he was showing us some of the fruit of a deceased root. Identifying that root is necessary if we are going to heal the university in our day. Van Doren helps us by making a point that Sasse also made. Sasse reminded us that the universities (Harvard, Yale, Princeton) began as seminaries and are once again seminaries of this new religion. This is only a metaphor, but it relies on the idea that religion is often seen as a dogmatic adherence to an unquestionable creed, and the beliefs of those who identify as "far left" operate in a similar manner. In between those two times, a secular liberal education believed that one could educate the public and produce citizens without getting to the details of revealed religion. Van Doren says:

The American college, even today, is descended in a direct line from the seventeenth-century college, which prepared so many persons for the ministry. It prepared others for secular life, and all who studied in it can be said to have been prepared for life. But its connection with religion was crucial; it was one way in which the deeper spirit of the time received expression. The college of today finds itself in a world not only secularized to the root but busily occupied with details of trade, profession, and technique. The question of its survival has everything to do with the question whether so busy a time possesses anything that could be called a deeper spirit. Doubtless, it does, but it must be deep indeed, for few can define it (Van Doren 1943, p. 106).

The diseased root lacks this deeper spirit. The secular university jettisoned revealed religion, but it did not have anything of ultimate meaning with which to replace it. Thus, the superficial cultural Marxism, which I move to describe below in the next section and which thinks only of money and power, is its logical outcome. In the previous quote, Van Doren directed our attention to the seventeenth century. He is moving in the right direction, but the massive change happened the century before this with Thomas Cromwell, and it laid the groundwork for the classical liberal's reliance on Greek philosophy.

#### 4. Eroding the Foundation

In the 1960s, the cultural revolution challenged the principles of classical liberalism by criticizing it for being out of touch. Herbert Marcuse argued that cultural Marxists could use the weaknesses of classical liberalism against the system in order to transform it into a progressive education. “Liberating tolerance, then, would mean intolerance against movements from the Right, and toleration of movements from the Left”. (Marcuse 1969, p. 9). His “liberating tolerance” used the tolerance of classical liberalism to first introduce Marxist teachings into the university (all ideas must be tolerated) and then cement their hegemony by teaching that Christian and conservative ideas are not to be tolerated. “Liberating intolerance” means no longer tolerating ideas from the Right. Just as recently as December 2023, a dean and an assistant provost at Arizona State University penned an article in *The Chronicle of Higher Education* claiming that “intellectual diversity” is a right-wing conspiracy and should not be tolerated (Amesbury and O’Donnell 2023).

These attacks on classical liberalism operated in a context that had already jettisoned the Bible as divine law from the state university. The relationship between the Bible, the foundation of revealed religion, and natural theology is the most important problem that the university has not solved since the day of Cromwell. A common solution is to say that the Greek philosophers like Aristotle were correct in their understanding of natural theology. General revelation is very limited and vague, so such philosophers did the best they could. However, they needed the Bible to obtain more detailed information about the nature of God, the moral law, and salvation. Unfortunately, this meant a contradiction existed at the heart of the modern university. The Biblical worldview teaches that there is a clear general revelation of God’s existence and the moral law. However, the Greek philosophical systems were at odds with this. They taught Greek dualism, wherein the demiurge and the material world have both existed from eternity. For Plato, the human soul has also existed from eternity and is in a cycle of reincarnation (Timaeus). Thus, Plato taught that knowledge is remembering. Aristotle further wrote that the unmoved mover is unaware of anything but itself (Nicomachean Ethics). None of this is consistent with Yahweh, who alone has existed from eternity, created ex nihilo, and providentially rules history from the greatest to the least detail, all for the revelation of his glory.

As challenges mounted against the Bible (higher criticism, evolution, religious pluralism), the classical liberal university jettisoned the Biblical worldview foundation, replaced it with tolerant skepticism, and continued to look to the Greeks for natural knowledge. Only recently, the “decolonizing” movement has sought to replace the Greeks (ASU’s decolonizing curriculum). This is not because philosophical criticism showed that the Greeks misunderstood natural theology; rather, this is because the Greeks and their intellectual heirs are the oppressors who must be replaced by thinkers from the oppressed class.

Unsurprisingly, the classical Greek system taught alongside the Biblical worldview was eventually criticized as harmful. The Greek system views this world as a mere shadow of the reality of the eternal forms, some of which are reflected in natural law. It does not provide a basis for social progress or for the rights of the poor. It does not provide hope or meaning in this life. The best one can hope for is to die and contemplate being in itself. This is a far cry from knowing the glory of God revealed in all of his works. But as the modern university became increasingly secular, it cast off the Biblical emphasis onto private universities with religious creeds. The state universities took up the remaining subjects.

The idea was that these are the “neutral” subjects that people from all backgrounds, religions, and ideologies, can study without controversy. But this gives us a very low view of education and law. Neither education nor law can be neutral. That is because truth is not neutral. Some propositions are true, and some are not. And it was precisely because of this truth that professors like Marcuse and administrators like Amesbury and O’Donnell argued that conservative ideas should not be tolerated in the state university if the experts say so. What began in academic skepticism (we cannot settle the differences between religious groups by reason, so we must remain neutral) ended in intolerance against conservatives and Christians.

## 5. Secular Professors Move Away from Classical Liberalism

Looking at *The Chronicle of Higher Education* from the months after the presidents spoke before Congress shows that there are faculty of secular universities who do not see the loss of neutrality as a problem. In a recent article in *The Chronicle of Higher Education*, two authors tell us that attempts at intellectual diversity are simply ways that right-wing politicians try to smuggle their ideas into the humanities. They claim this is akin to trying to teach flat earth in an astronomy class. The university is not about intellectual diversity, according to these authors, it is about listening to experts. And the experts have decided that the liberal/very liberal interpretation of the world is the correct one (Amesbury and O'Donnell 2023). These authors likened neutrality and intellectual diversity to requiring an astronomy professor to have a flat earth presentation.

In order to set the context, it is useful to consider responses by professors to the testimony of three Ivy League university presidents before Congress. When asked if calls for genocide against Israel violated their respective university standards, none could give a simple “yes”. The president of Harvard said it depends on the context. This means that there are some contexts where calling for genocide against Israel is acceptable at Harvard. It might be tempting to suppose that this was due to a tense situation in a congressional hearing, and that the lack of moral clarity is not the reality at such universities. But university faculty came to the defense of these presidents. I will consider two examples from *The Chronicle of Higher Education*, in order to highlight how classical liberalism and the post-classical liberal are in conflict about laws regulating free speech and research.

In an article titled “Why the Presidents Couldn’t Answer Yes or No: They Behaved Like Academics”, Rafael Walker argues that there cannot be simple answers in the academy. When asked by Rep. Stefanik if calls for genocide against Israel violate their university’s codes of conduct, a very simple question, the presidents could not give the simple answer. Why? Because of context. Walker says:

However craven or unsatisfactory Gay’s and Magill’s “academic” responses to these provocative questions may appear at first glance, they were absolutely right, even if tone-deaf. Theorists of language, from J.L. Austin to Roman Jakobson, have taught us that utterances are nothing if not contextual. Language is situated—coming from a particular person, in a particular time and place, meant for particular ends. Speech is meaningless when shorn of its context. As absurd as it may seem, this is true even of something so apparently threatening as “calling for the genocide of the Jews”. Was it a joke made between two Jewish students? A line put in the mouth of a character in a creative-writing professor’s novel? A satire, in the mode of Swift, actually intended to prevent genocide? We have had this conversation before about the N-word: Many literature professors have been at pains to explain that the word appearing in, say, *Huckleberry Finn* is different from a racist Proud Boy menacingly hurling it at a black child on the sidewalk (Walker 2023).

The context of the question was clear. However, this still leaves the difficult question of what kind of speech is legally protected at a state university. The idea that an academic must be nuanced and cannot answer a question with a simple answer is rooted in skepticism. This is for two reasons. One, the fear is that credal statements which affirm what we can know, and the answers to fundamental questions, are coercive and have a chilling effect on free enquiry. This is a weaker concern, since all disciplines have a de facto creed of assumed answers to certain questions. But more powerful is the concern connected to classical liberalism that objective knowledge is impossible and each person must decide what the meaning of life is for themselves. Justices O’Conner, Kennedy, and Souter phrased it this way: “At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State” (*Planned Parenthood v Casey* 1992). The emphasis is on each person *determining*

rather than on each person *learning*. In this view, teaching at a public university that there is a correct answer amounts to legal compulsion. The state, and state education, must be neutral because anything else threatens liberty.

In his article titled, “Against Moral Clarity: Colleges are not the place for simplistic certitudes”, Geoff Shullenberger wants to remind us that the academy is not the place to look for certainty or simplicity. Now, both natural and positive law rely on a moral compass to set “true north”. The classical liberal system, implicitly relying on skepticism, saw open debate as essential to arriving at the truth, but the post-classical system, relying on critical philosophy, is structured around a more explicit skepticism. He says the following:

The problem, then, isn’t that progressives have imbibed a moral relativism that makes them incapable of denouncing genocide. It is that progressives, centrists, and conservatives disagree over, for instance, what counts as “genocide” or a call for it, even as they echo one another’s reductive rhetoric. The commitment to moral clarity, which is presented as conversation-ending, is in fact what makes debate interminable and unproductive (Shullenberger 2023).

This view of the educated person is that the more educated you get, the more nuanced you get. The more educated you get, the more you know about the complexities of any subject or situation. And, thus, the more educated you get, the less able you are to give a simple answer. This means that when the presidents were asked a simple question about the laws regulating free speech at their universities, they should not be expected to give a simple answer. And that is because an educated person understands that moral clarity is relative to belief systems. He explains the following:

Any institution claiming to be guided by values like open debate and viewpoint diversity should therefore treat assertions of moral clarity as inimical to those values. The difference between 2020 and 2023 is who has been able to marshal the fervor of constituents to override norms that might otherwise limit the triumph of one camp’s convictions. Calls for moral clarity merely reflect the certitude of those issuing them. There are settings where such certitude may be appropriate and desirable, but universities and newspapers aren’t among them (Shullenberger 2023).

Undoubtedly, context, resistance to unambiguous answers, and skepticism are foregrounded in the above reflections.

Shullenberger’s version of skepticism is somewhat different from traditional academic skepticism. As quoted above, his version tells us that we do not even know what others mean by the words we are using (in this case, “genocide”). Each perspective gives a different meaning to that word, and, therefore, what someone on the right counts as moral clarity is not the same as what someone who is “very liberal” thinks is moral clarity. The consequences for running a university are stark. Despite the implicit acceptance of skeptical ideas, classical liberalism relied on the guiding principle of open debate, which was still connected to a notion of objective truth (as manifested in the outcomes of debates). The critical philosophy of post-classical liberalism relies on a deeper skepticism, which is immune to the clarifying effects of vigorous debates, to deconstruct metanarratives about morality.

Strikingly, in keeping with this deeper skepticism of later liberalism, it has become commonplace to see professors who call for the rejection of intellectual diversity on the basis that it is a tool used by the right wing. In the article titled “Dear Administrators: Enough With the Free-Speech Rhetoric! It concedes too much to right-wing agendas”, ASU professors Richard Amesbury and Catherine O’Donnell argue that outside money is a problem for universities. But they are clear that they do not mean left-wing sources of money. As their sub-title tells us, the problem is right-wing money. This article proposes the same skepticism we have seen in the previous two. However, it adds a new solution: the expert. They explain the problem, especially faced by the humanities professors, as follows:

The humanities and the more-humanistic social sciences, perhaps because they frequently make claims about matters also hotly debated in the public sphere, and

perhaps because their practitioners often argue for the reconsideration of texts, events, and social processes, have particularly struggled to resist being cast, even by college administrators, as simply a speaker's corner in which every perspective should somehow be accommodated. Here, one is told, colleges should seek a diversity of opinion, and every opinion deserves to be heard. Accepting this role for the humanities and social sciences, however, means that their faculties risk losing the ability to judge any ideas (or proposed curricula or public programming) unworthy of sponsorship. Offering up the humanities and social sciences as the realm of free speech deprives those faculty of academic freedom and deprives the public of the faculty's expertise (Amesbury and O'Donnell 2023).

The tension between the humanities professors as experts who should be listened to and the humanities as a speaker's corner where anything goes is fueled by the professors themselves. In too many instances have these types of classes been used to promote personal opinions rather than knowledge supported by reason and argument (Pluckrose and Lindsay 2022, p. 182). This makes it hard to treat such professors as experts in the same way a professor from physics or engineering or medicine has claim to that title. The solution is to return to the use of reason and argument as the shared standard.

But now, we are right back to the whole point of having the three university presidents testify. They are the leading experts on how to run a university. They were asked a very straightforward question. It is because they are professors and have built a career on academic freedom that they are now experts. Amesbury and O'Donnell tell us, "Put another way, academic freedom, as distinct from free speech, entails intellectual responsibilities. Far from a license to voice just any opinion, it protects the processes by which scholars distinguish what is warranted, credible, and true from what is not" (Amesbury and O'Donnell 2023). Yet, this definition still resists the objective standard of reason and argument that other disciplines are held to in order to be called "experts". It still runs the risk of majority rule over the content of a humanities education. Experts, as experts, should be able to demonstrate the truth of their conclusions. Freedom of speech protects the ability to question those conclusions and offer alternatives based on sound argument.

According to these two authors, the scholarly experts, through advanced study, have arrived at the truth of the matter regarding progressive values regarding ways in which to pursue programs of social transformation, implement visions of later liberalism, etc. Politicians and donors who disagree, and who try to use their money to influence the university, hinder the pursuit of truth. On this view, it should come as no surprise that the vast majority of faculty agree about post-classical liberalism because, I argue, it remains the best approximation to truth in the possession of the contemporary university. To allow right-wing professors or speakers is akin to inviting a flat-earthier to speak in an astronomy class.

At first glance, this argument can seem compelling. It affirms that the experts do, in fact, know, in contrast to the troubling rejection of certainty and clarity by Shullenberger. But upon reflection, we can see that it still shares the same root. No clear and certain moral answers present themselves as readily available to the untrained. And this means that a professor turned university president cannot be expected to give a simple answer to an untrained politician. What this means is that, for the moment, politicians who continue to fund professors at state universities should realize that they are funding experts. It just happens that "liberal or very liberal" is what the experts have determined is the truth of the matter.

But what neither the classical liberals nor the post-classical liberals have achieved is to establish a foundation for law that will consistently govern free speech and academic inquiry. The classical liberal's solution of neutrality is challenged by the professors quoted above, who say that education is not neutral because truth is not neutral. They believe they have arrived at the truth, and that it excludes what they call right-wing agendas. A favorable reading of their argument is that education is not neutral because truth is not neutral; not every belief system is true. The same critique, therefore, applies to the

post-classical and later liberals who currently favor projects of social transformation. What none of these thinkers have been able to show, in the end, is that their belief system, and its associated legal framework, is indeed the true one that should be normative at the secular university.

## 6. Conclusions: The Foundation of Divine and Human Law

So where do we go from here? Both political sides have drawn their lines and are defending their philosophy of education with little progress toward agreement. Classical liberalism is now considered a conservative viewpoint. Rather than seeing these intellectual disagreements play out in the university setting through rigorous debate and the application of reason to arrive at truth, they are moved into the political sphere with its own set of adversarial methods. Perhaps this is what happens during a time of large-scale educational reform, as people look to their political leaders to help curb abuses in the educational system. However, it does imply that a mere return to classical liberalism will not solve the problem. The rules of conduct at state universities enforce the freedoms of speech and research found in classical liberalism ([Texas v Johnson 1989](#)), but the views of presidents and professors often defend the limitations on speakers and viewpoints that are at variance with the social transformation model.

The goal of education is meaning. We saw how the reforms to English education in the 16th century pointed to the Greeks as the ones who provided a secular education that was presumed to be neutral. However, the Greek philosophical system was challenged by Christians as anti-Christian and by secularists as dualistic and otherworldly. The classical liberal strategy with legal implications, resulting from these early conflicts, has been to say that education is neutral. But if education is aimed at meaning, it cannot be neutral. Education that cannot provide a basis for law and truth, it turns out, will inevitably experience a challenge by way of characterization by its opponents as detached and unhelpful to society, as has recently occurred at the hands of later liberals who favor social transformation.

Historically, the university is a place that relies on a foundation of truths known from both natural and divine legal sources. But to date, classical liberal education in America, with its emphasis on pragmatic outcomes, has been skeptical about the role of natural law and theology. It is content with neutrality that cannot provide humans with solutions to their deepest needs. In an attempt to fill these needs, we see the “liberal and very liberal” professors looking for meaning in partisan political advocacy, which is in direct conflict with the classical liberal system.

As humans search for meaning, the university must remain a place for free inquiry and debate. But this does not preclude that universities are also places where students learn the basic truths about authority, reality, and value that give meaning to life. The Declaration of Independence, in its most famous line, illustrates this by grounding human rights in self-evident truths that include the Creator. A robust natural theology that points to the need for revealed theology is foundational for the purpose of a university.

Going against this idea, the proposed neutrality of classical liberal education relies on skepticism about the most important matters that divide humans. If the university is to be a place that advances cooperation and unity, it must question fictional neutrality, identify the current presuppositions that underlie “liberal and very liberal” outlooks, and promote debate about starting points and first things. To do so, we must return to building on foundational truths. This requires understanding the role of both natural and divine law.

Education is not neutral. But it does build on common ground shared by all humans, and it provides an equitable outcome far more meaningful than the material goods measured by Marx. It produces the equitable outcome of knowledge. Knowledge about the most important questions we can ask. It is by understanding the common ground shared by all humans that we can make sense of both unity and diversity. The pursuit of knowledge and meaning for all humans also teaches us how the many instances of human diversity

point to that same goal. Human and divine law, and their ongoing dialogue, clearly show us how to find meaning, and is the proper study for a secular university.

In the end, both classical liberalism and the post-classical social transformation model share a common skepticism about ultimate meaning. They both confine their solutions to pragmatic or material goals. It is natural for students to want more out of their education. But as long as a state education's view of neutrality rests on skepticism about basic questions, there will not be more. The stalemate we now see between the classical and post-classical systems cannot go on forever; indeed, as state legislatures around the country use legal tools to put into place alternatives such as SCETL at my home institution, it is becoming clear how legislation is able to mobilize on behalf of or even mandate an institutional space in which there is contemplation of the deeper questions, involving divine and human law. Whichever option takes the ascendancy will still need to explain the foundational truths that are the underpinning of any conception of law.

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