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*Response to Keynote Address*

AMBIVALENT POWER IN PUBLIC SCHOOL CONTEXTS

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In her fine essay pointing to the necessity to understand different kinds of power and their administration—in times of emergency, especially as all times come to resemble emergency—Bonnie Honig reminds us that there is no easy distinction between the rule of law and the rule of man. Indeed Honig’s essay reminds me of de Castell’s call for a lesbian ruler, bringing back Aristotle’s conception of the supple interrogation of law and its application and the need to care for the particularities of context, as well as the inherent flexibility of even intentioned interpretation.<sup>1</sup> Schools are fine contexts in which to discuss these issues as juridical forms of power all too often interlace with administrative forms of power and each provide particular kinds of reinforcing and/or contradicting discourses. In much the same way that Honig demonstrates Post managed to use one law to balance another, members of school communities find themselves often in uneasy relation between their commitments to one form of their responsibilities and the regulations, whether from the state, the federal government, or local decisions.

In addition, the clash of an emergency, however enduring, context and the need for flexibility in an educational context are nowhere more evident than in public school reaction to life after 9/11 (or life after Columbine, life after AIDS, etc.). On the evening of 9/11, I was finally able to contact my mother, a Long Island teacher and thus unreachable by phone for most of the day both because of the massive communications traffic, the loss of phone service, and the odd continuation of the school day despite the very local crisis. I had heard from my preservice teachers that day and in the days to follow, stories of their own parents (who were teachers) waiting at school with children whose parents had either been killed or lost in the crush of evacuation and thus unable to pick their children up—school personnel had to bend many regulations to get children home or to engage beyond the usual call of their responsibility. In short, the caring aspect of teaching led many teachers in the NY/NJ metropolitan areas to skirt the edges of what the district lawyers would have considered legally appropriate behavior. But when I reached my mother, who had just gotten home from school and was watching news like everyone else, I asked how her school handled the end of the towers. She replied, “What are you talking about? I’m looking at them right now on tv, they’re still standing.” It was dark out by then and it just hadn’t gotten through to her that the images she was looking at were of the towers in broad daylight and that because she was in a school whose administrator had decided that a news blackout would preserve school stability she was unaware that events had in fact moved on. While this is a minor example

of administrative discretion, it nonetheless shows how distinct schools are from one another, largely because of how administrators make decisions: one school may throw itself into a community and another withdraw from even nation-changing events. Schools are odd and instructive places for considering the promises and possibilities of kinds of administrative power, as well as negotiations over competing obligations of law and responsibility.

I am going to take the opportunity in this response to go over the kinds of negotiations of different forms of power that take place in two well known cases: the refusal of teachers in California to take up the power claimed by popular referendum on Proposition on 187: the power of teachers and other professionals to act as immigration officials. Teachers' professionalism kept them from willingly taking on a form of power that would have distanced them from their mission to work with all students and indeed would have required that teachers actively undertake new roles more similar to those of border guards and INS officers than teachers. A particularly teacher-based form of caring, deeply rooted in professionalism and ethics, inspired this response (a response shared by medical professionals also outraged at the shift in role Prop 187 demanded of them). Proposition 187, though, was a highly contested law that was immediately challenged and eventually voided. Other cases where regulations make it less easy for teachers to care for in comprehensive ways, even though laws do not specifically require that they point out those students to state officials. Schools respond to sexual minority students, my second area of focus, with enforced neglect, whether benign or malicious, enforced by law that requires no action or locally enforced by custom, that encourages teacher passivity. While teachers may object to becoming active agents of racist state control in the instance of Prop 187, they are less likely to object to participating in the institutional silencing of sexual minority students. As many teachers will tell you, teachers are much better at being reactive than proactive. I will argue that these two competing relations to law and obligation sit uneasily in the same institution, care for the same students in such different ways, at least insofar as they define the limits of their practice, and that schools are particularly good places to examine the kinds of ambivalent forms of law and administration that Honig details.

#### PROPOSITION 187 AND TEACHER CARE

Described in the ballot argument provided by the state as 'the first giant stride in ultimately ending the illegal alien invasion,'<sup>72</sup> Proposition 187 was passed by popular referendum in California in November 1994. Intended to cut the financial burden on taxpayers, Proposition 187 prohibited illegal immigrants from accessing publicly funded medical aid and public education, as well as other social services provided by the state. While Governor Wilson endorsed Prop 187, he was also leery of its effect on public education, stating in a television interview that he was confident that court challenges to the proposition would

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halt the “drastic measure of having to remove students from classrooms.”<sup>3</sup> As we all recall, there was a lot wrong with Prop 187: conflict with federal law, conflict with *Plyler v. Doe*, a decision that approved schooling of children of illegal immigrants, among others. Interestingly enough, the California State Board of Education joined arguments *against* Texas statutes that denied public education to the children of people “illegally admitted” to the U.S.<sup>4</sup> Still, it was heartening to see teachers were prominent in the debates, protests, and action against the proposition. As an editorial in *Phi Delta Kappan* put it, “One wrenching effect of the California proposition is that it puts teachers and administrators in the role of ‘cop’ for the Immigration and Naturalization Service, a role that many educators have said that they will not play.”<sup>5</sup>

Indeed educators, PTA members, and students joined in mass protest just after the passage of Prop 187, echoing *Plyler v. Doe*’s contention that the proposition unfairly punished children for their parent’s decisions and, in addition to essentially drafting school personnel into the border patrol, also put an unfair wedge between teacher and student. For teachers, then, *Plyler* as well as a strong sense of professional care, provided the legal and moral grounds for their refusal to cooperate with the proposition. While their cooperation was also prevented by an immediate court order not to enforce Prop 187, public discussion over the clash of laws continued. As one letter to the editor put it, “The real issue here is do we or do we not live according to the law? This is an all or nothing question. If you choose to ignore the laws you don’t like then you have no position to complain.”<sup>6</sup> While teachers unions were overwhelmingly against the ruling, reports of individual teachers complying troubled the anti-Prop 187 organizers, including one where a teacher assigning her students “to write semester essays about their parent’s immigration status.”<sup>7</sup> Other school personnel rushed to reassure students that the provision to expel students had been not been put into practice. As one 12 year old participant in demonstrations against Prop 187 put it, “Our principal said that 187 won’t affect us, but we’re concerned about the rights of others.”<sup>8</sup> In addition to individual acts of reassurance, the California Teachers Union raised one-third of the \$1.6 million to fight the proposition.<sup>9</sup> When the ruling to strike down Prop 187 was announced, the union president of 30,000 member United Teachers of Los Angeles stated of the “requirement that teachers turn in students suspected of being illegal immigrants... ‘We weren’t going to do it anyway’.”<sup>10</sup> The president-elect of the California School Board Association added, “I believe that schools are being asked to do this terribly inhumane thing.”<sup>11</sup>

#### BETWEEN HEAVEN AND THE GAY STRAIGHT ALLIANCE

While in the case of Prop 187, teachers’ higher calling to respect and nurture all their students was central to their refusal to remove students from their classrooms, other situations exist where teachers’ dedication to higher

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callings are less democratically minded. And here, I think, we come to the very real challenges these uncertainties between regulations, administrative discretion, and enforcement of laws pose for schools in a diverse democracy. While time and again school districts have been challenged for their refusal to support gay straight alliances, they continue to put restrictions on these student groups. Most recently in a local school district, the newly-founded gay straight alliance has been informed by the district's legal counsel that they must add to their flyers and school announcements that "this group is neither supported by nor sponsored by the district." According to the Equal Access Act, which guarantees all extra curricular student groups the right to space and support from schools, the district does have to support this group if it supports other extra curricular groups. But because a parent, who is a local preacher, has objected to the group's existence, the district has decided to err on the side of caution and undercut the place of the group in the school community. In short, the district has allowed the parent's religious objects to homosexuality guide its decision about a school group. This is a small example of a growing trend in administrative discretion and like a heckler's veto, it means that those parents who are most willing to give an administrator a hard time will be allowed to alter school practices. Only a few years ago in another local district, a teacher attended ally training and then put an ally sticker on her door, suggesting to lgbt students and their allies that her office was safe space and that she would be glad to talk to them about issues related to sexuality, if they were so inclined. Other teachers who objected that her sticker implied that they were homophobic, took their objection to the school board who then demanded she remove the sticker because the majority of parents in the district were committed Christians and offended by two things: first, the implication that they were homophobic and second, the idea that lgbt students should find respectful, safe space in a school community whose higher commitment was to Christianity, not democratic tolerance that was only a screen for the homosexual agenda.

While the administrator in the local example I first cited did bow to the district directive, she also used her discretionary power to provide as much support to the gay straight alliance as she possibly could. She began to attend their meetings. Because of the new status of the group as "neither endorsed nor supported," the gay straight alliance was not allowed by district policy to use the central bulletin board reserved for recognized groups.<sup>12</sup> The principal allowed them to post their notices in the more prominent location in the large windowed wall separating the administrative offices from the main hallway. Further, upon hearing that gay straight alliance members were saddened at their exclusion from the yearbook, she contacted the central offices and arranged that they be allowed to be present in the yearbook, despite the usual policy only allowing recognized groups. In short, she used her discretionary administrative power to overcome almost all of the exclusions required by district policy.

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But unlike the situation of Prop 187, the policy remains in effect and here is certainly one shortcoming of relying on new forms of administrative discretion to adjudicate justice claims. One must rely on the administrator's good character and disposition to act in just ways. There is certainly much in both stories about teachers, principals, and school board members participation in anti-187 organizing and protest to give one hope that the general desire to care for students will help to push educators in the right direction in contentious social issues. But there are other forms of care that clash as much as forms of power can. For instance, a teacher concerned about a student's moral state or a teacher who hopes to help a student eventually make it to heaven is certainly motivated by a form of care. An administrator who wants to respect a local clergy person and is willing to show care for religious commitment in a way that works against care for sexual minority students is, after all, expressing care. One form of care may inevitably impinge upon another. In the local example I cited first, the principal did invite the objecting pastor into her office to find out how she could best accommodate him. When she found out that he wanted to express his hope for gay straight alliance students through offering them salvation in the act of having his congregation pray over them, she very respectfully asked if he thought the students would experience that act as caring. He thought about and decided they wouldn't and so withdrew his request. It should be clear from this example that she is a very thoughtful administrator who is able to balance the need to respect multiple constituencies with the need to lend particular support to young people in her institution. She is equally fortunate that the pastor in question was convinced by her argument. Because of the central office's discretionary use of power against the intentions of federal law, there is little doubt that the situation would have turned against the principal had the central administration been able to use their discretionary power.

#### NOTES

1. Suzanne De Castell, "On 'The Priority of the Particular to Practical Rationality,'" in *Philosophy of Education 1993*, ed. Audrey Thompson (Urbana, IL: Philosophy of Education Society, 1994).
2. California ballot pamphlet: General election. Sacramento: Secretary of State, November 8, 1994: 54-55, quoted in Tal Ann Ziv, "Denial of Care to Illegal Immigrants—Proposition 187 in California," *New England Journal of Medicine*, vol 332 no. 16 (April 1995): 1095. Laura Angelica Simon's video documentary, *Fearing and Learning at Hoover Elementary* (1997) is a complex examination of how students reinterpret their teachers' care for them in light of their speculations about their teachers' vote on Proposition 187.
3. Ralph Armbruster, Kim Geron, and Edna Bonacich, "The Assault on California's Latino Immigrants: the Politics of Proposition 187," *International Journal of Urban and Regional Research* 19 no. 4 (1995).

4. California State Department of Education, “Immigrant Status of Students,” <http://www.cde.ca.gov/re/pn/fb/yr04is.asp>, n.d., accessed August 28, 2004.
  5. Anne C. Lewis “The Ghost of November Past” *Phi Delta Kappan* vol 76 (Jan 1995): 348-349.
  6. “Controversy Over Prop. 187,” *Los Angeles Times*, 11 Oct. 1994, B6 quoted in Robin Jacobson, “Dangerous Distinctions: New Racism and the Passage of Proposition 187,” paper presented at the Race, Ethnicity, and Migration Conference, University of Minnesota, Nov. 16-18, 2000.
  7. Daniel B. Wood, “California’s Prop. 187 Puts Illegal Immigrants on Edge,” *Christian Science Monitor*, 22 November 1994: 2.
  8. Elsa Guitierrez quoted in Isabel Williams, “Prop. 187 Challenged in Court,” *San Francisco Chronicle*, 10 November 1994: A1.
  9. Williams, “Prop. 187 Challenged”: A1.
  10. Eric Malnic, “Anger, Elation Greet Ruling on Immigration,” *Los Angeles Times*, 21 November 21 1995: A1.
  11. Malnic, “Anger, Elation”, A1
  12. I can only add at this point that I find it odd to be writing about bulletin boards when so many colleagues in the humanities assume this is actually what educational philosophers do. Apparently they are right.
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