

# Bolstering the Board:

Trustees Are Academia's Best Hope for Reform

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# EXECUTIVE SUMMARY

Higher education is in a crisis. Its two key missions—the search for truth and service to the public—are under attack from many directions. Facts and well-tested theories that some segment of the academia community deems offensive are rejected and often replaced by wild speculations. Much of academia shows outright contempt for the nation’s middle and working class. Additionally, costs have soared faster than in almost every other sector of the economy.

In such a scenario, the first place to look is governance policies and practices. An examination of such practices reveals a system of “shared governance” that is guaranteed to prevent bold leadership at the top. Furthermore, shared governance and other academic cultural practices that give authority to mid-level individual employees prevent almost any attempt to right the ship of institutional state.

Reform cannot be expected to happen in a broad-based, organic fashion from within. The incentives are such that those who see the need for reform put their careers in peril for speaking out. The psychological phenomenon known as “groupthink” is creating a dangerous uniformity in many departments and disciplines.

Two conditions are needed to effect large-scale reforms in academia: a hierarchical, top-down system of governance that can enact sweeping changes, and for that system to be controlled or heavily influenced by those outside the system. Strong board governance provides both of those conditions. Most university boards, especially the public ones, were created by charters or statutes that placed the board fully in charge, and, remarkably, the boards legally retain much of their power. And yet, because of a variety of pressures and distortion, most boards have relinquished their rightful positions atop college and university governance.

This report is intended to operate on two levels. One is to make the case for stronger board control. Such a hierarchical system, rather than the distributed shared governance system that exists now, is necessary to effect large-scale reform. Shared governance is a sacred cow that needs to be gored.

The report also works on a more immediate, pragmatic level, providing many solutions that can be implemented individually to begin the process of reforming governance. In most situations, boards still have extensive legal authority. They merely need to exercise their existing authority to put the brakes on many of academia’s excesses.

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# INTRODUCTION

Higher education is approaching an existential crisis. It is in danger of rejecting its most fundamental value, the search for truth, and replacing it with political dogma and opportunistic careerism.<sup>1</sup> Other problems abound, but none so serious as this one.

Indeed, in many departments on many campuses—even on campuses that seem well-ordered—the spirit of free inquiry is under attack. Irrational theories, such as the belief that race and gender are mere social constructs, are proliferating. Political correctness and corporate and government money are distorting scientific exploration. Many departments are dominated by adherents of fundamentally flawed philosophies, such as French post-modernism or communism. Disturbed or hostile individuals are routinely hired, while conservative scholars “need not apply” to many departments. On occasion, even political liberals who express moderate views in public are hounded out of their jobs; one widely publicized incident occurred in 2018 at Evergreen State University when a liberal biology professor, Bret Weinstein, was forced to resign because of harassment from students after he refused to leave campus on a specified “day of absence” for white people.<sup>2</sup>

Certainly, much of academia is still functioning at high levels, in technological research and STEM (science, technology, engineering, and mathematics) education, for instance. But the continued success of some programs merely provides cover for the erosion of standards and quality elsewhere in the Ivory Tower. In much of the humanities and social sciences, political dogma has already replaced objective inquiry. In some schools of education, for example, science is considered dependent upon the background of the individual instead of having universal principles for all, with indigenous myths considered equal to rigorous research methods.

It is still possible to get an excellent education at many universities, even in the humanities. But it is not likely to happen by chance; either a student must be intensely focused on a career path in the financial or empirical fields, or he or she will need considerable guidance and awareness to make it through the maze of nonsense. And the maze is getting increasingly difficult to maneuver.

Even traditional safeguards put in place to maintain standards of inquiry are failing, as revealed by the “Sokal-squared” controversy, in which highly reputable peer-reviewed journals in the social sciences were fooled by deliberately contrived nonsense and published it as if it was important scholarship.<sup>3</sup> This collapse of intellectual standards is even starting to make inroads into the physical sciences.<sup>4</sup>

How can this be happening in plain sight, without spurring a massive campaign for reform?

In a well-run higher education system based on the honest pursuit of truth, the marketplace of ideas would permit critics to attack, refute, and even satirize such ideas. The worst theories would be prevented from gaining even a tiny foothold; the rest would be condemned to some musty little corner while more reasoned ideas displaced them. But that is not the case; the free market of ideas is broken, replaced by a one-sided, dogmatic consensus.

At the heart of the problem is higher education's tradition of sharing governance functions and authority among the board, the administration, and the faculty.

The reason is that the governance of academia has become almost terminally sclerotic and self-interested; academic leaders simply cannot, or will not, respond to these destructive trends. The results are appalling. For example, in 2012 the English department at the University of North Carolina-Wilmington hired a professor instead of 100 other applicants whose scholarship largely consisted of vulgar poems dedicated to pornographic film stars, nonsense rhymes, profane X-rated ruminations made in Toronto strip clubs, and a dissertation about hip-hop music.<sup>5</sup>

General education programs—which were created to ensure that all college graduates had at least a minimum understanding of the most essential cultural knowledge—have been gutted, with requirements satisfied by such lame fare as “Southern Food Studies: Beyond the Plate” and “Breakdancers, Vocaloids, and Gamers: East Asian Youth Cultures” (both at UNC-Chapel Hill).<sup>6</sup>

Mission statements are frequently rewritten to elevate diversity over excellence. Student radicals can chase prominent invited speakers off campus, or tear down campus statues with almost no repercussions.

And it seems as if nobody in any official capacity is pushing back. This is a problem of governance, of leadership.

Of course, many see that a problem exists. Even back in 1998, RAND Corporation researchers Roger Benjamin and Stephen Carroll wrote that the “most pressing reform needed today in the higher education sector is the redesign of the governance structure of institutions.”<sup>7</sup> Governance practices at that time were not responsive to outside concerns, they did not allow expertise-based decisions, and they did not permit timely reviews. But even the Rand authors did not seem to grasp the full extent of the problem. And although there is no shortage of analysis of higher education, including that performed by many top academic administrators, the more common tendency is to ignore or deny the crisis's severity.

For example, Robert Birnbaum, a retired professor of higher education at the University of Maryland, in 2004 disputed the claims of critics that many “institutions are risking disruption or failure because they cannot respond quickly enough to a changing environment.”<sup>8</sup> Birnbaum was viewing the politicized academy through a lens from an earlier time. He believed, in the words of former University of California president Clark Kerr, that “the university is ‘a church with a religion. It believes in the unfettered search for the truth, in free expression of opinion without fear, in preservation of the past, including books, however offensive they may be currently, and in access on merit and the granting of grace on merit.’”<sup>9</sup>

Today, however, the academy is rapidly moving away from those ideals. At best, higher education analysts offer only tepid solutions to the crisis, which threatens to turn academia into a mockery. They cling to worn-out assumptions, such as the belief that academic freedom is more threatened by challenges from conservative elements in the government rather than from academic “groupthink.”<sup>10</sup>

Most of all, the academy fears real change. At least, the changes that are needed. For example, James Duderstadt is the former president of the University of Michigan who later headed a research center focused on the future of higher education. Of his 2000 book *A University for the 21st Century*, he said its central “theme” is one of “change.” But he warned against “the danger of external intervention in academic affairs in the name of accountability.”<sup>11</sup>

In other words, the academy expects to change, but only if these changes are initiated and controlled by academics, without the influence of outsiders. This means that current trends will continue. This continued insularity portends a disaster, not just for the Ivory Tower, but for society as a whole.

For academia exists to serve society. This debt to the public was commonly accepted at the founding of the American Association of University Professors. Founder and economist Alexander Meiklejohn wrote, “We, who engage in research and teaching, do so as agents of the people of the nation.”<sup>12</sup> The AAUP's founding document, the *1915 Declaration of Principles on Academic Freedom and Academic Tenure*, stated that a professor is “primarily responsible to the public itself” (albeit adding the contradictory statement “and to the judgment

of his own profession”).<sup>13</sup> And if not to serve society’s interests, what other purpose would be served by the creation of and public support for massive systems of public universities and community colleges that educate 75 percent of higher education students?

The thing that seems to be forgotten is that society, at its heart, consists of the great mass of people “external” to the academy. And society’s values are not the values of today’s English or sociology departments. Time and again, populist movements have risen in opposition to the ideology of the academy: Nixon’s Silent Majority, the Reagan Revolution, Ross Perot’s third party run, the Tea Party, and the surprise election of Donald Trump. Academia is, by any reasonable estimate, at great odds with those it purports to serve. Either the American people are too stupid to know their own interests—a common view in academia—or something is greatly amiss in the Ivory Tower.

At the heart of the problem is higher education’s tradition of sharing governance functions and authority among the board, the administration, and the faculty. Few observers are willing to criticize it; it is truly a “sacred cow.” The prescriptions of experts for fixing higher education’s problems call for more of the same practices that led to the crisis in the first place. That is, most of the acclaimed writers call for heightening the shared components of higher education governance, not reducing them.

But that may be the worst thing institutions can do. If higher education’s governance practices are working, why then is academia increasingly struggling to protect its most important goals? To increase the shared component of governance by empowering faculty and administrators is to essentially do more of the same thing that causes the current failure to correct the problems.

For shared governance, by definition, inhibits reform. It is based on developing a consensus among widely differing constituencies, and therefore tends to clog and tangle rather than attack problems directly. If you wish to maintain the status quo, instituting a system with multiple layers and involved processes is the way to go. Of course, to maintain the status quo in academia doesn’t mean that no change will occur. It means that the system will continue to move in the same direction: toward more politicization.

If, on the other hand, you wish to address problems aggressively, it is best to instill a hierarchical form of governance with a clear chain of command. And with the trustees in charge. Only boards can represent all interests. And the American system of higher education was intended to function with boards in charge.

Today, though, boards are derided on campus and in the media. They are blamed for getting in the way of progress or even turning back the clock. Insiders claim that boards are becoming politicized. “Political forces are encroaching on the governance of our institutions,” wrote Duderstadt.<sup>14</sup> What such insiders cannot see is that the introduction of politics has come from their own ranks, that boards are merely reacting to the extreme politicization that is already occurring in the academy itself. Furthermore, boards are where academia should interact with the rest of society on a political level, rather than in the departments and classrooms.

Boards are disparaged for being anti-intellectual and even too stupid to understand how a university works. Or, they are viewed as being concerned only with the university’s relations with the business world in a self-interested manner—or perhaps, only interested in good tickets to school sporting events.

In some cases, those criticisms may be true. But a much worse problem is that board members are also kept in the dark about higher education’s real problems, shown only one side of situations. They are overwhelmed and outmaneuvered because of a serious asymmetry-of-information problem. The current system is one in which the power of the board has shrunk in relation to those of the faculty and administration—if boards are at fault for anything, it is because they have unwittingly abdicated their real roles atop the system.

To preserve the best of higher education, something more fundamental—a “Copernican revolution,” or “Kuhnian paradigm shift,” if you prefer—is needed to turn academia back toward the spirit of open inquiry. Such a paradigm shift is called for when the existing framework is no longer sufficient to explain or solve existing puzzles; a new perspective is needed with greater explanatory power.

Such a shift in higher education would require reordering power relationships, elevating the power of governing boards, the public, and the alumni while reducing the power of faculty and administrators.

To many, such a recommendation may seem drastic, even alarming. Most commentary on higher education remains within fairly narrow boundaries; much of the best-known literature tends to be written by former college administrators, who have the seeming advantage of being “inside” the system, or else written by policy professionals from professional associations that have risen to prominence within the current system. But their insider status also tends to blind them to the overall picture. They may decry the gridlock that an outside observer will perceive to be the natural result of shared governance, but they blame it on the governing boards, whom they would prefer to keep at a distance and forego their legal and natural authority. More faculty involvement, a more powerful administration, more shared governance is their solution.<sup>15</sup>

But to support the current system is to permit antagonistic forces to incrementally dislodge the best of the Western intellectual heritage from the academy.

Furthermore, there are perceptions that the current system is the natural—and only—way academia can be organized and that it has always been ordered this way. Both assumptions are untrue; today’s system is merely one that evolved pragmatically over a period of time when particular political and intellectual modes were in ascendance.

This report on higher education governance is primarily about the public sector; governance in private colleges and universities has a very different set of conditions and incentives than those in their public counterparts. And that may be to the advantage of public schools, for they are much more susceptible to the reforming powers of public opinion and state funding than are private institutions. Public universities are less insulated on all fronts than are prestigious private schools with large endowments; such private colleges need neither obey the public nor submit to market demands to attract students. (Although, it should be added, non-prestigious private schools are the most susceptible of all to market forces; they have neither large endowments nor direct public support.)

The report is not just descriptive. It indeed describes how university governance got to the point of crisis. It also describes the forces currently affecting academia’s inability to address its own problems, including the psychological phenomena that make reform from within unlikely. But it is also prescriptive, focusing on potential solutions that may prevent higher education’s further descent and usher in a period of stronger leadership. Such suggestions for reform need not be all or nothing; they can be implemented in incremental or piecemeal fashion. The one overriding principle, however, is that the direction of higher education must be changed and that stronger board governance is the way forward.

## Notes

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9. Birnbaum, p. 9.
10. Lingenfelter, p. 51.
11. James Duderstadt, *A University for the 21st Century* (Ann Arbor, MI: University of Michigan Press, 2000), pp. 3-4.
12. Jay Schalin, *Academic Freedom in the Age of Political Correctness* (Raleigh, NC: The Pope Center for Higher Education Policy, 2016), p. 10.
13. Schalin, 2016, p. 9.
14. Duderstadt, p. 5.
15. Duderstadt, p. 257.



# UNIVERSITY GOVERNANCE: PAST AND PRESENT

## History

There are many roots to the form of academic board governance that currently dominates the American academy, and they extend back millennia. When higher education observers refer to legal conventions or traditions as a reason for doing things a certain way, they may be discussing practices that go back a few decades—or many centuries.

### Old World Roots

The first innovation crucial for the development of the modern Western academy was the corporation. “Roman rulers established legal processes designed to encourage the creation of desirable social institutions separate from agencies of the state, but at the same time subject to their dominion.”<sup>1</sup>

Roman jurists did not think of such an institution as a legal abstraction but considered it to be a tangible entity, a reality with a special status.”<sup>2</sup> Thus, it was categorized as a “corpus” or a “universitas.” Furthermore, a corporation was “not sui generis: it had to be created by some external authority.”<sup>3</sup>

The second innovation was that of academia itself. Massive undercurrents rose to the surface in Europe in the eleventh century. The chaotic period of Islamic and barbarian invasions was coming to an end; the feudal political and economic system had achieved stability. Towns re-emerged, and classical learning was re-introduced from the recovered Islamic-held territories in Spain and Italy.

The first European university was founded at Bologna, Italy, about 1088. (The starting dates of the early universities are difficult to pinpoint, since scholars informally taking on pupils usually occurred before official organization into a school.) According to the university’s website, the university at Bologna was formed when independent teachers of “grammar, rhetoric and logic began to apply themselves to law.”<sup>4</sup> The defining characteristic of Bologna’s organization in those formative years was that students—and their wealthy patrons—were in charge. It was, essentially, a “guild of students” who contracted with scholars to tutor them. As such, it became the model for other institutions of higher learning in southern Europe.

Bologna’s origins contrasted greatly with those of the University of Paris, which became the archetype of the early northern universities. The Parisian academy was started around 1100 A.D. by “creative scholars expanding intellectual inquiries beyond rote logic and copying ecclesiastical documents,” according to Edwin Duryea, a professor of higher education at SUNY-Buffalo who wrote the definitive work on the history of higher education governing boards (titled *The*

*Academic Corporation: A History of College and University Governing Boards*).<sup>5</sup> Those early Parisian scholars soon went beyond their own explorations to providing instruction to students. However, the operation remained scholar-centered:

The masters had taken the initiative to consolidate what began as an informal clustering of lectures in rented rooms and halls. In conformity with medieval custom, as their numbers increased they combined into a guild of scholars who by the end of the twelfth century had moved into corporate status as a *universitas*.<sup>6</sup>

According to Anglican theologian and historian Hastings Rashdall, “Paris supplied the model for the universities of the masters; Bologna for the universities of the students.”<sup>7</sup>

The initial English university at Oxford followed a similar progression as the one at Paris, with an informal gathering of scholars coalescing into a guild association in the twelfth century. Rashdall wrote that the “intercourse between Paris and Oxford was so close that every fresh development of corporate activity on the part of the masters of Paris was more or less faithfully imitated or reproduced at Oxford.”<sup>8</sup>

The university at Cambridge opened early in the thirteenth century and adopted the same corporate practices as its predecessors.

King Henry VIII played a large part in the development of the English universities after appropriating religious jurisdiction from the pope in 1534. He assumed the “right of visitation,”<sup>9</sup> in which a committee of his representatives was authorized “to interview masters” and students and to apply other means deemed necessary “to ensure conformity with royal policy.”<sup>10</sup>

He also asserted that the right to grant a corporate charter included the right to cancel it.

Subsequent actions affirmed those royal prerogatives. However, Oxford and Cambridge continued with internal faculty governance (albeit still subject to control by the king’s visitors). A chief administrative officer, usually a member of the faculty and sometimes referred to as a college head, warden, master, provost, or president, handled the university’s day-to-day affairs. This tripartite structure presaged the current “shared governance” model dominant in today’s U.S. universities.

## Colonial America: Establishing Governance Traditions

Perhaps the most common understanding of the founding of American colonial colleges is that “the Parisian model” that was adopted and enhanced “in Oxford and Cambridge” was, in turn, “carried over to America.”<sup>11</sup> There were many reasons to assume so. Beyond the obvious inheritance of English culture by the colonists, the founders of Harvard College, the first colonial college, had close ties with Cambridge and there were great similarities in the two schools’ curricula. Colonial colleges were also “constituted not as part of the government but, in the English tradition, as separate entities.”<sup>12</sup>

But that common view does not appear to be accurate. A stronger case can be made that the primary influence on the American colonial colleges was not their English academic predecessors, but their Calvinist ones. Geneva Academy (later the University of Geneva) was founded by the French-Swiss religious reformer John Calvin in 1559 as a theological seminary and law school. It was not a typical scholar-driven northern university formed on the Parisian model, as were Oxford and Cambridge. Instead, it was governed by a board of community leaders who were also members of Calvin’s Reformed Church.

There was considerable influence at Geneva from the Italian universities—but not the original student-run Italian system. According to Rashdall, medieval Italian university teachers grew tired of being controlled by their students and sought an alliance with municipal authorities. In time, those authorities gained the upper

hand, creating dominant governing boards of prominent citizens that were more amenable to the faculty than student control had been.<sup>13</sup> This was the form adopted at Geneva.

Other universities in Calvinist centers adopted structures similar to Geneva's, including those at Leyden, Aberdeen, and Edinburgh. The Scottish schools were especially community-based. Edinburgh's founding grant differed "from the English charters that conveyed corporate powers to the senior academics in the universities and their colleges."<sup>14</sup> Instead, "the municipality was to oversee internal affairs, including the appointment of teachers, subject only to 'advice' from the clergy."<sup>15</sup>

And that became the case with most of the early American colleges founded during the colonial period. They had external lay boards instead of internal governance by scholars. They were also community-driven: "In all instances, a group of influential residents took the initiative and proposed the founding to provincial legislatures which then sent the proposed charter to the governor for a recommendation to Westminster. A royal charter followed."<sup>16</sup>

The governance structures at the first two colonial colleges, Harvard College in Massachusetts and William and Mary College in Virginia, were originally "bi-cameral," that is, having an external board made up of community leaders and an internal board of faculty. Yet the internal boards had little power: "The educational-ministerial cadre that maintained the educational program did so under close oversight by the magistrates who represented civil government."<sup>17</sup>

At William and Mary, it was the government-appointed Board of Visitors who not only "held the final right and responsibility to manage the property and the monies," but "selected the professors and enacted the rules by which it was to be operated."<sup>18</sup> At Harvard, the external board, the Overseers, consisted of six magistrates and six ministers, while the internal board was composed of the administrative president, the treasurer, and five fellows (faculty). The internal board could initiate policy and action, but only "with the consent of the Overseers."<sup>19</sup>

It was the third colonial college, Yale, that provided the template for most of the colleges started in the United States before the Civil War. According to Duryea, the school was founded by Congregational ministers who were concerned about "theological heresies' infiltrating Harvard."<sup>20</sup>

That cast of mind led them to a governing board with the authority to manage a school or college to assure a 'proper' Christian environment. In contrast to Harvard and William and Mary, their proposal prescribed an autonomous board of trustees composed of external members, in their case ministers with a solid Calvinist faith.<sup>21</sup>

He continued: "The Yale founders have sought and obtained a self-perpetuating board which would assure them proper theological oversight free of influences from 'unreliable' members of the teaching staff."<sup>22</sup>

That community control of intellectual content carried over to most of the other colonial colleges. They (and those chartered in the early years of the United States) were also organized with single boards, of varying sizes and denominations. The College of New Jersey (now Princeton) was initiated by Presbyterians; King's College (Columbia) and the College of Philadelphia (Penn) were civic leader-initiated (although these included clergy); Rutgers was initiated by the Dutch Reformed; and Dartmouth by an individual, Eleazar Wheelock, a New Light minister.

Only Brown College in Rhode Island followed Harvard and William and Mary with a bi-cameral board, including an external board composed of members of the community (the Trustees) and an internal board of faculty (the Fellows). In a truly unique format, the two boards at Brown met together and acted as one.

**And that became the case with most of the early American colleges founded during the colonial period. They had external lay boards instead of internal governance by scholars.**

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From those origins, American colleges continued to fundamentally diverge from their English counterparts, according to Duryea:

The unique situation in the colonies, however, resulted in two consequences. One was the concept of education as an activity separate from government but responsible to it, a condition that ultimately resulted in a balance between institutional autonomy and public accountability in American higher education. The second was a precedent for the corporate responsibility of governing boards as agencies of control composed of private citizens.<sup>23</sup>

## American Universities: The Battle for Control

By and large, American colleges stayed relatively true to the Yale model for the better part of two centuries. But great changes were on the horizon. The biggest disruption came from the rapid expansion of knowledge and the adoption of empiricism as the new standard of truth, which forced higher education to adapt in radical ways that would lead to the academy as we know it today.

### Legal Status

The courts and governments played a major role in the evolution of the Ivory Tower. A lawsuit between the board of trustees of Dartmouth and the school's president, *Dartmouth College v. Woodward*, was settled in 1819, and had implications far beyond higher education. The decision helped to define the status of a private university as separate from the government even though it was chartered by the state. Furthermore, the decision clarified the relationship between the state and a private corporation, in that a corporation was given rights of its own as if it were an individual. In other words, the right of the state to cancel as well as grant charters claimed by King Henry VIII was no more; the corporation itself determined its continued existence or end.

Public universities received some clarification of their legal status as well. The "founding statute" of the University of Virginia in 1816 "made it explicit that a college would remain 'in all things and at all times . . . subject to the control of the legislature.' The Virginia initiative set a precedent for the public control of state colleges and universities that increased slowly and sporadically."<sup>24</sup> According to Duryea:

By 1900, nearly all state legislatures had founded their institutions along the lines of the University of Virginia pattern of statutory prescribed legislative control.<sup>25</sup>

By the mid-nineteenth century, the confusion between public and private institutions had been settled. Each had its own ultimate authorities: "for public institutions, state authority will prevail; for the private, the corporate charter requires that the courts will judge."<sup>26</sup>

Another important step was the 14th Amendment of the Constitution, which grants due process protection of person and property ("nor shall any state deprive any person of life, liberty, or property, without due process of law").<sup>27</sup> Due to a "growing recognition" of "Fourteenth Amendment requirements, courts began to insist that institutional rules and regulations be reasonable and fair."<sup>28</sup> According to Duryea, it "furnished an important conduit to students seeking judicial review against improper treatment by faculty members and administrations. It also allowed professors, in turn, to appeal actions by presidents and governing boards."<sup>29</sup>

Among the questions that needed clarification by the courts concerning faculty with important implications for the future were:

Did appointments approved by the boards constitute contracts holding an obligation on the institution as well as the individual?

Was a faculty member in the public sector an officer of the state or an employee of the board?<sup>30</sup>

The Supreme Court decision in *Head v. University of Missouri* in 1873 provided the answers. For the first part, the decision “assumed the existence of a contractual relationship.”<sup>31</sup> Both parties were bound by any agreements made at the time of appointment: “the court did give its approval to a formal legal relationship that in practice tended to bind the institution more than the faculty member.”<sup>32</sup>

*Head v. University of Missouri* also decided the question of whether faculty were employees in the affirmative. And “in subsequent cases, state and federal, state and federal appeals courts continued to support state constitutions and statutes that classified faculty members as employees of the board and not as officers of the state.”<sup>33</sup>

M. M. Chambers, a former professor of educational administration at Illinois State University who was once called “the undisputed leader in the field of law and higher education” by the *Review of Higher Education*, stated in a 1959 essay entitled “Who Is the University?” that “in reality” and “in law and the opinions of courts, faculty members serve as employees of the board, just as do administrators and staff.”<sup>34</sup>

### Transition to Shared Governance

Boards still had broad powers until the dawn of the 20th century. In 1887, for example, the statute establishing the University of Arizona declared that “the board of regents shall have the power to remove any officer or employee connected with the institution other than the chancellor or member of the board of regents when, in their judgment, the interests of the university require it.”<sup>35</sup>

But the tremendous explosion of knowledge during the nineteenth century, resulting from Enlightenment empirical methods, caused new complexities and a demand by faculty and administrators for a new organization of the academy. Early in the 19th century, trustees were assumed to know much of the content taught. When the curriculum had largely been limited to a few topics such as law, theology, the classics, and medicine, educated trustees could actually determine the specific curriculum and even question students to ascertain their achievement. “Boards would evaluate what students learned by making it a board responsibility to determine that students met requirements for graduation.”<sup>36</sup>

Knowledge gains and specialization made that no longer possible: “in practice, of course, board members could not carry on that colonial precedent of questioning each graduate at commencement. . . . [They] had to rely on faculty members who dealt directly with students and their education.”<sup>37</sup>

The new age of specialized knowledge in many new and advanced disciplines gave faculty leverage they lacked in earlier years. With trustees no longer able to grasp the entire curriculum, departments soon rivaled—and eventually superseded—boards as the authority in academic matters.

According to Duryea, “During the final decades of the nineteenth century . . . specialization bonded to departmental organization and left boards with no alternative to acceding to the faculty the oversight of academic matters and to find and approve new colleagues.”<sup>38</sup>

Nicholas Butler, who was president of Columbia University from 1901 to 1945, wrote in his 1917 annual report:

**But the tremendous explosion of knowledge during the nineteenth century, resulting from Enlightenment empirical methods, caused new complexities and a demand by faculty and administrators for a new organization of the academy.**

The records of the university make plain that before 1887 or thereabouts, the Trustees concerned themselves not only with the government of the university, but directly with its administration. Since July 1, 1887, however, and more completely since 1892, the Statutes of the University have put all initiative and virtually complete responsibility for the educational policies and work of the university in the hands of the University Council and the several faculties.<sup>39</sup>

During this period, the esteem the public held for their institutions was gradually transferred to the faculty. According to Duryea, “at Johns Hopkins and Chicago, professors were accepted as the guiding force for all matters concerned with education and research.”<sup>40</sup> He added that “the decades that followed chronicled the increasing primacy of professors in academic matters.”<sup>41</sup>

This change in fortunes extended to the courts, which “in decisions as early as the 1890s referred to the faculty rather than dean, president or board as the appropriate source of judgment.”<sup>42</sup>

Perhaps the issue that most transformed higher education from board-centered to faculty-centered was academic freedom. The basic concept accepts the right of scholars to pursue knowledge according to their own consciences. The growing success of empirical methods in explaining and corraling the forces of nature for mankind’s benefit drove much of the academic freedom controversy. Early colleges had taught from religious perspectives; deviation from doctrine was not tolerated. But it was not to last, in the main. “A philosophical shift, the Darwinian revolution, ended the dominance of doctrinal morality as the final word in the determination of truth, emphasizing instead an empiricism that depended on verification of facts through experimentation.”<sup>43</sup>

As society secularized, and with the emergence of public universities (and their adoption of German definitions of academic freedom that were extremely broad), academia became embroiled in a protracted struggle to determine academic freedom rights. Starting in the mid-19th century, that struggle continues today. “Accusations of “heresy, infidelity, or atheism” were “beside the question,” argued *Popular Science Monthly* in 1876. “If a theory in astronomy, in geology, in physics, chemistry, or biology, is in doubt, let it be judged by its own evidence.”<sup>44</sup>

In one seminal controversy occurring in 1880, a professor of social science, William Sumner, was castigated by the school president, Noah Porter, for assigning a book by Herbert Spencer, the father of social Darwinism. Eventually, they achieved a compromise that moved the cause of science—and academic freedom—forward, with Sumner remaining on the Yale faculty.<sup>45</sup>

Sumner’s self-defense centered on the idea of “whether a professor who was competent enough to be allowed to teach should teach without restraint from religious taboos.”<sup>46</sup> In this, he presaged a central contention of the American Association of University Professors (AAUP) foundational document, its 1915 *Declaration on Academic Freedom and Tenure*. The Declaration contended that, for public universities and private colleges that do not specify submission to a particular doctrine, trustees “have no moral right to bind the reason or conscience of any professor.”<sup>47</sup>

This struggle set boards directly against faculty, with administrators appearing on both sides. Events such as the Sumner controversy and favorable court decisions encouraged the professoriate to push against old boundaries and seek greater authority. In 1905, John James Stevenson, a New York University chemistry professor and president of the New York Academy of Sciences, characterized the subordination of professors to trustees as contrary to the real interests of educational progress. He wrote that “the university has outgrown the swaddling clothes of the semitheological college and the method of control should be adapted to the new conditions.”<sup>48</sup>

Eventually, the faculty won the day. The academic freedom argument gave them the higher ground in the search for truth, the shift to departmental authority over content gave them actual power, and they pushed their advantages to the fullest. The formation of the AAUP provided them with a formal power base, enabling them to “set widely accepted standards used by courts in cases related to university and college organization, especially those involving the status of faculty.”<sup>49</sup>

The changing roles of boards and professors influenced the legal and legislative climates surrounding higher education. As the century progressed, trustees realized the limits on their ability to act informally.<sup>50</sup>

According to historian of academia Laurence Veysey, “the American university of 1900 was all but unrecognizable in comparison with the college of 1860.”<sup>51</sup> And, according to Duryea, the character of governing board membership had changed along with it.<sup>52</sup> Formerly assertive boards gradually relinquished their leadership roles:

Neither charters, statutes, nor court decisions imposed serious constraints upon the authority of boards to direct educational policy. With very few exceptions, the significant curbs imposed upon boards’ corporate authority at the turn of the twentieth century derived from their increasing remoteness from academic affairs as a consequence of the increasing size of the institutions they governed and thus their leverage over and participation in decisions affecting internal policies.<sup>53</sup>

Strong leadership in the boardroom gave way to a lighter touch, Duryea added:

“But the reason it does [work effectively as a form of governance], as has been emphasized over and over again by all modern writings on trustee function your Committee has been able to investigate, lies not only in the wisdom but in the restraint with which the individual trustee conducts himself in the unique situation he occupies. The legal supremacy of trustees and their final authority to act . . . is unquestioned, but the most experienced trustees are themselves constantly warning their newer colleagues that over-activity in certain areas—particularly in the area of education itself—is as great a sin against the modern spirit of trusteeship as is neglect.”<sup>54</sup>

At the same time, the status of the faculty grew. “During the latter part of the nineteenth and early twentieth centuries, the literature dealing with this facet of academic history evidences an increased acceptance of the professional status of the professorate—as more than simply employees of the board but as professionals holding a degree of eminence, especially in connection with academic affairs.”<sup>55</sup>

Court decisions that once gave the board the right to dismiss professors “at will,” such as *University of Mississippi v. Diester* in 1917, eventually gave way to decisions that permitted professors due process protections such as hearings by faculty committees, as in *State ex rel. Bourgeois v. Board of Supervisors on Louisiana State College* in 1944.<sup>56</sup>

In most ways, the increase in faculty control of the intellectual content has continued until today. But several developments threaten to reverse their gains.

### Legislative Control of Boards

The relationship between the states and governing boards at public universities remained consistent until the second half of the twentieth century. The official power remained with the states; courts consistently upheld “the ultimate legislative right to supervise governing boards.”<sup>57</sup> Edward Elliott and M. M.

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**Eventually, the faculty won the day. The academic freedom argument gave them the higher ground in the search for truth, the shift to departmental authority over content gave them actual power, and they pushed their advantages to the fullest.**

Chambers wrote in their 1936 book, *The Colleges and the Courts*, that “the power of the legislature to control the expenditure of funds appropriated to it by attaching reasonable conditions to the appropriation acts is practically unlimited in most states.”<sup>58</sup>

But that did not mean legislators always exercised their authority. “In practice, however, governing boards did enjoy a substantial degree of autonomy in the sense that they were usually viewed as public agencies separate from agencies of the state,” wrote Duryea.<sup>59</sup> Right up until the 1950s, legislatures refrained from intruding too far into the financial affairs of public universities.

But greater interaction with the world beyond the Ivory Tower has brought greater oversight. “Higher education’s expanding utility in society has drawn with it increasing intrusions by governments (especially state) and other influential segments of society.”<sup>60</sup> Additional funding by government has also brought greater interference. “State and federal agencies have augmented drastically their oversight, accompanying major growth of financial support of institutions and their services,” wrote Duryea.<sup>61</sup> The federal government also works through the regional accrediting agencies, which it authorizes.

Furthermore, the general social upheaval of the 1960s, with its massive increase in the size and scope of government, “significantly changed relationships between government and educational institutions,” according to Duryea. “Each facet of federal involvement inevitably carried with it ‘guidelines’ and agencies to oversee and in time control how institutions used public funds. College and university governing boards were not left out.”<sup>62</sup>

Most of the major stakeholders at public universities other than boards of trustees—faculty, administrators, students, state legislatures, accrediting agencies, and federal agencies—increased in influence. The administration has especially grown in importance by leveraging its position as the central point of contact for other stakeholders.

Governing boards, in contrast, have been devalued as merely a vestige of an older order. They are often reduced to rubber-stamp committees that give a seal of imprimatur to decisions made by others, even those who are legally subordinate to them.<sup>63</sup>

## Current Characteristics of the University

The changes occurring in the last 50 years have been no less dramatic than the ones in the century that preceded them. “Governing boards . . . have made an extraordinary adjustment to changes occurring around them,” wrote Duryea.<sup>64</sup>

The question is, have these adjustments—culminating in a retreat from exercising their rightful authority—improved higher education? Have they produced the right framework for the future going forward? The answer to both questions is a resounding “no”; rather, it would appear that they have produced a sclerotic shared governance system that shows no ability to handle severe problems.

The problems are obvious and severe. Student debt hangs over higher education like a threatening storm cloud. The radical protest movement that started in the 1960s has now become enfranchised on campuses. The humanities are disappearing due to a combination of a lack of immediate utility, lowered standards, and politicization, devolving into an academic area that serves itself and special interests to the detriment of the general public.

The faculty is faced with two destructive trends. For one, it faces increased radicalization within its ranks, setting academia at odds with the rest of society. Additionally, an overproduction of PhDs has created a glut of potential faculty in many disciplines; increasingly, faculty are not full-time tenured professors paid



to both teach and conduct research, but contingent teaching specialists or part-time adjuncts. (And an army of post-doctoral researchers waits to fill any open position.) In both cases, the faculty has shown its inability to police itself.

The administration has grown in esteem and power; after all, somebody has to manage the whole business, even if poorly equipped to see the larger picture. Empowered by accreditation demands and federal legislation, administrative staff have emerged as another key faction—and one that aggressively pushes for an increasingly politicized campus.

Control of academia is a zero-sum game; as the power of other stakeholder groups has increased, boards have weakened. Private boards are almost extensions of the administration. Public boards are under assault from all directions; they too have been reduced to rubber-stamp committees.

Yet, almost nobody is looking at making fundamental changes to governance. Instead, the higher education world is holding to the fiction that the current system of shared governance has existed from the start of the American academy and that academia is necessarily organized in such a fashion.

These claims are false; for over 200 years, American colleges were governed top-down, with lay boards and communities in control. It was not until the Progressive Era of the early 1900s that shared governance became the industry standard. And shared governance has served the nation no better than other Progressive Era ideas—it has eroded freedom, national unity, and the level of discourse.

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# Essential Elements of Governance

University governance is a complex topic, with many elements; it almost defies analysis. Economist Andreas Ortmann and business law professor Richard Squire suggest that the internal operation of a college or university has long been seen as a “black box not accessible to analysis.” Their reason for this opacity is that the competing groups in the governance structure have “inconsistent, ill-defined, and in any case hopelessly multi-layered” preferences.<sup>1</sup>

Yet without better understanding, higher education policies will remain mired in their current path. No matter how complex, higher education’s “internal workings” must be defined and analyzed. This section will introduce some of the more important concepts that will be important in the later discussions.

## Introducing Shared Governance

The first of those concepts is shared governance. Shared governance dominates today’s academy and has increasingly done so for nearly a century. Accordingly, if there are problems, it is likely that this model has been a contributing factor.

And yet, shared governance is often not an official policy. The Association of Governing Boards (AGB), which is an advisory association that informs boards on what are considered to be “best practices,” affirms that “boards have fiduciary responsibility to advance the institution’s mission to promote integrity and quality.”<sup>2</sup> This means they determine the type of academic programs offered and are ultimately responsible for the quality of the learning experience.

However, in practice, boards often cede much real decision-making to the faculty and administration. Writing for the AGB, Steven Bahls, the president of Augustana College in Illinois, states that it is the administration and faculty who “shape the manner in which subjects are taught and learning experiences framed, identify who shall teach these programs, and develop approaches to assess the outcomes of student learning.”<sup>3</sup>

The division and delegation of powers is crucial to shared governance. Boards delegate powers to other internal stakeholders. They did so long before shared governance became a convention; they do this through provisions in fundamental governing documents such as statutes and charters. In other words, they control the degree to which governance is shared.

According to Bahls, boards almost always delegate day-to-day matters to the officers of the organization. Furthermore, the actions of the officers are—or should be—subject to close scrutiny and oversight by the board. Usually, this delegation of powers is “ensconced in the policy documents in each college or university.”<sup>4</sup>

According to the 1966 AAUP *Statement of Government of Colleges and Universities*, the board should have primary responsibility for:<sup>5</sup>

- Ensuring fidelity to mission.
- Managing the endowment.
- Managing the finances of the college—both for operating expenses and capital needs.
- Setting general personnel policies that govern all employees.

Faculty, on their own volition, have taken control of intellectual content. According to the AAUP *Statement*, the faculty has primary responsibility for:

- Course requirements.
- Degree requirements.
- Faculty status, including hiring and tenure decisions.
- Appointment of academic department chairs.
- Selection and organization of faculty representational structures.

According to the same document, the president has primary responsibility for:

- Planning for the institution.
- Maintaining institutional resources and developing new resources.
- Managing non-academic activities.
- Serving as chief spokesperson.

## The Role of Stakeholders

One of the most frequently cited reasons for why higher education suffers from management problems is because, unlike the clear-cut measure of “profit” in the business world, higher education has no single “return on investment” standard that is both undeniable and quantifiable. Instead, there is a tangle of competing ends desired by numerous actors.

Given this absence of a single objective standard for performance, one commonly used approach is “stakeholder analysis.” According to R. Edward Freeman, a philosopher and business professor at the University of Virginia who wrote the seminal work on stakeholder theory in 1984, stakeholders are, simply, “any group or individual who can affect or is affected by the achievement of an organization’s objectives.”<sup>6</sup> Given a broad enough definition, almost everybody has some sort of stake in higher education. The most central ones are students, faculty, administrators, and board members. Others with an important stake in higher education include alumni, staff, parents, society in general, employers, and the government.

Taking a step further out from the center, one can add K-12 educators, vendors, and accrediting agencies to the list of stakeholders. And, perhaps, academia in general is one, as it is also dependent upon the policies and conduct of individual schools.

Stakeholder theory is supportive of shared governance. Andrew L. Friedman, a professor of management and economics at the University of Bristol, and Samantha Miles, a reader in accounting and finance at Oxford Brookes University, suggest that board members “should direct the affairs of the corporation in accordance” with the “stake-holding principle.”<sup>7</sup> By that, they mean a “normative” approach in which the needs of stakeholders must be balanced according to ethical principles. Such an approach conflicts with the more traditional view of organizations, in which there is a hierarchy of authority and in which the top level of authority has both full control and responsibility for achieving the mission and other goals.

## Incentives

One of the central questions of this paper is which stakeholders and their incentives are most likely to support and protect the main goals and values of higher education: to preserve the spirit of free inquiry, to transmit valuable knowledge, and, for public schools, service to society. Identifying the stakeholders who have strong incentives to defend these values should determine how to apportion power.

Some stakeholders—faculty, administrators, and students—have seemingly endless numbers of incentives. Of course, not all incentives—or stakeholder groups—are of equal importance. And not all members of the stakeholder group have every incentive mentioned. Nor does every member of the group benefit from every group incentive.

And, it should be noted, incentives can be divided into internal goals and external rewards. However, both types drive behavior in roughly similar fashions.

The following are broadly defined lists of potential incentives for the major stakeholder groups:

Faculty:

Pay, benefits, perquisites, tenure and promotion, power/influence, control over campus, job security, career growth, honors, fame, ego, personal advancement, teaching hours versus time to research, institutional or departmental reputation, personal reputation, academic freedom, control over the curriculum, control over the classroom and pedagogy, control over hiring, tenure, and promotion for others, promote learning, help students, student success, business startups, replication of self in graduate students, politics.

Board Members:

Quality education, institutional or system reputation, personal reputation, loyalty to institution, desire for public service, student success, social life, career enhancement, economic development for personal gain, economic development because of regional loyalty, economic development to attract research, political ideology, serving an interest group, satisfaction of accreditors and regulators, ego, controversy avoidance.

Top Administrators:

Quality education, pay, benefits, perquisites, aggrandizement of the campus, satisfaction of accreditors and regulators, student success, cost-cutting, social glamour, institution or system reputation (rankings), personal reputation, fundraising, research funding, good publicity, scandal avoidance, popularity, athletic success, control of other stakeholders, influence with legislature to maintain revenues, high enrollments, increasing applications, personal career growth, defend free speech and open inquiry, politics.

As can be imagined, no model can accommodate the full range of incentives and come up with a clear conclusion.

The question is how to decide between all these competing incentives to determine which ones drive stakeholders toward supporting good values. Even analyzing stakeholders in the light of their incentives doesn't promise clarity. Friedman and Miles acknowledge that some view stakeholder analysis as a "slippery creature . . . used by different people to mean widely differing things."<sup>8</sup> Furthermore, they reveal that stakeholder groups themselves are hardly homogenous, yet are often reduced to a single set as if they were all alike.<sup>9</sup> For instance, students' motivations and goals vary widely, as do those of faculty members, administrators, board members, and so on.

To illustrate the analysis of incentives, and given such lack of consistency, it may be best to avoid formality and take a casual look at two incentives that are present across much of the stakeholder spectrum. One of the most important goals of a college or university—one that almost everyone agrees on, albeit using different definitions—is to provide a "quality education" (used here in a general, non-specific sense).

Students' natural default position is that they wish for quality educations. Yet, some do not. There are a great many students who merely wish to gain academic credentials for the least amount of work; the quality of their learning experience is secondary at best. That attitude stands in opposition to obtaining a quality

**At times, quality and reputation may even be at odds in higher education, for correcting problems can bring negative publicity that hurts an institution's public standing.**

education, which by most definitions requires some effort. Other students reject quality for some part of their education; they are serious about learning their major discipline, in which they hope to be employed or specialize academically, but have a negative attitude toward the general education program, merely wishing to check off the necessary boxes with as little effort as possible.

Furthermore, many politicized students ardently reject most definitions of a quality education—which necessarily includes exposure to alternate ideas—preferring to avoid anything that does not adhere to a very narrow spectrum of politicized thinking that mirrors their own.

Faculty in general seek to provide a quality education to their students. For many, that is the main reason for their academic careers. But that is often a matter of personal choice. The reward structure for faculty is based as much or more on research and publishing than it is on teaching. This creates a trade-off between educational activities such as teaching, counseling, and mentoring and more profitable activities such as research or writing. As a result, some faculty may be ambivalent or even antagonistic toward providing a quality education.

It is expected that administrators would be highly motivated to provide a quality education. But many factors can get in the way of expected motivations. The reputation for educational quality may be more important to administrators than the actual quality. Quality and a reputation for quality are not necessarily the same things; there are ways to achieve a reputation for educational quality without actually providing one. For instance, most ranking systems are based largely on inputs rather than outcomes; one way to game the system is by admitting only highly qualified students who are likely to succeed even without any further education.

At times, quality and reputation may even be at odds in higher education, for correcting problems can bring negative publicity that hurts an institution's public standing. For instance, student success is frequently important to administrators. Yet one way to increase student success as measured by graduation rates is to lower standards, which is equivalent to lowering educational quality. Indeed, faculty frequently lament administrative pressure to raise the grades of underperforming, undeserving students.

The concept of “institutional reputation” possibly causes more perverse actions than any other incentive. Just about all stakeholders benefit from enhanced institutional reputation; the quest for higher prestige may even be considered to replace the profit motive as a unifying motive for some. “To understand the incentives that operate in higher education, we need to recognize that the chief objective of the producers may not be education per se, but maximizing the school's reputation,” writes Centre College economist Robert Martin.<sup>10</sup>

Another example of how reputation supersedes actual performance concerns administrators' deep fear of scandals. After all, it is one of the most frequent reasons why administrators are fired or pressured to resign. Administrators may gloss over poor performance rather than confront problems whose exposure will likely trigger embarrassing headlines. Administrators ignore politicized faculty who are teaching to indoctrinate when they should be chastising or firing them. They may also appease radical students who are disrupting the campus. And they may introduce low-quality programs and courses to avoid coming under attack by pressure groups, both inside and outside the campus. Yet all of these things detract from providing a quality education.

Governing boards are also motivated by incentives for reputation and scandal avoidance. And they are often unknowledgeable about the actual educational quality of the institution. But one thing ensures—or should ensure—their allegiance to providing a quality education even when that means facing a media

firestorm or downgrading by a popular ratings system such as *U.S. News and World Report*: they have a legally mandated fiduciary duty to support the mission of the institution, which almost invariably includes providing a high-quality education.

In this case, at least, while many stakeholders may give quality education lip service, only the board—as an entire body—has a legal incentive to provide one.

Another incentive stands out and deserves mention, not only because it is so pervasive, but because it is controversial. That incentive is politics, generally the politics of the political left. Unlike reputation, which all major stakeholder groups acknowledge as highly influential, stakeholders' political inclinations are often disregarded or denied as incentives. Many academics like to believe they are above such matters. And while certainly not everybody in academia is motivated by political beliefs, increasingly faculty, staff, and higher-level administrations do include it as a reason for action. If the absence of politics from the Ivory Tower was once the case, it no longer is.

## Who Owns the University?

Another important question to ask is whether a natural hierarchy exists among stakeholders. Surely not all stakeholder needs and rights are of equal importance. One way to analyze such a hierarchy is by beginning with the concept of “ownership.”

Ownership rights in corporations are akin to property rights; those in possession have the final say. And although some higher education critics may give such rights to various stakeholders, there are fairly simple criteria by which ownership rights in higher education can be ascertained.

First of all, at private nonprofit schools, as seen in the historical record, the boards of trustees are granted a form of ownership in perpetuity; legally, they are the corporation that is the school. Court decisions have consistently affirmed that, as do the owners of for-profit firms, trustees have the final say.

Additionally, board members have explicit fiduciary responsibilities that cannot be broached by the decisions of other stakeholders. The highest duties are to protect the search for truth and to promote educational quality, and the board has the final say in both these matters. These two conditions—that trustees protect the highest-level values, and that they are legally required to do so—may be taken to confer some level of ownership to them.

Public colleges are a different matter. They are indeed public, and that means that ownership belongs to the people and taxpayers of the state. The state government acts on their behalf, creating a board to serve as the people's “agents.”

Still, even top analysts from the same side of the political spectrum place ownership with different stakeholders:

- University of Texas at Arlington economist and law professor Roger Meiners writes that [public] “colleges do not have clear owners; state governments establish colleges.”<sup>11</sup>
- The late Henry Manne, a law professor at George Mason University, wrote that “tenured faculties (and to a growing extent bureaucratic administrators) have long been the ‘owners’ of our universities and, as such, have long participated in the real profits.”<sup>12</sup>
- Robert Martin wrote in a paper for the Martin Center that, “in higher education, the principals are taxpayers, students, parents, alumni, and donors, while the agents are faculty, administrators, and board members.”<sup>13</sup>

- Ortmann and Squire defined an entity called the “Overseer,” who can be conceptualized as the agent of students and alumni,” thereby placing students and alumni atop the ownership chain. This “Overseer” equates to the board, which is the agent of the owners, but also the “principal” to whom administrators are “agents.”<sup>14</sup>

It may appear more difficult to distinguish theoretical ownership from actual property rights in academia than elsewhere. In reality, once the facts are understood, it is not. Board members are the owners of private colleges, and the public are the owners of public colleges, with trustees legally bound to serve on their behalf.

The confusion comes when analyzing the concept of ownership in practice, rather than in theory or fact. If you look just at the way universities operate under shared governance, it may appear as if ownership is difficult to decipher. Or, if you accept the false narrative that American colleges began as guilds of faculty, you may wish to consider them the rightful owners.

But American colleges did not begin with the faculty; they began with outside entities such as churches, donors, or governments. In fact, although some faculty may claim otherwise, they have traditionally been regarded as employees in a legal sense.

## Notes

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7. Andrew L. Friedman and Samantha Miles, *Stakeholder: Theory and Practice* (Oxford, UK: Oxford University Press, 2006), p. 2.
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12. Henry Manne, “All Education is For-Profit Education,” The Martin Center for Academic Renewal, June 25, 2014. <https://www.jamesgmartin.center/2014/06/all-education-is-for-profit-education/>.
13. Martin, p. 7.
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# Understanding Governance Today

University governance today is a tangled mess, with vague designations of authority. This section describes how boards are generally formed, how they operate, and how they interact with other stakeholder groups.

## Board Basics

Much of the discussion about improving boards in establishment circles concerns such matters as board size and length of terms. While these steps can make some difference, they are far less important in enhancing the ability of a board to address major issues than how board members are chosen and how they are enabled and incentivized to exert oversight and control.

### Board Size

The number of members on governing boards receives a lot of attention from policy-makers and critics. Boards vary widely in size; sometimes the size depends on the type of institution and at other times the variance seems random. According to Robert Scott, former president of two colleges—one public and one private—the average number of board members for private institutions is 29, while public schools average only 12.<sup>1</sup>

There are distinct advantages and disadvantages to having either larger or smaller boards. The more members a board has, the more accumulated expertise it has. A large board also has more resources to perform its duties, including having enough members to fill multiple committees, plus more diversity of opinions and more potential donors. However, larger boards tend to be more rife with factionalism and intrigue.

In contrast, small boards suffer less from factionalism. Members tend to be more familiar with each other and each member's voice is heard more. An empirical study by Gabriel Kaplan, a Harvard-trained public policy Ph.D., published in *New Directions for Higher Education* in 2004 suggested that the data seemed to favor smaller boards, as they “render board processes more coherent and effective.”<sup>2</sup>

### Board Terms of Service

The average term of service for a public university trustee is 5.8 years and the average for public institution trustees is 3.6 years, according to Robert Scott.<sup>3</sup> He recommends shorter terms for both: three years at a time, with a total time on the board not to exceed twelve years. Of course, there are benefits and drawbacks to the different term lengths. Longer terms mean greater stability, continuity, and a more knowledgeable and connected board; shorter terms mean a constant infusion of new ideas and energy and less tendency toward “groupthink.”

Scott also suggests that board officers (the chair, vice chair, etc.) be elected for one year at a time, renewable twice, for a total term of three years. On the one hand, shorter terms prevent the accumulation of power by officers. However, changing leadership frequently can lead to inconsistency or incoherence, and can give the impression that nobody is in charge.

### Board Meetings

The average number of meetings per year, according to Scott, is 7.4 for public institutions and between three and four for private schools.<sup>4</sup> More meetings permit the board to better “monitor their managerial agents.”<sup>5</sup> Of course, the more boards meet, the more members must be available and prepared; the time involved can be hard to handle for busy board members.

Board meetings have a host of issues.<sup>6</sup> “Sunshine laws” ensure transparency but privacy laws protect disclosure of personal information. Some meetings are conducted with undue secrecy—or the real work is done beforehand and the meetings are just for show. At the other extreme, some academic boards film or even live-stream their meetings so that the public can watch.

Another problem concerns information packets for members about the issues to be discussed. Often, they may not receive these packets—often with hundreds of pages—until a day or so before the meeting. If so, they can end up voting on issues about which they know nothing or making personnel decisions blindly.

## Board Membership

The argument of this paper is based on the conviction that changes from the status quo are imperative and thus a different style of board membership is needed. Yet most “experts” suggest that good trustees are those who will perpetuate higher education’s current trends. In the following discussion we will describe the standard recommended board characteristics—reflecting how “good” boards operate. However, we will also indicate some of the weaknesses of those recommendations or characteristics in the light of the need for reform.

### Desirable Qualities of Board Members

Much of the advice by higher education “experts” about what qualities make for good board members indicates a satisfaction with current trends in the academy.

Robert Scott begins the chapter of his book *How University Boards Work* with a suggestion that it is best to have “senior academics from another, non-competing institution on a university board.”<sup>7</sup>

Certainly, one can see the benefits of including those who know higher education from the inside. However, such a proposal ignores the potential downsides. A top academic administrator will most likely favor the “academic” view—that is, primarily the view of the faculty. Even worse, this sets up an asymmetry-of-information problem with board members. Board members will naturally look to an academic administrator on the board to obtain his or her superior knowledge of the inner workings of a university. But the administrator will likely oppose attempts to make unpopular reforms, introduce efficiencies, and bring in ideas from outside academia—which are some of the very advantages a lay board provides.

Scott also recommends that boards be selected for greater demographic diversity, “because such diversity is more likely than homogeneity to contribute to robust discussions about the mission, direction, challenges and accomplishments of the institution.”<sup>8</sup> This may be wrong. As Duke University psychologist John Staddon has written, demographic diversity can mean “the meticulous *exclusion* of topics that might offend any one of an expanding list of identity groups.”<sup>9</sup>

One of Scott’s observations about effective board members is that they “bring questions, not prescriptions.”<sup>10</sup> While this may be partly true—one does want people who will examine and listen before arriving at a decision—board members do not live in a vacuum; they may have already formed good ideas. Most importantly, reformers tend to be people with strong opinions, not those who go whichever way the wind blows.

Much of the work of finding new members occurs, typically, in the trustee affairs committee.<sup>11</sup> Scott suggests that identifying candidates for the board be done largely through networking. Since he suggests that membership “be earned by service,” alumni and donors are prime candidates. Other places for private schools to look for potential board members are fundraising events. He also recommends that board members should have prior board experience. However, this tends to limit candidates to those possessing opinions in a narrow range.

Scott also recommends that potential board members should be tested in interviews and other “rehearsal” activities for sociability, such as how they relate to others, their degree of tact, and whether they may have personal agendas that may be disruptive.<sup>12</sup> Such an emphasis on collegiality may tend to eliminate potential trustees who are inclined to raise difficult questions and suggest unpopular solutions, at a time when such approaches are desperately needed. A look at great leaders and visionaries throughout history reveals many with abrasive personalities.

A technique for finding desirable board members suggested by Scott is to create a matrix “pairing potential candidates” with their areas of expertise and personal characteristics to make sure the board has the needed knowledge.<sup>13</sup> This may be good for a work unit, such as a design team, but board members are not technical staff. Though not without value, choosing somebody for expertise alone means eliminating somebody else with other qualities—and those qualities may be the sort of integrative reasoning and vision that make for good leadership.

Another method is to hire executive search firms to find prospective board members.<sup>14</sup> This suffers from the same problems as using a search firm for school presidents: it unnecessarily adds to the cost and tends to narrow the field of candidates to those with previous higher education board experience.

### Who Becomes a Board Member?

According to Roger Meiners, “most boards of state universities are political appointees with limited terms; at private schools the boards often are self-sustaining with the president playing a major role in determining who gets picked for the board.”<sup>15</sup>

Even so, there is no typical academic board member. Board members can be politically connected; they can be seeking to benefit financially; they can be interested in community service; they can have loyalty to their school; or they can merely want to enjoy the social atmosphere and prestige that board membership provides.

Some board members have purely political reasons for serving. Those on the periphery of political circles are sometimes attracted to public board service as a way of entering politics. And, occasionally, political activists find their way onto boards—particularly at public institutions.

Board membership is often seen as a way to promote higher education’s role in economic development; often, in statewide boards there is an element of regionalism as members seek favorable treatment of their local branch campuses.

An informal survey by the Martin Center of 13 of the 15 schools in the University of North Carolina system (plus the system-wide Board of Governors) and six private schools in North Carolina and Virginia showed which professions are chosen for board membership. In both public and private cases, business leaders and lawyers predominated. At the UNC schools, of 175 board members 95 come from the business community and 26 are lawyers. At private schools, fully two-thirds (90) of 135 board members come from the business world, while another 15 are lawyers.

This survey revealed some clear differences between the makeup of private and public boards. Public institution boards had a wider range of professions represented; they also included more teachers, more government officials, and more members of the military. Private schools had more medical doctors, clergy, and academics, as well as more trustees from the non-profit sector.

Private schools also tend to have a higher percentage of trustees who are alumni. Only 58 percent of trustees at UNC schools are alumni, whereas 84 percent of private school

**Much of the advice by higher education “experts” about what qualities make for good board members indicates a satisfaction with current trends in the academy.**

trustees are. However, at the two top UNC schools in terms of prestige and admissions, UNC-Chapel Hill and NC State University, being an alumnus is almost a prerequisite for board membership: 23 of their 24 trustees graduated from the school on whose board they serve.

Large donors commonly serve on governing boards. It seems natural that those who help the institutions should have influence. Yet too often boards are largely composed for fundraising instead of governance.<sup>16</sup> This is more true of private schools, where the administration is likely to have more input into who serves on the board. Money often enters state boards in other ways: legislators often dole out board seats to contributors. This obviously has potential for corrupting the process.

## Board Selection

The selection of board members is one of the most crucial matters for good governance; as has been often stated, “personnel is policy.” Even the best practices are no guarantee of good governance if the decisions are made by those opposed to reforms.

Perhaps first among the necessary principles for board selection is that no members should be internal stakeholders, such as employees or students. The reason is obvious: to avoid narrow self-interest. Gabriel Kaplan wrote that research suggests it is best to exclude “internal stakeholders such as employees” because there is too much incentive for them to “neglect their fiduciary duties in favor of a particular group.”<sup>17</sup> Also according to Kaplan, including students on boards is associated with higher expenditures and operating costs.<sup>18</sup> Even so, many institutions include students, faculty, staff, and top administrators as both voting and non-voting members.

Private and public institutions have very different methods for selecting trustees. For most state university system boards, the selection process is largely political. Members are chosen by the state governor or elected by the state legislatures. In North Carolina, the legislature elects the 24 members of the Board of Governors, half by the state Senate and half by the House of Representatives. In Florida, 14 of the 17 members of the system’s Board of Governors are chosen by the state governor. In California, 19 regents are appointed by the state governor and confirmed by the state Senate. Additionally, the board itself appoints one student member and two members who are alumni of system schools. The board also includes seven ex officio members: the state governor, the lieutenant governor, the speaker of the state House of Representatives, the superintendent of public instruction, the president and vice-president of the alumni association, and the president of the University of California.

Boards chosen by statewide politicians tend to be much more attuned to the public and more responsive to public opinion. According to Kaplan, they are “likely to push an institution away from academic norms and toward those more common among the general populace.”<sup>19</sup> This method also creates a direct linkage between the owners—the voters and taxpayers—with their agents—the board. This in turn, clarifies accountability.

**Such an emphasis on collegiality may tend to eliminate potential trustees who are inclined to raise difficult questions and suggest unpopular solutions, at a time when such approaches are desperately needed.**

Board appointments for individual campuses in state university systems tend to be political. For example, at the University of Oregon, 14 of 15 board members are chosen by the state governor and confirmed by the Oregon Senate. (The 15th member is the university president.) One of the 14 governor-appointed trustees must be an enrolled student, one must be a member of the faculty, and one must be non-faculty staff. (The state governor can choose whether to make these trustees voting or non-voting.)

But boards for individual public campuses may also have some trustees selected by the state system boards. At the University of Florida, six trustees are chosen by the state governor, while five are elected by the university system's Board of Governors. Those 11 are joined on the board as voting members by the chair of the faculty senate and the president of the student body. Both public and private institutions commonly mandate that specific stakeholder groups other than alumni be represented on boards. Florida's system board adds the chair of the advisory council of the system's faculty senate, the state commissioner of education, and the chairman of the Florida Student Association.

**Many self-perpetuating boards are actively attempting to dismantle their schools ideals and traditions, aggressively replacing them with the ideology of the left.**

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Public election of board members of state higher education systems is an idea worthy of consideration. Such members would likely match the public mood. However, voters are unlikely to have the requisite knowledge to select the best candidates, or even candidates that accord with their own beliefs. It is possible that the education establishment would be able to control the electoral process the way they do with K-12 school boards. That is, for instance, by holding trustee elections separately from main elections to ensure low turnouts.

Most private academic boards are largely “self-perpetuating,” in which existing board members select their successors. At Vanderbilt, for example, all 27 members were elected in this manner. (Vanderbilt includes several “Young Alumni Leaders” from recent graduating classes.) Strictly self-perpetuating boards are subject to an excessive degree of homogeneity: they tend to induce “groupthink,” as current members will tend to pick members who think like themselves. On the other hand, self-perpetuated members are acculturated to the university philosophy, which can enable efficiency. One drawback, according to Kaplan, is that such boards tend to spend more money than others.<sup>20</sup>

The other common method for selecting trustees at private institutions is election by alumni associations. Many schools apportion seats to those trustees elected by the existing board and those selected by alumni. Governing bodies with both board and alumni appointees include those at Duke, Davidson, Dartmouth, and Yale.

Alumni-elected boards have considerable promise for enacting reforms, although there is no guarantee that they will do so. Letting alumni choose board members means that school loyalties will be strong on the board. Plus, a board selected by alumni can reflect public opinion, much as a board chosen by the legislature does for public schools.

One problem with actual alumni-elected boards is that the alumni associations that conduct these elections are frequently controlled by administrators. Board members can also be nominated by administrators, as is often done at private colleges. It is not hard to see the inherent conflict of interest presented by this scenario: administrators can help choose who will have oversight over them.

A balanced board, in which members are chosen by a variety of means, abides with higher education's commitment to including multiple stakeholders. The advantages and disadvantages spring from the same tendencies: on one hand, such a board is likely to be contentious and possibly inactive as a result of the inability to form a solid consensus. On the other hand, all viewpoints are at least likely to be expressed, and controversial issues may be discussed rather than ignored or glossed over.

One insightful—and ironic—finding by Kaplan is that board structures frequently have little influence in important matters such as the turnover of top administrators, program closures, and faculty teaching loads.

## Implications of Board Selections

Self-perpetuating boards, which are common at private colleges and universities, are intended to preserve the institution's ideals and traditions; it is not expected that such boards will deliberately and consistently add new members who oppose their own policies.

But over several decades, a governing board can incrementally turn 180 degrees as new ideas come into fashion among younger generations. Consider the well-known game in which one participant verbally whispers a message to another who then whispers it to the next and so on, until the original message is completely obscured. The same dynamic can work over long periods of time with governing bodies, especially when such principles as "inclusivity" and "diversity" are in vogue. And once a board is corrupted in this manner, it is extremely difficult to right the ship of state again.

Today, that seems to be the case as often as not. Many self-perpetuating boards are actively attempting to dismantle their school's ideals and traditions, aggressively replacing them with the ideology of the left. One example is at Washington and Lee University, where the board of trustees has mounted a campaign to bury much of the school's history, including its association with General Robert E. Lee (who was the school's president from 1865 to 1870). Recent policies have "ended prayer at public ceremonies, temporarily removed a stop in the interior of Lee Chapel from campus tours for prospective students, and even briefly banned a children's book on Lee's horse, Traveller."<sup>21</sup> Additionally, the board has permitted leftist agenda-driven changes to the curriculum that are at odds with the traditional Washington and Lee education.

The dynamic is different with public institutions. Political appointees dominate public system boards. As expected, system boards will reflect the political situation in the state, although any extremes will be tempered by the tendency to appoint members of the business community. Trustees from the business community tend to aim for continuation and moderation rather than reform; the business world does not like disruption and is generally satisfied with the status quo on campuses.

Including school presidents and other top administrators on boards, even as ex-officio members, creates a breeding ground for conflicts of interest. The president can exploit his or her superior knowledge of the institution's operations to manipulate the board, instead of being answerable to the board.

Most of the internal stakeholder groups who are included on boards, private and public, push an agenda from the left or support the status quo. There is little likelihood of needed reform resulting from the inclusion of faculty, students, staff, or state educational bureaucrats.

## Alumni to the Rescue?

One stakeholder group with considerable potential for changing academia is the alumni. Alumni often have more centrist or conservative attitudes than their school's administrations and faculty. Today's politicized academy is starting to cause some rumbling among alumni, especially the older ones who tend to be the most prolific donors. According to a 2016 *New York Times* article, alumni are reducing donations because of dissatisfaction over radical activism.<sup>22</sup> At one fundraising consortium that includes many of the nation's most prestigious liberal arts colleges, 22 of 35 institutional members had fewer donors for the first half of year 2016 than they had in the first half of 2015.<sup>23</sup>

In the *New York Times* article, a 1999 graduate of Amherst said he is withholding his giving, despite being a seventh-generation alumnus, because "refusing to write a check 'seems to be the only lever that can make a difference.'"<sup>24</sup> He added that "he had heard from 'friends who went to Hamilton, Trinity, Williams, Bates, Middlebury, Hobart who are not pleased with what's going on and they've kind of stepped away.'" The article also cited a 1960 graduate of Amherst College who is not reducing his giving but is "one of a group of alumni pushing for the return of a core curriculum."

Other attempts to increase alumni influence in governance are starting to crop up. At the University of Texas at Austin, some alumni created a Facebook page titled “Stop the Insanity at UT” in response to the politicization of the campus.<sup>25</sup> At Colgate University, an alternative alumni association called “A Better Colgate” formed in 2004 and has thousands of members. Its main focus has been pressuring the school to permit the alumni to directly elect trustees.<sup>26</sup>

At Washington and Lee, a dissident alumni organization called “The Generals Redoubt” formed in 2018 in response to the board’s assault on the school’s past. The Redoubt’s mission is to preserve “the history, values, and traditions of Washington and Lee University,” and it has criticized the administration’s attempts to remove historical monuments and the school’s politicization of the curriculum.<sup>27</sup>

Yet such attempts to reform governance are ignored and even explicitly undermined by existing boards and administrators, and the march toward a politicized academy continues. A controversy at Dartmouth in 2007 that made national news revealed the lengths administrators will go to maintain control of the trustee selection process. Although the alumni elected half of Dartmouth’s trustees at that time, prospective candidates until that year had been invariably selected from the formal alumni association which had close ties to the administration.<sup>28</sup>

Some alumni, who were dissatisfied with the direction in which Dartmouth was moving, exploited a little-used procedure for electing alumni to the board of trustees. Independent alumni candidates could be nominated for the board via a petition process. Before the emergence of the Internet, the process was too cumbersome to alter the make-up of the Dartmouth board. Email, however, eliminated communication obstacles and four reform-minded alumni were elected to the board through the petition process.<sup>29</sup>

The Dartmouth board at the time was equally divided between eight trustees selected by the alumni and eight selected by the board itself. While the four dissidents were too outnumbered to affect the vote directly, they were privy to board discussions that previously had not seen the light of day and they could quickly mobilize alumni and public opinion against the administration’s designs to change the campus.

To stave off this encroachment upon their authority, the Dartmouth administration and establishment trustees doubled the number of trustees selected by the board to 16, thereby diminishing the influence of the independent alumni.<sup>30</sup> The Dartmouth board reform movement was eventually beaten back by the majority.

Another example of the way administrators treat alumni who don’t toe the line occurred at George Washington University in 2017. The school president attempted to “merge the alumni association (which was privately funded) with the university’s Office of Alumni Relations.”<sup>31</sup> Some alumni in the association grew concerned about losing autonomy, but the board of trustees backed the president. The alumni crafted a compromise position that honored donor intent—that is, allowing donors to stipulate how their gifts are used—and also permitted the alumni association to elect some members of its own board. The administration refused such safeguards of alumni independence and severed ties with the association. It also created its own official alumni organization to replace the prior one. As a result, the 60-year-old George Washington University Alumni Association continued to exist, but had to change its name to the “Independent Alumni Association of George Washington University” and must function without much cooperation from the school.<sup>32</sup>

For the most part, however, alumni are reluctant to go against their school’s leadership. Active alumni generally have strong positive attitudes toward their schools. More often, the alumni are reduced to mere donors and boosters by the administration’s

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control of information. For instance, the administration can limit access to alumni listservs and other means of communication so that dissident alumni have a difficult time organizing opposition. And official alumni publications are little more than public relations vehicles for the administration.

And yet alumni remain one of the best hopes for reform at private institutions, and can be a force for positive change at public universities as well.

## Board Chair

On most academic boards, the chairperson has extensive power: he or she appoints committee chairs, interacts with both top administrators and politicians, and is one of the chief spokespeople for the school or system.

Choosing the chair will determine much of the direction the board will take. Certainly, one can easily imagine the traits a board leader should have. Obvious ones include a commitment to transparency, integrity, and fairness, along with a willingness to listen and learn.

The board chairmanship, however, does not always attract top people. It is a magnet for those with special interests. As Scott suggests, too often it simply goes to one of the top donors.<sup>33</sup> It also tends to go to an “insider,” one who is not likely to make big changes but will instead accede to the administrator’s wishes.

Another problem that is happening more as academia’s culture war intensifies is that good people will stay away from being board leaders because the post is a political hot seat, with lots of antagonism and work for not much reward.

Some, such as Scott and Steven Bahls (the president of Augustana College), claim that to be effective the chair must be an advocate of shared governance. This is contradictory; the effect of the board is diminished, not enhanced, by giving up power.

## Board Advisors

Clearly, a board of trustees is not an administration. Its members are not full-time experts on higher education. They must instead rely on the counsel of experts and other help.

The advisor with the most direct relationship to the board is the person who performs administrative tasks for them. According to the Association of Governing Boards, the administrator’s duties include planning meetings and taking minutes.<sup>34</sup> But such administrators frequently go beyond such mundane tasks: they may also arrange for outside speakers and advisors. As is often the case, by being helpful they can have an influence far greater than appearances would suggest.

They also provide a link between the school president and the board. This can be a major problem. When board administrators are part of the school administration—and that is the most common arrangement because their board duties tend to be part-time—they will naturally have, at best, mixed loyalties. More likely, they are primarily part of the administration, and that will be where their real loyalties lie. This represents a serious conflict of interest.<sup>35</sup> Not only are there powerful incentives for them to favor the institution’s administration rather than the board, but they are privy to board secrets and can therefore act as a fifth column undermining the board’s authority.

Because of this problem of mixed loyalties, the board should have at least one permanent staff member who is not beholden in any way to the administration. Furthermore, this board staff member should be a policy expert who keeps abreast of new developments and ideas concerning higher education. This is to alleviate an asymmetry-of-information problem that allows administrators to usurp authority from the



board. Without an independent source of information, the board—composed primarily of outsiders with expertise in fields other than higher education—can be manipulated by administrators who not only have expertise about academia but also have intimate knowledge of the institution’s people and daily activities.

The staff member should not only inform the board about higher education’s innovations, trends, traditions, and ideals but should conduct new member orientation and ongoing training for all members.

The same problem exists with the board’s legal counsel. More likely than not, the board consults with the university counsel on a part-time basis. Since the counsel is part of the school or system administration, that is where his or her allegiances are.

There is a third type of advisor worthy of discussion. The board often seeks the advice of outside experts on specific topics. But most outside advisors come from the legion of establishment consultants who prosper by telling those who hire them what they want to hear. As long as the administration can hire the consultants that inform the board, this problem will continue. Having an independent board staff member who can invite experts with varying viewpoints will shed additional light on matters and not merely confirm the administration’s opinion.

## Training

New board member orientation is a crucial part of governance. It can be a means to show board members the full extent of their power or to indoctrinate them into accepting an insignificant role within the shared governance structure. Very often, board training conducted by administrators emphasizes shared governance at the expense of board authority.

Therefore, having an independent staff member who is entirely loyal to the board is essential for training purposes. The board staff needs to conduct training so that board members are knowledgeable about their rights, obligations, and the full extent of their authority.

The same situation occurs for ongoing training of board members. Scott recommends training programs and materials from a veritable alphabet soup of establishment organizations: ACE, AGB, American Management Association, BAICU, AASCU, CIC AACC, AACU. While such training has some value, these organizations are all vested in shared governance and other establishment policies; the training tends to narrow the vision of new trustees instead of empowering them.

## Board Relationships

Boards must relate effectively with a variety of university people and organizations.

### Boards and Presidents

Boards often reflexively support the president.<sup>36</sup> This is to be expected, as they generally hire the president, so that the president’s performance reflects on them. At private schools, the presidents may nominate board members, with their suggestions carrying great weight and influence, and these trustees return the favor with support.

However, this allegiance to the president may pose problems. The president’s focus may be on what is best for him or her day-to-day, rather than on fulfilling the mission and upholding the values of

**The staff member should not only inform the board about higher education’s innovations, trends, traditions, and ideals but should conduct new member orientation and ongoing training for all members.**

the institution. Presidents survive best in the short term by appeasing factions likely to cause disturbances; serious solutions to serious problems tend to anger those who must make accommodations or give up power or benefits for the institutional good.

Another relationship that can be either a strength or a weakness of the system is between the president and the board chair. Scott recommends that the chair should be the president's partner in establishing priorities and strategies.<sup>37</sup> In this way, the chair can inform the board regularly so that it isn't hit with surprises.

But problems can arise when the relationship between the president and board chair becomes too tight. Since the president has much more information than the board chair, he or she can reduce the board chair—and hence, the board—to governing as his or her agent (when the president should instead be the board's agent). Furthermore, a close relationship with the president may empower the board chair to such a degree that he or she unduly dominates the board.

Conflicts between the president and board can arise if the board is not clear in its expectations of the president, changes direction, or communicates poorly. If confusion is a problem, then it is best if the rightful leadership is in firm control.

### Who Becomes an Academic Administrator?

It almost goes without saying that college presidents tend to be ambitious. High-level administrators usually begin as faculty members. Others come from a variety of fields, primarily the business world or government. When administrators rise through the ranks of academia, they usually retain beliefs that are in synch with the faculty intellectually and professionally. A particular sort of faculty member reaches the highest levels of administrator, and that is somebody who assiduously avoids ruffling feathers. Those who are not in synch with the academic zeitgeist will get chewed up by the meat grinder of academic office politics.

Even though academic administrators tend to be products of academic environments, practically they cannot be closed to all outside influences, particularly those of large donors, private industry, the media, and political forces. Unfortunately, that means they are likely to support higher education as a source of economic development and to increase access and diversity—and do nothing that will rub these outside factions the wrong way.

Bahls and Scott both mention the need for college presidents to be strong leaders. Scott uses qualities such as “risk taker” and “visionary” as desirable for presidents.<sup>38</sup> However, such qualities are rare atop universities. More likely, the opposite is true. Strong leaders do not rise in an atmosphere of consensus and collegiality or where the slightest hint of controversial decision-making can disqualify one for the job. Very often, administrators yield to the faculty about political issues to maintain their control over operations.

Because of this, presidents are more often at their best functioning as stewards within a narrow unimaginative range. When controversy strikes, they are often at a loss as to how to proceed. And more often than not, they capitulate to the most strident or radical voices, hoping the problems will go away.

Today, a strong academic leader is more likely to emerge from outside the academy. One current example is Purdue University's president, Mitch Daniels, who is gaining a national reputation for bucking established trends. Daniels's prior career included heading the national Office of Management and Budget and serving as governor of Indiana.

Scott adds that college presidents should have respect for higher education's values and traditions and commitment to the university's mission.<sup>39</sup> But this raises more questions than answers. Which of higher education's values and traditions must be respected? What if the current values appear to conflict with those of the more general society? Or if they appear to be wrong?

One practice Bahls decries is the tendency of school presidents to increase their power through “divide and conquer” policies, which cause the board to mistrust the faculty and vice versa.<sup>40</sup> Eventually, he claims, such policies will destroy the president’s credibility.

A frequent anecdotal remark is that sometimes other faculty look down on colleagues who become administrators. This is not so certain, for very often college presidents are prominent researchers and scholars.

## Faculty Organizations and Departments

Faculty organizations can be important—or not. They can be structured to include all the faculty or just elected representatives. They can be limited to only tenured faculty or include all manner of faculty, including adjuncts.<sup>41</sup> Scott for one suggests that only full-time tenured faculty can perform governance duties adequately.<sup>42</sup>

But the real faculty power resides in the department. According to former University of Michigan president James Duderstadt, “the heart of the governance of the academic mission of the university is actually not at the level of the governing board, but at the level of the academic unit, typically at the department or school level.”<sup>43</sup> He suggests that faculty organizations such as senates and assemblies are “generally advisory on most issues, without true power.”<sup>44</sup>

Duderstadt writes that “there has long been an acceptance of the premise that faculty members should govern themselves in academic matters, making key decisions about what should be taught, whom should be hired, and other key academic issues.”<sup>45</sup> And it has been in the department where such matters are generally decided. Approval by either administrators or the board may be formally required; as Steve Bahls wrote, the faculty “recognizes limited authority of the president and board to review faculty decisions.” But the key word may be “limited”; rarely are faculty decisions overturned.<sup>46</sup>

Faculty power structures have evolved over time since departments became universal in the late 1800s. According to William Mallon, a senior director of the Association of American Medical Colleges, who specializes in strategy and organization, “department chairs were, at first, quite authoritarian and dictatorial.”<sup>47</sup> In 1911, however, the University of Chicago switched to a system of elected chairs, and it subsequently became common for the chair position to rotate among department members, thereby reducing the hold a single powerful individual could have over a department.

Mallon wrote that after this change to a more democratic department the chairs had only “limited power over colleagues” and could “no longer lead without faculty support.” This meant that, “by the early 1900s, the department in U.S. universities took on a collegial decision-making culture.”<sup>48</sup> Today, according to Duderstadt, much of the actual work is accomplished in committees, such as those for hiring, curriculum, or tenure.<sup>49</sup>

## Government

In public university systems, legislators have the last word in public higher education policy. They control public budgets and can make statutory changes to the public universities. They can even alter the state constitution if they have enough support. And, depending on the state, they may appoint trustees or regents to the state system and to individual universities.

The state governor has control over auditors and regulatory agencies that oversee the university systems. The governor may also have the power to appoint trustees.

One purpose served by boards is that they are often used to insulate public universities from the political process. Problems can arise, however, when the universities become too insulated and ignore outside influences.

A problem area is that legislatures often rely on higher education lobbyists from the university system. Just as boards are disadvantaged by their lack of knowledge, elected officials have far less knowledge than self-interested lobbyists (often top administrators). Even board members of public universities, who have been trained to believe that they are “advocates” rather than “overseers,” lobby legislators.

## General Critique

Crisis management is another trouble spot for boards. Crises often require strong responses. If a mix of student radicals and community activists disrupt an event or tears down a statue, a weak response means more problems will arise in the future. Too often, boards are willing to let the administrators handle matters, with the inevitable result that the controversy-averse administrators cave into the agitators. In this way, a few extremists can shift the campus “Overton Window” steadily to the left.

Scott also suggests that boards must avoid behaviors that can damage their relationship with the president.<sup>50</sup> These include holding secret sessions, having conflicts of interest, prejudging issues based on outside information, pleading for special interests, speaking improperly as officials, and revealing confidential information.

## Board Duties

University board governance is not a job for narrow specialists. While duties may be defined in state charters, mission statements, by-laws, handbooks, and best-practices literature, board members must apply those duties to a vast array of concerns.

### General Duties

Duties, as described, are conducted on a couple of levels. The higher level can be somewhat esoteric and generally calls for board members to be protectors of values. Lower-level duties involve the detailed execution of those high-level directives, as well as more mundane tasks.

But board governance is primarily about high-level duties. These include overseeing the standards, values, and finances of the institution. They also include protecting “higher education’s most fundamental principles: institutional autonomy, academic freedom, and commitment to the public purpose.”<sup>51</sup> The AGB also recommends that “engaging effectively with students, faculty, staff, alumni, and community” should be among a board’s high-level duties.<sup>52</sup> And to these may be added long-term strategic planning.

Scott writes that the board is also responsible for fulfilling the school’s mission, which expresses the “educational goals, values, and outcomes,” along with “the vision and purpose” of the school.<sup>53</sup> This includes reviewing campus units with the institutional mission in mind. The board is “legally entrusted” by outside authorities (the state government or constitution) as the “stewards for all aspects of the enterprise.”<sup>54</sup> Furthermore, board members have a fiduciary duty to act in the best interests of the institution, not in self-interest.

The National Commission on College and University Board Governance suggested these other high-level goals: increasing public trust in higher education, improving the long-term sustainability of the institution, improving shared governance, selecting and supporting the president, overseeing strategic planning, and creating metrics for other goals.<sup>55</sup>

Boards should follow ratings in Moody’s and Standard and Poor, which evaluate the effectiveness of board, administration, educational programs, finances, and student outcomes. Scott suggests that members should even meet with the bond rating staff.<sup>56</sup>

At a lower level of responsibility, the board should examine campus safety, operations, and maintenance, and review emergency plans.

## Board Review of Administrative and Faculty Actions

Scott also suggests that the board only be involved when needed. There is reason for that—being on a university board is only a part-time position for people who may be exceptionally busy elsewhere. Loading board members down with work will make the position untenable for some; an overworked board will eventually lose talented members, opening the way for opportunists.

The question is when is board involvement needed? If the board is merely a “rubber-stamp” committee for the administration—which it is in many instances—then the board lacks engagement. For example, given the increasing regularity of schools hiring under-qualified political activists for faculty and staff, and given that boards generally have the right to review and approve new hires, then boards are failing to exercise their authority when it is crucial that they do so.

Boards almost always have a right—or duty—to review faculty hires, but the convention is to allow all department choices. As a result, the hiring, tenure, and promotion of faculty are now principally faculty functions, with some administration influence. This is no small matter—faculty hires largely determine the intellectual direction of the university. The faculty base their primacy in such matters on their expertise: only they are able to judge which candidates are “best” or “most qualified.” But selecting faculty is not simply a matter of deciding who is “best” or “most qualified” according to their peers, especially in the social sciences and humanities where such qualities are largely subjective. Often, department personnel decisions are made according to “groupthink” tendencies such as ideology.

Because faculty hires and promotions determine the intellectual direction of the institution, they must be judged at the societal level—which is the province of the board, not the faculty or administration.

Board members are, for the most part, educated and intelligent; they run businesses, practice law, and generally work in professional capacities. While they may not have the specific academic knowledge to judge the quality of most scholarship, there are ways for them to appraise scholarship that falls outside the normal boundaries of competence or politicization. For instance, if none of them can understand at a layman’s level the ideas presented in a non-scientific academic’s work, perhaps that raises the question whether the academic can communicate ideas properly. After all, too much academic scholarship today is incomprehensible because of intentionally complex and obscure writing—such a tendency should be viewed negatively at hiring time, since such writing indicates either poor reasoning skills or an attempt to obfuscate meaning except to a small circle of like-minded academics.

Another reason why board review of faculty is so important is because it occurs before an offer of employment is finalized. Academic freedom protections do not kick in completely until the candidate is hired, and candidates can be judged according to the content of their research and public statements. It is much easier and less costly to not hire a candidate with disturbing ideas than to take action after he or she is hired.

One example of why boards should exercise due diligence for all faculty hires was demonstrated in the Steven Salaita case at the University of Illinois. Salaita was offered a tenured position by the school’s American Indian Studies program; soon after, tweets he made came to light that included, among other anti-social sentiments, praise for the kidnapping and murder of Israeli teenagers. Salaita’s offer was contingent upon approval by the university’s trustees, who voted against his appointment. Had they not done so—or had they not had the opportunity to do so—Illinois would have been saddled with an unhinged radical professor whose academic freedom protections would have made him difficult to fire.<sup>57</sup>

## Presidential Search

One of the most important duties of a board is to hire the top administrator. But presidential turnover is becoming an increasing problem for many colleges and universities; the average length of a college presidency has dropped from 8.5 to 7 years in a decade.<sup>58</sup> One indication that the job is becoming less desirable is that the traditional internal pipeline is diminishing: a 2017 study by Deloitte’s Center for

**Boards almost always have a right—or duty—to review faculty hires, but the convention is to allow all department choices. As a result, the hiring, tenure, and promotion of faculty are now principally faculty functions.**

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Higher Education Excellence and the Center for 21st Century Universities at Georgia Tech suggests that the number of provosts expressing interest in becoming president is down dramatically.<sup>59</sup>

Lots of factors enter into this situation: some schools face tighter budgets than in the past so there is an increased need for fundraising. There are also many social pressures: students seem to have more problems than in the past. Academia is in the forefront of the so-called culture war, causing more pressure from the media and various stakeholders and placing the president in a media fishbowl of sorts.

At the same time, top academic administrative salaries are skyrocketing. College presidents average more than \$500,000 in annual compensation.

According to Scott, boards should consider candidates from a variety of professions. These can include politicians, military leaders, and corporate executives.<sup>60</sup> However, the overwhelming percentage of college presidents are former faculty. According to the American Council of Education's American College President Study, fully 85 percent of presidents in 2016 rose through the ranks of academia.<sup>61</sup>

It is common practice to employ search firms along with the university's own search committee. But increasingly the practice has come into question. For one thing, it can be expensive. For another, search firms tend to draw from a narrow pool of candidates who have previously held a college president's job or academics who are putting themselves forward for such a position. This adds to the insularity of academia, rendering it impermeable to outside ideas.

Much of the process is often out of the board's hands; search committees made up of inside stakeholders, including administrators, faculty, and students, often lead the way. Only after such committees have narrowed down prospective candidates to a select few does the board take control of the process; many preferable candidates can be eliminated before the board has any say.

Scott also recommends hiring an interim president who knows the campus when the transition from one top administrator is sudden or difficult. His advice, however, is to seek somebody from the establishment: somebody sponsored by the "AGB or Registry for College and University Presidents."<sup>62</sup>

## **Board Ethics**

Boards are the highest level of campus governance; the school's ethical standing is in their purview. Scandals can come in many forms: financial, athletics, falsification of data, student debt default rates, politicization, research fraud, and more; the buck stops with the board. Particularly pertinent to board members are their potential conflicts of interest. Common unethical situations include members who have vendor contracts or ties to university endowment investments.

According to Scott, universities are moral institutions that demonstrate their values by what they teach and by their policies.<sup>63</sup> But non-profit boards are not legally allowed to take positions on political issues or to indoctrinate students. Nor are public school administrations permitted to do so; they are expected to practice "institutional neutrality" about controversial issues of the day. Yet political activism is increasingly common in academia; it is especially troubling if the prescribed political values conflict with those of taxpayers (at public schools) or alumni (at private schools).

While no institution can be entirely value-free—after all, simple decency is a moral quality—this pattern of increasing institutional politicization is troubling. A politically motivated stance—unless severely qualified—may permit violations of institutional neutrality.

This non-neutrality includes investment strategies. Ordinarily, university investment strategies focus on gaining the highest returns, but Scott says that colleges operate under a system known as “fund accounting rules,” which “emphasizes accountability rather than profitability.”<sup>64</sup> Accountability is often interpreted liberally, justifying “divestments” from businesses that trade with Israel or are deemed adverse to the environment. In 2019, for example, the University of North Carolina at Asheville divested part of its endowment portfolio from investments based on fossil fuels in response to student opinions about “global warming.” This was a clear violation of institutional neutrality.<sup>65</sup>

## Board Struggles

Avoidance of disruption is a powerful incentive for all in academia, except, perhaps, for those hankering for reform. Academia is, when its own interests are concerned, a highly conservative institution. According to Bahls, boards are better equipped to deal with disruption than academics, since it is more common in the business world.<sup>66</sup>

Successful business people also confront problems directly; the bottom line demands no less. University boards, though, struggle to uphold their duties today. Efforts to ensure the spirit of free inquiry on their campuses are spotty; a few universities have bolstered protections for free speech and the like, but overall academia is increasingly open to intrusions into the ethos of free inquiry.

Bahls lists some elements he believes make boards ineffective.<sup>67</sup> These include: weakness, indecisiveness, having deep divisions and factions in the membership, a lack of collegial debate on the issues, having poor organizational structures, giving committees too much power.

The issue of weakness overwhelms all the rest. University boards have abdicated their leadership roles; the entire higher education apparatus—from the faculty and administration to the many non-profit experts such as the AGB, ACE, and so on— browbeats them into insignificance. Chaos and decline are the results.

Boards also struggle with keeping costs down, but they are the only one of the three major partners in shared governance with an interest in doing so. Administrators are highly incentivized toward aggrandizement; they almost always seek to increase budgets. It is to their benefit to grow the school bureaucracy: the bigger their job, the more power and money they have. As a result, higher education has seen a dramatic growth in non-faculty staff. Tuition has also risen faster than inflation over the decades. There is often a problem with cutting programs with subpar enrollments, that are obsolete, or, especially, that are intellectually empty.

Boards are also not protecting academia’s intellectual mission. That has largely become the province of the faculty. Too often, board timidity, tenure, and soft governance allow the faculty and their allies in the administration to exercise total control over the curriculum, when board input and oversight are sorely needed.

Overall, university boards are struggling in many ways. Even knowing their proper roles is beyond their capacity in many cases. But without that, there is no hope for the reform of higher education.

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# THE PROBLEMS OF TODAY'S UNIVERSITY GOVERNANCE

Higher education's crisis is primarily a crisis of governance. That crisis is a failure of the governance system to deal with crippling problems. As stated before, higher education governance has long been considered a "black box" whose contents are too complex for analysis. One way to cut through the complexity to arrive at understanding is to examine specific problems—which are numerous.

## "Soft" Governance

If the legal structure is weighted toward the board as the final authority, then why do boards seem impotent in the face of threats to higher education's most important values and goals?

One reason is the struggle between what Robert Birnbaum, a former professor of higher education at the University of Maryland, referred to as "hard" and "soft" governance:

'Hard' (or rational) governance refers to the structures, regulations, and systems of sanctions in an organization that define authority relationships, prescribe certain organizational processes and encourage compliance with enacted policies and procedures. 'Soft' (or interactional) governance encompasses the systems of social connections and interactions in an organization that help to develop and maintain individual and social norms.<sup>1</sup>

In other words, hard governance consists of the official set of laws, rules, and organization. Soft governance consists of, for the most part, the many minute decisions, conversations, and interactions that constitute everyday life and collectively influence the future. Hard governance favors the governing; soft governance favors the governed. Soft governance is a means by which the lower-ranking constituencies can fend off direct commands by the higher authorities.

Birnbaum claims that, due to the unseen influences of soft governance, hard governance rarely has its intended effect. Soft governance is far more influential, as infinite individual decisions overwhelm official dictates. "Hard governance proposals almost always sound reasonable and self-evident. But when they conflict with soft-governance, they inevitably fail."<sup>2</sup>

Birnbaum's description accords with the findings of other researchers. Gabriel Kaplan also found "little relationship between governance structures—such as faculty senates, academic senates, faculty advisory councils—and the decisions that institutions subsequently implemented."<sup>3</sup>

Kaplan's "hunch is that the guiding force in the implementation of shared governance is institutional culture."<sup>4</sup> If so, that means that higher education may be acting at cross-purposes to the intentions of

its founders or current “owners.” The noble official purposes will likely be foiled or bastardized into the purposes of the administration, staff, and faculty. The search for truth and service to the public will be twisted into bureaucratic expansion, job security, higher revenues and the like.

Steven Bahls acknowledges the difficulties presented in such a scenario. “It is difficult to share governance if practices within the institution are different than what the bylaws, faculty handbooks, and other governing documents actually mandate.”<sup>5</sup> Through soft governance practices, much of higher education’s governance is essentially “captured” by the faculty and staff.

Furthermore, intimate knowledge of the operations may be needed even to be aware that such a capture of the governance process by faculty and administrators is occurring. Board members may assume their college or university is a properly functioning institution that responds to their directions, when in fact decisions are made that directly oppose their intentions.

In some ways, the world of higher education reverses the normal political order. Appeals to tradition and a preference for soft governance in the broader political arena have generally belonged to conservatives. The political left, on the other hand, has generally favored grand sweeping stroke-of-the-pen reforms.

But in academia, political conservatives wish to reform through bold measures. The politically left faculty, however, is able to preserve the status quo organically through soft governance. It is more difficult to effect reform by changing the minds of an entire faculty (and staff) than it is to merely replace a few policy makers.

Outside the academy, many faculty and staff consider themselves agents of societal change and deny the role of tradition for society at large—but not for themselves when it is advantageous to maintain it. Having taken over the academy through major transitions in the past, academics now consider themselves keepers of missions and traditions—but especially when it suits their own purposes.<sup>6</sup>

Many in the academic establishment recognize that there is a governance quagmire. “The dominant perspective, or common wisdom, is that campus governance needs radical alteration of its structure and formal processes,” writes Adrianna Kezar, a professor of higher education at the University of Southern California.<sup>7</sup>

Citing a 1996 report from the Association of Governing Boards, Kezar describes several criticisms of higher education governance. For one, shared governance reduces a school’s “agility and flexibility, creating obstructions and sluggishness; it fosters a predisposition toward the status quo.”<sup>8</sup> Second, “administrators have become fixated on meeting political and social pressures, stabilizing finances, and promoting efficiency and accountability; the problem, according to this view, is that these administrators have lost touch with education-based decision making, quality, and the real purposes of the governance problem.”<sup>9</sup>

And yet Kezar’s own approach (echoing Birnbaum’s) is likely to be not just unsuccessful but disastrous. She proposes changing the emphasis for reform not on “structures and processes” but on “relationships, trust, and leadership.”<sup>10</sup> This means making soft governance even more important, thus increasing its sclerotic and crippling effects.

## Disjointed Governance

Another recent development that clogs the gears of governance is what William Mallon, a director of organization studies at the Association of American Medical Colleges, calls “disjointed governance.” He explains:<sup>11</sup>

University governance has become increasingly disjointed over time. First, universities have introduced an abundance of new governance structures . . . including strategic-planning committees, specialized committees, and task forces. The result has been a complex maze of governance, where participants' responsibilities are increasingly confusing and uncertain.

Second, university governance has become more disjointed because there are now more decision makers. Historically, academic decision-making was shared among trustees, administrations, and faculty. As universities have become more commercialized and politicized, external constituencies—legislatures, donors, for-profit competitors, strategic partners, and the federal government—have played an increasing role how universities make decisions.

According to Mallon, the “periphery” of universities is growing at the expense of older structures. The periphery includes the athletics department, continuing and online education programs, independent academic centers, and some research arrangements.<sup>12</sup>

In many cases, a growing periphery leads to loss of control by departments.<sup>13</sup> Money drives independence; centers and research projects attract their own money from outside the university. Independent centers often offer courses and hire faculty to teach. Furthermore, center leadership tends to be top-down rather than broadly consensual, especially when the grants are tied to the center director.

As institutions grow more complex, it is only natural that trust diminishes. According to Myron Pope, a vice president at Central Oklahoma State University:

This diversity yields situations in which the interpersonal relationships that are important for developing and maintaining trust between individuals are made impossible because of a lack of physical interaction.<sup>14</sup>

Pope adds that the lack of trust interrupts information flows vital for governance, both hard and soft. Shared governance, if it is to work at all, requires trust between the major stakeholders.<sup>15</sup>

## Shared Governance

There may be no principle held in higher esteem in academia than shared governance, in which trustees, administrators, and faculty all take precedence in their own spheres of activity and advise and inform the other two stakeholder groups. Indeed, much of the literature produced by faculty, trustee, and administrative associations (and individual analysts) treats shared governance as an end in itself, rather than a means to good government.

**Birnbaum claims that, due to the unseen influences of soft governance, hard governance rarely has its intended effect. Soft governance is far more influential, as infinite individual decisions overwhelm official dictates.**

“The Association of Governing Boards of Universities and Colleges, The American Council on Education, and the American Association of University Professors have each strongly endorsed the concept of shared governance,” writes Steven Bahls.<sup>16</sup> He adds that shared governance is “firmly enshrined in the policy documents of each college or university” and that “accrediting agencies often mandate some level of shared governance as a condition of accreditation.<sup>17</sup> For example, the Middle States Commission on Higher Education states the following: “the faculty has primary responsibility for the content and structure of academic programs, as well as faculty personnel matters.”<sup>18</sup>

Mainstream analysts of shared governance also agree that shared governance can mean many things, but that good governance is more “art” than science. According to Bahls, treating governance as a rigid system of a system of “rules of engagement” leads to a failure to have “give and take among the faculty, president and board that builds high-quality, timely decisions.”<sup>19</sup>

One problem is that, without such rules of engagement, shared governance becomes even less effective. One stakeholder group can hold up decisions—timeliness is rarely the result of “give-and-take.” Shared governance often requires building a consensus between very disparate factions before anything gets done. Consensus-building leads to “horse-trading,” which, as Bahls suggests, “is not the way to make the bold decisions required today.”<sup>20</sup>

Shared governance requires effort, according to former Adelphi University president Robert Scott. He suggests it requires a “covenant” that is “based on a trust that there will be no surprises and there will be adequate and appropriate consultation on major issues.”<sup>21</sup> Such a covenant may be possible in an unpolarized society in which mutual respect is the default even between opposing factions. But anybody witnessing interactions between public university system boards attempting reform and faculty resisting any intrusion on their control by soft governance understands that mutual trust is not always present.

Shared governance is continuously evolving. Faculty control was dominant in the recent past, according to Michael Miller, Everett Smith, and Daniel Nadler. “Faculty members once controlled all elements of institutional life, ranging from what was to be taught, when, by whom, and to whom.”<sup>22</sup>

But now that dominance may be waning: “although faculty are still engaged in setting admission standards and determining curricular requirements, their ability to control the larger campus has diminished significantly.”<sup>23</sup> Miller et al. suggest this is due to a “growing administrative class, with these professionals being charged with enforcing and ratifying state and federal compliance in such areas as Title IX and ADA compliance.”<sup>24</sup>

## A Conflict of Visions

Steven Bahls writes that a “system to align faculty, board, and administration in common directions for decision making” is best.<sup>25</sup> And Association of Governing Boards president Richard Legon states that his organization’s perspectives and recommendations are grounded in the understanding that the board and the faculty share a commitment to educational quality.”<sup>26</sup>

But both of these statements contain a conundrum: all stakeholders may be committed to educational quality but have different definitions of what constitutes a quality education. After all, there is a growing division between those who believe the university should strive for truth and those who believe it should strive for social justice.

Resolution of those two values is unlikely. It may not be possible to align these groups: if the administration and faculty want a campus of “safe spaces” and the board wants the campus to celebrate a vibrant exchange of ideas, where is the common ground?

And without a renewed emphasis on truth and open inquiry, and given recent trends, it is likely that higher education will remain a rudderless vessel lurching in the direction of social justice.

**Furthermore, in many situations, demands to control the curriculum and stifle dissent by an increasingly politicized faculty are a greater threat to academic freedom than are outside influences.**

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One way around the conflict of vision is to make the system more hierarchical—with the rightful governors in control. A restoration of a more hierarchical governance model is especially desirable in light of the criticism that institutions of higher education are unresponsive. Shared governance hardly streamlines decision-making; rather it makes the process more complex and therefore more tortuous. When the problem of soft governance is added to the equation, and academic freedom questions are thrown into the mix, intellectual reform—or at least intellectual reform opposed by the faculty—becomes next to impossible.

Also, without strict boundaries between each group's responsibilities, it is possible for the board's fiduciary duties to come into conflict with shared governance.<sup>27</sup>

The choice seems simple: if you wish to continue the status quo, bolster shared governance. If you wish to counter current trends, bolster board control.

## The Impact on Academic Freedom

One reason claimed for the emergence of shared governance is its close relationship with academic freedom. As explained in the history section, academic freedom-- which enables scholars to freely investigate all questions—and shared governance developed at roughly the same time for mutually supportive reasons: protecting academic freedom provided the high moral ground that justified giving faculty more power.<sup>28</sup>

For a time, the two concepts were tied together; without shared governance, boards were likely to impose restrictions on scholarship based on religious or political beliefs—even at public universities. So initially there was some justification for empowering the faculty for the sake of open inquiry.

But that mutual attachment is no longer necessary. Today, academic freedom has numerous protections other than faculty control: in state statutes, in court decisions, in institutional by-laws, and in contracts. Where those protections don't exist, they can be written into existence.

Furthermore, in many situations, demands to control the curriculum and stifle dissent by an increasingly politicized faculty are a greater threat to academic freedom than are outside influences. Today, the academic freedom of students is more at risk than that of faculty, from their right to be educated instead of indoctrinated to their right to invite outside speakers of their choosing to campus.

Tenure, too, started as protection for academic freedom against trustee interference. However, additional protections for academic freedom have reduced it to a system of job security and a means by which the faculty can control personnel decisions.

## The Role of Faculty Documents

One important area of controversy is whether faculty documents such as handbooks and collective bargaining agreements constitute fundamental policy documents. If so, they can come into conflict with board authority stipulated in founding charters and statutes.

### Handbooks

According to Bahls, these handbooks are developed by the faculty and presented to the board for approval. In many states, such handbooks are considered contracts and have legal force.<sup>29</sup> That is the position taken by much of the higher education establishment, such as the AGB and AAUP, which favor a strong faculty presence in a system of shared governance.

It is only natural that these handbooks are usually written with considerable self-interest and can undermine other policies derived from other sources that put either the board or the administration in charge. Their status as enforceable contracts may be at odds with the seminal 1984 Supreme Court decision *Minnesota*

*State Board for Community Colleges v. Knight*, in which justice Sandra Day O'Connor wrote for the majority that "this court has never recognized a constitutional right of faculty to participate in policy-making in academic institutions."<sup>30</sup> O'Connor's decision was "clear," according to Bahls, for "without the board's delegation of authority, there is no legal right to shared governance."<sup>31</sup>

To eliminate any confusion about which documents to enforce, Bahls writes that, "Increasingly, many colleges and universities explicitly state that faculty handbooks are intended as statements of practice, not contracts, and the board can amend them at any time."<sup>32</sup>

## Collective Bargaining Agreements

On some campuses, collective bargaining agreements can actually spell out shared governance participation by faculty. Such agreements are enforceable by courts and arbitration proceedings. According to Bahls, these agreements can establish rights, such as the right of the faculty senate to participate in governance proceedings, the right of faculty to be involved in appointments, tenure and promotion, to sit on search committees or budget committees, and more.<sup>33</sup> One consideration is whether they conflict with the board's statutory authority or fiduciary responsibilities.

The legal status of collective bargaining adds to the tangled web that prevents board control. As shared governance rights are negotiated with faculty, the process becomes horse-trading or a power struggle, rather than well-crafted governance.

Other conditions add to the sclerosis, according to Bahls. These can include accrediting agencies, Title IX regulations, and the decentralization of campus administrations.<sup>34</sup> At times, it's hard to know who is in charge of various operations.

## Asymmetry of Information: Undermining Authority

Economists use the term "asymmetry of information" to describe the problem that occurs when one party in a negotiation has knowledge important to the discussion that the other participant lacks. That imbalance of information gives the first party such a considerable advantage it can consistently manipulate the second party.

This asymmetry has driven many of the major transitions in higher education and is central to academic governance. Boards lost control of the colleges in the late 1800s when members no longer had sufficient knowledge to make student-level academic decisions, such as whether students had learned enough to receive credentials. Faculty claimed that their greater specific knowledge conferred the natural right to control the curriculum.

But the board may face an even bigger asymmetry-of-information problem today, this time with the administration. Many of the board's difficulties with asserting its full legal powers arise from this relationship. Clearly, the board lacks the intimate institutional knowledge that the administration has, since board members can generally devote only a few days a month to university business, while the administration is involved with almost every detail of institutional operations.

A couple of areas in which public board members would appear to have a natural advantage are their relationships with legislators and with the outside world. But even that is not necessarily the case. In their relations with legislators, board members are often expected to serve as advocates for their schools or systems, rather than to serve as agents of reform. Administrators have their

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own relationships with politicians; many public universities and university systems have administrators serving as lobbyists during legislative sessions.

Indeed, the administration has a similar advantage over almost all stakeholders. Furthermore, the administration not only has more knowledge than others, but has more means to disseminate its views.

William Tierney, a professor of higher education at the University of Southern California, and James Minor, an assistant professor of higher education at Michigan State University, wrote that “too often, it appears as if the administration controls the airwaves.”<sup>35</sup>

The president is usually the institution’s main spokesperson; other times, he or she delegates the task of dealing with the media to members of the administration’s communications department. The administration usually is involved with producing the alumni magazine; the president’s office issues newsletters and news releases and controls the university website.

Bahls offers an example of how damaging the information problem is.

Boards delegate to the president (and chief academic officer) that learning is assessed, deficiencies monitored, and results improved. Presidents, chief academic officers and faculty leaders who provide perfunctory information about academic concerns to the board under the guise of consulting with the board do not allow the board to fulfill its responsibility for ensuring quality education.<sup>36</sup>

When this happens (as it almost always does), the board is put in a difficult position: it has not used its fiduciary powers properly. It can delegate various tasks to the administration and faculty, but it cannot delegate away its responsibility for educational quality, and yet it is doing so.<sup>37</sup> Its delegation of tasks has removed the opportunity to receive the necessary information. The board can claim innocence due to ignorance in such a matter, but that still means it has not exercised due diligence to make sure the information was accurate.

Only if everybody in the system turns a blind eye to the problem can it be dismissed. And that is the status quo.

## Accreditation Issues

Clouding the governance picture are outside agencies with authority over higher education institutions. These include accrediting agencies, the federal Education Department, and state licensing commissions and auditors. Also looming large are the various iterations of the Higher Education Act, which incrementally shift power to the federal government.

Perhaps the most intrusive of these outside entities are the accrediting agencies. Accrediting can have a powerful distorting influence on university governance.

According to a 2010 study by economists Andrew Gillen, Daniel Bennett, and Richard Vedder, today’s system of accreditation is largely a historical accident. “If the nation were starting afresh on accreditation,” they wrote, “we predict it would devise a radically different system than the one it has become over the past century.”<sup>38</sup>



Accrediting agencies began in the late 1800s as a way for the more prestigious institutions to distinguish themselves. They established “institutional standards, such as faculty size, length of educational programs, library size, and size of endowments which aspiring colleges were required to meet to gain accreditation.”<sup>39</sup>

Eventually, accrediting agencies added more duties. They gained a new focus on helping schools get better “rather than the rigid enforcement of universal standards.”<sup>40</sup> That meant colleges were permitted to define their own standards, and accreditors provided analysis and recommended ways to improve.

The two GI bills—one in 1944 and the other in 1952—gave education grants to servicemen returning from World War II and the Korean War. This infusion of money changed the purpose of accreditation. Initially, states determined institutions’ eligibility to enroll GI Bill-funded students. But because of so-called “diploma mills” that popped up to capture the federal money without providing an adequate education, accreditors were given the role of making sure schools were actually providing quality training. The commissioner of education selected “the six current regional accreditation agencies” to determine which schools could receive these federal funds.<sup>41</sup>

Gillen et al. wrote that the amounts of funding provided by the GI bills were relatively small compared to the total spent on higher education at the time. The bills were also temporary. That meant schools could still remain competitive without accreditation. But then the 1965 Higher Education Act (HEA) established “massive and permanent funding for higher education, and any school that wanted access to the funds had to be approved by the new gatekeepers.”<sup>42</sup>

The 1992 reauthorization of the HEA increased the Education Department’s oversight capabilities. According to Alexandra Hegji, an analyst for the Congressional Research Service, the law detailed such assessment standards as “recruitment and admissions practices, program length and success with respect to student achievement in relation to the school’s mission.”<sup>43</sup>

Today, there are seven regional accreditors that oversee most public, private, and non-profit postsecondary institutions, including some of the largest for-profit chains. Schools are bound to the regional agency in whose district they are located. There are also 10 national accreditors: four are for faith-related schools and six have a vocational emphasis, serving mainly for-profit colleges. There are also numerous program accreditors for individual academic programs.<sup>44</sup>

The accrediting process is essentially in three parts. It begins with an “institutional self-study” conducted by the school’s administration. Hegji wrote that this self-study “is designed to be an examination of whether an institution’s operation and performance meet the basic requirements or standards of the accrediting organization.” It “typically involves the preparation of detailed written reports” about the school, “as well as how it plans to improve in the future.”<sup>45</sup>

The next step “typically involves a peer review and site visit at the institution,” conducted by “an outside team primarily composed of higher education faculty and administrators” who participate on a voluntary basis. The self-study in the initial step is used as the “basis for scrutiny” during the campus visit. Members of the visiting team interview faculty, staff, administrators, and students.<sup>46</sup>

To complete the review, Hegji writes, the visiting team produces an extensive report with “judgments about the institution’s strengths, weaknesses, and potential for improvement.”<sup>47</sup>

**Conflicts of interest also abound. For instance, most of the people who conduct investigations are themselves academics from institutions that are subject to the authority of the accrediting agencies for which they work.**

Afterward, the agencies' commissioners determine whether "accreditation should be awarded to a new institution, renewed for an existing institution, denied, or put on provisional or probationary status."<sup>48</sup> Schools denied accreditation can appeal.

Accrediting agencies themselves are authorized by the Education Department of the federal government. There is an "Accreditation Group" within the department to specifically carry out accreditation-related tasks. They are advised by an 18-member panel called the National Advisory Committee on Institutional Quality and Integrity (NACIQI), with six members each appointed by the Speaker of the House of Representatives, the President pro tempore of the Senate, and the education secretary.<sup>49</sup> The Education Department certifies accrediting agencies to be the gateway to federal funds.

## Basic Problems

The result of this haphazard development of accreditation and its ever-expanding role in university governance is an intrinsically flawed system. It has proven both ineffective and injurious. Furthermore, it has eroded traditional forms of governance and shifted control from boards and state legislatures to the accrediting agencies, administrators, and the federal government. It is a world of distortions, bad incentives, and conflicts of interest.

One underlying problem is that the accrediting agencies have dual masters—they are both voluntary professional associations, created and funded by the universities they oversee, and at the same time, a regulatory arm of the Department of Education. This means that accreditors have "two bosses: their members and the federal government."<sup>50</sup>

They have dual missions as well, serving as consultants to help schools identify and correct weaknesses on one hand, and acting as gatekeepers to federal funds on the other. The combined effect of these two missions is disastrous for institutional autonomous governance. Agencies can threaten to withhold accreditation unless schools comply with their "recommendation"; this gives them the final say in many matters, since receiving accreditation is imperative to continue revenue streams for almost all colleges. With so much financial aid hanging in the balance, board decisions that conflict with accreditors' recommendations are likely to be set aside.

Conflicts of interest also abound. For instance, most of the people who conduct investigations are themselves academics from institutions that are subject to the authority of the accrediting agencies for which they work. In a 2016 report for the Manhattan Institute for Policy Research, Preston Cooper, now a research analyst with the American Enterprise Institute, found that among the 332 commissioners hired by 15 regional and national agencies, 221—roughly two-thirds—were employed at a school accredited by their agency. Of those 221, 196 were employed as administrators, 113 of them as college presidents.<sup>51</sup>

Cooper wrote that such arrangements have enormous potential for "logrolling," in which a commissioner will cast "a favorable vote toward a particular school with which he is not affiliated in exchange for an explicit or implicit promise that other commissioners will make a favorable decision toward his own school when the time comes."<sup>52</sup>

Robert Kelchen, a professor of higher education at Seton Hall University, adds that this sort of peer review relationship can also be an example of regulatory capture, since those who are supposed to be regulated—academics—have undue influence over the decisions of the regulators. Furthermore, accreditors get much of their revenue from members' (that is, colleges') dues. The self-study process and self-definition of standards by the schools undergoing accreditation, in which they have powerful incentives to downplay any problems, add to this distortion.

Today, accreditation itself says almost nothing about the value of a school's education, except perhaps that the school is not failing financially.

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According to the American Council of Trustees and Alumni (ACTA), the monopoly status of regional accrediting agencies gives them “nearly unchecked power—often making the accreditation process a high-wire act for schools.”<sup>53</sup> Kelchen instead suggests that the “regional accrediting agency system is a ‘cartel.’” This is because the regulators are largely financed by the regulated.<sup>54</sup> Cartel-like behavior is expressed in two ways. One is to “set standards that are lower than desirable to allow most colleges to receive federal aid.”<sup>55</sup> The other is to demand infrastructure inputs too expensive for new colleges to start up, thus preventing innovation.

Accreditors that focus on specific programs instead of entire colleges can pose a threat to institutional autonomy. These include business schools and law schools. Because of the incessant calls for more resources in their particular area, the specialized accreditors are largely “viewed as a guild designed to protect the guild.”<sup>56</sup>

Specialized program accreditors “often come to the conclusion that the institution is shortchanging whatever field they represent,” say Gillen et al. “As John V. Lombardi, the president of the University of Florida complained, ‘They blackmail us....If they say your department of astrophysics needs 12 spaceships and you have only 10, you had better get the other two....You take the money from the history department because it doesn’t have an accrediting lobby to protect it.’”<sup>57</sup>

This all makes for a system in which accreditation is not only a powerful force in higher education policy, but whose incentives favor the interests of both the federal government and academic administrators at established institutions, to the detriment of a diverse and innovative national intellectual life.

## Ineffectiveness

Accreditation’s gatekeeper role is “supposed to protect society from wasteful spending on fraudulent educational programs,” according to Gillen et al. Yet rarely do schools lose their accredited status.

It is exceptionally hard to argue that accrediting agencies have performed well as far as ensuring that federal money only flows to quality institutions. As a 2007 policy paper from ACTA wrote, “Colleges and universities simply do not lose their accreditation because of a judgment by accreditors that the curriculum is weak, the faculty poor, and the students don’t learn much.”<sup>58</sup>

Indeed, the loss of accreditation can seem almost random. *Wall Street Journal* reporters Andrea Fuller and Douglas Belkin found that “accreditors have only removed 18 four-year colleges from membership since 2000. The representatives of those groups argued that it was their job to help schools get better, not to police schools and kick out the worst ones.”<sup>59</sup> Fuller and Belkin discovered that “nearly 350 out of more than 1,500 accredited four-year schools had a lower graduation rate or higher student loan default rate than the average of the schools that lost accreditation.”<sup>60</sup>

In one blatant example of an accreditor’s failure to prevent an inadequate institution from continuing to operate, Kevin Carey, an education analyst with New America, a policy think tank, chronicled the collapse of Southeastern University, a small private college in Washington, D.C. Southeastern had its accreditation revoked in 2009 and then closed its doors permanently. However, it had remained open for decades despite an abysmal record:

Southeastern had lived for many years on the most distant margins of higher education, mired in obscurity, mediocrity, cronyism, and intermittent corruption. Students routinely dropped out and defaulted on their student loans while the small, nonselective school lurched from one financial

crisis to another. Yet during all that time Southeastern enjoyed the gold of gold approval seals: “regional” accreditation, the very same mark of quality granted to Ivy League universities including Princeton, Columbia, Penn, and Cornell.<sup>61</sup>

In Southeastern’s last years, the education was truly wretched. “The school’s graduation rate was a paltry 14 percent. Overall student pass rates on six exams administered through an allied health program were, respectively, 0, 0, 0, 16, 33, and 40 percent,” Carey wrote.<sup>62</sup>

But this was hardly a new development; Southeastern had been underperforming for decades. Southeastern’s mission was to serve low-income and minority students; it admitted anyone who could pay tuition through loans and grants. In 1987, its default rate for student loans was 42 percent, at a time when the national average was 18 percent. “Throughout the 1980s and ’90s,” Carey wrote, the Middle States Association of Colleges and Schools “periodically put Southeastern on various forms of probation and encouraged it to improve via sternly worded letters. But none of that was publicized to students, who continued to enroll and borrow every year.”<sup>63</sup>

In the end, it was not the quality of education that caused Middle States to pull the plug, but finances. This was due in part a perfect storm of financial events: the recession that began in 2008 and new regulations governing foreign students after the terrorist acts in September, 2001. (Southeastern had been boosting enrollment by admitting large numbers of foreign students with ready cash.) With fewer students, the house of cards collapsed.

The situation at Southeastern is common: according to ACTA, “typically, institutions are sanctioned because of financial shortcomings—an area the Education Department already investigates without the need for accreditation teams.”<sup>64</sup>

## Transparency

The initial function of accreditation was to inform the public about schools. Today, accreditation itself says almost nothing about the value of a school’s education, except perhaps that the school is not failing financially. Gillen et al. wrote that “virtually everything about accreditation continues to be shrouded in a veil of secrecy. Accreditation reports are kept secret, and the only information available to the public is whether the institution has or does not have accreditation.”<sup>65</sup>

One reason why the accreditation process is not more transparent “is that colleges would be less forthcoming in their dealings with accreditors.”<sup>66</sup> However, that would not be a problem if accreditors actually looked into university operations, with the schools required to open their books. The underlying problem is the reliance by accreditors on universities’ self-studies. As Gillen et al. ask, “Since third parties—especially taxpayers—fund much of higher education, does not the public have a right to know how what are essentially government mandated observers assess these institutions?”<sup>67</sup>

## Institutional Autonomy

One of the most frequent complaints is that accreditors largely look at inputs, such as faculty-student ratios, the size of the library, whether or not there is a faculty senate, what percentage of faculty have terminal degrees, and so on. Malcolm Gillis, president of Rice University, complained in 1998 that “the accreditors are not interested in what or how the students learn, but how many square feet of classroom space we have per student.”<sup>68</sup>

Attempts have been made over the years to increase the emphasis on “outputs,” such as learning outcomes, graduation rates, employment of graduates, and passage rates on state licensing examinations; one such attempt was in the 1992 reauthorization of the Higher Education Act.<sup>69</sup> But these attempts have largely

come to naught. According to Gillen et al., even though the 1992 HEA reauthorization required schools to collect evidence of student learning, “the college lobby has ensured that these are self-designed assessments.”<sup>70</sup> They concluded that “the lack of evidence in this area is compelling evidence in favor of a fundamental restructuring of accreditation.”<sup>71</sup>

One reason accreditors give for not setting any standards of learning is the fear of reducing “institutional autonomy.” But such a hands-off approach is highly selective. Accreditors mandate inputs such as professors’ salaries or library capacities, but do not demand that schools have a reasonable general education program. As the ACTA report indicated, “while claiming on one hand that assessing student learning would undermine institutional autonomy and diversity, accreditors have shown no hesitation when it comes to matters of employment, productivity, governance, and trustee oversight.”<sup>72</sup>

Examples of how accreditors create perverse incentives and take authority away from the rightful institutional governance include:<sup>73</sup>

Campbell University in North Carolina was placed on probation because its standard teaching load was 15 hours a week instead of the 12 mandated by the Southern Association of Colleges. The school was able to end its probationary status by combining classes, meaning that professors taught the same number of students, but in larger, less manageable classes that reduced students’ classroom participation.

Thomas Aquinas College offers an “avowedly Catholic, traditional” curriculum that is based on close readings of “the Great Books.” By most accounts, the education students receive there is rigorous and demanding, everything a liberal arts education should be. And yet, it was once threatened with loss of accreditation because the Western Association wanted it to make room for additional courses.

Former education secretary Lamar Alexander “concluded that it was not appropriate for an accreditation agency to wield what amounted to federal power in a manner that threatened academic freedom and diversity among institutions.”<sup>74</sup>

Yet accreditors often do. In some of the most egregious instances “accreditors sometimes insist that college’s academic goals be subordinated to the accreditors’ own social vision.”<sup>75</sup> One is a requirement by the Council on Social Work Education that accredits social work programs that students must “understand the forms and mechanisms of oppression and discrimination and apply strategies of social change that advances social and economic justice.”<sup>76</sup> Another is the National Council for Accreditation of Teacher Education (NCATE) requiring that “schools of education assess the ‘dispositions’ or opinions, of teacher trainees.”<sup>77</sup> ACTA described NCATE’s dispositional assessment as “troublesome. In practice, NCATE’s standards have been used to ignore academic goals and lead to a politicized determination of who is qualified to be a teacher.”<sup>78</sup>

Gillen et al. cited Anne Neal, ACTA’s former president: “They have too frequently used their power as federal gatekeepers to ‘apply intrusive prescriptive standards and ideological tests and other criteria unrelated to educational quality.’”<sup>79</sup>

Even worse, this overreach doesn’t start with the individual accrediting agencies, but with the HEA. According to ACTA, the law allows agencies “free reign” to adopt ‘additional standards not provided for.’ Thus accreditors are free to impose standards that go beyond those Congress has mandated, using their leverage to push institutions toward any agenda they wish.”<sup>80</sup>

**In some of the most egregious instances “accreditors sometimes insist that college’s academic goals be subordinated to the accreditors’ own social vision.”**

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## Usurping Board Functions

By wielding the power of gatekeeping, and by cutting boards out of the decision-making process in favor of the federal government and administrators, the current accreditation apparatus is deeply distorting academic governance. And accrediting agencies will continually push the usurpation further, unless restrained. In one blatant power grab, the Southern Association of Colleges and Schools (SACS) declares in its Comprehensive Standards of Institutional Mission, Governance, and Effectiveness that the “President—and not the board—is in charge when it comes to major pieces of the academic enterprise.”<sup>81</sup> This contradicts most schools’ founding charters and state statutes, and the very concept of a corporation upon which colleges are based.

SACS also once put Auburn University on a one-year probation for “trustee meddling in the university’s administration and a lack of commitment to the accreditation process.” Three outside investigators found no basis for the penalty, but the trustees still had to sign “a personal statement of commitment to the accreditation process” to get the sanctions dismissed.<sup>82</sup> In other words, by dangling the loss of federal funds over schools’ heads, accreditors can force submission.

## Accrediting Conclusion

Accreditation, at its best, is merely ineffective for ensuring academic quality. And it drives up costs. On average, it should be viewed as a distortionary failure. At its worst, it is an effective means for transferring power away from governing boards to the federal government and administrators. This encroachment on governance threatens institutional autonomy.

Many solutions have been proposed to improve accreditation, but only a few that can prevent accreditation’s intrusion into college governance. One of the most obvious is the decoupling of accreditation and the gatekeeping role for financial aid, which would permit accrediting agencies to instead focus on their advisory roles.

One way to accomplish this decoupling is to shift the gatekeeping role to an actual government agency, ending the tangle of distorting incentives—such as regulatory capture—resulting from institutions being a partner in accreditation rather than a subject. Currently, “accreditation is just one of the three hurdles that a school, whether prospective or established, generally must satisfy. The other two are ‘federal certification of financial and administrative capability’ and ‘state licensing or approval to operate in a state.’”<sup>83</sup> Public universities usually face additional scrutiny from the state, including audits and budgetary controls. In all of this oversight, there is considerable duplication.

Making the federal government directly responsible for accreditation brings its own set of problems. On one hand, this could bring a much-needed focus on learning outcomes as the standards for receiving accreditation. And yet it places higher education further under the thumb of the federal government, a move fraught with negative potential. For instance, it is likely that the government officials would increasingly impose political agendas on colleges seeking accreditation. And it may not end university administrators’ excessive influence on the process. Rather, it is likely that federal officials would cut governing boards out of the process in order to deal directly with administrators, as they have been doing.

State governments would be subject to many of the same influences as the federal government would. But one principle makes them the better choice: federalism. Not every state’s politics are the same, and it is very likely that accrediting methods and agencies would vary greatly from state to state, providing a laboratory for best practices.

Another potential improvement is for the accrediting agency performing the gatekeeping role—whether a state, federal, or private non-profit—to eschew the intense investigation of an institution’s operations and inputs and to focus on a few simple outcomes. Greater scrutiny may be warranted for schools that

are starting up or failing, but for established institutions it is enough to look at its finances and a few simple outcomes. In the case of Southeastern University, only a cursory glance would have revealed overwhelming problems long before Middle States pulled the plug. Once an institution demonstrates sub-par performance financially and on some outcome measures—graduation rates, loan default rates, some measures of student learning—its curriculum, standards, and other aspects should be intensely examined. Allowing such institutions to continue taking money for students who will not benefit is a borderline criminal activity. That is, fraud.

But is it necessary for accrediting agencies to closely investigate the inputs and operations of highly functioning institutions, say, North Carolina State University or Colgate University, and then mandate extensive operational changes for them to qualify for federal aid? It is one thing for schools to hire outside consultants—including professional associations such as the accrediting agencies—to recommend changes. But when those consultants can mandate their recommendations by holding financial aid over the institution's heads, power is taken from the true “owners” and governance is distorted.

Another means of improving and streamlining accreditation is to develop tests that measure learning. Some have already been created that measure general learning, such as the Collegiate Learning Assessment. There are also professional exams, such as the bar exam for aspiring lawyers, the certified public accountancy test, and various tests for state licensing (for everything from nursing to hair-styling).

Gillen et al. suggest that additional tests could be devised to cover other subjects.<sup>84</sup> Furthermore, the tests could be adjusted for the types of students admitted to an institution.

With an expanded system of testing, accreditation decisions could be made at program levels instead of for entire institutions. While this enables more targeted accreditation, accreditation for entire institutions would still be necessary for academic schools with many students who are undecided about their majors.

Such reliance on testing could promote greater institutional autonomy and board control. The curricula and pedagogy could be decided entirely by the institutions, as long as they produce the desired results. This in turn could spur innovation. However, while schools would be freer to experiment, there could also be some negative impact on innovation. In order to ensure the passage of tests for accreditation, there would likely be greater pressure to adopt established best practices instead of experimenting.

Furthermore, testing would suffer from the same problem that has prevented its universal adoption throughout academia: the lack of consensus on what students should be learning.

In any case, accreditation's intrusion into university governance and ineffectiveness suggest it may be time to scrap the current system.

**By wielding the power of gatekeeping, and by cutting boards out of the decision-making process in favor of the federal government and administrators, the current accreditation apparatus is deeply distorting academic governance.**

## The Principal-Agent Problem

One analytical tool that is often used to get a handle on understanding business and political relationships is the principal-agent model, also called the principal-agent problem. This problem is the result of misalignment between the goals and incentives of different stakeholders, in particular between the “owners” (principals) of a firm, institution, or operation and their agents (managers and producers). The designation is situational: a stakeholder can be a principal in relation to one stakeholder and an agent in relation to another.

Robert E. Martin, a former Centre College economics professor, writing in a 2009 report for the Martin Center, suggested that “the particular human failing that leads to the agency problem is the assumption that whatever is in our own interest is also in the institution’s interest.”<sup>85</sup>

Martin writes that this lack of awareness about the nature of one’s incentives has dire consequences for higher education’s system of shared governance:

In a perfect world, this shared governance would be a constraint on the problem of agency. . . . The sad truth, however, is that shared governance creates competing incentives that operate against the mission of education.<sup>86</sup>

In a 2000 paper published in the *Journal of Economic Behavior & Organization*, Andreas Ortmann and Richard Squire attempted to wrangle higher education’s incentive structure into “a cascade” of principal-agent relationships. This was done to show that current incentives in academia necessarily increase costs.<sup>87</sup>

The particular mechanisms driving the cost increases examined by Ortmann and Squire they call “administrative lattice” and “academic ratchet.” Administrative lattice “describes the tendency for college administrative staffs to grow relative to the faculty over time.” It occurs partly in response to academic ratchet, which is “the tendency for faculty to shift effort over time toward research and personal income opportunities and away from teaching.”<sup>88</sup> Instead of combating academic ratchet, administrators hire additional staff to make up for faculty neglect of traditional duties such as student advising—thereby moving the administrative “lattice” higher.

Formalizing the principal-agent problem into a game theory exercise often requires that complexity be reduced. Ortmann and Squire boil down a faculty member’s incentives to “job security, freedom to spend his time on activities he prefers, and maximization of professional reputation and income.”<sup>89</sup> In their model, most other activities, such as advising and other “governance tasks,” are reduced to “sharable management duties,” since they can be performed by either staff or faculty.<sup>90</sup> Such duties are largely disincentives for faculty, since time spent on them means less time spent on research and writing.

Tenure plays a critical role in the incentive structure for faculty: it is both a motive and, once attained, it enables faculty to fend off pressure from administrators to perform shared management duties. Research and publishing play a pivotal role as well; they help faculty secure tenure, and are also the key to heightened reputations and incomes. Given such an incentive structure, a professor will most likely shirk shareable management duties in order to pursue personal incentives.

Furthermore, the administration is unlikely to monitor the faculty. Much of the incentive structure for administrators resembles that of faculty. In addition to being driven toward job security, free use of time, and maximization of reputation and income, administrators seek to delegate shared management duties, just as faculty are incentivized to shirk them. Since the administration seeks to avoid conflict with tenured faculty, it will hire extra staff to accommodate both factions’ incentives rather than try to impose the duties on the faculty.

Another reason administrators prefer hiring staff is that managing more employees increases one’s status.

Administrators also have incentives from above. They not only wish to maximize their own reputations, but the reputation of the institution as well. They must also please their own principal, the “overseers” (the board and owners in the Ortmann and Squire model). The overseers also wish to enhance the organization’s reputation. (Indeed, in this abbreviated model, that is their only incentive.) However, the relationship between the administration and the overseers is tainted by a serious asymmetry-of-information problem, since the overseers are entirely dependent on what the administration chooses to tell them. As a result, the overseers are “disadvantaged in quickly recognizing poor Administrator performance.”<sup>91</sup>



In the Ortmann and Squire model, the overseers make budget decisions based on whether they believe the administration's budget proposal is optimal. But their decision is based on information provided by the administration.

Both increasing staff and enhancing the school's reputation cost money. And that is the conclusion of the model: current incentives increase costs.

In his own model, Martin places the administration at the center of the incentive structure, permitting administrators to manipulate other stakeholders. "Administrators artfully play the two groups [faculty and board] off each other. They stand between the two groups, cutting off the communication that needs to take place between board members and faculty."<sup>92</sup>

This maneuver is not particularly difficult, according to Martin, since many board members deliberately isolate themselves. Many trustees consider talking to faculty "to be a violation of the 'chain of command' that exists in the corporate world from which they came."<sup>93</sup> Furthermore, the faculty is not particularly eager to engage with the board. Faculty have little loyalty to institutions and "tend to underinvest in campus governance," Martin writes. "The primary allegiance of faculty has shifted to their academic discipline and to their colleagues."<sup>94</sup>

Plus, the faculty tend to be protective of their control over intellectual content. Martin writes that they "think theirs is the only voice that should be heard when it comes to curriculum. This has a disastrous effect on the formulation of a curriculum that meets society's needs."<sup>95</sup>

Reputation is a primary incentive for all the major stakeholders, but especially board members and administrators. Martin writes that it is hard to overestimate the role that reputation plays in an institution's policies. "To understand the incentives that operate in higher education, we need to recognize that the chief objective of the producers may not be education per se, but maximizing the school's reputation."<sup>96</sup> Reputation brings better students, more donations, and more research grants, which increase reputation even more. Additionally, increased revenues reduce financial risk.

However, the emphasis on reputation brings with it a host of "opportunities for mischief" by self-interested agents. Furthermore, the results of "such mischief may not be detected for a generation or more."<sup>97</sup>

The focus on reputation also leads to an avoidance of controversy. That avoidance means that problems go unaddressed, causing education to suffer. Whereas a controversy hurts reputation (and therefore fundraising) immediately, the effects of lower quality education may not appear for decades.<sup>98</sup>

The desire to avoid controversy lessens the incentives for reform. Boards tend to choose cautious and ingratiating managers for their ability to avoid controversy and raise money, rather than for bold leadership.

## "Groupthink"

Shared governance has another major flaw beyond its tendency to clog the wheels of reform. This one is rooted deeply in human nature: the tendency for a group of people, under certain conditions, to succumb to "groupthink." According to Yale psychologist Irving Janis, groupthink is "members' strivings for unanimity overriding their motivation to realistically appraise alternative courses of action."<sup>99</sup> Two of the three main parties in shared governance are subject to groupthink. One is the faculty, which exercises the most influence over the intellectual life of the institution in the current system of shared governance

**"To understand the incentives that operate in higher education, we need to recognize that the chief objective of the producers may not be education per se, but maximizing the school's reputation."**

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and appears to be exceptionally susceptible to this tendency. The other is administrators, most of whom rise from the ranks of faculty and can only do so by conforming and avoiding unpopular controversies. Trustees are less susceptible; they come from different backgrounds, have a much higher turnover rate, and meet infrequently.

Janis published his seminal article on the subject in *Psychology Today* in 1971, using mid-20th-century political figures as examples. They included the highly prominent group clustered around President Kennedy that advised him to go ahead with the disastrous Bay of Pigs invasion of Cuba in 1961, President Lyndon Johnson's "Tuesday Cabinet," which encouraged the military build-up in Vietnam, and Admiral Husband Kimmel's advisors who, in 1941, scoffed at the thought of the Japanese attacking Pearl Harbor.<sup>100</sup>

At first glance, many of Janis's criteria for the likely emergence of groupthink in an organization do not seem to apply to academia. These criteria (and some by subsequent writers on the topic) are:<sup>101</sup>

1. The group is small.
2. The group is fairly neatly defined—a group of "insiders."
3. The group is chief-based, with highly centralized decision-making.
4. The group is concerned about security leaks or other constraints that lead it to put a premium on secrecy.
5. The group acts under great stress.
6. The group makes decisions that run great risks and involve huge possible dangers.
7. The group is dealing with an issue of great immediacy and exigency.
8. The group's bad beliefs are specific to the decision at hand.
9. The bad beliefs are shallow; they are not about issues of identity.
10. The potential for eventually admitting defectiveness usually exists.

Just about none of the above characteristics applies to academic departments, other than the possibility that they may be small or that the power may reside in a group of "insiders." Yet departments are where the process of groupthink in academia originates.

George Mason economist Daniel Klein and Stockholm University sociologist Charlotta Stern posit that, unlike other instances of groupthink, in which the "bad beliefs are shallow" and "not about issues of identity," academia's "beliefs are deep seated and connected to selfhood and identity." They are "more in the nature of moral, political, and aesthetic values," and, "for that reason, protecting and preserving them have high personal stakes."<sup>102</sup>

Academia lends itself to groupthink especially well since the outcomes of academic theories are not subject to the same scrutiny that would be present in a for-profit firm. There are frequently no corrective mechanisms to call out defective theories, so the groupthink can continue no matter what outcomes it produces.

Another reason why groupthink is allowed to flourish is the specialized nature of academia. This is the same characteristic that enabled faculty to wrest control of their institutions from the governing boards over a century ago: because of their advantages in subject knowledge, the faculty can be impervious to correction or even rebuttal, including "the important questions (about hiring, firing, promotion, teaching, research, graduate student training, and so on)."<sup>103</sup> With no need to accept outside influence, many departments and entire faculties are left to accept ever-more extreme ideas.

Former Duke University psychobiologist John Staddon provides an illustration of one way radicalization can overtake a discipline. Over time, there has been a proliferation of sub-fields in each discipline. As the sub-fields grow increasingly narrow, a drift toward increasing radicalism occurs, as members of the subfields compete for attention by making more extreme hypotheses without criticism from the broader discipline. Consider the following from Staddon's article:<sup>104</sup>

When the American Psychological Association (APA) was founded in 1892 it had just one division, but after World War II it merged with various other psychological organizations and created 19 divisions. By 2007, this number had expanded to 54. . .

Parallel to the APA, with almost as many sections, is the American Sociological Association. . .

A fatal consequence of this multiplication of social-science sub-disciplines has been a weakening of criticism. Technical languages—mostly jargon— have evolved and, like natural languages, isolate speakers from non-speakers, immunizing research from truly independent criticism . . .

In social science, especially, each sub-division developed its own cluster of journals. A finding in one area that might have little or no credibility in others, can nevertheless find a safe berth in its own publication harbor. Results can be supported by citations drawn from a sympathetic group of like-minded researchers, often publishing in the same journal . . .

The problem seems to be the endless subdivision of the social sciences. Some means must be found if not to abolish at least to mitigate this protective isolation of sub-disciplines. Perhaps a modification of a peer-review system that, at present, allows hyper-specialized social-science scholars to listen only to the like-minded. Perhaps social-science grant applications should be vetted by a broader range of scientists, a majority from outside the sub-specialty. Perhaps some other solution can be found to restore the academic status of sociology. For the time being, all we can do is highlight what seems to be a pernicious degradation of science.

The signs of a progressively expanding groupthink in academia are overwhelming. For one, a 2005 survey by Klein and Stern showed that an imbalance of faculty voter registrations in the humanities and social sciences increased from four Democrats for every Republican in 1972 to eight to one in 2005.<sup>105</sup> A more recent study by Klein, Mitchell Lambert, and Anthony Quain, using a slightly different mix of departments, showed that by 2016 the imbalance had risen to 11.5 to one.<sup>106</sup>

Nor do claims such as “left-leaning individuals prefer academia more than their right-leaning counterparts” or “liberals are more intellectually gifted than conservatives” stand up to serious scrutiny. For instance, a 2005 study by Stanley Rothman, Robert Lichter, and Neil Nevitte indicates that conservative scholars with accomplishments equal to those of liberals have less prestigious positions.<sup>107</sup>

## The Emergence of Groupthink

Theories of group formation and social dynamics tell us that social groups tend to seek and attract newcomers like themselves, screen out and repel misfits, and mold the uninformed in their own image.<sup>108</sup> These tendencies are deeply rooted in human nature.

The process is familiar to observers of higher education. Faculty mentors seek to replicate themselves in a new generation of scholars, while young acolytes tend to be accepting of the values of their superiors. Ideas that get adopted in graduate school are reinforced throughout academia and tend to persist, unless life events jar an individual's sensibilities. According to Klein and Stern, “most intellectuals develop ideological sensibilities by the age of twenty-five or thirty and afterward they rarely revise them substantially.”<sup>109</sup>

Klein and Stern also describe a process in which the conservative or libertarian professor must go along to get along, and over the decades will wind up more in accord with liberal colleagues.<sup>110</sup> Additionally, the hiring process tends to promote groupthink once an ideological imbalance appears. As Klein and Stern suggest, “In hiring a new member of the department, most existing members will tend to support candidates who share their fundamental beliefs, values, and commitments.”<sup>111</sup>

Klein and Stern describe the tendency to avoid controversy:

Professors are likely to respect scholars who pursue questions similar to their own and who master similar modes of thought. Indeed if a scholar is engaged in a task that might threaten a colleague’s sense of self, he may give rise to personal distress and create acrimony between them.<sup>112</sup>

A faculty member is likely to say, “If Candidate A has judged differently on fundamentals, then he has exhibited bad scholarly or scientific judgment.”<sup>113</sup>

## Groupthink Characteristics

Klein and Stern cited several pervasive characteristics of groups subject to groupthink. For one, there tends to be some homogeneity in members’ social backgrounds. Even more important is the way that, for those whose socioeconomic backgrounds do not match the rest of the group, academia’s sorting and molding mechanisms produce an ideological homogeneity.

Another characteristic is that such groups tend to be impervious to outside critiques. The different “mechanisms in academe work to create an ‘in-group’ that is insular, self-perpetuating, and self-reinforcing,” just as in other spheres that more readily meet Janis’s criteria.<sup>114</sup> No one outside the group is considered qualified to judge the group. Any outside opinions are rejected out of hand: those outside the academic discipline are perceived to lack the knowledge and credibility to criticize intelligently.

Furthermore, there is a belief in the inherent morality of the group. Generally, scholarship and scientific research are perceived to be noble pursuits, and membership in a “tribe” conducting such investigations into the true nature of things confers nobility. This is believed to be correct even when the goals of the scholarship are either personal or ideological.

Uniformity of thought means group members’ ideas are subject to less testing and challenge; in time this causes habits of thought to become, not only sloppy, but, according to Klein and Stern, extreme and close-minded.<sup>115</sup> With this close-mindedness comes a host of mechanisms to further eliminate original

thinking. One of them is “collective rationalizations” to eliminate challenging or intractable ideas outside the 40-yard line.<sup>116</sup> Such ideas are rejected as ideological, oversimplified, or advocacy even when the opposite is true. Dissenters are portrayed as clichéd images of moral and intellectual inferiors: one is a fascist, a racist, a backward rustic, and so on.

Dissent is indeed fraught with threats to one’s career; those inside the group fear becoming renegades. Being part of the group can be important for both psychological reasons and career reasons; to be cast outside the group is unthinkable for many, particularly those whose entire adult lives have socialized them for membership in that particular group, as is often the case in academia. Klein and Stern expand:

**Another characteristic is that such groups tend to be impervious to outside critiques. The different “mechanisms in academe work to create an ‘in-group’ that is insular, self-perpetuating, and self-reinforcing.”**

In academia, the dissenter is likely to be frozen out. As the group's ideas become more defective, the group becomes more sensitive to tension, more intolerant of would-be challengers and miscreants. This development leads to tighter vetting and expulsion, more uniformity, more intellectual deterioration, and more intolerance.<sup>117</sup>

As a result, self-censorship is extremely common; most potential dissidents go along to get along. And for those who may stray from the intellectual fold, direct pressure is applied: tenure and promotion withheld, articles rejected by top journals, and so on. High-profile examples include Brooklyn College history professor KC Johnson and University of North Carolina at Wilmington sociologist Mike Adams. Johnson was initially denied tenure (he won on appeal) for, among other ideological transgressions, attacking “gender-driven hiring,” according to *Wall Street Journal* writer Dorothy Rabinowitz.<sup>118</sup> Adams won an important academic freedom court case after being denied a promotion, ostensibly for criticizing his campus's liberal majority.<sup>119</sup>

One result of all this pressure to conform or at least hide dissent means a lack of accountability. University of Illinois professors Nicholas Burbules, C. K. Gunsalus, and Robert Easter asked in *Inside Higher Ed* “where are the faculty voices holding their peers accountable? Instead, what we see is a deep reluctance to speak out. . . . As a result, we often see variations on the bystander effect: people unwilling to take a public position even in situations that they know are wrong.”<sup>120</sup>

Personal ambition is another reason why non-controversy is the rule in academic settings. According to Klein and Stern, “the groupthink theorist wants to gain standing as a social theorist and therefore wants to avoid unnecessary controversy.” This is true of administrators as well. The avoidance of controversy is essential for somebody who wants to rise in the institution hierarchy.

## The Shadow of Collegiality

The spirit of collegiality is heralded in academia as a means of civil discourse and a sense of membership in the common purposes of the pursuit of truth and service to society. Burbules et al. wrote that an “academic unit climate” that includes frequent outbursts of “confrontational discourse . . . cannot engage in fact-based and deliberative discourse essential to the activities of knowledge creation, instruction and shared decision making on which the university model depends.”<sup>121</sup>

In other words, deep divisions cannot be expressed without threatening to disrupt collegiality. As truth becomes secondary to agreement, it becomes impolitic to alienate colleagues over intellectual matters or even rudeness:

Many faculty members, especially tenured ones, are long-term members of their units and leery of alienating colleagues who might be their neighbors for decades to come. So it is easier to overlook behavior, or rationalize it away, rather than surface it for discussion.<sup>122</sup>

Burbules et al. suggest that dysfunctional departments tend to suffer from a “misplaced sense of collegiality.”<sup>123</sup> They cite an anecdote told by Gunsalus in an earlier work about “a unit head who wrote to the provost's office to express concerns that a faculty member had threatened to kill him. When told that one option was going to the police, the letter writer said no, doing that would be too ‘uncollegial.’”<sup>124</sup>

## The Problem of “Majority Rule”

Another contributing factor is the need to create majorities to get anything done. “The most important decisions . . . come down to a majority vote,” write Klein and Stern.<sup>125</sup> They describe how, once a department starts to have an ideological majority, it can gradually become overwhelmingly so. “The department members hire somebody like them. The 51 percent becomes 55 percent, then 60 percent, then 65 percent,

Faculty power is concentrated in the department. Many of the institution's most important decisions are primarily made at this level: what to teach (and what not to teach), whom to hire, whom to promote, and so on.

then 70 percent, and so on. As Steve Balch (2003) and others have noted, majoritarianism tends to produce ideological uniformity in a department.”<sup>126</sup>

This does not always mean departments become entirely monolithic. “Colleagues are human beings, and they are stuck with each other,” wrote Klein and Stern. “They usually seek to avoid acrimony.”<sup>127</sup>

At one time, according to Klein and Stern, consensus pushed departments away from extreme views. “The consensus factor works toward blandness in personnel matters; the majority advances job candidates who belong to their camp, but not in a strident or outspoken way,” they wrote.<sup>128</sup> But that sort of bland civility is declining; the polarization of the nation—and

the increasing uniformity in academia—is introducing more aggressive political attitudes into the academy. The advocates of those attitudes also forcefully pursue positions on hiring committees and other means for moving departments and schools toward their agendas.

“Unfortunately, we live and work in a time when the more confrontational model is on the rise—across the political spectrum,” according to Burbules, et al.<sup>129</sup> However, the imbalance is so severe that confrontations within academia tend to go only in one direction—against the right. Most academic combativeness is expressed toward those outside the Ivory Tower. Nor do hard governance protections, such as tenure, always work as planned: “Tenure alone is clearly not a refuge for the departmental miscreant,” lament Klein and Stern.<sup>130</sup>

After all, there are many ways to make dissenters go away.

## Faculty Departments: Controlling the Curriculum

Faculty power is concentrated in the department. Many of the institution's most important decisions are primarily made at this level: what to teach (and what not to teach), whom to hire, whom to promote, and so on.

Additionally, faculty members tend to place their loyalty or professional focus in their discipline, rather than their institutions. For the most part, they are hired by departments rather than by universities. As Klein and Stern suggest, “Historians are accountable for the most part only to other historians.”<sup>131</sup>

A history department, for example, “is not so much a subunit” of a university, but a “village of a larger tribe, history as a profession,” they write.<sup>132</sup> Historians rarely have discussions outside their tribe; they get their “meaning and validation” from membership in the tribe. The history profession is essentially controlled by reputation: from publications in academic journals, schools, grants, citations, awards, and so forth.<sup>133</sup> Reputations are generally determined by conformity; those who propose paradigm shifts that go against the grain are often disregarded, ignored, or explicitly cast out.

“The tribe's standards are focal points around which expectations are mutually coordinated and consensus is tolerably achieved,” write Klein and Stern.<sup>134</sup> Once that consensus is achieved, it can be hard for other viewpoints to emerge.

The process of specialization described by Staddon plays a part in reputation-building: “Research is highly specialized and the tribe is broken down into subfields. . . . Prestige and eminence are determined within the subfield, a kind of club within the tribe,” write Klein and Stern.<sup>135</sup>

They then describe how disciplines become intensely insulated from outside influence: “Each club sorts people with overt reference to pedigree, publication, citations, and letters of reference. The club controls these filters and applies them to itself. It controls the graduate programs and journals. By spawning and hiring new recipients of Ph.D. degrees, the club reproduces itself.”<sup>136</sup>

Hiring, etc. are “microdecisions. “In making and justifying those decisions, department members draw on the tribe’s macronorms and values,” wrote Klein and Stern.<sup>137</sup> “A department’s microdecisions are about friends, colleagues, enemies, friends of friends, students of mentors, and so on. If it wants to look beyond itself to make and justify its decision, it looks to the higher echelons of the profession, as an individual may look to heritage.”<sup>138</sup>

Those higher echelons are the few elite schools that produce the most faculty and to which the most celebrated faculty are drawn. A small number of departments determines who gets hired. Klein and Stern ask: “Consider a ranking of two hundred economics departments worldwide, where the top thirty-five are treated as at the apex. In these top thirty-five departments, more than 90 percent of faculty received their Ph.D. degree from the same thirty-five departments; the top is almost entirely self-regenerating.”<sup>139</sup>

Klein and Stern show that the top few departments continue to have undue influence down the line:

In the field of law, Richard Redding finds: ‘A third of all new teachers [hired in law schools between 1996 and 2000] graduated from either Harvard (18%) or Yale (15%); another third graduated from other top-12 schools, and 20 percent graduated from other top-25 law schools.’<sup>140</sup>

With such a few schools determining intellectual standards, there is less likelihood that alternative opinions will be heard. Departments therefore do not feel the same pressures that the university feels from, say, the legislature or the public; the people can push against the university to change the department, but the university will not react because the department is insulated by its disciplinary self-involvement.

## Faculty Pushback

An important puzzle remains regarding the radicalization of the campus: why don’t sensible faculty push back against the extremists?

One obvious answer is the economic concept of concentrated benefits and dispersed costs. Most faculty care less about politics than do their more aggressive colleagues. They tend to be individual performers who care about their own work. The political direction of the campus matters less to the average professor than to radicalized activists whose emotional well-being is tied to whether they win political struggles.

Faculty governance duties require full-time tenured faculty, according to Bahls. However, many faculty don’t participate by choice.<sup>141</sup> Because so many faculty voluntarily remove themselves from governance, faculty governance structures are skewed toward activists. After all, they are the ones seeking power and least likely to remove themselves, so their presence is exaggerated both numerically and in terms of aggression.

Another reason for their reluctance to push back is that faculty today often agree with the directions in which their campuses or departments are moving. Leftist is normal: as revealed earlier, Democrats overwhelmingly outnumber Republicans on campus. And, as the popularity of socialist Bernie Sanders and some of his extreme policies have shown, the average Democrat is much farther to the left than in the past.

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Fear of confrontation or even outright intimidation is another major reason. Being accused of having politically incorrect attitudes can be disastrous to an academic today. Ambition is thwarted by going against the tide.

## Groupthink Conclusion

Governing boards are constantly changing as current members leave and new members join and therefore are subject to outside influence. Faculties, on the other hand, are longstanding and intensely self-perpetuating. Similarly, administrative staff are often on campus for many years, though they do not self-perpetuate. Yet even though they experience more turnover than faculty, top administrators are still members of the academic “tribe”; their thinking is not general, but academic.

Klein and Stern are not necessarily accusatory about ideological bias. “We all discriminate on the basis of ideology and—again in the abstract—doing so is perfectly justifiable.”<sup>142</sup> However, even though this discrimination may be somewhat unavoidable by individuals, the group suffers from it. And there is no limit to the policies and beliefs that sound good “in the abstract” but become nightmarish in reality. Although we cannot avoid all ideological discrimination in academia, it is still incumbent upon scholars to question their biases. Once ideology becomes open and acceptable—even celebrated—and there is a political imbalance in the membership, groupthink will be the inevitable result. University authorities should expect this inevitability, and governance practices should address it.

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# SOLUTIONS: GOING FORWARD

So what can be done about the crisis of governance in higher education?

Quite a lot, it turns out. There are all kinds of solutions, some that require extensive restructuring and some that can be implemented individually and incrementally.

Some major keys to good board governance are:

- Boards must be independent of administrations.
- Boards at public universities and non-sectarian private colleges should be reminded that their highest duty is to protect open inquiry and the free exchange of ideas.
- Boards should represent all external stakeholder groups, especially those with legitimate claims to ownership.
- Boards must safeguard against both “expert” extremism and the disregard of the public in favor of self-interested stakeholder concerns.
- Member selection, information sources, and training for university boards must be improved so that governing bodies will not merely act as rubber-stamp committees nor thrash about unwittingly.

In a general sense, governance reform starts with restoring governing boards to their place atop the higher education system. The currently dominant convention of shared governance makes meaningful change difficult, if not impossible. Shared governance must no longer be regarded as an end and instead judged as a means—with a critical eye. Such reassessment may suggest that faculty and administration should be considered as employees rather than as principals or members of the corporation.

Following is a list of potential guidelines and improvements for university governance:

## Solutions Inside Academia

### 1. Streamline the Governance Process

Advocates of shared governance are missing something important: the real objective is good, effective governance that can tackle difficult problems, not the appearance of an equitable process and collegiality. Difficult problems can become intractable if the goal is pleasing everyone instead of finding and implementing viable solutions. It is apparent that shared governance and its concomitant “soft governance” are producing much of the failure through inaction of governance that prevents higher education from dealing with problems. How will expanding the decision-making franchise across the stakeholder spectrum create a less intransigent university? Simple: it won't!

## **2. Adopt a Modern-Day Loyalty Pledge**

The mere mention of a “loyalty pledge” may cause a panic on most modern American campuses. But it is time to instill one, not mandating allegiance to any particular ideology or religion, but to academia’s most treasured values—the pursuit of truth and the free expression of ideas. Too often, those in control lose sight of the most important principles in higher education. (Naturally, this solution does not apply to private sectarian institutions that hold to specific dogmas.)

## **3. Hire Independent Board Staff**

The board should have at least one permanent staff member who is not beholden in any way to the administration. Too often, the board administrator or staff member—who helps prepare the board agenda and invites expert speakers, among other duties—is an employee of the university or public university system. This presents a very injurious conflict of interest.

Furthermore, the staff member should be a policy expert who keeps abreast of new developments and ideas concerning higher education rather than a mere administrator. This is to alleviate the asymmetry-of-information problem that allows administrators to usurp control of an institution or state system from the board.

## **4. Boards Should Conduct Member Orientation and Training**

Too often, the roles of board members are distorted when training is conducted by the administration. The board staff should not only inform the board about higher education’s innovations, trends, traditions, and ideals, but he or she should conduct new-member orientation and ongoing training of members. The board needs to conduct its own training so that board members are knowledgeable about their rights, obligations, the full extent of their authority, and higher education in general.

## **5. Hire an Independent Board Legal Counsel**

Board legal counsel should also be independent of their school’s or system’s administration. Otherwise, the counsel faces a conflict of interest in cases in which the board and administration have differing incentives. It is better if the board counsel only answers to the board; the board should contract with its own counsel.

## **6. Review Documents to Protect Original Missions**

Mission statements, by-laws, and handbooks should emphatically protect free inquiry and service to the public. Too many institutions have made changes to fundamental documents in recent years that conflict with academia’s true purposes or serve special interests.

This is also true for statutes and by-laws governing academic freedom. Rather than relying on definitions and theories about academic freedom and free inquiry that are crafted by higher education organizations—including the very self-interested American Association of University Professors—boards should rewrite fundamental university documents to align policies with court decisions. A court decision is the outcome of a formal argument between two opposing sides, not a one-sided argument by a self-interested stakeholder group. Court decisions more accurately reflect the proper sense of fairness that serves the purpose of keeping inquiry free.

## **7. Emphasize Academic Freedom for Board Members**

Public discourse should not be limited to board officers or designates; dissident voices should be able to express themselves. Higher education experts, such as Robert Scott, insist that “no individual other than the chair or another designated person should speak for the board.” Scott adds that “disputes about decisions should stay in the boardroom.”<sup>1</sup> But this is wrong. University board members should have the academic

freedom to speak openly about matters of public concern. There is a lengthy list of court decisions that support such freedom, from *Pickering v. the Board of Education* in 1968 to *Myers v. Connick* in 1983 to *Adams v. The Trustees of the University of North Carolina at Wilmington* in 2015.<sup>2</sup> Secrecy is hardly the path to good governance, particularly for public institutions.

Furthermore, board members are the representatives of an institution's "owners," or, in the case of private schools organized along corporate lines, owners themselves. Trustees of public schools should not be prevented from bringing issues to the owners—the state's residents and taxpayers. Nor should trustees at any institution be prevented from apprising alumni on controversial issues.

## **8. Increase Board Review of Faculty and Administration Hires**

As stated before, faculty and administrative hires have an influence that extends far beyond the campus. The academic perspective is only one of many possible views. Often, the common sense of ordinary people is proven superior to the opinions of intellectuals. Therefore, the intellectual direction of the nation should not be left entirely to a small cadre of self-interested experts.

At public institutions, board members should thoroughly examine new faculty members' ideas and backgrounds before giving their assent to hiring. This is a good reason why boards need policy-level staff, in order to gather a faculty member's writing and other background information so that the board can see who is being proposed for inclusion in the campus community.

Procedures should be crafted to ensure board participation in the hiring and promotion processes.

## **9. Increase Board Review of the Curriculum**

Boards generally have the right to review the curriculum, but it is often done on a superficial level only. Boards often make program cuts based only on enrollment, rather than on purpose.

It would be better for boards to be more involved in deciding whether a program or course serves a real need, rather than whether it is merely popular or not.

## **10. Increase Board Control of the General Education Program**

Boards have fiduciary duties to ensure quality education. The quality of many general education programs has collapsed, with rigorous requirements that students be truly educated reduced to vague suggestions; this is a result of general education programs being crafted by self-interested "experts."

General education is a concern that needs to be decided at the societal level, not negotiated among departments trying to boost enrollment in their courses.

## **11. Promote General Transparency**

Boards should adopt procedures that honor the spirit of transparency. Sunshine laws should be employed. All board votes should be recorded and made public, excepting those conducted in closed sessions to preserve individuals' privacy.

The board staff should provide a newsletter for alumni that provides them with specific votes by members and other matters of governance. Official alumni publications are not a viable vehicle for such information; they offer little more than fundraising propaganda.

Additionally, the board chair should not have private communications with the administration unless there are privacy issues at stake. The chair is first among equals, not elevated above the rest. Nor is he or she a "partner" of the top administrator.

## **12. Deliver Information in a Timely Manner**

Board members should be sent information packets at least one week before meetings. Too often, large amounts of information are dumped on board members with too little time to review the vast majority of it. Such information dumps are one way administrations maintain an asymmetry-of-information advantage while appearing to do the opposite.

## **13. Attach Public Boards to the Institution, not the Institution's Private Foundation**

Another situation that is fraught with the potential for corruption at public universities is having university foundation boards function as the governing body for the entire school. This is a common practice in the University of California system, for example. At public institutions, foundations can declare themselves as private charities, thereby skirting public information requirements.

This may be less of a problem at private schools, as they are not subject to public records laws nor accountable to the general public.

## **14. Redefine the Role of a Board Member from “Advocate” to “Overseer”**

Public university board members should not be oriented to believe they are “advocates” for the university. This practice reduces trustees to lobbyists who promote the needs of the administration instead of acting as leaders.

Instead, their “overseer” role should be emphasized. A major part of that role is to uncover, critique, and correct a university's problems. This oversight conflicts with the role of an advocate, who is incentivized to hide, downplay, or overlook problems.

## **15. Improve Communications between the Board and Other Stakeholders**

Efforts should be made to prevent the school administration—particularly the president—from being the sole go-between among all stakeholders, as that is a major source of multiple asymmetry-of-information problems. Creating links between board members and faculty and between board members and alumni is especially important. Board members should know what faculty actually think. And it is very important that they listen to taxpayers, who may wish to reduce costs, and to the parents of students. Trustees should not receive information about other stakeholders sanitized and filtered by administrators.

## **16. Improve Presidential Searches**

**a.** Transparency in presidential searches is important. As soon as the finalists have been selected, their names and backgrounds should be open to the alumni at private schools and to the public at state universities.

The major objection to transparency in presidential searches is specious. The academic and political establishments have long claimed that making prospective presidents known before they have been offered the job prevents top candidates from applying for jobs, since they do not want their current institutions to know they are seeking employment elsewhere.

This claim is false for two reasons. First, the belief that good candidates will not apply for openings because they worry about their current institutions' reactions is wrong. That assumption may be true for some careers, but in academia it is a common practice for top people to use outside job offers as leverage for higher pay and perquisites at their current institutions. This is especially true today, when the turnover rate of college presidents is increasing and their salaries are skyrocketing.

More important, even if such transparency did reduce the pool of applicants for the reason given, the reduction is not enough to offset the possibility that a new president can escape public vetting if his or her name is kept secret until the time of appointment. Many details about a candidate may not come to light

during the official search—and board members may not have the time to perform due diligence in checking a candidate’s likely policies and background. But those details frequently get exposed when the full board and public can scrutinize their records.

If candidates are properly vetted, they are more likely to do the job well. If not, the university may be in for some unpleasant surprises. The lack of vetting or public disclosure is one way the academy has permitted political radicals or corrupt administrators to gain positions of influence.

**b.** Additionally, boards should rely less on outside search consultants. Such consultants tend to look at a narrow range of establishment candidates rather than come up with potential reformers from a broad array of fields. This may be a contributing factor to the prevalence of groupthink. Furthermore, such searches also tend to cost more than they are worth.

**c.** Limit—or eliminate—the number of faculty, administrators, and students on presidential or chancellor search committees, as that can lead to serious conflicts of interest. Faculty and administrators may have too much self-interest to choose impartially.

## 17. Improve Trustee Selection

People are policy; the means of choosing new members is one of the most important elements of board structure. Some common methods no longer produce good governance. Boards that self-perpetuate no longer preserve the values of the founders, or even of the current public or alumni; rather, the academic zeitgeist has shifted in favor of radical transformation of the curriculum and it is likely that the radicalization will be what is perpetuated. Only a substantial change in direction will lead to the preservation of, or the return to, longstanding traditions; self-perpetuation will not accomplish this.

Nor will the inclusion of internal stakeholder groups such as faculty, students, and staff encourage meaningful reforms. All of these constituencies tend to support the status quo. Inclusion of the president or provost—even in an ex officio capacity—on the board committee that recruits new members creates a potential conflict of interest.

There are three methods that have potential for placing reform-minded individuals on the board:

- One is the current system of political appointments to public university boards by state legislatures and governors. Naturally, whether reform-minded trustees are actually appointed depends on the politics of the state; one should not expect much change from current policies in states where the dominant party is closely aligned with mainstream academia. After all, the policies crafted by established officials helped to create the current crisis.

Whether the governor or the legislature selects the trustees is not an important distinction. The quality or inclinations of trustees depends on who controls the legislature or state administration, not on any specific process.

One problem with politicians choosing trustees is that monetary political contributions may play a part in selecting trustees.

- The second—and perhaps best—hope to improve the quality of trustees is through alumni elections. In fact, it may be the only hope at private schools. Of course, getting reform-minded or traditionalist trustees elected will not be easy; any attempt to do so will be met by resistance from both the existing board and the administration. A lot depends on whether alumni can

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organize independently of administrations, with access to listserv alumni addresses or other means of contacting each other. Without such independence, administrations and sycophantic alumni leadership can continue to reduce alumni to mere booster status.

- The third is both political and radical: the direct election of public university trustees by the general state electorate. Such elections must be limited to state system boards and must be statewide, for there is the possibility of local candidates adopting the sort of regionalism in which trustees become advocates for their local campuses and not good stewards of the entire system.

Direct popular elections will likely allow reform candidates to emerge from obscurity, and they may produce boards that better reflect the wishes of the state. However, they are fraught with potential for the same problems suffered by elections for other minor offices. In elections for judges, for instance, the electorate has little knowledge about candidates' actual beliefs and policy tendencies.

## **18. Identify Better Candidates for Board Membership**

Robert Scott recommends that the school president play a large part in identifying candidates for board membership. This leads to the problem of giving an administrator a role in selecting who will judge his or her performance. It also stands to reason that a president will favor those who agree with his or her policies.

Although having a president review candidates for the board may be bad, having fundraisers and development officers do the same may be even worse, unless a school is in extreme financial difficulty. Most critics complain that boards are already dominated by large donors, and having development officers recruit board candidates will only exacerbate this problem.

Public institutions should cast as wide a net as possible for new candidates in order to promote greater independence. The nomination process for governing boards at public institutions should permit almost anyone to throw a hat into the ring. That does not mean almost anyone will be chosen, but it opens the process to differing perspectives.

One possibility rarely mentioned for finding candidates is to have board staff at public institutions scan media for state residents who have spoken or written intelligent, informed commentary on higher education.

Private schools may wish to limit candidates to alumni and donors to ensure continuity, commitment, and loyalty. However, the elections should be open to all alumni and widely advertised. And the administration should not be involved.

## **19. Improve Selection of the Board Chair**

Boards generally select their chairs primarily by one of two methods: election by a governance committee or election by the full board. Both have some potential for electing reform-oriented or tradition-preserving chairs, but that potential rarely reaches fruition.

Election by a governance committee can cause a circular appointment process, with board committees choosing the board chair and the board chairman appointing committee chairs. Still, selection by committee has one advantage: because it only takes a few people to form the majority of a committee, it is possible to choose a reform-minded chair with just a few votes.

Election by the full board can also be beneficial or not; it all depends on the particulars. On one hand, it can prevent an established minority from permanently retaining power. On the other, if the board is loaded with "deadwood," that majority may elect one of their own.

The board chair position should be open to all members—or, at the least, all members not in their first year or two on the board. This increases the possibility of multiple choices and competition and removes the accumulation of too much power in a small number of hands.



Elections for board chairs should also permit election by a plurality instead of a majority. Reform-minded trustees are usually in the minority; election by plurality permits election of non-conformist candidates.

## **20. Improve Selection of Committee Members and Chairs**

Committee members and chairs should never be appointed by the board chairman or elected by governance committees. Once again, there is too much opportunity for retaining the power within a small clique.

Committee chairs should instead be elected by the entire board or by members of the specific committee in question. The first method prevents insularity; the second may allow a small group to place an aggressive reformer in a key position.

Committee membership should be voluntary, or perhaps based on seniority, rather than by appointment.

## **Solutions Outside Academia**

### **21. End Accrediting Agencies' Role as Gatekeepers to Federal Money**

Because accrediting agency mandates frequently conflict with governing board policies, the practice of using accrediting agencies as gatekeepers to financial aid must end to restore board authority.

Many accrediting agencies' functions are redundant. State and federal agencies audit or examine university finances as well (and some schools are rated by Moody's). Accrediting agencies rarely sanction schools for academic matters—but impose mandates that reduce institutional autonomy.

### **22. Reduce the Federal Government's Role in Higher Education**

The federal government has been encroaching on the ability of public and private universities to conduct their own affairs for decades. Especially infringing are the various "titles" of the Higher Education Act of 1965 and its subsequent updates.

One result of this federal intrusion into academia has been to elevate the administration above the board. Another has been an explosion of "academic bloat" caused in part by a veritable army of bureaucrats to fulfill federal mandates.

It is time to decouple higher education and the federal government as much as possible. Higher education works best in the spirit of federalism: let the individual states experiment and craft their systems to serve their specific populations. Let the legislatures and the boards of trustees, regents, governors, and visitors create the policies and set the standards, as their charters intended.

## **When All Else Fails**

It may be that much of higher education is beyond reform. Having the will to reform is imperative; without that, nothing will drive change. Most elite private schools appear to have reached the point of no return. They are insulated from change by large endowments, tradition, and terminal groupthink; the politicization has metastasized, and only some unforeseen act of creative destruction will cause a reversal.

The same is true of public universities in states with large left-leaning majorities, where the radicalization is a valid expression of the popular will.

The potential for reform exists elsewhere: at public universities in states with majorities that want their educational institutions to remain open to a diversity of viewpoints and at private schools that are highly subject to market forces. If neither of those sectors improve their governance policies in the near future, they, too, may be lost. If that is the case, again, what can be done?

One possibility—and the easiest—is creating privately funded independent centers within universities that provide viewpoint diversity, with alternate viewpoints often expressed as a founding tenet. As stated in the “Soft Governance” section, such centers can thrive somewhat beyond the control of administrations and departments.

Otherwise, there is the solution of last resort: building new institutions—with proper governance and open inquiry explicitly stipulated in the founding documents. Those institutions should remain as free as possible from federal control. Then, let the results speak for themselves in a true marketplace of ideas.

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## Notes

1. Robert Scott, *How University Boards Work* (Baltimore, MD: Johns Hopkins University Press, 2018), p. 81.
2. Jay Schalin, “Academic Freedom in the Age of Political Correctness” (Raleigh, NC: John William Pope Center for Higher Education Policy, Sept. 2016), pp. 31-2.

## CONCLUSION

An educational system cannot long remain antagonistic to the society it serves and is supported by—unless backed by tyranny. Nor can a governance system act counter to the goals of an institution—again, without tyranny.

Currently, both of these perverse situations are in ascendance in American higher education. Governance reform is the most expedient hope to reunite higher education with the American people and their ideals. The recommendations in this report are intended as a road map forward to having intellectual institutions that are aligned with the nation that created them, to where truth trumps politics, investigations into human existence are open and free, and the needs of the real people—not some pretend population born of academics' imaginations—are served.



## About the Author

Jay Schalin joined the Martin Center in August 2007. A Philadelphia native, he began his writing career as a freelance journalist for the *Asbury Park Press* in New Jersey and wrote for several other papers in New Jersey and Delaware. Schalin has a B.S. in computer science from Richard Stockton College in New Jersey and an M.A. in economics from the University of Delaware.

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## About the Martin Center

The James G. Martin Center for Academic Renewal is a private nonprofit institute dedicated to improving higher education policy. Our mission is to renew and fulfill the promise of higher education in North Carolina and across the country.

We advocate responsible governance, viewpoint diversity, academic quality, cost-effective education solutions, and innovative market-based reform. We do that by studying and reporting on critical issues in higher education and recommending policies that can create change—especially at the state and local level.

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