

CHAPTER 15

Governance of U.S. Universities and Colleges

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THE PRINCIPLE OF INSTITUTIONAL GOVERNANCE

Patterns of governance in U.S. universities and colleges differ substantially in public (that is, state-supported or assisted) and private (that is, independently endowed or financed) institutions. But both patterns are based on a single assumption: universities and colleges are the beneficiaries of an unwritten social contract, under which they enjoy substantial institutional autonomy and broad academic freedom in exchange for social responsibility and public accountability. The role of governing boards is to oversee the balance reflected within that social contract. There are quite different patterns of governance and management in the growing number of “for profit” institutions, but I have not included these in the present paper.

Governing boards govern. They represent the ultimate legal authority of the institution. Their very titles reflect the extent and the dignity of their responsibility: they are variously described in different institutions as overseers, members of the corporation, members of the board of governors, regents or – more modestly, perhaps – members of the board of trustees. Whatever the name or title, there is no mistaking their level in the hierarchy of the institution. Regents, overseers, governors symbolize authority; boards of governors govern. This pattern is, of course, also found in Europe: in many British universities, for example, courts of governors represent the ultimate institutional authority.

In contrast, the academic leaders and administrative bodies of our institutions have inherited more modest titles from the medieval church, their ultimate ancestor. Consider the titles dean, provost, chancellor, council, congre-

gation and, in Europe, rector: these are the titles, not of ultimate, but of intermediate, ecclesiastical authority, subservient to kings, popes, cardinals and bishops. Even the rare but grand title of “Rector magnificus”, still used in some European universities, occupies an intermediate level within the traditional hierarchy. Medieval church leaders did not have universal authority; their charge was within the church, limited to the congregation of the faithful, to the community of believers, sharing a common faith and a common commitment and embodying common values. That same pattern persists, not only in ecclesiastical communities, but also in the universities that arose from them. Like churches, universities are seen as communities of shared values and common vocation, in which membership is voluntary.

For all their differences, which are substantial, governing boards of universities and colleges share this common authority of ultimate responsibility. University officers serve at the pleasure and implement the policies of their boards. But the board is not only the overseer of the community; it is also the guardian of the community. It is both the guarantor of the responsibility of the community and the custodian of the values of the community. The responsibilities of its dual role involve tension: its oversight role can be exercised effectively only so long as it is balanced by its fiduciary role. And this seeming paradox is resolved by the recognition that the university can effectively discharge its highest public obligation only to the extent that it is faithful to its own values of integrity, impartiality, rationality, excellence, openness and civility. To the extent that those scholarly virtues are eroded, its public service is reduced and the public’s trust is diminished. Effective trusteeship involves this balance: overseer and fiduciary. The effective trustee is both. (Rhodes, 2001a and b.)

But oversight is not management. The overseer, the governor, sets the policy; the manager, the executive, implements the policy. The executive may, and generally does, develop and propose policy, but it is the governor who adopts and approves policy. Confusion between these two roles leads to frustration and mismanagement. The motto of good governance is “noses in; fingers out.” Consider the trustee role in oversight. On the advice and with the support of the executive, the board of trustees:

- establishes the institution’s mission and goals;
- ensures its effective management in achieving them;
- provides for the financial solvency and accountability of the institution;
- appoints and evaluates the senior leadership of the institution;
- assures appropriate procedure and due process within the institution;
- evaluates and perfects its own performance as a board.

I shall discuss each of these roles in detail below, but even to list them is to be reminded that such high responsibility can be discharged only with an appreciation of the complexity of the institution's mission, broad understanding of the issues it confronts, a familiarity with its life and work, an agreement with its values and an appreciation of its style.

All these are required in the exercise of oversight. But the trustee is more than an overseer; he or she is a fiduciary, a guardian, a protector, not only of the performance and accountability of the institution, but also of the institution itself and of the standards and values it embodies. As such the trustee may be required to defend the institution against external intervention or internal intrusion in the exercise of its scholarly function; may be required to affirm the proper autonomy of the institution or assert the authority of its president and faculty, to safeguard the interests and well-being of all its members and to uphold and nurture the qualities and values on which its continued life depends. And, since effective performance requires effective support, the fiduciary trustee will play an appropriate role in garnering support for the institution and its programmes.

This is a large task. The office of trustee is not a political prize to be gained, not a favour to be bestowed, not a reward to be won, though in practice it may be each of these. It is rather a public function to be performed, a societal obligation to be discharged, a vital trust to be fulfilled. To serve as a trustee is to undertake an essential public service, to facilitate a social compact, to ensure an essential partnership, to nurture a vital process in which knowledge is brought to bear in human affairs.

THE PRACTICE OF INSTITUTIONAL GOVERNANCE

This lofty conception of the role of trusteeship is one thing; its effective performance is another. Complaints about the effectiveness of boards on the one hand, and the role of particular trustees on the other, are common both within the campus community and beyond it. Such complaints, however, are nothing new. What is new is the increasing pressure upon boards of trustees and the added strain that this imposes on the overall governance of institutions.

There is no single factor that accounts for this increase in strain, but collectively a number of trends are adding to existing tensions. Among these are:

- *Increased size, range and complexity of institutions.* The challenges of governing a small liberal arts college are very different from the challenges of governing a complex research university with a range of professional schools, an assortment of health services and hospitals, a

variety of outreach functions within the state and region, athletic teams of near-professional performance and other conspicuous elements. Each of these involves a range of institutional and public issues that increasingly demand attention from the university's governors. Though many of the issues are properly the concern of university management, rather than governance, the policies for dealing with them require thoughtful procedures and protocols.

- *Complex new partnerships.* The university's role in public outreach and engagement can be performed effectively only by the development of new partnerships. These will involve research partnerships with industry, service partnerships with various not-for-profit organizations and a variety of distance learning and continuing professional education programmes, which, though the parent institution will remain not-for-profit, may themselves be revenue-generating. The variety of new partnerships increases the complexity of both governance and management of the organization.
- *New demands for accountability* increase the task of governance, especially when they involve responsibilities that have long been the sole function of the board. There is, for example, pending legislation that would empower the U.S. Congress "to determine if colleges are raising their tuition and fees beyond reasonable rates." (McKeon, 2003.)
- *A host of new regulatory requirements*, from occupational safety and health to the Homeland Security Act, now pose operational obligations and responsibilities on the board and its officers. Nor are regulations such as these confined to non-academic aspects of the university. The question of the admission of international students, the pursuit of stem-cell research and the recent Supreme Court decision on affirmative action all require a high level of informed oversight of the university's educational and research practices.
- *Increased public expectations of the role of universities* have been accompanied by declining public confidence in their impartiality and cost-effectiveness. The irony of this situation is not lost on those who see the university primarily as an engine for economic growth and development. This responsibility is likely to influence the pattern of academic development, the balance of faculty appointments, the priority of certain fields of scholarship and the number and nature of university partnerships and affiliations. Each of these is likely to be complex, and some of them are likely to be highly controversial.
- *Commercialization* is becoming an increasing challenge for the universities, given the range of their scholarly products and the growing financial constraints under which they are forced to operate. Whether in athletics, patents, distance learning or professional

services, the university inevitably acts in part as a commercial enterprise. Even such things as campus food services and dormitory accommodation raise financial issues. Derek Bok (2003) has recently written persuasively on the hazards of increasing commercialization, and the need for a responsible balance between covering costs and generating income through for-profit ventures. In contrast to those who see the hazards of commercialization, others see a need for the university to be run on more effective business lines and demand performance indicators and business audits (for an example of this in the U.K., see Willmott, 1995.) This issue will require continuing scrutiny and adjustment by board members.

- *New demands.* In addition to the issues raised above, increasing demands are placed on the universities to respond to pressing public issues. To name but one, unionization now involves not only members of the faculty on some campuses but also graduate teaching assistants, research assistants, residents and interns, lecturers, adjunct members of the faculty, and post-doctoral fellows. Traditionally few of these groups have been represented by unions, and the new relationship poses substantial challenges for faculty governance on the campus. Providing a reasonable framework within which discussions of this kind can take place is one of the tasks of the board of trustees.
- *Financial constraint* is likely to be added to other pressures upon the university, and to complicate the formidable task of governance in the light of these other requirements (see, for example, Yudoff, 2003.)

TRUSTEESHIP

Trusteeship in an Oversight Role

The oversight role of the board of trustees represents the fulfilment of its obligations as guardians of the social compact and public trust. In that sense a public board represents the public. Inevitably, its oversight will be limited, but it will be effective only to the extent that all its members have a sensitive understanding of the institution, and an appreciation of its missions, goals and standards.

- Appointment of the president. The oversight role of the trustees in most institutions is carried out primarily in the selection and appointment of the president of the university. This is perhaps the most important single role that the trustees play, for on this appointment depend the management and the effectiveness of many aspects

of the institution's life and work. The president appoints the other officers of the university and, with the consent of the faculty, the deans of the several schools and colleges. It is this group of individuals who constitute the senior management of the university, and the success of their work is essential to the functioning of the institution.

- The board is also responsible for the regular evaluation of the president and for providing continuing support and counsel to him or her. Beyond that, the trustees are required to be the ultimate body in confirming the mission and goals of the institution, in approving the broad outlines of its programmes, and in assuring its effective management. This involves the following functions:
- Mission and goals of the university. The modern university is one of the most diffuse and free-ranging institutions of the Western world. It is opportunistic, expansionist, inclusive and entrepreneurial. Because of this, it needs some distinctive statement of mission and goals, not only to distinguish it from the 4,000 or so other institutions of higher education, but also to serve as a benchmark and point of reference against which its performance and future direction are measured. Though the president and faculty will have the major role in framing this statement of mission and goals, it is the trustees who must evaluate and endorse it (Morrill, 2003.)
- Ensuring effective management. The trustees do not manage the institution. But the trustees do assure themselves that the institution is effectively managed by others. This means that typically they have a voice in approving nominations made by the president for senior executive positions and that the executive officers of the university meet regularly with the trustees to provide information on progress within their various fields of responsibility.
- Oversight of the facilities, properties and grounds of the university. One of the significant responsibilities of board members in a major university is the oversight of the university's buildings, properties and facilities. On a large campus these represent a multi-billion dollar investment. The most direct way in which this is exercised is in the planning process for the development of the campus as a whole and in the oversight of the design, construction and maintenance of campus buildings and property. Typically the board will appoint a specialist committee for this task.
- Appropriate procedures. The trustees are responsible for assuring both themselves and the general public that the procedures adopted by the university are legitimate and appropriate. Procedures cover things as different as student admissions, on the one hand, or tenure

requirements on the other. In all cases the task of the trustees is to ensure that the procedures are appropriate, are understood, implemented and publicized, and are capable of withstanding public scrutiny.

- **Due process.** It is the trustees' responsibility to ensure the availability of due process to members of the campus community. Some of the situations in which due process is required may be both visible and controversial. One thinks, for example, of cases involving dismissal for cause, denial of tenure, and similar actions. It is the trustees' responsibility to ensure that there are adequate mechanisms for appeal and review in such cases.
- **Financial solvency.** The trustees approve each annual budget, and they are responsible for the overall financial solvency of the university in the longer term. For this reason, in private institutions, the trustees may also be responsible for the overall management, rather than oversight, of the university's endowment. For the same reason, the audit committee of the board generally reports directly to the board, and not through the president of the university. In both public and private institutions the board is the final arbiter of budgetary and financial decisions. Though the deliberations of the board will generally involve only review of existing proposals from the president and his or her officers, the ultimate responsibility of the trustees for the financial well-being of the institution is a clearly accepted principle.
- **Accountability.** It is through the board that the institution is made accountable to the wider public. Although sometimes state legislatures intervene by inserting themselves in this linkage of accountability, it is through board review and oversight that the public is best assured that its investment in higher education is being responsibly managed and effectively used.
- **Delegation.** The board is clearly limited in the time it can devote to the affairs of the institution, making the delegation of appropriate authority to the president and his or her officers one of the primary tasks of the board. This delegation involves both specific delegation and implied delegation. It is generally understood, for example, without any formal delegation, that teaching is in the hands of faculty members. But occasionally in public universities, boards of trustees may assert a role in determining the curriculum. In one recent instance they intervened to decide whether credit should be given for ROTC – Reserve Officers' Training Corps – courses.
- The delegation in other cases may be more specific. Most boards, for example, on an annual basis delegate to the president of the university the authority to award degrees. Indeed the formula for the award-

ing of degrees often includes the phrase “By authority of the board of trustees and on the recommendation of the faculty, I do hereby admit you to the degree of...”

- Self-evaluation. Together with the responsibility to evaluate virtually everything connected with the university, the board has the responsibility to evaluate itself. Boards vary greatly in the quality of this evaluation. They are perhaps more likely to exercise it where they are not elected by the public nor appointed by the political process. But no matter how board members are selected, they have an obligation for self-evaluation. This assessment is of primary importance, because it involves not only the effectiveness of the officers and members of the board, but also the effectiveness of its procedures and meetings.

Fiduciary Role of the Trustee

In contrast to the supervisory role of the trustee, the fiduciary role involves the responsibility not only to oversee, but also to nurture and support the institution. In broad terms this means defending the autonomy of the institution against both external intrusion or assault and improper internal erosion; to nurture the community itself; to defend its values and standards; to support the president and uphold his or her authority; and to assist in garnering resources that make possible the appropriate pursuit of the university’s activities.

The fiduciary role, though important, is far from automatic. It does not mean providing uncritical support for every activity, but rather ensuring, by understanding, questioning, challenge and inquiry, that the university enjoys the support and the freedom required to pursue its stated goals.

In private universities the importance of trustees in garnering financial support is greater than it is in public universities, although in both sectors trustees may play a useful role in relationships with local, state and federal authorities. The balance here is a delicate one, however; joint leadership of the president and the board chairman is essential in guaranteeing the success of this part of the board’s responsibility, and in ensuring that it does not overwhelm the other responsibilities described above.

The Individual Trustee

Trusteeship is a public obligation. The ideal trustee will not only be informed, challenging, candid and inquiring but also committed to the institution and its values, disciplined in his or her role as a trustee, and – once persuaded that their performance is appropriate – supportive of the president and his or her officers.

In theory, a board made up of such individuals will function effectively, but much depends on the working partnership between the chairman of the

board and the president of the university. Candour, frequent contact and personal trust between the president and the board chair are essential to ensure that there are no surprises, no secrets, no end runs, no short cuts, no inappropriate leaks, no sacred cows and no second-guessing by members of the board or the administration. The responsibility of board membership is a heavy one, and the demanding nature of the office can bring out both the best and the worst in those who serve.

PUBLIC AND PRIVATE UNIVERSITIES

Private universities account for some 70 % of the 2,173 non-profit, four-year institutions of higher education in the United States, but they enrol fewer than 40 % of all the students. They include a large number of small institutions, most of which are classified as colleges of one kind or another, rather than universities. A half-century ago, enrolment was more evenly divided between public and private universities.

But private universities occupy a position of special significance in the scheme of American higher education, not only because of their numbers, but also because of their influence. The Ivy League, MIT, Caltech, Stanford, Chicago and a handful of other comparable universities, exercise an authority out of all proportion to their size by providing benchmarks for programme quality to which all universities, both public and private, can aspire. The great flagship public universities – California, Michigan, Wisconsin and Illinois, for example – are institutions of broadly comparable stature, but the role of a small group of private universities as pacesetters for all universities should not be underestimated. Private universities also play a valuable role as a bulwark against the intrusion of others, whether from local, state or federal government or from industry, professional groups, unions or others, in the autonomy and work of higher education. It is more difficult for state government, for example, to exercise undue or improper influence on the affairs of public universities than it would be if private universities did not exist.

Perhaps the biggest practical difference between public and private universities is in their method of governance. The differences here are so significant that some critics see them as affecting the future of the institutions themselves. Private universities enjoy the leadership of boards whose members are generally self-appointed, though some may be elected by alumni, faculty or other groups, are typically large and generally have a majority of members who are alumni. A board of 60 or so would not be unusual in a major private university. The proceedings of these boards are generally private and their business is conducted in a strikingly apolitical atmosphere. Many such boards now deliberately build in membership so as to reflect the international nature of the alumni and faculty body and the professional breadth of the institution

itself. These boards are generally very supportive of the institution and its officers and are broadly seen as very effective. They include respected leaders from every area of public life.

Public boards of trustees, in contrast, are generally appointed by the governor and/or the legislature of the state. In a few cases, they may be elected by the state's citizens. These boards are generally small, containing from eight to 12 members. They are not all dominated by alumni, though many of them tend to be. Their meetings are held in public, and they sometimes become very political in their activities. They vary greatly in their effectiveness, but they are broadly supportive of the institution and its constituencies. In some states individual universities are governed by their own governing boards; in others several campuses of a single university are grouped together under a single governing board. In still other cases, there is a statewide system of higher education, represented by a single board, and in still other cases, for example the University of California system, there are multiple universities within a single statewide system. This leads to great variety in the performance and effectiveness of boards, as well as in the autonomy of the institutions involved.

Two converging trends are likely to diminish the differences between the great flagship public research universities and their independent sister institutions, which Robert Zemsky has helpfully identified collectively as "medallion institutions". One of these trends is the pressure of the market, which will increasingly drive both public and private medallion institutions towards broadly similar ventures. The second trend is the steady diminution of the level of state support for public institutions, and especially for public medallion institutions.

As the state contribution declines, one might suppose that the level of state influence would also decline. Already at some of the medallion universities, more than half the buildings on campus have been constructed with private funding. Many of the leading public universities receive rather less than 20 % of their funding from the state government. In light of the declining state contribution, it may be asked whether the present pattern of governance for public universities is appropriate for the future. This question was faced in the mid-19th century by the founders of Cornell who, in exchange for some limited state support at what was created as, and still remains, a private institution, agreed to the inclusion on its board of a number of representatives of the state. These people include the governor of the State of New York, the temporary president of the Senate, and the Speaker of the Assembly, three trustees appointed by the governor, one trustee from the field of agriculture and two from the field of labour. The total board size is over 60, but arrangements such as this give the state an informed and influential voice on the board. The levels of tuition in the four contract

colleges at Cornell, for example, are determined by the Cornell board of trustees, but are subject to formal approval by the State Legislature.

The situation at Cornell is unique and so is not likely to provide a precise model for other universities. Ezra Cornell, for example, agreed to give his endowment to create the university, only if the state would declare it the land grant institution. There was no public state university of New York in existence until 1948. Nor is the organizational balance within Cornell an appropriate model for the great public universities. There are 12 colleges at Cornell of which only four – Agricultural and Life Sciences, Human Ecology, Industrial and Labor Relations and Veterinary Medicine – are contract colleges, run with financial support from the state. The annual level of state support is some \$134 million out of a total university annual operating budget of \$2.1 billion. Students receive Cornell degrees, and faculty appointments, salaries, financial aid, and other matters are determined by the university. Although faculty members at other state university campuses are represented by faculty unions, there is no such union at Cornell.

The Cornell model, while not appropriate for every public university, does suggest a way in which states may choose to limit their present total authority over the governance of major public universities, while still retaining a major influence upon that governance. The recent decision of Miami University of Ohio to charge “private level tuition” and provide generous financial aid suggests another complementary direction of adjustment in the face of declining state support.

Because private boards of trustees are generally large, they typically meet only quarterly for one or two days, with much of the detailed work of the board delegated to committees. These generally include, for example, an executive committee and committees for state and federal relations, campus life, academic affairs, finance, investment, buildings and properties, development, nominating and governance, campus relations, compensation and other matters. Much of the work of the board between meetings is carried out by the executive committee, which typically holds monthly meetings.

In addition to this formal board structure, most of the constituent colleges of private universities and of some public universities have their own advisory boards and councils. The medical college at Cornell, for example, has a board of overseers of some 30 to 35 people, including some of the leading citizens of New York City. Most of these members are not graduates of the institution, but they play an increasingly important role in the life of the institution. Advisory committees for other colleges and in some cases for departments play corresponding roles.

CAMPUS GOVERNANCE

Effective governance within major American universities is not limited to the central governing board. It also extends down into the institution, with a variety of structures. The most significant of these is the governance system established by the faculty, with authority delegated by the board and/or the president. Generally speaking, faculty governance is based on the assumption of shared goals, values and interests and with the recognition that membership of the university carries both rights and responsibilities. Faculty participation in governance varies widely from place to place, from college to college and from institution to institution. Almost everywhere, however, there is a faculty governing body, typically referred to as a faculty senate or faculty council. This represents faculty members at large, and deals with the major policy questions. Typically it might be concerned with teaching terms, grading policies, and similar matters. Election to this central council or senate is generally conducted on a departmental or collegiate basis, so that it is broadly representative of faculty members across the institution.

Faculty governance is exercised at multiple levels. Each department, centre, school or college, for example, will have its own faculty governance structure, typically consisting of an executive committee responsible, under the dean, chair or director, for overall policy and performance. A principle of subsidiarity generally applies, so that decisions are most appropriately made at the lowest possible level. Thus decisions about the teaching strategy and programme in chemistry are properly made by the department rather than by the college or the university councils. Faculty governance is rarely simple, is frequently ponderous and is sometimes frustratingly ineffective. The degree of faculty participation may be low and variable. Overall, however, it has served the universities well, and it remains an essential factor in the vigour of university life. It is made more effective by the recognition that on various matters, faculty members and governing councils will have differing degrees of responsibility. Some items, for example, may be referred to the governing faculty simply for information, while others may involve more formal consultation and review. Still others may require approval. In each case it is important to recognize the division of responsibility.

Some matters involve multiple levels of faculty and broad responsibility. Thus a faculty appointment or tenure decision in, say, classics, will be developed within the classics department, but will typically be subject to confirmation by a college committee, a university-wide review committee, the president and the board of trustees.

Some recent writers have suggested that both faculty governance and faculty performance would be improved by the development of a Socratic oath, similar to the Hippocratic oath taken by members of the medical

teaching faculty. (Rhodes, 2001c.) Others have urged that a social contract be developed. (Rosovsky, 2001.) This has proved to be a controversial and difficult question, but it is one that is not likely to go away and is one that may give some assurance of accountability, even as it improves teaching performance on campus.

On most campuses, university staff will also have a governing structure. This typically takes the form of a staff assembly, elected by staff members of the university so as to be broadly representative of the range of interests and concerns of the staff. Because a typical major university may have thousands of staff members, the pattern of governance is important. The staff assembly will typically elect its own chair and that person generally has access to the president. In the same way, the faculty will generally elect a dean of the faculty or a chair of the faculty senate who will also have access to the president. The issues discussed by the staff assembly might include benefits, security issues, parking and transportation, facilities and campus life. Again participation tends to be spotty, and some of the responsibilities of the staff assembly will be influenced or diminished to the extent that members of staff are unionized.

Student governance. Student governance typically involves the election of a university-wide student assembly. There may be separate assemblies for graduate and professional students. The range of issues typically reviewed by such assemblies includes such things as housing, campus life, athletics, student societies, health and safety, security, financial aid and comparable items. As in the case of faculty and staff governance, the leaders of the student assembly typically enjoy access to the president. The president or his or her representatives will generally address the assembly on an annual basis and be available for questioning. Representatives of the president's office will typically join the assembly at most of its meetings to provide whatever background information may be required.

CONCLUSION

All in all, university governance is complex, cumbersome and slow. Its results would rarely please an expert in efficiency, but the very nature of universities and the historical origins of faculty and student guilds indicate that a representative pattern of governance has served institutions well. While the present participatory system can undoubtedly be refined and improved, it is unlikely to be replaced soon by a more hierarchical corporate model, as some have advocated.

Yet university governance is unlikely to remain frozen in its present form. Its current variety suggests otherwise, as do the various trends and pressures described above. Indeed, it seems likely that these trends and pressures will

require leadership and management at every level within the university to become more nimble, creative and effective. That itself will impinge on governance and will require new organizational arrangements. But the best universities are likely to remain communities of scholars whose members recognize common interests and shared concerns. That implies a high degree of both academic freedom and institutional autonomy, but the price of that is public accountability. It is the genius of the pattern of American university governance that, with all its imperfections, it has served to ensure and balance both.

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