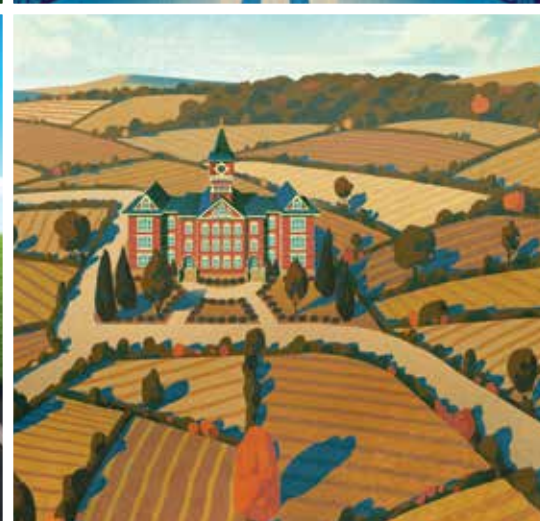
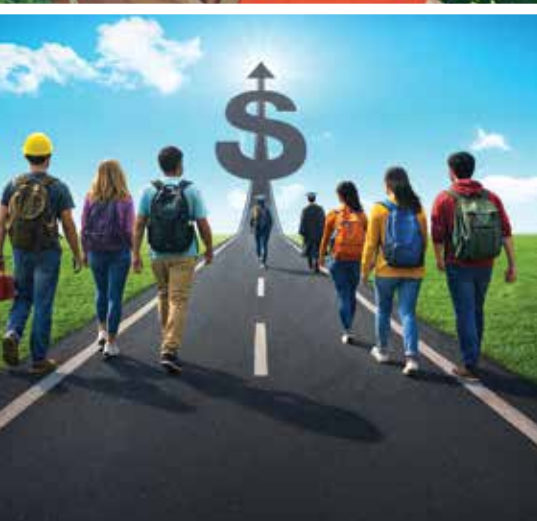
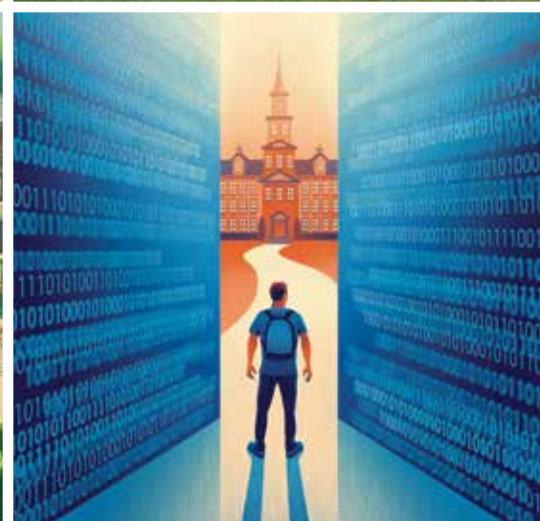
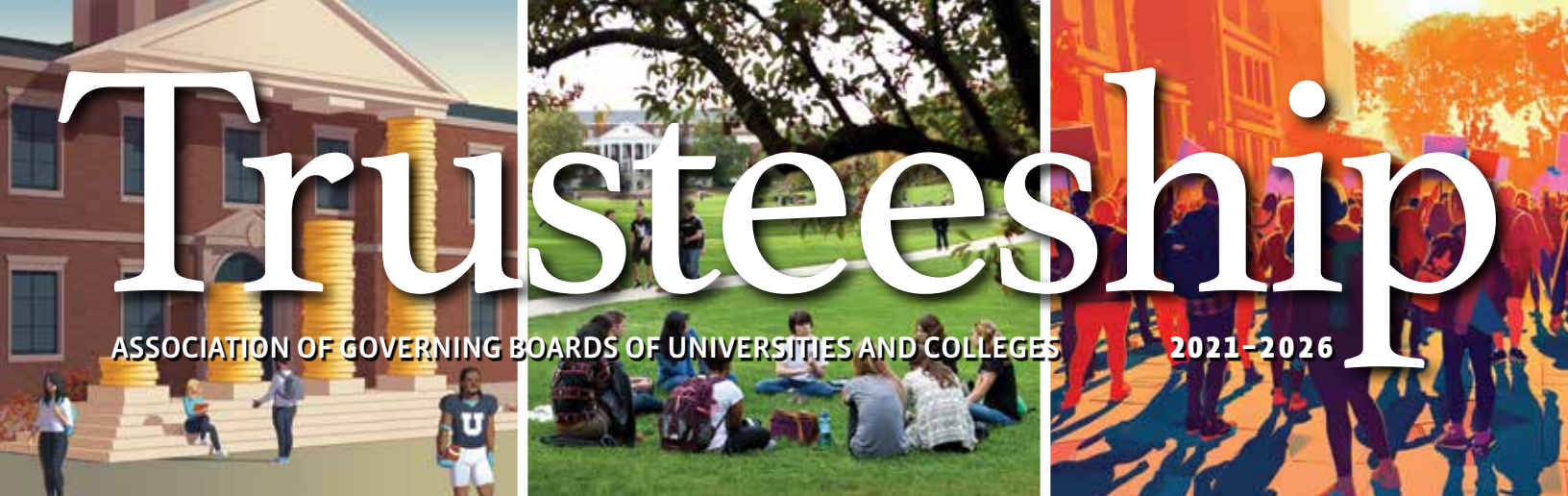




Academic Freedom, Free Speech, and Board Independence Compendium



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Introduction

For more than 100 years, AGB has been at the forefront of the governance structure of higher education institutions. For trustees who serve on governing boards, understanding the underpinning of academia is a fundamental characteristic of service. The purpose of higher education is to create a citizenry that is informed and can understand many different perspectives. The greatest mission of higher education institutions is the pursuit of knowledge and truth. Pursuing knowledge requires a spirit of open-mindedness; all viewpoints must be welcome—and even celebrated—on campuses. What lies at the foundation of academia are the principles of academic freedom and free speech. Supporting these inherent tenets of higher education is a duty of every trustee to safeguard board independence and institutional autonomy. In recent years, a dedication to supporting academic freedom and free speech has been more important than ever. As society is undergoing massive change at an unprecedented pace and the political environment is fraught with ongoing divisiveness, American higher education institutions serving as a beacon of clarity for academic freedom and free speech is what we all need. Trustees have a great responsibility to uphold these principles, which is what makes American higher education unique around the world. Effective governance depends on it.

This compendium is a special collection of articles that have been published in *Trusteeship* magazine over the last several years. In 2026, AGB received a grant from the Mellon Foundation to launch the Govern NOW initiative, to raise awareness and provide resources for higher education governing boards to protect academic freedom and free speech on campus, which are crucial to sustaining board independence and institutional autonomy. In alignment with the Govern NOW initiative, *Trusteeship* magazine published many articles on topics related to academic freedom, free speech, and board independence in 2026. However, *Trusteeship* magazine has been devoted to these issues long before this year. To reinforce these topics, this compendium compiles articles published in *Trusteeship* from the year 2021 through August 2026 in this special publication. We hope that reading these articles in one dedicated collection will prove to be an invaluable resource to foster an even greater knowledge of the principles of academic freedom and freedom of speech. With a deeper understanding of these core values of academia, trustees can govern even more effectively while preserving board independence and championing institutional autonomy.

Elena Loveland

Editor-in-Chief

Trusteeship

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Academic Freedom, Free Speech, and Board Independence

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Opinions expressed are those of the authors and not necessarily those of the institutions that employ them or of AGB.

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■ ON MY AGENDA

Encouraging Academic Freedom and the Value of Higher Education

BY ROSS A. MUGLER

AS THE NEW ADMINISTRATION TAKES OFFICE IN WASHINGTON, D.C., institutional leaders across the nation face many questions regarding what the next four years will bring for colleges and universities. For me, as new policies and regulations take shape, one thing stands clear: regardless of the changes coming, higher education will be well served by encouraging academic freedom and independence and continuing to make the case for the importance and value of investing in higher education.

Together, academic freedom and freedom of speech form the foundational cornerstones of a thriving higher education system—driving the advancement of knowledge, the pursuit of innovation, and the preservation of democratic values. These principles—which have formed the underpinning of a U.S. higher education system that is renowned worldwide—ensure that institutions remain bastions of critical thinking, open inquiry, and independent thought.

Academic freedom ensures that faculty can teach, conduct research, and share ideas without fear of censorship or retaliation, which fosters innovation and intellectual growth. Freedom of speech ensures that students, faculty, and administrators can engage in open dialogue, debate, and the exchange of diverse perspectives. Together, these parallel but distinct freedoms are critical to developing the next generation of leaders who can tackle complex societal challenges with credibility, fortitude, creativity, and integrity.

And while all members of the higher education community have a role to play in protecting these assets, governing boards are uniquely positioned to prevent external forces from imposing undue influence that undermines institutional missions. By actively promoting academic freedom and free speech and creating a campus environment where the free exchange of ideas is treasured, boards uphold the integrity of their institutions, and in so doing ensure that education remains an unbiased, transformative force in society. Boards must understand their responsibility to protect these values and be prepared to recognize and resist policies that compromise academic independence and shift an institution's focus from its self-proclaimed mission, vision, and values.

Recently, higher education has struggled to connect with a range of audiences who, rightly or wrongly, perceive our institutions as suppressive of certain viewpoints, expensive, slow to change, inadequately focused on career outcomes, elitist, and overwhelmingly liberal. But our frustration at not being seen clearly must not stop us from shining a light on our work.

Institutional and foundation board members have a critical role to play in helping the mission of higher education come to life for some of our most skeptical publics. By virtue of the personal, social, and professional connections board members bring with them to the boardroom, these ambassadors are perhaps the most

able to carry targeted and tailored messages to law and policymakers, business leaders, and even the general public.

State lawmakers are a particularly important audience as we anticipate the real potential for gridlock in Congress, forcing action on higher education policy shifts to the states. Whether serving a public or private institution, board members have the responsibility to advocate not just for their institution, but for the industry writ large. Indeed, as pressure on public institutions increases, it is incumbent on private institutions to advocate for higher education in a way that may not be possible for our public colleagues.

Regardless of the sector, it is important to remind policymakers and the public that higher education institutions serve vital public interests far beyond the all-important work we do to educate the workforce of the next generation—a concept that has faded from the fore as the focus for many has shifted to career preparation. Higher education remains the single greatest creator of new knowledge, much of which has a direct connection to improving the lives of people around the world, whether it be through an innovation, a cure for disease, or a greater understanding of society. We also power local, state, and regional economies and serve these communities, which our institutions boost in myriad ways, from medical care to the performing arts. Most importantly, higher education creates spaces where challenging ideas can be discussed and debated, and students can learn the skills and responsibilities of engaged citizenship in a world where those skills are desperately needed.

As policies begin to take shape from a new Congress and presidential administration, it is important to advocate consistently and persistently for higher education. While it can be difficult to break through to the more frequent critics of our industry, for the sake of our students and our society, it's a responsibility we must all take on. ■



Ross A. Mugler is board chair and acting president and CEO of AGB.

The Courage to Govern Now

BY ROSS A. MUGLER

IT IS A DISTINCT PLEASURE TO WRITE TO YOU IN THIS ISSUE OF *TRUSTEESHIP* having recently been named president and CEO by the AGB Board of Directors. While much has been written about the challenges facing higher education, I am also cognizant of the opportunities presented at this unique time and am excited to continue working with our members, our colleagues, and our staff.

Meeting the moment is the overarching goal of AGB's Govern NOW initiative. Higher education is facing unprecedented attacks on those values that have been at the core of our mission for centuries: institutional autonomy, academic freedom, and independent governance. It is board members who are on the front lines of the fight to protect the system of non-ideological, mission-driven governance that has built a higher education system that is the envy of the world.

Fortunately, board members are not in this fight alone. Everyone who touches higher education has a role to play in protecting our core values, even as we seek to adapt and innovate to the current needs of our students, our society, and our world. To that end, AGB is working to support not only board members and board professionals but also elected officials who are seeking to codify good governance practices in state law. For example, in Virginia, AGB has provided recommendations to the Spanberger administration and legislative leaders that will help meet the shared goal of returning fiduciary duty and advancement of mission to the center of the board member's role across the Commonwealth.

We have also created an extensive suite of resources for use in the board room as a way to clarify responsibilities, prepare for emerging threats, or navigate complex campus dynamics. *How to Govern for Institutional Autonomy: A Practical Guide for Higher Education Boards* provides diagnostic tools, checklists, sample resolutions, discussion guides, and other interactive tools that can help boards prepare for and

Everyone who touches higher education has a role to play in protecting our core values, even as we seek to adapt and innovate to the current needs of our students, our society, and our world.

tackle these pressing attacks on academic freedom, freedom of speech, and independent governance.

In addition to boardroom resources, AGB has recently welcomed its first cohort of participants in the Govern NOW Leadership Academy. Designed for public, private, and system board members, presidents, board professionals, and general counsel, this hybrid learning opportunity brings together AGB and PEN America experts on academic freedom, freedom of expression, and institutional autonomy. These sessions will help participants identify and mitigate high-priority concerns stemming from the current higher education landscape. It is our hope that this program, which will conclude with a half-day in-person session at the 2026 AGB National Conference on Trusteeship, will help us create a board development program that can reach many more members and higher education leaders beyond this first cohort.

Additionally, we are working closely with our colleague associations in Washington, D.C., to bring attention to the

negative repercussions inherent in allowing political pressures to overwhelm mission. Over the past year, I have had the pleasure of talking about our Govern NOW work with a wide variety of colleagues, including business officers at the National Association of College and University Business Officers annual meeting and the American Council on Education as well as at our own 2026 AGB Foundation Leadership Forum.

This summer, AGB will bring together leading voices for a conversation in Washington, D.C., about institutional autonomy, where higher education has succeeded in pushing back on attacks and where there is still work to do. Board members are crucial to this discussion, as are the voices of presidents and chancellors, faculty, and elected officials. I look forward to sharing more information as event planning progresses.

Lastly, I want to extend my sincere gratitude to the Mellon Foundation for their strong support of Govern NOW, which has enabled us to make this work a primary focus of the organization over the last year. I also want to commend Ellen Chaffee, AGB senior consultant and senior fellow, for her inspired leadership of this initiative and the AGB team that worked to bring these resources to life.

If your institution would like assistance with any Govern NOW resources, please be in touch. ■



Ross A. Mugler is the president and CEO of AGB.

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Finding the Guideposts for Free Speech on Campus

BY DAVID FINE

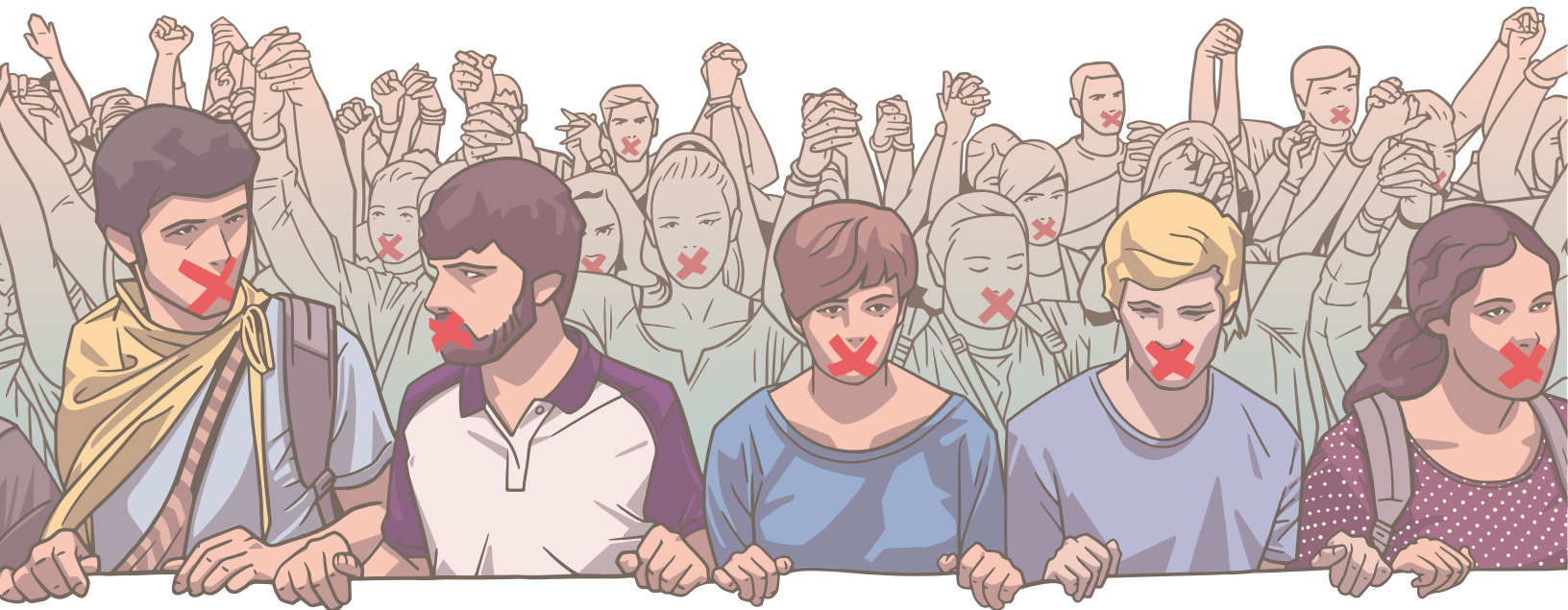
WAS OUTSIDE ON THE CAMPUS OF METROPOLITAN STATE UNIVERSITY DENVER (MSU) observing a pro-Palestinian protest of the showing of a pro-Israeli movie when Merrill Schwartz of AGB called to ask me about writing a legal column for *Trusteeship*. After I told Merrill what all the noise was, she said, “Why don’t you write about free speech?”

Public universities are bound by the free speech clause of the First Amendment. Modern free speech law (dating from the early 20th century) is based on Justice Holmes’ earlier version, and later coined by Justice Douglas as the “marketplace of ideas” (itself reflecting the philosophy of Mill, Milton, and Rawls), is particularly apt for modern universities’ pursuit of knowledge and truth. Core to this philosophy is that the collision of ideas leads to the truth. Private universities, while not bound by the First Amendment, have developed similar principles, and employed them to varying degrees of success. Since the Vietnam War, campuses have been testing grounds for free speech. Still, free speech has particularly vexed campuses during the current Israel-Hamas conflict.

It is particularly difficult to create free expression policies or a culture of free expression in the midst of a conflict when emotions are extremely high. The best time to consider campus policies is before you need them. Especially these days, the notions that none of

us has a franchise on the truth, and that speech should not be censored because it makes us uncomfortable, does not come naturally to most people, and certainly not so during a conflagration. Rather, this culture must be established with the engagement of all university stakeholders, via policies, statements of principle, pedagogy, and leadership from the top, when times are quiet. If this is done properly, when crises arise and demands are made on the president or board to make or disavow political statements, the university leadership and community will be better prepared to engage in robust debate and more likely to emerge without casualties. It is also helpful to develop principles about when and why university leadership will speak about public issues. The board should be educated about all of this, ideally in public session.

Good resources exist to guide the development of this culture. MSU Denver worked with the Bipartisan Policy Center (BPC) on its campus speech initiative, which helped us develop a robust free expression





It is particularly difficult to create free expression policies or a culture of free expression in the midst of a conflict when emotions are extremely high. The best time to consider campus policies is before you need them.

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statement. The statement was developed by a task force stood up by President Janine Davidson, with representatives of key university stakeholders. A significant part of the task-force work dealt with reconciling free speech and diversity, equity, and inclusion principles. The statement was reviewed and approved by our board of trustees.

Our work with the BPC also included diving deep into the presidential speech question, that is, when and why should a president make a statement about a public issue. The 1967 Kalven Report remains the gold standard on this question. A key statement from the report is: “The neutrality of the university as an institution arises [. . .] not from a lack of courage nor out of indifference and insensitivity. It arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints.” Notwithstanding the Kalven Report and recent related efforts to determine when a president should speak, the Israel-Hamas conflict put many presidents to the test. They were criticized for speaking, for not speaking, for not speaking enough or strongly enough. Some were taken apart on the chopping block of politics. This is in part because universities have become the proxy battlefield in the larger culture wars. Thus, the imperative for university leadership to have the tools to navigate such public and donor-driven pressure.

At MSU Denver, we also took our free speech efforts to the classroom, where President Davidson and I co-taught a course on free speech. We hosted Colorado Attorney General Phil Weiser in a panel discussion about his Scalia-Ginsberg Initiative, designed to further civil dialogue among attorneys general.

All of this work elevated notions of free speech to our leadership team, our community, and to our trustees, many of whom became quite interested in the issue. So, when the Israel-Hamas conflict happened, we were able to address questions from all points of view, and to be clear that no viewpoints would be censored, violence would not be tolerated, and the president would not make statements endorsing one side or the other. Because we had established a culture of free expression and had created a system to determine when our president should make public statements, and because our board understood our culture and stood behind our president (after robust discussion), we came through this tough period successfully. ■

David Fine, JD, is general counsel and secretary to the board of trustees at Metropolitan State University Denver. Email: dfine2@msudenver.edu.

RESOURCES

- Bipartisan Policy Center <https://bipartisanpolicy.org/policy-area/campus-free-expression/> The Kalven Report (University of Chicago, 1967).
- The University of Chicago Office of the Provost’s Report on the University’s Role in Political and Social Action <https://provost.uchicago.edu/reports/report-universitys-role-political-and-social-action>.
- Freedom of Speech and Diversity, Equity, and Inclusion on Campus (AGB, 2022) <https://agb.org/product/freedom-of-speech-and-diversity-equity-and-inclusion-on-campus/>.

What the Debate About Campus Protests Gets Wrong

Three Misconceptions About the First Amendment

BY LEE TYNER

AT ITS CORE, THE FIRST AMENDMENT prohibits federal, state, and local governments from treating citizens differently based upon what they think or say. This is a fairly straightforward idea. But since last October, it has become clear that this simple idea, or at least its application to campus protests, is not so simple.

How institutions have responded to campus protests has generated its own, distinct public controversy, separate and apart from the conflict between Israel and Hamas or the devastation in Gaza. Members of Congress have grilled university presidents. Outspoken donors have publicly criticized their alma maters and voted with their dollars. Institutional leaders have lost their jobs. Elected officials have sought to influence, if not direct, campus responses through police action, executive orders, agency guidance, or proposed legislation.

While public commentary on how universities have handled campus protests is ubiquitous, a clear understanding of First Amendment law has been elusive. The debate has unearthed three common misconceptions.

■ **Misconception #1: *The First Amendment protects more hateful speech than most people think—even speech that advocates violence and lawlessness.***

Modern First Amendment law began to emerge between the two world wars, a period of extraordinary political and social unrest. Extremist movements and political parties dotted the political landscape: from anarchists and radical labor movements to socialist, communist, and fascist political parties. These groups sought radical change. Some openly advocated violence and revolution. Early Supreme Court cases evaluated seditious speech through some variation of Justice Holmes’s “clear and present danger” formulation. See, e.g., *Schenck v. the United States*, 249 U.S. 47 (1919).

The case law continued to mature after World War II, as the courts struggled with threats and perceived threats associated with the Cold War and with the social upheaval produced by the Civil Rights movement and Vietnam-era protests. By the end of the 1960s the Supreme Court had articulated the test the courts still use today. The government may only punish speech

if it is: (1) “directed to inciting or producing imminent lawless action,” and (2) “likely to incite or produce such action.” See *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

■ **Misconception #2: *But the First Amendment protects less conduct than most people think.***

The public debate around campus protests often assumes that acts associated with protests are protected by the First Amendment, just like the radical speech the conduct accompanies. But this is not so.

For conduct to receive any First Amendment protection it must be expressive; the actor must intend to convey a particular message, and the message must be clear enough that those who view the conduct would understand the intended message. See *Clark v. Community for Creative Non-Violence*, 468 U.S. 288 (1984) (allowing National Park Service to prohibit tent encampments that were intended to protest homelessness).

Applying that standard to recent campus protests, what is the message intended by encampments? By blocking traffic or ingress to buildings? By occupying administrative buildings? Is it likely that an observer would understand that message? If the answer to any of these questions is “no,” then the conduct receives no First Amendment protection.

Even when conduct clearly conveys an intended message, public universities and local governments have more power to regulate expressive conduct than pure speech. Governments may regulate symbolic speech if the regulation serves a substantial government interest unrelated to suppression of expression, like preserving campus order or operations. But any “incidental restriction on alleged First Amendment freedoms” must be “no greater than is essential” to advance the government’s interest. See *United States v. O’Brien*, 391 U.S. 367 (1968).

Thus, the power of university leaders to deal with conduct is less constrained by the First Amendment than most people think. Vibrant universities are complex, pluralistic communities. To thrive, a university must provide a home for students, faculty, staff, and alumni who disagree strongly. In light of this reality, political capital often limits a university leader's ability to address protests more than the First Amendment.

■ **Misconception #3: *Whether the First Amendment protects campus expression is more dependent on the facts and context than most people think.***

As we all learned from the recent Congressional hearings, “it depends” fails as a sound bite. Unfortunately, First Amendment analysis does not lend itself to sound bites. For example, applying the *Brandenburg* test to recent campus protests requires a deep dive into the facts. When is an antisemitic chant *directed at producing* lawless action? Is the violence a speaker advocates *imminent and immediate* or remote? Is hate speech *likely to produce* imminent violence or crime?

Or the *Clark* test for expressive conduct: when protestors create an encampment on a campus quad, do they intend for their actions to communicate a particular message? What is the message? Given the context, would observers understand the message? If not, then the First Amendment offers no protection. Even if the encampment qualifies as symbolic speech, is the conduct interfering with the operations of the university? Is there another way to communicate the message?

These tests and their applications are fact-dependent and require thoughtful analysis. The same is true for other exceptions to First Amendment protections, like true threats or defamation or fighting words.

The fall election season is around the corner. More protests are certain. On a difficult day in the fall, when trustees and university leaders turn to counsel and ask “What can we do?” do not be surprised to hear an answer grounded in the First Amendment: “It depends.” ■

Lee Tyner, JD, is the general counsel at Texas Christian University. Email: lee.tyner@tcu.edu.



The Role of Counsel in a Changing Landscape: Deploying Mission and Values

BY LOU GUARD

THE LANDSCAPE FOR HIGHER EDUCATION IS SHIFTING DRAMATICALLY as the sector faces legal and regulatory headwinds that are set to challenge institutions in significant ways in the years ahead. As readers of these pages know, many of the core and existential issues facing the higher education sector have a nexus with the law or regulation. Behind rising costs, for example, is the question of whether litigation, regulation, and compliance are fueling institutional expenses and increasing prices. Underlying questions of access and college admissions is the specter of discrimination and questions of institutional autonomy in deciding who to admit and why. Beneath academic freedom, a core value to the academy, is debate over the line between harassment and protected speech. There are still numerous other disrupters across the sector from artificial intelligence to novel business issues, and each have their own nuanced legal angle for institutions.

The landscape of evolving legal and regulatory challenges coupled with the apparentness of more dramatic change ahead for the sector begs the question of how legal counsel for institutions can be effective strategic partners in the face of these challenges. In what ways can and do legal counsel for institutions best help their

the most effective legal counsel process issues faced by their institutional client. At the most elemental level, the core function of a general counsel is to give legal advice. But the legal and regulatory environment for higher education, like many sectors, is rife with ambiguity and the “right” answer can be highly fact specific. In this situation, underlying the core legal advice are the additional layers of policy, strategy, and institutional values. In any given scenario one or more of these factors of law, strategy, policy, and values may figure most prominently in the ultimate analysis.

There are often situations common to higher education where the question about what the correct path is regarding a law, case, regulation, or guidance involves a spectrum of reasonable possible institutional responses. The most effective general counsel in such a situation counsels the client through institutional responses with an in-depth knowledge of institutional strategy, and most importantly, values. Put simply, when the law alone does not prescribe a singular, clear directive, an institution must draw on and be guided by its core principles. These core principles should be well known to legal counsel advising a particular college or university.

Another way in which institutional counsel can help institutions navigate the uncertainty ahead is by working with institutional clients to proactively anticipate

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institution navigate the terrain of increasing litigation, regulation, public scrutiny of higher education, and overall uncertainty?

In the first instance, an institution’s general counsel or primary outside counsel should be well acquainted with institutional values and priorities. One long serving general counsel turned college president described the role of a college or university general counsel as an “integrator of strategy, law, policy, and values.”¹ This aptly summarizes the various lenses through which

future issues. So called “preventive lawyering” has long been a key tool for the most effective in-house counsel. While the specifics of the turbulence ahead for higher education may seem largely unpredictable and impossible to divine, counsel should still engage with key client constituencies to understand what the future may look like to these various institutional client stakeholders and how the legal function can help.

Finally, in times of anticipated change and uncertainty a general counsel should be seen as a source of institutional stability and consistency. A properly deployed and engaged general counsel often becomes

a key institutional steward by wedding the pervasive legal and regulatory realities to the mission and values of the institution. In so doing a general counsel can provide stability and consistency over the long term. ■



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1. Louis H. Guard and Joyce P. Jacobsen, *All the Campus Lawyers: Litigation, Regulation, and the New Era of Higher Education* (Cambridge, Massachusetts: Harvard University Press, 2024), 198.



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The Relevance of Institutional Neutrality

BY DAVID FINE

RECENTLY, ESPECIALLY AFTER GEORGE FLOYD'S DEATH and during the Israel-Hamas war, faculty and students increasingly came to expect university leaders to speak about major cultural and political issues outside of their school's core mission. It was not clear why such statements were believed to be necessary. What expertise did university leaders have simply by dint of their position? And why did students and faculty need to hear their leaders agree with their views? Such questions almost seem quaint now when higher education writ large is under attack but are still worth exploring.

Since at least the 1967 Kalven Report, which is the primary source of institutional neutrality today, many universities decided as a matter of principle not to have their leaders speak on issues outside of their core missions, following the principle of institutional neutrality. Even in the years leading up to the second election of Donald Trump, this principle collided with demands that university leaders speak out. Good philosophical and practical arguments existed then that university leaders were wise not to speak about issues outside their core mission (John Wilson's article in the March/April 2025 issue of *Trusteeship*, "American Higher

Education, 2025, and Beyond," articulates the unique perspective Historically Black Colleges and Universities have on what is a "core mission" and the application of the Kalven Report exception, described below). The principle is still worthwhile today, and it does not prevent universities from speaking about attacks on their institutions or higher education itself. The Kalven Report contains an exception, which provides: "From time to time, instances will arise in which the society, or segments of it, threaten the very mission of the university and its values of free inquiry. In such a crisis, it becomes the obligation of the university as an



institution to oppose such measures and actively to defend its interests and its values.”¹

Much scholarly work has been devoted to institutional neutrality but simply stated, it means that universities *qua* universities don’t exist to speak about important issues of the day but rather exist to pursue knowledge and truth and to teach their students how to think critically about complex social, cultural, scientific, and political issues. Thus, it is not the role of presidents or boards to make official statements on matters of public concern that do not directly affect the school.

Some prominent scholars, such as former Yale Law School Dean Robert Post, advocate for “institutional restraint,” pursuant to which, according to Princeton President Christopher Eisgruber, “there is a strong presumption against the university as an institution taking a position or playing an active role with respect to external issues of a political, economic, social, moral, or legal character” which presumption “can yield in ‘very unusual situations’ involving a ‘direct and serious contradiction’ between an investment and a ‘central value’ of the university.”²

If a policy of institutional neutrality is conceived and applied thoughtfully, it should not differ in practice from a policy of institutional restraint. In both cases, universities should view the decision whether to speak by considering several factors, such as mission alignment, the goal of speaking, the value of the statement to the resolution of the issue, and the risk-reward ratio. Making strident statements to appease activist faculty, staff, and students can be a slippery slope without guiding principles.

Before the recent election, universities for many reasons had become the epicenter of the nation’s culture and political wars. As a result, faculty and students expected presidents to speak about events having nothing to do with their university. Students and faculty wanted to hear their presidents echo and confirm their beliefs about high profile moral and political issues, assuming that those beliefs were shared by the entire university community. Some presidents were more than willing to do so and argued that not speaking was a moral failure. But campus communities are usually not of one mind about any issue and speaking on such issues usually puts a university or president in a position of angering at least one constituency, if not multiple constituencies. Some universities also became the target of the federal government because of their speech.

Institutions have also come under attack for failure to speak since President Trump’s election victory and his administration’s attacks on higher education. For example, Wesleyan president Michael Roth has argued “the infatuation with” institutional neutrality “is just making cowardice into a policy.”³

In my view, the analysis remains the same. First, universities

shouldn’t take a side in global conflicts not directly affecting their core functions, no matter how clear the moral issues may appear to be. The university’s role is to pursue truth and knowledge, not to tell others what to think. Second, in most cases, it is not institutional neutrality that has prevented presidents from speaking about federal administration policies that affect their schools. Such speech is appropriate under principles of institutional neutrality or institutional restraint. Rather, the reluctance to speak appears to stem from a generalized fear and in some cases, from a justified specific fear of losing significant federal funding.

A standing policy on institutional neutrality applies at the institutional level. It is not a limit on others’ speech. Faculty and students have the same free speech rights whether their school has adopted institutional neutrality, which applies primarily to statements by university leadership on behalf of the university. Thus, students may continue to protest, and make demands of university leadership, and faculty may encourage student protests and speak in their private capacities. However, as the situation at Columbia and Harvard show, this protected speech comes with a significant risk.

Trustees considering institutional neutrality or restraint should develop a clear rubric to follow when determining whether their university will speak about a political issue, using factors like the ones discussed above. A good reference is Princeton’s Policy on Institutional Statements and Expressions of Care for Non-Academic Units.⁴ A rubric such as this should include asking whether the issue directly affects the university and its students (such as an attack on diversity, equity, and inclusion efforts or federal funding) rather than being an important larger social or political issue generally. University leadership should also consider the real political and financial risk of their official statements. ■



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1. Harry Kalven, Jr. Committee, Kalven Committee: Report on the University’s Role in Political and Social Action, Record, vol. 1, no. 1, November 11, 1967, https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf.

2. “Princeton’s Tradition of Institutional Restraint,” Princeton University, accessed April 9, 2025, <https://paw.princeton.edu/article/princetons-tradition-institutional-restraint>.

3. Calder McHugh, “A College President Gets Real About Trump’s Attack on Universities,” *Politico*, March 12, 2025, <https://www.politico.com/news/magazine/2025/03/12/universities-trump-dei-mahmoud-khalil-00226048>.

4. “Policy on Institutional Statements and Expressions of Care for Non-academic Units,” Princeton University, effective date February 29, 2025, <https://institutionalstatements.policy.princeton.edu/>.

Free Speech Rights and Academic Freedom: Whose Rights Are They Anyway?

BY E. THOMAS SULLIVAN

OFTEN THE QUESTION IS RAISED—WHY DO SPEECH AND EXPRESSION RIGHTS MATTER? Core values underlying speech protection under the First Amendment have instrumental value because they may promote truth and fact finding, engage people to participate in discussions in the democratic process, and make for better decisions.

These rights also have intrinsic value that promote human dignity and individual liberty and autonomy. In short, the protection of speech rights advances the public good by serving as a tool to express opinions in society as a whole and to advance democratic accountability through discussion and debate with others in our deliberative democracy. Speech rights also help

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individuals realize and develop their character and potential and encourage self-fulfillment and self-expression, which can advance human dignity.

As Justice Holmes said in 1919, “[t]he ultimate good desired is better reached by a free trade in ideas [and] the best test of truth is the power of the thought to get itself accepted in the power of the market.”¹

Indeed, the consequence of the “marketplace of ideas” metaphor is that society benefits from a broad range of ideas and expression that can serve in a self-government system as a “checking function” on governmental overreach, and authoritative decision-making. Free speech rights, in addition, empower minority viewpoints to have access to ongoing societal debates.

The Supreme Court has found that First Amendment speech rights are within the “primacy” of rights under the Constitution. From Justice Holmes’s diverse marketplace of ideas concept in 1919 to the present, the Supreme Court has elevated speech rights to an almost absolute or libertarian viewpoint.

Today it applies the broadest interpretation in its application and enforcement of speech freedoms. It has only permitted four exceptions to its expansive approach: defamation, obscenity, speech incident to or part of a crime, and direct, imminent threats that have the potential or do in fact incite violence or harm. Even “hate speech” as vile, obnoxious, and hurtful as it may be, is protected speech if it does not fall within one of the narrow and highly restrictive exceptions.

These rights start from the “liberty of consciousness”—the liberty of one’s own thoughts and feelings—to speak passionately in public on any topic.

The Supreme Court over a long time, also, has dealt with speech in educational institutions, including students and faculty rights. Academic freedom for faculty has had an important history. Many consider academic freedom as a constitutionally protected subcategory under the First Amendment’s speech freedoms, going well beyond just an academic norm.

The concept goes back to medieval European universities.² In the more modern era, German universities protected faculty rights to discover new knowledge, to teach, and to engage in research within the university. This freedom for thought and speech was considered a public good. The freedom was first considered by the Supreme Court in 1952 in a dissent by Justice Douglas, who noted “[w]here suspicion fills



the air and holds scholars in line for fear of their jobs, there can be no exercise of free intellect.”³

In another case the same year, Justice Douglas and Justice Frankfurter, both former law professors, linked academic freedom to the Constitution’s First Amendment speech rights and to the advancement of democracy. Justice Frankfurter observed that “no totalitarian government is prepared to face the consequences of creating free universities.”⁴

A later opinion by Chief Justice Warren more directly connected the vital role that academic freedom plays in advancing democracy. “Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain maturity and understanding; otherwise, our civilization will stagnate and die.”⁵

Today, in 2026, the question is being raised anew. Is there a viable academic freedom right for faculty, and if so, how clear, fixed, and understood is that right?

As the 21st century began, a descriptive interpretation would be that individual faculty members have academic freedom rights to teach, to research, and to write within one’s professional expertise and academic field in the classroom if their opinions and viewpoints were relevant and germane to the subject matter of the assigned course. This constitutional rule would apply to individual faculty at public educational institutions under the First Amendment. Private institutions generally adopt these rights as normative understandings and standards within the private institution, as the First Amendment does not restrict private entities from setting their own rules.



More recently, it appears that some courts are limiting the right to teach, to research, and to engage in scholarly activities beyond the traditional roles of teaching, research, and scholarship. For example, academic freedom rights are now at risk for faculty activities that go beyond the classroom and scholarship that include “shared governance” responsibilities and other faculty conduct.

Indeed, in 2006 in the *Garcetti v. Ceballos* case,⁶ the Supreme Court ruled, in a non-educational setting, that “when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes. The Constitution therefore does not insulate those communications from employer discipline.”⁷ In short, if public employees are speaking or acting within their “official

duties,” public employees have no First Amendment rights under the Constitution. Those rights, the Court ruled, belong to the government employer.

Importantly, Justice Souter, in dissent, sounded an alarm that this holding should not apply to academic freedom rights in educational institutions.⁸ The majority Court’s opinion responded in a less than enthusiastic comment regarding academic freedom. “There is some argument ... related to academic scholarship or classroom instruction that are not fully accounted for by this Court’s customary employee-speech jurisprudence.” The Court then noted that questions regarding academic freedom were not being decided in this case.

Thus, the Court’s language portends that in future cases the Court may or may not apply academic freedom rights to public faculty employment disputes.

The Court has not decided another academic freedom case since its language in *Garcetti*, which reintroduced the critical distinction between government-employer speech and personal-employee speech.

The most positive ruling from *Garcetti* is that federal courts might protect core academic activities such as classroom teaching and academic scholarship, but not beyond those traditional roles. Examples beyond the “core” might include the following: individual faculty engaged in “shared governance” duties, including faculty committees, assignments regarding hiring, tenure, and promotion decisions, administrative work, and public appearances outside the university such as social media podcasts, op eds, and tweets online. These decisions might come down to how “core” these actions are and whether they come within the “official duties” of the faculty member.

Some federal courts already have ruled that *Garcetti* does not apply to educational institutions. Others have applied *Garcetti*’s “official duties” limitations on speech rights and denied speech protections to faculty.⁹

In those cases where speech is defined outside the “official duties,” where the faculty member is speaking as a private citizen, the speech still may not be protected under the First Amendment. If the subject matter of the speech is of a private interest rather than one of a “public concern,” or if the speech reasonably could be seen as substantially disruptive, it may be found without First Amendment protection. Cases have determined the “disruptive” standard to include speech regarding sexual matters or creating hostile or discriminatory learning environments.¹⁰

In conclusion, the *Garcetti* government speech doctrine has significant implications for eroding the speech rights of individual faculty in the educational context. This occurs when the government as employer decides its speech and expression in the public workspace should predominate over that of individuals.

Several states are exercising this government speech approach by noting that in public

institutions, it is the board of trustees, the state’s higher education commission, the state legislature, or even the governor who set state policy, not the appointed leadership of the institution or the faculty. Some courts even have held that if there are academic freedom rights, they belong to “the university,” not the faculty. Once it is determined that the challenged speech is “government speech,” the individual has no First Amendment protection since the government employer is not restricting or censoring speech deemed private under the Constitution. In short, the speech right belongs to the government employer.

As more states embrace the government speech doctrine, we shall see how the courts and ultimately the Supreme Court decide whose rights are protected. The stakes for public educational institutions are high. The cherished values that underlie the First Amendment speech freedoms are at risk. ■



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Endnotes

1. *Abrams v. U.S.* 250 U.S. 616 (J. Holmes dissenting) (1919). See also Len Niehoff and E. Thomas Sullivan, *From Core Values to Current Debates* (Cambridge University Press, 2022), 2–21.

2. Niehoff and Sullivan, *From Core Values to Current Debates*, 193–194.

3. *Adler v. Board of Education of the City of New York*, 342 U.S. 485 (J. Douglas dissenting) (1952).

4. *Wieman v. Updegraff*, 344 U.S. 183, 197–198 (J. Frankfurter concurring) (1952).

5. *Sweezy v. State of New Hampshire*, 354 U.S. 234, 250 (1945). See also *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589, 603 (J. Brennan majority opinion) (1967).

6. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

7. *Id.* at 421.

8. *Id.* at 425, 438 (J. Souter dissenting).

9. Niehoff and Sullivan, *From Core Values to Current Debates*, 203. *Hong v. Grant*, 516 F. Supp. 2d 1158 (C.D. Cal. 2007); *Renken v. Gregory*, 541 F.3d 769 (7th Cir. 2008); *Demers v. Austin*, 729 F.3d 1011 (9th Cir. 2013); 746 F.3d 402 (9th Cir. 2014) (remanded on other grounds); *Adams v. Trustees of the University of North Carolina-Wilmington*, 640 F.3d 550 (4th Cir. 2011).

10. *Waters v. Churchill*, 511 F.3d 661,673 (1994); *Jeffries v. Harleston*, 52 F.3d 9,13 (2d Cir.1995); *Salaia v. Kennedy*, 188 F. Supp. 3d 1068 (N.D. IL 2015); Niehoff and Sullivan, *From Core Values to Current Debates*, 204–205.

LEGAL STANDPOINT

“They Said What?!”

BY ROBERT FARRELL

ANY BOARD MEMBER OR UNIVERSITY LEADER WHO HAS LIVED THROUGH AN ACADEMIC YEAR knows or can recall that moment. A controversial comment, syllabus, speaker, or publication comes to light and the calls start coming. Donors, elected officials, alumni, faculty, parents, students, or possibly religious authorities (key constituencies all) have a reaction and an opinion as to how the matter should be handled. In response, leadership huddles to determine the appropriate response. The desire to act quickly and get ahead of the issue competes with the cautionary voice advocating for process and deliberation. Both can be the right answer depending on the problem. This is a legal viewpoint column, so it will focus on the legal boundaries of these controversies. To narrow a topic that warrants a book, this article focuses on academic freedom, a particular issue within free speech. This essay sets forth a few basic concepts and suggests some actions that trustees can consider and exercises to prepare for that moment.

Let's start with the concept. Chief Justice Warren in the case of *Sweezy v. New Hampshire*, 354 U.S. 234 (1957), ascribed significant importance to academic freedom: “Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understand-

Frankfurter's concurring opinion included the oft-cited four freedoms attributed to academic freedom: “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught and who may be admitted to study.”

Beyond the conceptual basis of aca-

time. University authorities, following a state law, required faculty including Sweezy to sign statements that they were not members of “treasonous” or “seditious” organizations, including the communist party. The court found this unacceptable. The law, and the university's application of it, chilled teaching, scholarship, and the free exchange of ideas all of which are essential to higher education. For public colleges and universities at least, the court linked academic freedom to first amendment rights. Critical to this understanding is the dual freedoms attributed on the one hand to faculty, and on the other to the institution, to protect both itself and those within it when exercising this freedom.

The application of these concepts presents a particular challenge for public universities. The case of *Garcetti v. Ceballos*, 547 U.S. 410 (2006), for example, held that governments may limit the speech of public employees made during their official duties because the first amendment does not protect that speech. Thus, faculty, as public employees, face potential exposure for their speech, though the court specifically did not address whether its holding applies to academic speech. Subsequent lower court decisions have recognized an academic freedom carveout for public employees while others limit those rights. Depending on emerging state laws, academic freedom



ing; otherwise, our civilization will stagnate and die.” Justice Frankfurter, in the concurring opinion, assigns an equally significant value to the freedom of inquiry. He states that the court did not need an abundance of witnesses to recognize the “dependence of a free society on free universities.” To achieve that, Justice Frankfurter, required “the exclusion of governmental intervention in the intellectual life of a university.”

demic freedom, it is helpful to consider that its legal application blends multiple inputs including constitutional limitations, contract law, and professional norms. For a grounding in this area, start with *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). That case, like *Sweezy*, stemmed from the fear of communist activities. State laws emerged to root out those sympathetic to communism, deemed subversive at the

could be vulnerable in this context and some may call to shut it down or fire the offenders.

Private institutions provide via contract the protections to academic freedom found in the constitution. Faculty handbooks and policies often cite to the AAUP's 1940 Statement of Principles on Academic Freedom and Tenure providing for freedom in research, publication, teaching, and protections for extramural speech. Thus, certain freedoms at private colleges and universities may apply to university operations despite being beyond the enforcement of the Constitution.

Other statutory boundaries potentially limit the exercise of academic freedom as well. For example, limitations on academic freedom can be found in other university policies. Notably, the anti-discrimination provisions of Titles XI and IX may be used to sanction universities that turn an indifferent eye to harassing faculty classroom conduct found to be severe and pervasive.

Finally, accrediting bodies will expect a university to protect academic freedom. Despite the requirement, recent state laws have attempted to regulate curricular content intensifying the tension between institutional autonomy and state control. Suffice it to say, the problem is complex.

In light of this complexity, what can boards do? I'd be remiss as a general counsel if I did not suggest that a board should consult its general counsel before acting on any difficult matter concerning academic freedom and speech issues. But as a trustee, reading this, what can you do now, in the relative comfort of a summer where, presumably, these issues are not pressing. Authors Peter Eckel and Kathy Trower, in the book *Practical Wisdom: Thinking Differently about College and University Governance*, suggest the value of a scrimmage. The authors suggest that trustees take time

Trustees assume oaths of loyalty to their institutions as part of the package of fiduciary duties. That means they put the interests of the institution before those of outside constituents or interests, be they political or financial. They are, in a sense, independent of those constraints. A statement supporting academic freedom demonstrates that loyalty.

at a retreat, or if possible, a meeting to consider a well-publicized case from the news, effectively practicing with difficult issues to prepare for the real thing. The board can test its response via a form of tabletop exercise. This can be done without a spotlight on the board's work but can include considerations for how the university would respond to adverse media coverage. Time pressure is removed too, though a good exercise will include a timing element. A board should question, throughout such an exercise, the parameters of the board's involvement in the response versus that of management. Authors Eckel and Trower suggest that these discussions should include what they term "stakeholder mapping" to show which groups have an important role in the response to a situation. That enables the board to ask the important governance question: have we consulted broadly with the appropriate stakeholders in reaching this decision?

If facing an issue that threatens to constrain freedom in the academy, trustees could consider making a statement in support of academic freedom. As described above, it is a concept that is baked into the American higher education cake from Supreme Court precedent to contractual obligation and constituent expectation. Taking a stand on the side of that freedom allows the administration to operate confident in the support of its board while it navigates the competing interests that pressure these issues. In addition, such

a statement shows campus stakeholders that the board appreciates and supports the freedoms that Justices Warren and Frankfurter held were fundamental to a civil society. A board statement has another benefit as well. It confirms the board's independence. Trustees assume oaths of loyalty to their institutions as part of the package of fiduciary duties. That means they put the interests of the institution before those of outside constituents or interests, be they political or financial. They are, in a sense, independent of those constraints. A statement supporting academic freedom demonstrates that loyalty.

Trustees of American higher education institutions should take pride in their place. They sit atop a system that has been the envy of many. That system, with its embedded respect for academic freedom, has provided American colleges and universities with a competitive advantage over those with constrained freedoms. American higher education is not perfect, and a controversy like the kind anticipated above may strain that sense of privilege, but others have held our universities as the gold standard of teaching and research. Academic freedom plays a key role in that prestige. It is worth protecting. ■



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Academic Freedom and Free Speech

for Public College and
University Faculty

BY SCOTT COLE

Academic freedom and free speech protection for faculty at public higher education institutions can be slightly more tenuous than they are for their counterparts at private institutions. Nevertheless, policies governing free speech and academic freedom may be prudent for any higher education institution—public or private.

ACADEMIC FREEDOM is a concept that is often misunderstood both by the higher education community and the public. Academic freedom has never meant that faculty can do or say whatever they please, or teach their courses in whatever manner they choose. For state university faculty, the issues are even more complicated because of the interplay between academic freedom and First Amendment principles of free speech. While faculty members and university administration may disagree on the contours of academic freedom and free speech, especially when a faculty member is accused of misconduct by the administration, it is often the courts that make the final decision.

This article will discuss academic freedom for state university faculty as generally understood by the university community, as well as federal court decisions addressing the right of the university to discipline faculty for their speech.

Defining Academic Freedom in the Academy versus the Courts

To define academic freedom, most universities have adopted some version of the American Association of University Professors' 1940 *Statement of Principles on Academic Freedom and Tenure* (Statement). The definition often appears in faculty handbooks, employment contracts, university policies, and collective-bargaining agreements. The Statement provides in general that faculty are entitled to freedom in pursuing scholarly research, discussing their areas of expertise within the classroom setting, and—as citizens, academic professionals, and educational institution officers—speaking and writing without the threat of censorship or discipline. However, the federal courts have not always accepted this definition of academic freedom.

In the *Sweezy v New Hampshire* case, the Supreme Court described academic freedom as a university, not faculty right. It established the four essential freedoms of the university as “to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”

Likewise, in the *Regents v. Bakke* case, the court stated that “Academic freedom, though not a specifically enumerated constitutional right, long has been viewed as a special concern of the First Amendment. The freedom of a university to make its own judgments as to education includes the selection of its student body.”

Because the courts have not directly ruled that academic freedom is a recognized constitutionally protected right of faculty, lawyers representing faculty members who have been disciplined by their universities for their speech, often allege that the faculty member's First Amendment rights were violated. As seen below, however, this is often not the case.

How the Courts Apply the First Amendment to Faculty Misconduct

The First Amendment states the following:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance.

The First Amendment applies only to government action but not to actions by private entities. Freedom of speech, as it applies to citizens generally, not only protects the right to speak and write but also the right to peacefully demonstrate. However, First Amendment rights are not unlimited. The federal courts are tasked with deciding which speech is protected and

Editor's Note: This article is meant to provide information for boards but should not be considered legal advice. Articles in *Trusteeship* magazine represent the opinions of the author(s).

TAKEAWAYS

- Academic freedom is often misunderstood. It does not simply give faculty the right to say or teach whatever they please. In practice, there is a complex interplay between academic freedom and First Amendment principles of free speech.
- Public college and university faculty are unique when it comes to the First Amendment; They act in three capacities: citizens, government employees, and faculty.
- U.S. courts have not directly ruled that academic freedom is a constitutionally protected right for faculty. The trend in court rulings is to grant public college and university faculty less protection of academic freedom than their private university counterparts.
- To avoid misunderstanding, institutions should establish clear definitions of academic freedom by contract, in institutional regulations, policies, appointment letters, faculty handbooks, and/or collective-bargaining agreements.

to what extent. This often involves the balancing of individual rights with the rights of others, including employers. Different types of speech receive different levels of protection. Political speech is given the highest level of protection. Commercial speech, such as advertisements or solicitations, receives a lesser degree of protection.

Differing Roles of Faculty

Faculty members working at state colleges and universities are unique when it comes to the First Amendment. They act in three capacities: citizens, government employees, and faculty. The following is a brief analysis of the law applied to each capacity.

Faculty as Citizens

Rule 1: Regulating the Content of Speech

In general, any attempt by the government, which includes state universities, to restrict or regulate a citizen's speech based upon the *content* of the speech, will be struck down unless the government can show: (1) it has a "compelling state interest" in restricting or regulating the speech and (2) the method used to restrict or regulate the speech is "narrowly tailored" to only limit speech that undermines the government's expressed interest.

Rule 2: Regulating Speech for Reasons other than Its Content

If the government attempts to regulate or restrict speech based upon considerations other than the content, those restrictions will be upheld so long as they further "an important or substantial government interest."

Rule 3: Time, Place, and Manner Restrictions

The government always has the right to restrict the time, place, and manner of speech if those restrictions:

- Are not based on the content of the speech;
- Serve a significant governmental interest;
- Are narrowly tailored to only address the government interest being protected; and
- Provide alternative venues for speech.

Faculty as Government Employees

As government employees, state university faculty give up some of the protections they have as citizens. The Supreme Court in the 1986 *Pickering* case established the initial framework for determining whether the First Amendment protects a government employee's speech from employer discipline. Under that framework, the first step is to determine if the employee is speaking in the course of their job duties or as a private citizen, and whether the speech addresses a matter of public concern. The Supreme Court has held that a matter of public concern is one "relating to any matter of political, social, or other concern to the community."

If an employee is speaking both as a private citizen *and* about a matter of public concern, the court then balances the employee's speech rights against the public employer's right to maintain efficiency, integrity, and discipline in the workplace. If the court finds the employer's interest outweighs the employee's interest, the disciplinary action will not violate the First Amendment. This weighing of employee versus employer interest is known as the *Pickering* Balancing Test.

Conversely, if an employee is either not speaking as a private citizen or is not speaking about a matter of public concern—for example, expressing internal work grievances—there is no First Amendment protection and the employee can be disciplined without violating the First Amendment.

The Supreme Court in the 2006 *Garcetti* case modified the *Pickering* Balancing Test by ruling that a government employee speaking *in connection* with their official duties can *never* be speaking as a private citizen. Consider the example of a state employee who is asked to appear on a television show to discuss his work but chooses instead to use the opportunity to criticize public officials over homelessness in the city. Even though he may be acting as a private citizen and discussing a matter of



public concern, he is doing so using a platform made available to him by virtue of his status as a public employee. In that case, the First Amendment will not protect the employee from discipline by his employer.

Exception for State University Faculty?

The *Garcetti* court did leave the door open for applying a different standard for state university faculty, even if speaking pursuant to their official duties. The court said, “There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.” While encouraging, the court did not actually address that issue.

Justice Souter stated in a dissent that “I have to hope that today’s majority does not mean to imperil First Amendment protection of academic freedom in public colleges and universities, whose teachers necessarily speak and write pursuant to official duties.”

Unfortunately, the Supreme Court has not provided additional guidance on whether faculty have a special status under the First Amendment and lower courts have also failed to provide further guidance. Therefore, it is often unclear whether *Pickering* or *Garcetti* is controlling law, or if a new standard for faculty will be applied.

The Supreme Court needs to clarify whether state university faculty members have greater first amendment rights than other government employees, so that their speech on matters of public concern, even made as part of their official academic duties, is at least entitled to be weighed against their employer’s interests before upholding

discipline. Without this clarity, there will be uncertainty as to when faculty may be disciplined for academically related speech.

Contract Rights

So what should universities do to bring some clarity regarding academic freedom for state university faculty? Public universities, like privates, should establish clear definitions of academic freedom by contract, in institutional regulations, policies, appointment letters, faculty handbooks, and/or collective-bargaining agreements. While the courts can strike down contract provisions that are more restrictive on academic freedom than the First Amendment allows, considering the courts’ current employer-friendly interpretation of faculty rights, that is unlikely to happen. To avoid ambiguity and unnecessary litigation, state universities and their faculty should take the time to reexamine their current contract provision on academic freedom to see if they are unambiguous and consistent with university culture. Any revisions should be carefully negotiated and documented so that there are no misunderstandings of their respective rights.

As an example, the right of faculty to criticize university policies is presumed by most academics to be protected speech. However, the courts have held that this is exactly the type of speech *not* protected by the First Amendment since it is made in the course of employment and does not involve matters of public concern. By clearly establishing by contract what is and is not acceptable speech and behavior in criticizing university policies, faculty can express their views without fear of discipline.

Conclusion

While the language of the First Amendment is deceptively simple, its application, especially as to state university faculty, is anything but. However, the trend in court rulings is to grant state university faculty less protection of academic freedom than their private university counterparts. Therefore, unless or until the courts explicitly provide protection for faculty academic freedom, it is crucial that faculty and the administration negotiate clear contractual provisions governing academic freedom at their institution to avoid any misunderstanding. ■

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*An Urgent
Call for
Leadership*

UNITED WE STAND

BY ELLEN-EARLE CHAFFEE



HIGHER EDUCATION IN A DEMOCRACY helps people explore information and ideas, debate, create, think for themselves, and apply their learning to benefit themselves and society. But political leaders in multiple states are aiming instead to teach people what to think—depriving them of information and ideas that most people believe are worth thinking about. The intruders are well-funded and gaining steam.

These new political and ideological intrusions warrant, but are not receiving, a proportionate response. This is in part because it is still unclear how to define, assess, or effectively handle the intrusions and likely in part because the potential for backlash is daunting. The hardest-hit institutions are public, where freely discussing sensitive matters while subject to open meetings and open records laws risks miscommunication and personal or institutional retaliation. But this much is clear: As the ultimate authority for a university or college, the governing board has the opportunity and responsibility to provide policy leadership in the best interests of the institution.

Moreover, responding to the ideological and political intrusions that are mounting against freedom in higher education and democracy is a high-stakes opportunity to impact the outcome of history. Boards and executive leaders have options: They can choose among many ways to affirm educational freedom, support democracy, and secure independent institutional governance. Courageous leadership by governing boards and presidents, together with collective energy from all who believe in uncensored education and independent governance, could stop the intrusions before the trend becomes insurmountable.

Freedom Is the Heart of the Matter

American higher education institutions were established in the cradle of New World democracy. Their leaders deliberately separated the governance of churches, schools, and civil government. In authoritarian countries, education is directed by the government in line with the ideological wishes of those who have political power.

Americans also created a new model of fiduciary citizen trusteeship for higher education to secure freedom of inquiry and expression based on expertise, facts, and reasoning rather than ideologies or politics. Subject-matter experts in this country determine the learning experiences of students, free of administrative or governmental control. Higher education depends on academic freedom and independent governing boards.

The current challenge before board members and leaders is to safeguard independence and academic freedom by stopping attempts to control academic institutions for political, ideological, and self-interested purposes.

Damaging New Intrusions on Freedom

Postsecondary institutions have long been subject to the expectations of federal, state, and accreditation authorities who have legitimate public purposes. These accountability, quality, and compliance requirements represent established public policy, not ideology. They focus on standards, processes, and outcomes, but not the academic and managerial decisions that determine how the institution complies with them.

What's happening now is very different.

In the first few months of 2023, PEN America, the non-profit organization to protect free expression, identified 25 bills challenging academic freedom in 15 state legislatures, and the *Chronicle of Higher Education* counted 37 bills to limit diversity, equity, and inclusion (DEI) programs in 21 states. In Ohio, a single bill still under consideration presents six mandates on DEI, twelve on teaching divisive concepts, three on intellectual diversity, six on China, and others on mission statements, equal opportunity, strikes, post-tenure faculty reviews, faculty workloads, course syllabi, and graduation requirements. With the 2024 election campaign season getting underway, candidates who support such bills are making it clear that they have only just begun.

How soon might the university you govern or lead and the college your family member attends be the scene of episodes like these?

- A student contends that finishing a wall on the U.S.-Mexico border would solve the immigration crisis. The professor would have to say, "It is illegal to discuss that here. That's too controversial."
- A program with students discussing their cultures and inter-group relationships would have to be held off campus. Faculty and staff members may not risk attending.
- Sociology professors might delete race from their syllabi, political science professors might delete contentious foreign policy issues, and history professors might resign rather than subvert or delete the post-Mayflower history of Native Americans, slavery, and the Holocaust.
- Institutional policy might not allow a faculty member to appeal an adverse decision to a higher authority.

Scenarios like these are potential outcomes of the current intrusions. If political officials are free to dictate curriculum, personnel policy, extracurricular opportunities, and other managerial functions, governing boards are superfluous.

TAKEAWAYS

- Freedom of expression, freedom of inquiry, and institutional independence make American higher education possible. Freedom, in turn, depends on a healthy democracy.
- Political and ideological intrusions on higher education are destroying students' freedom to learn by mandating censorship and instilling fear. Political control of educational freedom opens the door to indoctrination and authoritarianism.
- By taking decisive, courageous action now, governing boards and their presidents could create the tipping point that stems the tide of intrusions, preserves educational freedom, and strengthens democracy.

Politics, opinion, beliefs, short-term thinking, and inexperience would take over from hard-won expertise, long-term vision, and thoughtful fiduciary leadership.

The most pernicious ideological or political intrusions to date fall into four general categories.

1. They prevent a college or university from fulfilling its mission.

Colleges and universities are for exploring oneself, others, and the world; for discovering new interests; and for coming to terms with being wrong or misguided sometimes. Where else can you ask any question, express any belief, challenge an expert, or see your convictions in a new light?

Paying tuition is like buying a ticket to access professors' expertise and skills, even if students may not see it that way. The core operational function of colleges and universities as institutions is to provide such access for instruction, research, and service. Censoring or directing academic content for ideological or political purposes destroys the value of the ticket and decommissions the institution.

Ideological or political intrusions prevent students from expanding their minds and skills through informed discussion and debate. Professors avoid controversy, and students do not have access to information or opportunities to disagree. Colleges and universities are not allowed to do what they were created to do.

2. They prevent institutional governing boards from doing their fiduciary duty.

Accreditors require every higher education institution to be independent, with an independent governing board whose members are fiduciaries. As fiduciaries, members are to hold the university or college in trust on behalf of society. The board is expected to oversee and govern all aspects of the institution in pursuit of its best interests. As fiduciaries, trustees must care for the institution and prioritize its well-being over personal interests, loyalty to others,

or undue influence. In addition, they must adhere to the institution's founding documents and the law. The board hires, evaluates, and supervises the president, who also acts as a fiduciary.

Ideological or political intrusions that prevent or discourage governing boards and presidents from doing their job include co-opting the decision to select or dismiss a president, limiting access to educational materials, requiring the use of government-selected educational materials, prescribing how people may or may not interact with each other, prohibiting discussion of controversial topics, and tampering with personnel policies.

In many cases, the new intrusions also violate the governing board's authority. Although board authority varies among institutions, the assumption here is that the board's legal authority matches its prescribed duties. Every board must ensure that it has the necessary authority to fulfill its duties and challenge any external attempts to impose decisions that fall within its legal jurisdiction.

Governing boards face a dilemma when unacceptable requirements are imposed through laws. Obedience to the law is a fiduciary duty, but it can conflict with the duties of care and loyalty to the institution. For example, a law that prohibits discussing politically identified concepts undermines an institution's ability to fulfill its mission. Is there a way for the board to exercise its legal authority and its fiduciary duties of care and loyalty without breaking the law? This and many other knotty questions await the board's attention, ideally before they arise for their institution.

3. They use higher education institutions for inappropriate or contrary purposes without regard for the institutional consequences.

Intrusions that harm an institution for self-interested or ideological purposes are not entirely new, but they are becoming more blatant, numerous, and destructive.

If political officials are free to dictate curriculum, personnel policy, extracurricular opportunities, and other managerial functions, governing boards are superfluous. Politics, opinion, beliefs, short-term thinking, and inexperience would take over from hard-won expertise, long-term vision, and thoughtful fiduciary leadership.

For some, criticizing and exerting control over higher education is primarily a political strategy. For others, it may reflect an anti-democracy ideology or a culture of misinformation. The intrusions come from individuals who have no knowledge of or concern for how colleges and universities operate, making them particularly damaging. Their goal is not to improve higher education, but to control minds, exert power, and gain political advantage.

4. They undermine colleges and universities by making false allegations about them.

Unfounded claims about colleges and universities allege that professors impose their ideas on students. These claims are false. Professors encourage critical thinking, discussion, questioning, and explanation to improve learning. Their job descriptions, performance evaluations, and institutional policies clearly outline these expectations and ensure accountability. In contrast, the goal of external intrusions is not to improve learning, but to undermine and control educational institutions.

In summary, the present wave of ideological or political activism is in a class by itself. If left unchecked, it will undermine the freedoms that American higher education requires and the freedoms that define democracy in America. Moreover, it diverts valuable time, attention, and financial resources away from addressing students' educational needs and meeting society's expectations.

Potential Tipping Point for Freedom

The roots of this attack on higher education are deep, as are the pockets of its supporters. Neither higher education nor democracy is at its peak strength today. Although legislators rejected many of the 2023 proposals, the numbers, positions, networks, and resources of people who promote them are staggering. They will undoubtedly return.

However, many quiet Americans are ready for positive change. This is not how citizens do business. These efforts to destroy freedom of expression and freedom of inquiry do not reflect the values and hopes of most Americans. With leadership, partnership, and courage, perhaps history will record that the anti-freedom movement spurred a unifying challenge that changed the course of history.

The State of Democracy. The best safeguard for freedom of expression and freedom of inquiry in colleges and universities is a healthy democracy. American democracy, however, has been on a steep decline for over a decade.

The U.S. government's international standing on three democracy-related indicators has fallen considerably. Our rank on democracy dropped from number 26 to number 30 in a single year, according to the Economist Intelligence Unit, which downgraded the United States to "flawed democracy" status. According to Transparency International, which ranks nations on a corruption perception index based on input from experts and businesspeople, the United States scored number 24 on perceived corruption, down five more countries since 2015. And according to the Freedom Index, the United States is less free than 72 other nations.

The State of Higher Education. In recent years, the public image of college has shifted from learning as an intrinsically worthy investment to a transactional commodity. Public attention and policy have increasingly spotlighted the importance of economic impact, cost, and measurable outcomes of higher education while losing interest in the social sciences, humanities, personal growth, and societal outcomes. Trust and confidence in higher education are low, weakening the sector's ability to reclaim its position without strong leadership from its allies and champions.

The tide of ideological or political intrusion on higher education could prompt a tipping point for higher education and the country.

The Opportunity. All higher education governing boards and presidents have an opportunity to help restore reason, truth, and America's democratic republic by defending against intrusion and working for institutional independence, academic freedom, and democracy. Sooner or later, these intrusions could threaten the foundation of every college and university. A common threat can be a common bond that inspires energetic local, regional, and national response, supported by most Americans in every sector who share the values that are in jeopardy.

Consequential Leadership for Freedom

While private and elite institutions may feel safe for the time being, some public institutions are already dealing with threats and many others, both public and private, can see it coming. Besides, no educational institution is safe; if early encroachments succeed, restricting educational freedom will gain traction, expand, and become normalized. Freedom of expression and inquiry will be lost, as well as independent fiduciary governance.

Given the extensive resources and momentum behind ideological and political intrusion, preventing disaster requires all hands on deck. The odds of success increase if those with immediate threats respond effectively and others support their efforts. Extensive networking, coordination, strategic initiatives, and mutual assistance across higher education and with other stakeholders and threatened sectors are required.

Identifying and Dealing with Intrusion. Intrusion involves an expectation for change that is difficult or impossible to resist even though its legitimacy is questionable. New state laws or other actions that invoke trustees' fiduciary duty of obedience are the focus here, but they are not the only source of intrusion. A wealthy donor might offer to fund endowed professorships that focus on a school of thought already over-represented at the university, or a powerful legislator might demand the firing of a chancellor.

Intrusion also involves disharmony with the best interests of the institution. Healthy governing boards interact routinely with constituents who bring proposals to them, typically with good intentions. To determine whether they are facing an ideological or political intrusion, executives and board members can ask themselves questions such as the following:

- Does this proposal or requirement interfere with the institution's ability to carry out its stated mission?
- Does it violate or compromise the governing board's authority? Does it infringe on institutional autonomy?
- Does it limit academic or educational freedom, including opportunities to freely study, research, and express diverse ideas?
- Does it threaten or violate American Constitutional freedoms?
- Does it threaten the institution's ability to maintain and improve success for all students?
- Does it violate accreditation requirements?
- Does it impose financial, reputational, or other burdens?

Preventive and nonconfrontational options such as education, evasion, and negotiation can be effective even for serious threats. However, board members should also be aware of more forceful options, including outright noncompliance, injunction, or lawsuit. They need to think about what lines, if crossed, would justify invoking an escalating series of opposing actions. Under what conditions would the board seek an injunction? Is suing an intruding entity ever warranted? Although it may be difficult to consider such adverse actions, some ideas currently being discussed publicly pose a mortal threat to an institution's existence. Fiduciary trustees can fight hard, close it, or let it suffer away.

Operationally, a governing board and president should prepare in the following ways:

- Clearly understand the extent of the board's duties and authority and that of other entities that can advance or harm

the institution, such as the legislature, governor, sponsoring church, or foundation board. Clarifying roles, duties, and authority, as well as establishing agreements on dispute resolution processes, can help prevent or resolve intrusion issues.

- Foster a strong and candid relationship between the board and the president, with explicit agreements on roles and expectations in the event of ideological or political intrusion. Plan ways to help maintain mutual understanding and agreement.
- Develop contingency plans such as a small task force with a clearly defined, board-approved charge and carefully selected members. A robust internal and external communication plan should be in place, and tabletop exercises can be conducted to practice response strategies.
- Stay informed about relevant incidents elsewhere and maintain connections with state, regional, and national sources of information, support, and inspiration.

Furthermore, governing boards of public institutions with sunshine laws should address the fact that thoughtful and candid discussions almost always lead to better decisions than votes based on undisclosed, untested, and less-informed opinions. The risk of being candid in engaged public discussion is often far less than the risk of failing to halt a threatening intrusion.

Rebuilding Trust and Democracy. Leaders of all colleges and universities—even if they are not currently threatened by intrusions—have important, mission-related roles to play in securing educational freedom, independent governance, and democracy. The country needs that leadership: it can help bridge and heal divides, it is essential for mission-fulfillment in higher education, and its foreseeable loss warrants giving it first-tier status on institutional agendas.

It is concerning that one-fourth of American adults cannot name any of the five freedoms in the First Amendment, and less than half can name all three branches of government. Initiatives aimed at filling the gap in civics and government knowledge can help individuals understand that politics goes beyond partisanship and enable them to find their roles in a democratic republic with or without a party affiliation. Democracy provides educational freedom; educational institutions must provide democracy with competent, engaged citizens.

Governing board members could expand their relationships with community and state leaders. For example, the board could sponsor a public symposium series featuring thought leaders on higher education governance, academic freedom, and the democracy movement. Mobilizing alumni and donors to build trust and protect their institution from intruders could be powerful. Elite private universities and colleges, being relatively safe from threats, have a significant opportunity to leverage their national stature and networks by

Ohio State's Board of Trustees issue a statement opposing Senate Bill 83



Sheridan Hendrix
The Columbus Dispatch

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Ohio State trustees issued a statement opposing Senate Bill 83 Tuesday. David Chenoweth/Columbus Dispatch

In a rare public statement, Ohio State's Board of Trustees announced its opposition to Senate Bill 83 on Tuesday.

SB 83, also known as the Ohio Higher Education Enhancement Act, has been the subject of outcry dozens of university faculty members, leaders, and students since it was introduced in March. Opponents say the bill would radically change campus life across Ohio and could devastate the state's higher education ecosystem for years.

More: [Ohio Senate panel votes to restrict diversity training, teacher strikes at universities](#)

"We acknowledge the issues raised by this proposal but believe there are alternative solutions that will not undermine the shared governance model of universities, risk weakened academic rigor, or impose extensive and expensive new reporting mandates," the statement said. "Trustees will seek to continue to engage with the members of the legislature to address the fundamental flaws in this current version that diminish Ohio State's ability to fulfill its educational and research missions and negatively impact the state's economic future."

publicly expressing their views and participating in collective efforts to ensure institutional independence and academic freedom.

Institutional leadership provides the essential grass roots for new initiatives. But to achieve a tipping point for success, higher education institutions and beyond should collaborate to share agendas and provide mutual support. Numerous national associations are already developing initiatives to support independent governance and academic freedom. Their work could provide essential networking, coordination, strategic initiatives, and mutual assistance among institutions and with other threatened sectors.

Partnership opportunities include libraries and schools, which have also experienced intrusions. For instance, an expanding network is promoting book-banning in libraries. A well-funded national nonprofit is supporting candidates who espouse anti-democracy ideologies in public school-board elections nationwide. They have even emphasized their purpose with a quote from Hitler: "He alone, who owns the youth, gains the future." This is

nothing less than a battle for the minds of Americans.

Lastly, some people hold the perception that colleges and universities resist necessary change, leading to external imposition of change. That position does not apply to ideological or political mandates for change. These harmful intrusions are not the changes that colleges and universities should be making to enhance their societal value. Universities and colleges acknowledge the need for continuous improvement and strive to achieve it. Board members and executive leaders possess the knowledge, constructive mindset, and authority to drive change. If an institution requires change, and they all do, the governing board and president are the ones who should lead it.

United for Freedom

Standing up for freedom in higher education and standing up to those who seek to end it takes courage. Voting to protect the institution from harmful intrusion could result in the loss of funds, friends, political allies, or business associates. Governing board members need to deal with any misgivings they may have. Those who do not believe that their fiduciary duty is to advance the best interests of the institution over all else need to come to terms with their misunderstanding. Those who cannot risk potential personal consequences need to protect themselves without voting against the institution's best interests.

Higher education and democracy owe a great debt to citizen trustees, all of them generous volunteers, who work hard to understand and fulfill their role. Thank you. We need even more from you now, and if that does not work for you, just say so and step aside—we understand. But the gravity of these challenges requires leaders who can work with each other to create a unified position and strategy that will keep independent governance in the hands of fiduciary citizen trustees and academic freedom throughout the institution. How you proceed now, individually and collectively, matters more than ever.

July 4, 2026, is America's semiquincentennial. How will your college or university contribute to the joy of the occasion by ensuring institutional independence, academic freedom, and a stronger democracy? **T**



Ellen-Earle Chaffee, Ph.D., was president of Valley City State University and served nine years simultaneously as president of Mayville State University. She then spent a term as president in residence at Harvard University. Earlier, she served as academic vice-chancellor for the North Dakota University System and director of organizational studies at the National Center for Higher Education Management Systems. She was president of the Association for Institutional Research and the Association for the Study of Higher Education, as well as the public member of the American Council on Pharmaceutical Education. She is a past member of Des Moines University's board of trustees and served as board member and chair of a major health care system. Dr. Chaffee earned her masters degree and Ph.D. from Stanford University.

A NATION AT RISK



FOR DECADES, higher education as a sector has had the resilience, ingenuity, and persistence to thrive in the face of a variety of challenges. In recent years, however, higher education's core principles of academic freedom and institutional autonomy have come under sustained assault in ways that threaten our collective ability to serve the nation in producing the informed citizens essential to a civil democracy, advancing knowledge, and driving economic development. It is essential that trustees step up to protect their institutions from this assault, and to participate as rational and informed voices defending the essential value of higher education in the public discourse.



BY DAVID MAXWELL

In a recent conversation with a group of colleagues who have been higher education professionals (professors, presidents, consultants, and association senior staff) for as long as I have (over half a century), one person noted that over the decades there have been episodic paroxysms of cries of “the sky is falling”—that higher education is in decline, the barbarians are at the gate, and our future is grim if we don’t dramatically change what we are doing and the ways in which we do it.

Clay Christiansen even warned us in 2011 that thanks to “disruptive innovation,” (as in Massively Open Online Courses—MOOCs) more than half the colleges and universities in the United States would be out of business in 10 to 15 years (a claim that he repeated in 2013 and 2017).¹ Stretching the boundaries of credibility, Sebastian Thrun predicted in a *Wired* magazine interview in 2012 that within 50 years there would be just 10 universities worldwide,² though to his credit he eventually retreated from that prediction as reality intruded. And there is a whole industry that for decades has indulged in the at-least-annual publication of a blockbuster book informing us that higher education is failing the nation—some overtly political (cf. Dinesh D’Souza),³ some ideological (cf. Allan Bloom)⁴ and many thoughtful and offering helpful and potentially productive solutions to the very real problems that they have identified (cf. Kevin Carey;⁵ Richard H. Hersh & John Merrow eds.;⁶ Derek Bok;⁷ Arthur Levine & Scott Van Pelt;⁸ Brian Rosenberg).⁹

Of course, there’s no question that higher education in the 2020s is facing a series of daunting challenges; Richard Novak, in his insightful AGB blog post, identifies several: “Falling enrollments, changing demographics, the shift in student interests away from the liberal arts, and the lingering effects of COVID-19 on student, staff, and faculty mental health.”¹⁰

A comprehensive list of challenges is, of course, much longer, including (but by no means limited to): cost, access, and affordability; the sustainability of the financial model—particularly for the majority of private institutions trapped in the “high sticker price/high discount” paradigm and public institutions facing dramatic declines in enrollment; the shift in public policy on higher education as a public good to higher education as a private good, with the consequential significant reduction in state support for higher education institutions (although that trend is slowly reversing in some states); and ensuring that our campuses are hospitable, welcoming, and supportive to an increasingly diverse student population—and equally hospitable, welcoming, and supportive to

a diverse range of viewpoints, perspectives, and political identities. And in the aftermath of the horrific events of October 7, 2023, campuses are struggling to define—and articulate—their commitment to academic freedom, free speech, and the right to assembly and protest while at the same time identifying those behaviors that are antithetical to the institution’s commitment to civil discourse and prevention of abusive behaviors.

Given the history of higher education in the 20th century, and the sector’s robust and usually successful responses to the threats of impending meteorological doom, there is every reason to be confident that we will find ways to confront these challenges and others, to manage them, and to emerge stronger, more resilient, and more relevant as a result.

But as Novak rightly points out, there are two new, more recent threats to higher education that, I would argue, justify the view that while the sky may not be falling yet, dark storm clouds are gathering and the ceiling is getting lower day by day. The first of these threats is the dramatic decline in public confidence in higher education. A Gallup Poll released in 2023 revealed that the percentage of respondents who indicated a “great deal” or “quite a lot” of confidence in higher education declined from 57 percent in 2015 to 35 percent in 2023; the percentage who indicated “very little” confidence increased from 9 percent in 2015 to 22 percent in 2023.¹¹

I would suggest that there are interrelated reasons for this dramatic—and deeply troubling—change in public attitudes. The first is that as of 2020 (the latest IPEDS data), there were more than 5,000 colleges and universities in the United States with nearly four million employees.¹² Given these huge numbers, anyone looking to criticize higher education for virtually any purpose should have no trouble finding at least several examples to validate their claim. Higher education has a long history of demonstrating with disturbing frequency that very smart people can manage to do very dumb and embarrassing—and even illegal—things (of course, that phenomenon is by no means unique to the higher education sector).

TAKEAWAYS

- The health and vitality of the higher education sector is essential to the fabric of a civil democracy; to a healthy, growing, and equitable economy; and to our collective well-being as a nation.
- Institutional autonomy and academic freedom are essential to the ability of higher education to fulfill its civic mission.
- Institutional autonomy and academic freedom are under sustained assault in ways that undermine higher education's ability to serve the country.
- College, university, system, and foundation trustees have a moral, civic, and fiduciary responsibility to protect their institutions from political interference that threatens institutional autonomy and academic freedom, and thus threatens the higher education community's ability to serve the country in ways that are essential to our health and vitality as a nation.



The problem, of course, is that most critics then use those few unfortunate examples to paint the entire sector with a broad—and disparaging—brush.

This problem is exacerbated by the fact that these often-sensationalized critiques have come to dominate both the media and the public policy discourse, and that to some extent is our fault, i.e., that of the higher education community: we have some time ago lost our voice in the public discourse, leaving a void to be exploited often by those who would criticize us for their own financial (e.g., book royalties and lecture fees) and/or political purposes. I wrote a piece for *Inside Higher Ed* 11 years ago that noted:

... if we focus solely on deflating myths and countering the sensationalized rhetoric of the media, we are reinforcing the public's focus on negative issues ...

It is time for us, as leaders in higher education, to play offense as well as defense. We must find ways to collectively guide the national discourse back to a position of truth—of fact-based information that is relevant to the needs and aspirations of prospective students and their families ...

I do want to recognize that I am implicitly challenging us—the higher education community—to do something that historically we haven't been very good at ... We have a tendency—as every profession does—to talk about what we do in a jargon-filled tribal dialect (filled with unspoken assumptions) that is impenetrable to “outsiders.” We need not only to articulate the core narrative about the value and purpose of higher education, but to do so in a language that those who are not us find useful, meaningful, and compelling.¹³

To make matters worse, the rhetorical vacuum that we have collectively allowed to develop over the past few decades is increasingly filled by extremist politicians at local, state, and national levels who have

chosen to inflame their base and advance their own careers by loudly characterizing America's colleges and universities as cauldrons of socialist, “woke,” anti-conservative, anti-American indoctrination, faculty members who are intolerant of viewpoints that don't coincide with their own, suppressing freedom of speech, and engaged in corrupting the minds of the country's youth.

The second threat that Novak identifies is “political and ideological intrusion is rising”:¹⁴ “We know that the majority of unjustifiable, undue, and outside (*interference*) is coming from governors and legislators in conservative states, with Florida proudly the leader.”¹⁵

And, of course, things have become decidedly worse at the federal level, as members of Congress are summoning higher education leaders to committee meetings that have been vaguely reminiscent of the Stalinist show trials, appearing to have no real constructive purpose other than to advance the stature of members in the eyes of their constituents.

Not surprisingly, the issue of the increasing interference of politics and politicians into the business of higher education is attracting a great deal of attention, often with concrete suggestions on effective ways in which to combat this phenomenon. And this, I write somewhat reluctantly, is where I think the sky really *is* falling—that for the first time in my more than half century in higher education, I believe that the ability of the higher education community to fulfill our multi-faceted role in a civil democracy is being undermined in ways from which it may take decades to recover. Thus, the title of this essay, “A Nation at Risk,” (which, some may recognize, I borrowed from the 1983 report of the United States National Commission on Excellence in Education). My belief that the nation is genuinely at risk from this phenomenon (as well as from a few others that are not relevant to this essay) is grounded in some fundamental principles:

Principle #1: *The health and vitality of the higher education sector is essential to the fabric of a civil democracy; to a healthy, growing, and equitable economy; and to our collective well-being as a nation.* As Tara D. Sonenshine and I noted in an article in *The Hill* in 2022:

For centuries, America's colleges and universities have played a central role in preparing citizens for participation in civil society, helping students become independent thinkers, analyze problems and identify creative solutions, and to understand that American democracy was built on the importance of a plurality of political philosophies and ideologies.¹⁶

As Jill Derby points out in her thoughtful *Trusteeship* essay (July/August, 2023), “Send in the Guardians,”

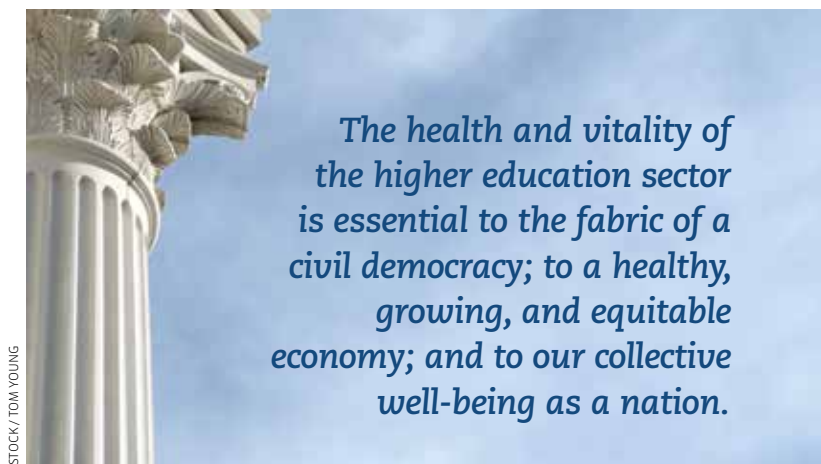
The education of citizens to make reasoned choices is a vital element of a democratic society. Even more important than the personal advantage an education confers is its value to a civil society. Democracy cannot work without an educated citizenry to contribute to reasoned discourse and make informed electoral decisions, especially amid the din of social media. The capacity to think critically and distinguish fact from fiction is all-the-more challenging and important today.¹⁷

Historically, colleges and universities have been the most powerful engine of our economy: preparing graduates with intellectual skills and abilities, as well as technical knowledge, to be productive members of the workforce; conducting the research that results in the development of products and strategies that are transferable to the private sector.

Principle #2: *Institutional autonomy and academic freedom are essential to the ability of higher education to fulfill its civic mission.* Colleges and universities must be free to set their own course, to determine the ways in which they can most effectively fulfill their mission, and to determine what is taught in the context of that mission.¹⁸

The “1940 Statement of Principles on Academic Freedom and Tenure” by the American Association of University Professors (AAUP) identifies the essential tenets of academic freedom:

- Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.
- Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher and of the student to freedom in learning.
- Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.¹⁹



The AGB Board of Directors’ Statement on Influences Impacting Governing Board Independence and Leadership notes:

Academic freedom is the foundation for learning at American colleges and universities, providing faculty members and students the ability to learn, debate, and express ideas without censorship, based on open access to facts, expertise, and alternative perspectives. Academic freedom is essential for innovation that depends on juxtaposing different ideas, challenging established norms, accessing relevant information from the best sources, and following an important question to its deepest understanding.²⁰

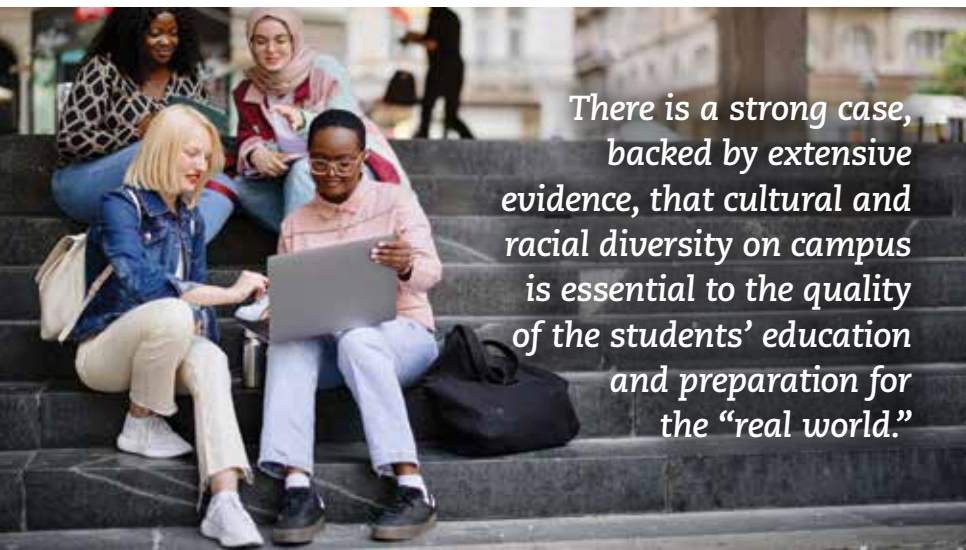
Institutional autonomy is essential in protecting academic freedom, allowing institutions to pursue inquiry, and disseminate knowledge based on evidence, truth, and peer review without external influence. It ensures the freedom to be creative in the pursuit of knowledge, supporting an environment conducive to innovation and progress. Further, institutional autonomy is a necessary condition for colleges and universities to fulfill their missions, maintaining the highest levels of education and research. Needless to say, institutional autonomy is not absolute—colleges and universities are highly regulated and must hold themselves accountable to their boards, to their accreditors, to the state that holds their license or charter, and—ultimately—to the public trust.

Principle #3: *Institutional autonomy and academic freedom are under sustained assault in ways that undermine higher education’s ability to serve the country.* In January 2024, AAUP issued the “Statement on Political Interference in Higher Education,”²¹ providing in exquisite—and discouraging—detail the myriad ways in which politicians at the state and Federal levels have launched what is for the most part an ultra-conservative assault on the higher education sector.

The AAUP “Statement” divides the political intrusion into institutional autonomy and academic freedom into the following categories:

1. *Legislation Limiting Academic Freedom*: Bills have been introduced in states like Florida, North Carolina, Tennessee, and Texas that seek to restrict teaching and research on race and gender. These bills are often referred to as “divisive concepts” bills and have been criticized for marginalizing and even criminalizing certain academic content.²²
2. *Intellectual and Viewpoint Diversity Requirements*: Some states have proposed or enacted laws requiring faculty to complete intellectual and viewpoint diversity statements and surveys. This has raised concerns about the potential for political litmus tests and the undermining of academic freedom.²³
3. *Funding Cuts for DEI Initiatives*: Efforts to cut funding for diversity, equity, and inclusion (DEI) programs have been seen as a way to weaken initiatives that support underrepresented groups in higher education.²⁴
4. *Weakening of Faculty Rights*: Efforts to abolish tenure, place restrictions on collective bargaining, and put political appointees in charge of hiring decisions have been reported. These moves can potentially erode the autonomy and job security of academic staff.²⁵
5. *Challenges to Accreditation*: Politicians have questioned the legitimacy of higher education accrediting bodies, which—perhaps ironically given the circumstances—serve as a check on political interference and ensure the quality and continuous improvement of academic programs. Such efforts to interfere with the country’s robust accreditation processes of course threaten *all* institutions—both public and private.²⁶

AGB Interim President and CEO Ellen Chaffee, in her powerful *Trusteeship* article, “United We Stand: An Urgent Call for Leadership,” summarizes the landscape as follows:



There is a strong case, backed by extensive evidence, that cultural and racial diversity on campus is essential to the quality of the students’ education and preparation for the “real world.”

Ideological or political intrusions that prevent or discourage governing boards and presidents from doing their job include co-opting the decision to select or dismiss a president, limiting access to educational materials, requiring the use of government-selected educational materials, prescribing how people may or may not interact with each other, prohibiting discussion of controversial topics, and tampering with personnel policies²⁷

Chaffee identifies four general categories of what she labels “the most pernicious ideological or political intrusions to date:

1. They prevent a college or university from fulfilling its mission.
2. They prevent institutional governing boards from doing their fiduciary duty.
3. They use higher education institutions for inappropriate or contrary purposes without regard for the institutional consequences.
4. They undermine colleges and universities by making false allegations about them.²⁸

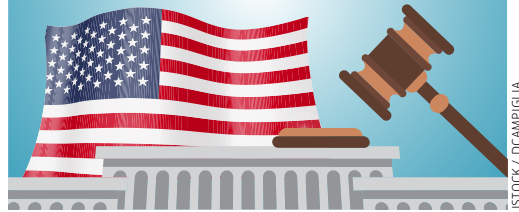
In a 2023 document developed jointly by the American Council on Education and PEN America, *Making the Case for Academic Freedom and Institutional Autonomy in a Challenging Political Environment: A Resource Guide*, they noted regarding the hundreds of bills introduced in state legislature since 2021:

Their goals are clear: to chill academic and educational discussions and impose government dictates on teaching and learning, sometimes with the threat of punishment that includes fines, loss of state funding, civil liability, dissolution of school districts, termination, or even criminal charges against teachers. There was more than a 250 percent increase in such bills in 2022 compared with 2021 . . .²⁹

Collectively, and increasingly on a massive scale, these ideologically-driven efforts severely interfere with and undermine higher education institutions’ ability to meet the mandates of their missions, prepare students to live out their personal dreams, and to fulfill their roles as engines of democracy, economic development, and the advancement of knowledge—they are literally *putting the nation at risk*.

The widespread assault on initiatives, programs, and positions related to diversity, equity, and inclusion (DEI) in particular is not only insidious, but short-sighted, morally and educationally indefensible, and dismissive of the demographic and economic realities of the country. I believe that the vast majority of those of us in higher

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and foundation trustees have
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education acknowledge that there is a moral imperative to ensure access for historically underserved populations—a college education is the most effective pipeline to escape the social and economic constraints that have been placed on many of them historically by local, state, and federal policies and practices.

But there are compelling practical reasons for a commitment to DEI initiatives as well. There is a strong case, backed by extensive evidence, that cultural and racial diversity on campus is essential to the quality of the students' education and preparation for the "real world." A 2012 Board of Directors Statement from the American Council on Education noted:

Diversity enriches the educational experience. We learn from those whose experiences, beliefs, and perspectives are different from our own, and these lessons can be taught best in a richly diverse intellectual and social environment.

It [diversity] promotes personal growth and a healthy society. Diversity challenges stereotyped preconceptions; it encourages critical thinking; and it helps students learn to communicate effectively with people of varied backgrounds.

It [diversity] strengthens communities and the workplace. Education within a diverse setting prepares students to become good citizens in an increasingly complex, pluralistic society; it fosters mutual respect and teamwork; and it helps build communities whose members are judged by the quality of their character and their contributions.

It [diversity] enhances America's economic competitiveness. Sustaining the nation's prosperity in the 21st century requires us to make effective use of the talents and abilities of all our citizens, in work settings that bring together individuals from diverse backgrounds and cultures. When presented with opportunities to critically explore these experiences, students can become more accepting, tolerant, and thoughtful members of society.³⁰

And then there is the simple and overtly practical matter of demographics. More than half of the students currently in the K–12 pipeline are Black, Indigenous, People of Color (BIPOC).³¹ Campus DEI efforts are focused, in great part, on ensuring that their institutions are not only accessible (financially and otherwise) to a diverse student population but welcoming to and supportive of those students whom they enroll. Given the demographics of the pipeline, if those efforts are not consistently successful, today's enrollment (and revenue) challenges will pale in comparison, and

higher education's ability to prepare the workforce essential to U.S. economic health and competitiveness in the future will be significantly diminished.

It is important to note that while ideologically driven interference in institutional autonomy and academic freedom has thus far played out primarily in public institutions, private (independent) colleges and universities are by no means immune to this threat. The more sensational examples, of course, are the highly publicized summons to elite university presidents to testify in front of Congressional committees.

The persistent attempts to meddle with higher education's accreditation structure, which relies on peer review by experienced and trained experts, affect independent institutions as much as public institutions. But private institutions can also face legislative pressure at the state level to make curricular or programmatic changes to avoid losing state funding or tax-exempt status. An Iowa legislator recently raised the possibility of limiting the Iowa Tuition Grant (need-based grants awarded to Iowa residents attending one of the state's private colleges and universities) to students in majors or programs directly related to identified workforce needs—a move that would impede the ability of Iowa students to major in liberal arts disciplines, with a devastating effect on institutions' enrollments and revenues.³² Fortunately, thanks in part to a coordinated effort on the part of the state's private institution presidents, that short-sighted idea has not progressed beyond several anxiety-inducing conversations.

Principle #4: *College, university, system, and foundation trustees have a moral, civic, and fiduciary responsibility to protect their institutions from political interference that threatens institutional autonomy and academic freedom, and thus threatens the higher education community's ability to serve the country in ways that are essential to our health and vitality as a nation.* Intended to be a clarion call to the trustees of America's colleges, universities, and foundations: the essential conditions of higher education's ability to serve its multi-faceted and essential roles in this country are under severe threat, and it is time for trustees—personally and collectively—to step up and do everything in their power to ensure the long-term health, vitality, and relevance of individual institutions and the sector as a whole.

As Chaffee noted:

All higher education boards and presidents have an opportunity to help restore reason, truth and American's democratic republic by defending against intrusion and working for institutional independence, academic freedom, and democracy.³³



We need the public at large to understand that our health as a civil democracy, our economic vitality, and our role as a global beacon of democracy are in great part dependent on America's colleges and universities.

AGB's *An Anatomy of Good Governance in Higher Education* notes that "The governing board of a college or university is responsible for . . . ensuring educational quality, preserving institutional autonomy, and safeguarding academic freedom."³⁴

In *Principles of Trusteeship*, AGB emphasizes that:

Good governance and sound stewardship include ensuring the long-term sustainability of the enterprise. You are not only responsible for financial resources and oversight, but also for institutional values, quality and reputation.³⁵

The *AGB Board of Directors' Statement on Influences Impacting Governing Board Independence and Leadership* offers extremely valuable and practical guidance on the ways in which boards can fulfill this mandate, including an emphasis on the following principles:

1. Preserve institutional independence and autonomy.
2. Demonstrate board independence to govern as established in charter, state law, or constitution.
3. Keep academic freedom central and be the standard-bearer for the due-process protection of faculty, staff, and students.
4. Assure institutional accountability to the public interest.³⁶

It is important to acknowledge that this challenge to board members to do everything in their power to protect their institutions—and higher education as a whole—from this plague of interference is not without risk, particularly for trustees of public institutions who are appointed by legislatures and/or governors with the increasingly explicit expectation of carrying out a political agenda. But ultimately, board members hold an institution in trust *for the public*, not for the political aspirations of appointed/elected officials: states provide funding for public institutions and private institutions are tax exempt precisely because they are deemed to be in the public interest, because what they do and how they do it, as defined by their missions, are essential to our health and vitality as a nation. Meeting this challenge head on is not for the faint of heart, and I recognize that for some stepping up to this challenge may well put their membership on a board at risk—but our collective failure to do so as a national community of trustees will be catastrophic.

Chaffee, in addition to providing some perceptive guidance for boards on dealing with political intrusion, while recognizing the precariousness for trustees in standing up to political interference, reinforces the need for boldness and bravery, and bluntly states the consequences of inaction:

Preventive and nonconfrontational options such as education, evasion, and negotiation can be effective even for serious threats. However, board members should also be aware of more forceful options, including outright noncompliance, injunction, or a lawsuit. They need to think about what lines, if crossed, would justify invoking an escalating series of opposing actions. Under what conditions would the board seek an injunction? Is suing an intruding entity ever warranted? Although it may be difficult to consider such adverse actions, some ideas currently being discussed publicly pose a mortal threat to an institution's existence. Fiduciary trustees can

fight hard, close it, or let it suffer away.³⁷

Last year, the Ohio State Board of Trustees demonstrated that it can be done, announcing publicly their opposition to Senate Bill 83 which, among other things, would have ended mandatory diversity trainings, banned university partnerships with Chinese institutions, prohibited faculty unions from striking during contract negotiations and—perhaps most frightening—created new evaluations for students to rate their professors on how well they removed bias from their classrooms. The bill would also require college students to take certain American history courses and would include "bias" in tenure considerations. All in all, a direct assault on the fundamental principles of institutional autonomy and academic freedom. Despite this brave opposition, the bill was passed (with some modifications that reflected the objections voiced by the board and members of the public) by the Ohio Senate, but has not yet been passed by the House, and its fate is still uncertain.

There are several publications that offer helpful guidance to trustees as they fulfill their responsibility to protect their institutions from undue influence. The *AGB Board of Directors Statement* provides specific direction including:

1. Engage in thoughtful discussion, decision-making, and policy-making to build shared understanding of the core concepts and values that underlie exemplary governance.
2. Make structural and procedural changes that reinforce the governing board's fiduciary duties and authority.
3. Listen, learn, and lead. Recognize that all governing boards and their organizations need to adapt and improve.
4. Recognize that fiduciary duty belongs to each member of the board and to board actions.
5. Address inappropriate influences that interfere with the governing board's independence, authority, or fiduciary commitment to the long-term success of the institution or foundation.³⁸

The ACE/PEN America document provides quite specific, and very helpful, information for trustees and institutional leaders that

should be required reading, including: “communication tools for tackling proposed restrictions on academic freedom,” “background points” to assist trustees and campus leaders in conversations with elected officials and other policymakers; and guidance on speaking to the media and communicating with institutional stakeholders.³⁹

In closing, however, I would emphasize that it is vitally important to expand this issue of trustee responsibility beyond the specifics of their individual institutions. As I noted earlier, we as the higher education community have lost our voice in the public discourse, leaving an all-too-large vacuum for others to fill with inaccurate and ideologically colored claims for their own purposes, often with ill will and destructive intent. I really do wonder if all of these political intrusions into higher education would be so welcomed, and often so successful, if they did not find such receptive audiences among those who have only been exposed to one distorted narrative—that America’s colleges and universities are centers of left-wing indoctrination, intolerance of other viewpoints, Marxist ideologies, and the denigration of this country’s history (and this is a somewhat generous description of that narrative, omitting some of the more disturbing racist and nationalist elements).

We need to find ways to reclaim our voice in the public arena,

ways to communicate clearly, effectively, and convincingly what it is we do, why we do it this way, and why what we do—teaching, research and discovery, and community engagement—is essential to the health of the nation (and yes, why it is so expensive. . .). We need the public at large to understand that our health as a civil democracy, our economic vitality, and our role as a global beacon of democracy are in great part dependent on America’s colleges and universities. And it is to this end that I urge trustees to use their voices—in conversations, in presentations, in the media, and in political arenas—to defend not just their own institutions, but the collective importance of institutional autonomy and academic freedom to higher education’s ability to serve this nation and its people. Trustees by definition tend to be people who have stature in their communities and in their professions—it is incumbent upon them to exploit that stature in service to the integrity of higher education in America. ■



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20. *AGB Board of Directors Statement on Influences Impacting Governing Board Independence and Leadership* (Washington, DC: AGB, 2023), p. 2.

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22. PEN America, a leading voice in opposing the assault on freedom of speech and academic freedom, in February 2024 identified six legislative bills on the state level that would censor speech: <https://pen.org/six-dangerous-bills-that-would-censor-speech-on-campus-across-the-country/>.

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24. *The Chronicle of Higher Education* has been tracking legislation that would prohibit colleges from having DEI offices or staff; ban mandatory diversity training and forbid institutions to use diversity statements in hiring and promotion. As of March 8, 2024, 81 such bills have been introduced, 8 have final legislative approval, 8 have become law and 29 have been tabled, failed to pass, or vetoed: <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts>.

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AUTHOR'S NOTE:

My recent book with Joyce Jacobsen entitled *All the Campus Lawyers: Litigation, Regulation, and the New Era of Higher Education* (Harvard, 2024) tells the story of the current and trending legal controversies embroiling American higher education and their evolution over the last several years. This piece incorporates excerpts, insights, and adaptations from *All the Campus Lawyers* and my other work to accomplish three goals: (1) raise awareness for fiduciaries in and around the leading legal issues and headwinds in the sector today, (2) frame for trustees the strategic and operational questions institutions are faced with in navigating these headwinds, and (3) get trustees thinking about the pressure points between the current legal and regulatory strictures and trends and the core mission of higher education.

Due to the changing regulatory and litigious environment, there has been a marked increase in the number of lawyers employed on campuses. Regardless of an institution's chosen solution for meeting legal needs, it is essential that legal counsel have a deep understanding of the higher education sector.

YOUR CAMPUS

BY LOU GUARD

On almost a daily basis the higher education news is filled with stories related to legal complexities in some form or other on campuses nationwide. Nearly every morning trustees, presidents, and administrators review the higher education news to read about a new high-profile lawsuit, a debate over free speech, a contract dispute with a president or coach, a governance squabble, a set of new regulations or guidance, or a new proposed legislation that would require institutional compliance.

The Current Environment: Litigation, Regulation, Public Scrutiny

Before reviewing specific substantive legal and regulatory trends campuses are facing, it is useful to consider some macro trends as they relate to the higher education sector more broadly. These trends provide important insight into the impact of the specific legal and regulatory shifts I will discuss by subject area, and they are interrelated. Specifically worth pointing out are the trends in public attitudes toward higher education, volume of litigation, and shifting regulation.

Recent survey data reveal a concerning trend: that public confidence in higher education is on the decline. *Gallup* reported in

2023 that overall confidence in higher education is down to 36 percent from 48 percent in 2018.¹ In 2015 public confidence in higher education was as high as 57 percent. Major headlines also regularly assail both the value and virtue of college. A 2023 *New York Times* headline proclaimed: “Americans are Losing Faith in the Value of College.”² A recent piece in the *Wall Street Journal* touts a billionaire’s plan to offer compensation to those willing to skip college entirely.³ Some commentators cite rising tuition as contributing to the public opinion struggles, insinuating a relationship between increased costs of attendance and the perception of dubious outcomes that is too stark to ignore completely.⁴ In all, Americans appear less confident in higher education as a sector and more wary of its rising cost. It is no surprise then to see an increased propensity for students, parents, employees, and other stakeholders to litigate. Nor is it a surprise to note lawmakers are more eager to step in and regulate. It is against this backdrop of public skepticism and rising costs that the litigation and regulatory trends are best observed.

It is no exaggeration to say that in this first part of the 21st century, the scale and impact of the legal issues bearing down on institutions and their campuses have reached unprecedented levels. As illustrated by Figure 1, a basic search of the two main legal case databases revealed that the number of cases in these databases that involve a college or university as a party has increased steadily over the last hundred or so years. Other scholars have also noted empirical trends showing that lawsuits involving key federal statutes such as Titles VI, VII, IX, and the Americans with Disabilities Act (ADA)—statutes that figure prominently in the workings of higher education—have been on the rise since the 1960s.⁵ Indeed, observers often cite the 1960s as the advent of higher education’s broader involvement with the courts and government regulation. But in the early 2000s higher education would begin to see an upward trend in litigation unlike any previously seen throughout the history of the

TAKEAWAYS

- The scale and impact of the legal issues bearing down on institutions and their campuses have reached unprecedented levels. An upward trend toward increased litigation began in the early 2000s. This trend has come to define operations on campuses as it relates to preparing for and managing litigation as well as overall litigation risk awareness.
- Recent legislation that directly and indirectly impacts higher education has been enacted, proposed, or seriously considered at both state and federal levels including a broad array of topics including transcript ransoming, legacy admissions, weapons on campus, restricting spending on diversity, equity, and inclusion (DEI) initiatives, banning DEI curricula, taxing university endowments, and various issues related to athletics.
- There are more lawyers on campuses than ever. Due to the changing regulatory and litigious environment, there has been a marked increase in the number of lawyers employed on campuses as well as the number of lawyers and support staff who spend all or most of their professional time working on academic, legal, and regulatory matters.
- Regardless of an institution's chosen solution for meeting legal needs, it is essential that legal counsel have a deep understanding of the higher education sector. Counsel to colleges and universities must appreciate how each constituent part—student, parent, faculty, staff, alumni, local community—feeds into the whole. They must also understand how quasilegal concepts such as shared governance, academic freedom, and academic deference play a role, must be able to explain these concepts to fiduciaries, and must understand institutional values.

sector. This trend has come to define operations on campuses as it relates to preparing for and managing litigation as well as overall litigation risk awareness.

The regulatory and legislative trends are also noteworthy and are likely familiar to fiduciaries. The last decade or two have brought increased involvement from the executive branch in the form of executive orders, which have seemingly now become commonplace for higher education. These executive orders influence not only direct action on the part of institutions but also compel important action on the part of key agencies regulating higher education by requiring or influencing further regulation. Significant executive orders for higher education from recent presidential administrations include those related to issues of campus free speech, educational equity, gender identity and sexual orientation, antisemitism, and immigration.

Legislators at both the federal level and across traditionally red and blue state lines have pursued significant pieces of legislation compelling action or compliance from institutions of higher education. Recent legislation that directly and indirectly impacts higher education has been enacted, proposed, or seriously considered at both state and federal levels includes a broad array of topics including transcript ransoming, legacy admissions, weapons on campus, restricting spending on diversity, equity, and inclusion (DEI) initiatives, banning DEI curricula, taxing university endowments, and various issues related to athletics. Given the cost of higher education and public skepticism, it is no surprise that legislatures seem more likely to take a hands-on approach in the sector despite many decades spent doing the opposite.

The sections that follow discuss trending legal controversies by subject area that should be known to trustees and understood in their capacity as fiduciaries.

Civil Rights on Campus

At the top of the list of campus civil rights concerns over the past 10 to 15 years is Title IX. From its passage in 1972, the

enforcement of Title IX's prohibition of discrimination on the basis of sex has evolved through a series of detailed guidance documents and regulatory shifts. This has culminated most recently in new regulations released in April 2024. Title IX litigation has also evolved significantly, with courts disagreeing over key aspects of the legal standards related to lawsuits under the statute. Counsel for colleges and universities are often involved in drafting policy changes, giving process advice, or managing litigation.

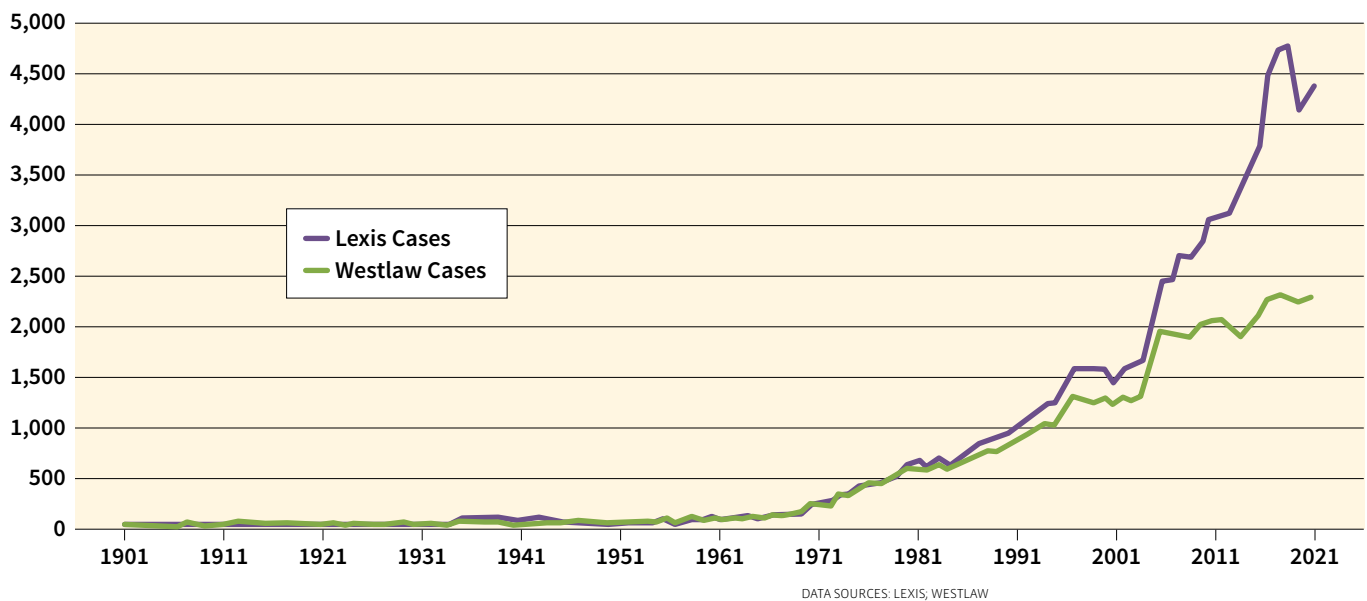
Other civil rights laws have continued to gain significant prominence on campus and also require the sustained attention of general counsel. Title VI and its prohibition against discrimination on the basis of race, color, or national origin (including shared ancestry) in programs receiving federal funds is also important on college campuses. Sadly, instances of antisemitism and islamophobia on campuses nationwide have brought recent attention to this statute. The recent investigation and findings of the Department of Education related to antisemitic incidents at the University of Vermont are an example.

Issues related to the ADA have continued to increase on campuses in recent years. The breadth of the ADA on campus is considerable, and its reach often extends to issues including the use of service animals, academic accommodations, and physical campus accessibility. Involuntary separations of students also implicate ADA considerations and can be an area of focus for institutional counsel supporting student affairs and campus life professionals. Like other employers, the higher education sector is also bound by Title VII, which prohibits discrimination in employment on the basis of several protected classes.

Free Speech and Academic Freedom

Free speech controversies have been pervasive on campuses for some time but have continued to accelerate and evolve of late. The recent unrest on campuses over the ongoing war in Gaza have brought to the fore key tensions at the intersection of the

FIGURE 1: Cases in Lexis and Westlaw with a University or College as Party, 1900–2021



values of free speech principles and academic freedom. Moreover, campuses have been challenged by novel fact patterns that continue to blur the lines between protected speech and expression and conduct that may constitute actionable harassment. The Department of Education has made clear that conduct that might be protected in a strict First Amendment sense can also contribute to a hostile environment and require action by the institution.⁷ Institutional leaders have an obligation to investigate and take corrective action where they knew or should have known of a hostile environment or harassment. Protest techniques such as those employed by demonstrators establishing encampments across college and university campuses in 2024 have challenged the effectiveness, limits, and overall utility of campus policies around time, place, and manner for demonstrations and protest.

Campus counsels are often called on by administrators and fiduciaries as thought partners for understanding the legalities and formulating responses to specific speech or expression issues. Legal counsel should be versed in the literature, history, and institutional policies on academic freedom and understand its relationship to free speech protections as a legal matter. In another recent example, the case of *Meriwether v. Hartop* became the focus of the higher education press when the Sixth Circuit Court of Appeals, relying in part on academic freedom constructs, upheld the right of the professor in that case to refuse to use preferred pronouns. The legal and doctrinal principles that apply in such a scenario are highly nuanced. While most cases like this do not often proceed this far in litigation, legal counsel are often called upon to provide guidance to senior administration in such scenarios and advise on overall strategy in light of the law, institutional policy, and values.

Student Life

The rising cost of college has arguably led to greater expectations from the students and parents footing the bill. It has raised the stakes for institutions seeking to deliver on their promises to students. It is unsurprising then that almost all facets of student life on campus have now become legal flash points in some respect:

- College athletics have become more complex. This is especially true since the Supreme Court's decision in *NCAA v. Alston*, which opened the door to legal challenges related to the treatment of athletes as employees, unionization of student athletes (and student employees), and complexities related to name, image, and likeness.
- Student mental health concerns have raised novel questions of liability for institutions of higher education. Courts have recently grappled with questions of liability for institutions when they fail to act—or are alleged to have acted insufficiently—in and around issues of student suicide.
- Greek life has continued to present thorny liability questions for campuses. Professionals in this area are regularly faced with questions about whether certain interventions or protocols are too intrusive and therefore might give rise to legal obligations or duties; or, too hands off and yet still likely to trigger liability.
- Study abroad and other off-campus study programs present unique institutional risk. In a changing geopolitical landscape, institutions are faced with serious questions over which programs to allow or not allow. And recent cases have looked at institutional duties that have been created or assumed in the study abroad context.

When it comes to students and campuses another global observation must be stated: courts and juries seem less likely to be deferential to higher education. Doctrinally, courts have evolved from traditional notions of either *in loco parentis*—and its implied trust that institutions always make the right decision—to complete non-involvement, taking a more skeptical and monitoring approach to higher education institutions' interactions with students. Deference, both as a legal doctrinal matter and as it relates to the court of public opinion, seems to be waning. Courts are more likely to find that an institution has a duty of care in a particular situation and thus allow cases against institutions to proceed beyond initial motions to dismiss.

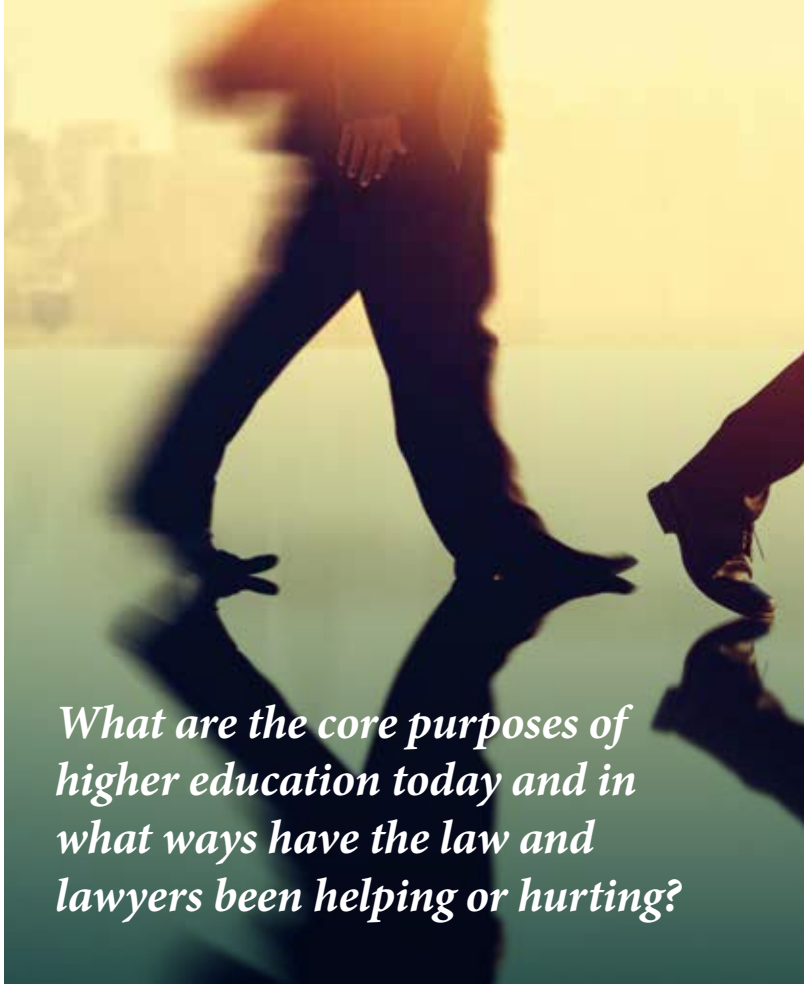
Still More Issues . . .

There are a multitude of other rapidly evolving legal controversies facing colleges and universities that are deserving of the attention and inquiry of fiduciaries. These include issues related to college admissions, including those stemming from *Students for Fair Admissions, Inc. v. Harvard*, issues related to institutional advancement and giving, such as gift acceptance or naming issues, and legal issues arising with local municipalities and communities, such as real estate issues or payment in lieu of taxes (PILOT) arrangements. Governance matters and controversies—ranging from shared governance disagreements to tenure denials to board member misbehavior—are also areas where general counsel generally partners with the governing boards or senior leadership to develop actions and responses and are areas where fiduciaries should be fluent. Relatedly, demographic and economic shifts in the higher education sector have spurred innovative and novel ventures that often require legal attention. Mergers, acquisitions, closures, shared service arrangements, consortial contracting, and group purchasing are all evolving areas for campus lawyers at institutions of all shapes and sizes.

Operational Considerations

All of these trends and headwinds have led to an increase in the number of lawyers employed on campuses as well as the number of lawyers and support staff who spend all or most of their professional time working on academic, legal, and regulatory matters. Data compiled by the *Chronicle of Higher Education* between 2010 and 2019 show steady increases in the number of listings for office of general counsel jobs during that period, with the number of job ads posted more than tripling between 2010 and 2018. The National Association of College and University Attorneys (NACUA)—the primary professional association for lawyers serving higher education—has grown significantly since its inception in the 1960s, with considerable recent growth. In 1985 the total number of members of NACUA was 2,400. By 1997, that number increased modestly to 2,762. By 2022, the total number of members of NACUA was 5,050, of which 3,849 were exclusively in-house counsel.

In light of the increased legal pressures, regulatory burdens, and public and legislative scrutiny facing the higher education sector, attention has also focused directly on those engaged to help advise



What are the core purposes of higher education today and in what ways have the law and lawyers been helping or hurting?

on and manage these issues: the campus lawyers themselves. From claims that lawyers can have an outsized role in institutional operations⁸ to claims that they can have a domineering influence over institutional communication strategies,⁹ conversation has resultingly centered around the so-called proper role of campus counsel in the higher education sector. With these issues in the spotlight, it is an opportune time for trustees and senior leadership to vector in on how conversations regarding the use of campus counsel might impact their campuses.

Does your institution have a general counsel and if not, should it? Are there alternative arrangements with an outside law firm that could result in your institution receiving closer attention and better advice and stewardship? Is it simply time to reevaluate your institution's use of legal counsel in light of the new legal and economic realities for institutions? How does insurance coverage play a role in institutional counsel and who on your campus oversees processes for new litigation? Both in-house and outsourced solutions could make sense for your institution, and it is important to examine fully all options.

Regardless of an institution's chosen solution for meeting legal needs, it is essential that legal counsel have a deep understanding of the higher education sector. One long-serving general counsel has called the role an integrator of law, strategy, policy, and values. It is a common refrain for those who practice higher education law to remark on the sheer breadth of their area of practice. From employment to tax, from tort and liability issues to technology transfer and intellectual property, the array of legal issues



impacting a typical institution of higher education is vast. Moreover, the unique nature of the corporate organisms that are colleges and universities require an understanding of not only a broad array of substantive legal issues but also an innate understanding of the constituent parts of the organization. Counsel to colleges and universities must appreciate how each constituent part—student, parent, faculty, staff, alumni, local community—feeds into the whole. In so doing, they must also understand how quasilegal concepts such as shared governance, academic freedom, and academic deference bear on the issues at hand and be able to explain these concepts to fiduciaries. They must understand institutional values.

Conclusion

Nearly 50 years ago former Yale President and Law School Dean Bart Giamatti wrote that one of his greatest fears for higher education was that “those who are responsible for the legal processes and those who are responsible for the daily life of the mind will see themselves as somehow engaged in different things.”¹⁰ What are the core purposes of higher education today and in what ways have the law and lawyers been helping or hurting? Have the legal strictures on colleges and universities overly constrained the actors—both faculty and administrators—charged with carrying out the mission of higher education and, in turn, compromised their institutions’ fundamental mission? Is the law helpful or a hindrance to colleges and universities and their core purposes? While ostensibly less practical in nature for fiduciaries, these are nevertheless important questions for trustees to consider as they think about

the long-term for their institutions. And this is true for fiduciaries both in their more routine capacity of stewarding their individual institutions as well as in the role they play at the intersection of their institutions and the broader world.

The interactions between the law and American higher education extend beyond the transactional aspects of the obviously law-laden accounts that often capture headlines: a scandalous or tawdry lawsuit, a high-profile coach’s contract, a governance meltdown, a student tragedy. The law’s relationship with higher education is in fact a central artery in the sector’s core and existential debates. Behind questions of cost may in fact lurk the question of whether litigation, regulation, and compliance are feeding administrative “bloat” and increasing the price of college. Behind the popular critique of student “coddling” are legal questions of whether institutions are compelled by tort law trends to take on overly influential roles in the lives of their students.

Behind classical notions of academic freedom and the search for truth, there lurk questions on the lines between protected speech and harassment. Behind questions of the sustainability of the sector as a business enterprise, questions of higher education’s virtues in a democratic society, and around questions of access to higher education there is a legal adjacency. How your institution navigates and deals with these questions, or not, will be central in some way to its future success. ■



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Activism on Campus

BY CHRISTOPHER CONNELL



Campus activism is not new—protests and demonstrations have been happening at different inflection points for decades. Earlier this year another moment in history brought another wave of campus protests. In these tense times, it's crucial for higher education boards to understand their role in shaping and defending college and university policies for dealing with potential protests and disruptions.

WHEN TENTS SPRANG UP ON COLLEGE QUADRANGLES amid heated protests against Israel for its retaliatory war in Gaza against the Hamas terrorists who staged the October 7, 2023, massacre, the tumult was unlike anything seen since campuses were the front line for antiwar protests against the war in Vietnam more than a half century ago.

Columbia University and the University of Southern California cancelled classes and more than 3,100 demonstrators were arrested at 70 schools as police were summoned to clear encampments. Subsequently, regardless of whether they experienced disruptions, numerous colleges changed their time, place, and manner rules and other restrictions on expressivity. Hood College in Frederick, Maryland, made its Pergola, a tree-canopied spot for peaceful community gatherings and romantic trysts, off-limits for protests “even when it is a call for peace.”

This fall remained a fraught time for presidents and boards as civilian casualties mounted in Gaza and Israel launched an offensive against Hezbollah in Lebanon. The strife posed a dilemma for higher education leaders facing demands that institutions forsake neutrality, disinvest from companies doing business in Israel and meet other demands of the pro-Palestinian protesters. At the same time, college leaders faced pressure from politicians and alumni for not adequately addressing Jewish students’ fears for their safety and antisemitism.

Inevitably, boards are asking themselves what their role is in helping steady the ship and strike the delicate balance between protecting free speech and the right to protest and carrying out their educational mission.

Trusteeship spoke with presidents and board leaders about what they see as the most proper and helpful role boards can play in turbulent times. The country’s political polarization and approaching presidential election compounded the difficulty of striking the right balance.

But there was unanimity among those who responded to *Trusteeship* that the most important thing boards can do is ask good questions and lend resolute support to their presidents and the steps they are taking to quell disruptions and return teaching and learning to normalcy.

The alterations made during the summer lull to time, manner, and place policies put students and faculty supporters on notice of what behavior goes beyond accepted protest boundaries and what the consequences are for breaching them. Lee Tyner, general counsel of Texas Christian University and an authority on the First Amendment, stressed the importance of good relations and clear communications with the leaders of protests beforehand.

“To me, if any student is ever arrested, it’s because they have chosen to be arrested. You have laid the choices and consequences before them, and they’re choosing to be arrested. It should never be a surprise,” he said.

Presidents were under intense outside pressures last spring to crack down on protests and dislodge student encampments. House of Representatives Speaker Mike Johnson, R-La., stood on the steps of Columbia’s Law Library

and demanded the resignation of President Nemat “Minouche” Shafik if she didn’t “immediately bring order to this chaos.” Days later, more than a score of House Democrats sent a letter to Columbia’s Board of Trustees calling on them to resign if they didn’t end the encampment. (Shafik summoned police after students occupied a building; more than 100 were arrested. She did step down four months later, the third Ivy president to quit under fire in the last calendar year.)

The First Amendment does not protect students’ pitching tents on college greens or blocking or occupying buildings, said Tyner. “It protects less conduct than most people think.”

But at the same time, “the First Amendment protects more hateful speech than most people think—even speech that advocates violence and lawlessness,” he said. What is beyond the pale, the Supreme Court ruled in a 1969 free speech case, is speech that is likely to incite or produce “imminent lawless action.”

Tyner believes that protesters’ chants of “from the river to the sea, Palestine will be free,” which defenders

of Israel interpret as a call for genocide of Jews and destruction of the state of Israel, does not meet that threshold. “Trustees ought to make sure their understanding of the First Amendment is accurate, because most people’s understanding is not,” Tyner said in an interview echoing a column he wrote for *Trusteeship*.¹

David Maxwell, president emeritus of Drake University, drew another distinction about offensive words. “If you’re saying ‘From the river to the sea’ at a rally of 200 people and you’re up at a podium with a microphone, I think your speech is protected. But if you walk up to a Jewish student and yell it in her face, that’s verbal assault. That’s different,” said Maxwell.

What is a governing board’s role in shaping and defending college and university policies for dealing with protests and disruptions?

Larry Ladd, a former university dean and budget director said, “No one anticipated that Hamas would do what it did, and that some students would react the way they did. Universities were caught flat-footed. They didn’t have policies and protocols for this particular moment. They were making it up as they went along.”

“It’s hard to imagine that you could have come up with a plan for exactly these circumstances, but you want a president, administration, and board that have become facile and agile dealing with unexpected circumstances,” said Ladd.

The most important thing is for boards to ask penetrating questions of the CEO they hired and their leadership team. “You ask, ‘Do you have a crisis management plan? Could you give us a briefing on what you’ve done? Who was involved in developing it?’ You’re not telling them what to do, you’re asking them questions. You’re not asking to vote to approve it. Essentially, you’re kicking the tires,” Ladd said. “If the answers you get don’t sound right, you keep probing.”





“I think that boards have to look at this from two perspectives: their fiduciary duty and the whole issue of reputational risk, but more importantly that of fidelity to free expression as a critical part of the mission of the institution . . . Obviously there’s a tension there.”

Maxwell knows the board-president dynamic from the other side as well as a trustee and former chair of the board at his alma mater, Grinnell College. It is typically the responsibility of the administration and faculty to set ground rules for protests and disciplinary policies for those who break the rules, he said, but boards “have the responsibility to formally approve all major policies of the institution because boards are ultimately accountable for everything. If somebody sues the institution for what they claim is a violation of policy, it’s the board that’s getting sued.”

During Maxwell’s 16 years at Drake, when the university was revising the mission statement or changing other policies, “we created task forces that (always) included a couple of board members because they really were partners,” said Maxwell. But “they really knew how to stay on the governance side and stay away from the management side.”

Boards needn’t look back far to a crisis that required them to collaborate more closely than usual with the CEO they hired. The COVID-19 crisis that erupted in early

2020 created financial, logistical, and technological challenges that demanded an all-hands-on-deck response.

At Grinnell that spring, outgoing President Raynard S. Kington and his successor, Anne F. Harris, enlisted Maxwell and three other board leaders to join weekly meetings with the leadership team to wrestle with pressing financial decisions and other matters. A few months later, when Harris became president, “I made it clear to Anne that, ‘It was great that we’re a part of this, but let us know when you want us to leave,’” recalled Maxwell. “Then I got a call from her in August, saying, ‘You know, I think it’s time for you guys to get back on your side of the line.’” But those five months of closer-than-ever shared governance had served its purpose.

The wave of disruptive college protests last spring also required boards to step up and help presidents reconsider and rewrite ground rules for student conduct and protests. At dozens of campuses, encampments were proscribed. The University of Wisconsin put an 11 p.m. lid on demonstrations.

“I think the most important role (for the board) is to ask good questions about

what policies are in place at the institution when the inevitable circumstances arise where these policies will be needed,” said Leo Lambert, president emeritus of Elon University. Boards need to “recognize what a complicated situation the president is trying to manage and to support the president, not try to manage it (themselves).”

Eileen B. Wilson-Oyelaran, president emerita of Kalamazoo College, said the stridency of student protests has been building for years and the divisions have only gotten sharper. Wilson-Oyelaran, who led Kalamazoo from 2005 to 2016, also spent 16 years on the board of trustees of Pomona College, her undergraduate alma mater. Even after moving to emeritus status on that board, she took an active part in discussions as Pomona grappled with protests over the past year.

What is her advice to boards weighing their role in shaping institutions’ response to this new era of activism?

“I think that boards have to look at this from two perspectives: their fiduciary duty

Discussion Questions for Board Members and Chief Executives

These are key questions about freedom of speech and diversity, equity, and inclusion on campus for your board to consider. They are designed to stimulate thoughtful and productive discussions among board members, as well as to frame helpful conversations with the chief executive and key members of the senior staff who may interact with the board on these policies and issues.

Policies and Practices

- Has the institution adopted a current statement of principles that addresses freedom of speech and diversity, equity, and inclusion?
- When does the board review the institution's or system's policies on freedom of speech? Are those policies reviewed as part of the orientation of new board members?
- Does the governing board have a policy that delegates responsibility for implementing institutional policies related to freedom of speech to the president of the institution or system? Is there a clear decision-making process in place related to issues of freedom of speech?
- Does the institution have student, staff, and faculty guidelines for campus protests that clearly define what constitutes a violation and what disciplinary measures would be taken? Are campus security measures in place to address student protests or controversial speakers? Does the institution have policies regarding the use of campus facilities by outside groups?
- Does the governing board clearly understand the relationships among: (1) freedom of speech; (2) academic freedom; and (3) justice, equity, and inclusion?

College, university, and system boards should have proactive conversations about free speech and inclusion before unrest surfaces on their campuses. Board members and chief executives must comprehend the difference between freedom of speech and academic freedom, recognize the tensions between free expression and campus inclusion, understand and ensure that they have adequate policies in place, and communicate effectively with stakeholders.

Editor's Note: These questions are excerpted from Freedom of Speech and Diversity, Equity, and Inclusion on Campus: Considerations for Board Members and Chief Executives Washington, D.C. (AGB, 2022).

Communications

- How often, if at all, does the institution's president, general counsel, or other senior staff member inform the board about specific incidents and events related to campus freedom of speech?
- Do board members know what the internal adjudication processes are for students, staff, or faculty who violate institutional rules protecting free speech? Can they speak with knowledge about those processes if asked for comment by the press?
- How has the board engaged with students about issues related to freedom of speech and other campus climate matters? Is there a structured process for board engagement with students?

Legal Considerations and Risk

- How often does the board discuss the various risks associated with campus free speech policies?
- Does the board not only consider financial, reputational, and security risks, but also those related to the retention of students, faculty, and staff, especially if they feel the institution has fallen down on its commitment to fostering diversity, equity, and inclusion?
- Has the board considered how it would handle a hypothetical lawsuit filed against the trustees in federal court accusing them of First Amendment violations?

and the whole issue of reputational risk, but more importantly that of fidelity to free expression as a critical part of the mission of the institution . . . Obviously there's a tension there," she said.

"My sense is that institutions are better served if boards allow leadership to provide the strategy and response to these issues, rather than getting over involved," she said. "It's critically important that leadership has an effective strategy for keeping the board informed, but there's a difference between being informed and being a decision-maker."

Public or private boards alike must grapple with the reality that regardless of how their institutions handle protests, higher education institutions are "a target now for political purposes. There's a 'gotcha' mentality in Congress," she said.

"This is a time when boards need to think very deeply about how they support presidents and their leadership teams because this is really wrenching stuff," said Wilson-Oyeleran.

Lambert, the former Elon president, said, "boards need to understand there are going to be protests and issues. You don't know on any given day what monster is out there in the waiting room. It's not if it's going to happen, it's when it's going to happen." Boards also have a responsibility to ensure "that the welfare of all students on campus is being looked out for" regardless of their views on the conflict in the Middle East.

"College campuses will be places of debate and spirited exchange of views, and occasionally this will result in acrimony," he said. "Institutions simply need to be prepared to handle it. If they don't have policies



“What we are about is providing an education so that after the students leave the institution, they can lead productive and meaningful lives. We want to make sure the classes keep going and that are our students are feeling safe.”

in place, and haven’t done tabletop exercises beforehand, they’re going to be behind the eight ball.”

No institution is more closely associated in the American mind with campus protests that end in tragedy than Kent State University, where four students were shot and killed by Ohio National Guardsmen during an anti-Vietnam war protest on May 4, 1970. Over the decades Kent State has honored their memory—Kent State opened a Center for Peaceful Change that is now the School of Peace and Conflict Studies—while also serving as a cautionary reminder of the dangers of using deadly force against peaceful protesters. (Two students were also killed by police that month at Jackson State University in Mississippi.)

Carol A. Cartwright, president of Kent State from 1991 to 2006, said that tragic legacy left administrators and trustees alike keenly aware of the constant need for crisis planning.

“It’s not a good time when you’re in the middle of it to try to figure out how to manage it,” said Cartwright, former ambassador to the AGB Council of Presidents. Cartwright wrote “Be Prepared” for the AGB blog after a session at a council meeting last December on board-president relationships.

“Several council presidents suggested ways to become better prepared, such as engaging institutional leaders, including board members, in scenario planning exercises in which they imagine ‘what if’ situations and discuss ways to manage them,” she wrote.²

Thinking ahead and having documented policies in place becomes paramount. “Presidents felt strongly that

boards must also be educated about bedrock concepts of higher education, such as board independence and academic freedom,” Cartwright said. “Even when boards are well versed in these core ideas, they need fresh perspectives as the environment changes.”

“Board members do not always understand that presidents cannot and do not control what the people on their campuses say and do. Council members generally agreed that most board members do not fully understand the legal aspects of content-neutral time, place, and manner policies. Board education on this topic is vital,” Cartwright said.

In a discussion of whether presidents should make public statements on behalf of their institution about national or global issues unrelated to higher education, the answer “was a resounding no,” she said.

“What many council members agreed that presidents should do, however, is speak out forcefully on issues that directly impact their institution in particular and higher education in general,” she added.

Constant communication with the board in times of turmoil is essential, Cartwright said in an interview. “You want to try to communicate as quickly as possible: ‘We have this issue. Here’s how we’re dealing with it. Remember you as a board talked about these kinds of things several months ago. We’re now seeing it play out on our campus. The board chair and I are in close communication. If you have questions, call me or call the chair,’” Cartwright said. “But it’s not the board’s call on deciding whether to call in the police.”

SHUTTERSTOCK / NEWMAN

"I know from my 15-plus years as president that Kent State was always ready. If there was a sense that a student group might invite a controversial speaker, there was immediately a discussion about, 'How will we manage it? What are the alternatives? How can we organize programming on the other side of that issue?'" she said.

Some institutions have pledged or renewed their commitment to the principles a University of Chicago faculty committee laid out in 1967 as antiwar protests began to shake campuses nationwide. The Kalven Committee's report on the University's Role in Political and Social Action made a compelling case for institutional neutrality. "To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures," it said.

"The neutrality of the university as an institution arises then not from a lack of courage nor out of indifference and insensitivity. It arises out of respect for free inquiry and the obligation to cherish a diversity of viewpoints. And this neutrality as an institution has its complement in the fullest freedom for its faculty and students as individuals to participate in political action and social protest," it said.³

But even an exemplar of free speech such as the University of Chicago faced uncomfortable moments in dealing with protests last spring. After a week-long encampment and vigil on its quad, campus police in riot gear moved in before dawn to dismantle the tents and move students off the lawn. None were arrested. The university said it acted amid rising safety concerns.

Vanderbilt University Chancellor Daniel Diermeier has been outspoken in defending institutional neutrality and fostering open discussions of divergent, controversial views. He flatly rejected student demands for divestiture from companies associated with Israel. In an opening convocation for the new academic year, Diermeier put first-year students on notice that Vanderbilt would not tolerate protests "disrupting the learning environment." He told the *New York Times*, "The chaos on campuses is because there's lack of clarity on these principles."⁴

In a *Forbes* magazine column, Diermeier noted that Vanderbilt had rejected petitions from two alumni groups with opposite views on the Israel-Gaza conflict. "One wanted the school to adopt tactics advocated by the Boycott, Divest and Sanction movement, and condemn Israel for genocide. The other wanted the university to voice strong support for Israel and adopt the definition of antisemitism proposed by the International Holocaust Remembrance Alliance," he wrote. The first would have violated its commitment to neutrality and the second "would have severely limited our faculty's freedom to research and teach what they want, how they want."⁵

With strong support from boards, many colleges and universities took pains to turn the anger over the Israel-Hamas conflict into teachable moments. Diermeier, a former provost at the University of Chicago, took pride in noting that both the Israeli ambassador to the United States and the former prime minister of the Palestinian Authority

"You don't have to allow your institution to be used as a battlefield. You have to establish ground rules and have policies in place. It's not necessarily the board's job to set those policies, but to ask how good and how strong those policies are."



spoke to an international relations class one day apart last March.

The University of San Diego (USD) held almost weekly teach-ins on the Middle East conflict. In May students, faculty, and staff held a “requiem” and “die-in” that included prayers for all victims. It culminated with Palestinian supporters’ marching to President James T. Harris III’s office and presenting Harris with a petition to divest from supporting Israel’s economy in any way and to end a study abroad program in Israel.

Harris, who had attended the requiem at the protesters’ invitation, said, “I think our students have set a positive standard of how to have civil conversations and dialogue.”

His board chair agreed. “We have been able to maintain a very peaceful and calm campus,” said Thomas Mulvaney, a graduate of USD’s law school.

“What we are about is providing an education so that after the students leave the institution, they can lead productive and meaningful lives. We want to make sure the classes keep going and that are our students are feeling safe,” said Mulvaney, who enlisted in the Marines after high school and served in Vietnam and later in college sided with the war protesters.

“We’re not a Columbia or a UC Berkeley. Jim has the complete, 100 percent backing of the board. Our job is to support the President and his team to make sure we can maintain a peaceful and orderly situation,” he said.

“The world seems to be a more polarized place than it has been in recent times. We’re very cognizant of what’s going on and we will take immediate steps if something seems to be going awry,” Mulvaney said. “But it’s Jim’s job to maintain the order on campus and make sure that people can speak freely.”

“You don’t have to allow your institution to be used as a battlefield,” said Elon’s Lambert. “You have to establish ground rules and have policies in place. It’s not necessarily the board’s job to set those policies, but to ask how good and how strong those policies are.”

The American Association of University Professors has condemned what it calls a “crack down on peaceful campus protest,” which it contends is an assault on academic freedom. Without singling out institutions, it said that “college and university administrations have hastily enacted overly restrictive policies dealing with the rights to assemble and protest on campus. These policies,

which go beyond reasonable time, place, and manner restrictions, impose severe limits on speech and assembly that discourage or shut down freedom of expression.”⁶

Assumption University President Gregory S. Weiner wrote a blunt op-ed for the *Wall Street Journal* last December that argued non-elite colleges such as his are doing a better job of teaching students to be open-minded and “grapple with difficult moral and political questions that can’t be reduced to slogans.” His column was headlined, “A Haven from the Ivy League’s Madness.”⁷

“If we drop students into the middle of the most boiling, hot, contentious events and say, ‘Now you need to figure out how to how to disagree constructively,’ we’re setting them and ourselves up for failure,” said Weiner, a politics professor who in 2022 became the first Jewish president of a Catholic college in the United States.

“I think one of the things our board has done well is having a good, clear sense of the institution’s mission,” he said. While the fiduciary responsibility of trustees “is certainly significantly financial, it’s ultimately about holding the mission of the institution in trust. And when institutions of higher education drift away from education, I think they’re just not prepared for controversy.” 

Christopher Connell is a veteran higher education writer based in Washington, D.C.

Endnotes

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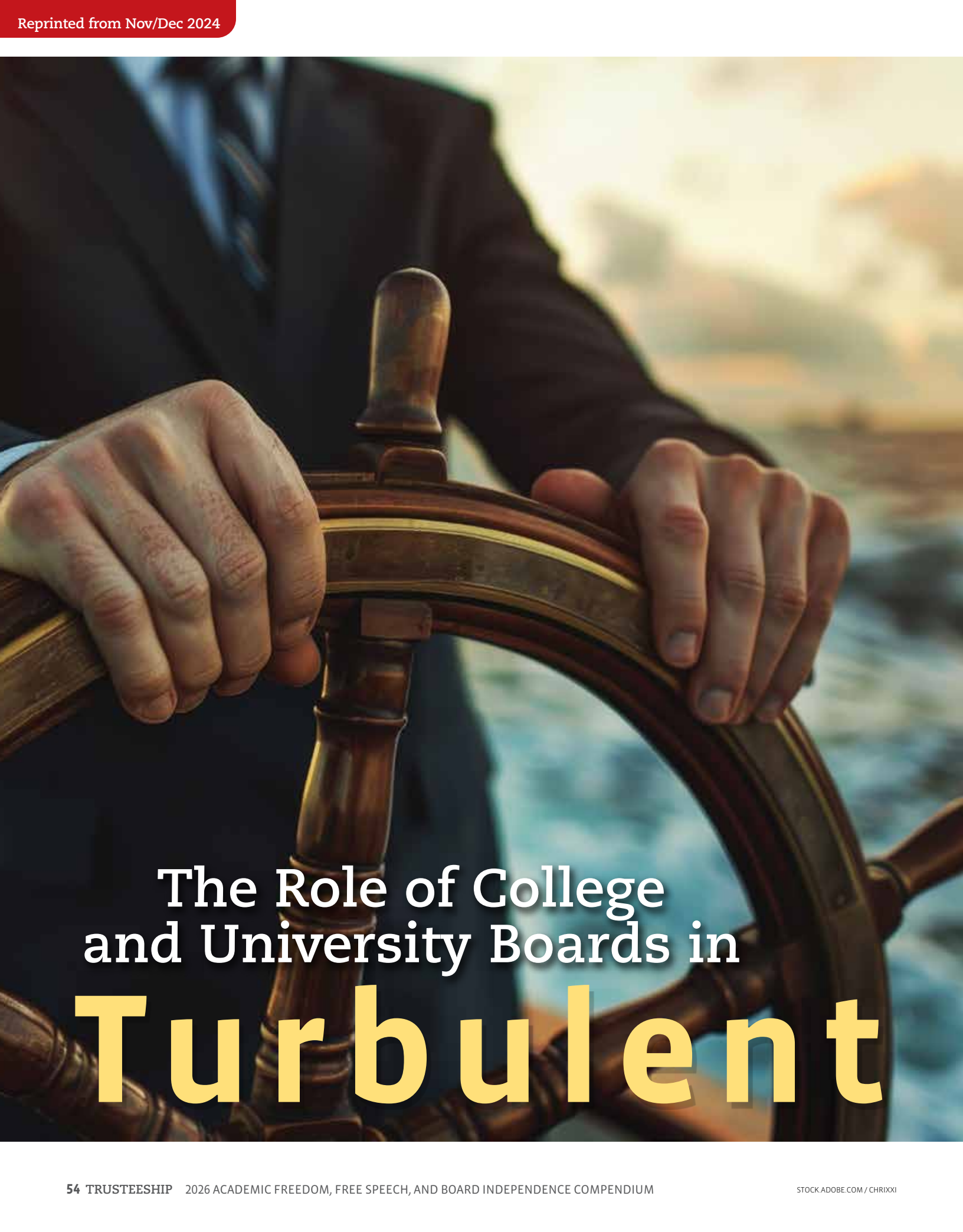
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5. Daniel Diermeier, “Universities Must Resist the Pressures of Politicization,” *Forbes*, April 24, 2024, <https://www.forbes.com/sites/danieldiermeier/2024/04/26/universities-must-resist-the-pressures-of-politicization>.

6. “AAUP Condemns Wave of Administrative Policies Intended to Crack Down on Peaceful Campus Protest,” American Association of University Professors, August 14, 2024, <https://www.aaup.org/news/aaup-condemns-wave-administrative-policies-intended-crack-down-peaceful-campus-protest>.

7. Greg Weiner, “A Haven from the Ivy League’s Madness,” *Wall Street Journal*, December 21, 2023, <https://www.wsj.com/articles/a-haven-from-the-ivy-leagues-madness-assumption-jews-antisemitism-harvard-f60d063a>.

A close-up photograph of a person's hands, wearing a dark suit and tie, firmly gripping a polished wooden ship's steering wheel. The background is a blurred seascape under a warm, golden sunset sky, suggesting a sense of direction and leadership in a challenging environment.

The Role of College and University Boards in **Turbulent**

Colleges and universities are facing unprecedented challenges today. How can boards best navigate these turbulent times and find new opportunities amid the chaos?

In his 2023 book, *Whatever It Is, I'm Against It*, published by Harvard University Press, Brian Rosenberg, president emeritus of Macalester College, writes about the intense resistance to change in higher education. He sees this resistance stemming from a number of factors, including incentive structures, disciplinary boundaries, faculty tenure, shared governance traditions, and institutional rankings, among others. In a more recent essay in the *Chronicle of Higher Education*, he describes college leadership as “impossible” because presidents “face unreasonable demands and intolerable critics.”¹ No doubt, board members and presidents can identify with Rosenberg’s analysis, but they do not have the luxury of accepting it as a given going forward. The fact is that America’s colleges and universities are facing—and must respond to—a perfect storm of disruptions that threaten their very existence. Those disruptions include the following:

- Significant campus unrest from the Israel-Hamas conflict in Gaza;
- A projected 15 to 20 percent drop in enrollments by next year;
- An unsustainable and costly instructional model;
- Crippling student debt resulting from high costs;
- Growing societal concerns about the return on investment in higher education;
- Lingering impacts of the COVID-19 pandemic;
- Attacks on diversity, equity, and inclusion (DEI) policies; and
- The emergence of artificial intelligence (AI).

These challenges will negatively impact virtually every college and university in some way. The good news is that, at the same time, significant opportunities are also on the horizon for institutions that have the vision and courage to pursue them. AI and new adult education markets, for instance, present a myriad of promising and valuable prospects.

Yet capitalizing on such opportunities means that institutions, despite their penchant for clinging to the status quo, will have to transform themselves on an unprecedented scale. This article outlines the difficult questions boards need to ask themselves in order to help their institutions effectively respond to the existential challenges and expanding opportunities that now surround them and will continue to emerge in the future.

Times

BY JOSEPH E. (TIM) GILMOUR

The Questions

Are the roles of our board and president, as currently defined, up to meeting the historical challenges our institution faces?

Recent issues of *Trusteeship* have enumerated many of the specific issues facing higher education, but little has been published about the need for governing boards to play a more significant role in helping their institutions navigate the rough waters and the perhaps even stronger turbulence ahead. The current governance model for college and university boards and presidents evolved during times of growth and stability. In today's disruptive climate, more effective governance and leadership are needed, requiring enhanced and more active roles for both the board and the president. Key elements of this more effective approach include the following.

A more assertive board role in strategic planning. Boards must take a stronger hand in ensuring that the strategic planning process led by the president brings about genuine transformation. Most institutional strategic plans produced today call for modest change and do not adequately provide for the execution of these changes. Given the existential challenges facing most institutions, boards cannot allow planning and implementation of this caliber to continue.

Boards can address this shortcoming by setting higher expectations for their institution's strategic plans, asking their presidents hard questions about those plans and expecting at least annual progress reports on implementation and impact on institutional performance. The central questions a board should be asking include: Do we have a plan that addresses the central issues facing our institution; does it provide a realistic plan for implementation; and is it having the desired impact on institutional performance? The kinds of issues board members should expect to see addressed are how their institution plans to remain financially viable and how it will address both the opportunities and threats of AI. To be effective in this role, board members will have to read the strategic plans critically and stay abreast of the issues confronting higher education.

Selected board members should serve on strategic planning committees and subcommittees to keep the board informed about how well the process is working and to guide the development of strategies where appropriate. Finally, for strategic plans that are truly transformative, board members should be prepared to help their presidents advocate internally and externally for the directions set in them.

A significantly reframed presidential role and mindset.

Presidents must adopt a new mindset in order to operate more effectively now and in the future. Most sitting presidents have emerged from a higher education culture in which change is intensely resisted. All too often, their mindset about their capacity to bring change is severely constrained as a result of this experience. As institutions become more challenged by the disruptions discussed earlier, this constrained thinking must change. Presidents must be able to bring hope to their institutions and enlist their communities in the pursuit of a shared and transformative vision. To achieve this shared vision, they will also need to be able to craft a strategy and a plan for implementation that enables everyone to participate in its achievement. And to this new set of expectations, presidents will have to bring a remarkable set of personal qualities: courage, humility, empathy, and an absolute determination to successfully navigate their institution through these disruptive times.

Unfortunately, leaders with these capacities are in short supply and it will fall to institutional boards to relentlessly seek and develop such leaders.

Boards will also need to provide their presidents the professional development support and the agency they need to assume and fulfill these new responsibilities. These higher expectations should be memorialized in a position description shaped jointly by the board and the president with input from representatives of the faculty, staff, students, and alumni.

Rigorous assessment of the board's and the president's performance.

This assessment should gauge their capacity to operate under this new paradigm and address any areas that need improvement. A good place to start are the assessment processes and consulting services offered by the Association of Governing Boards. These assessments should occur annually, or more frequently if needed, and should be substantive, supportive, empowering, and hold the president fully accountable. In most cases, the president will need help in addressing the issues coming out of their assessments. Sometimes this help can come from a board member, but in many cases, it will need to come from an executive coach.





Presidents must be able to bring hope to their institutions and enlist their communities in the pursuit of a shared and transformative vision.

Do we have an effective process in place for leading and navigating the transformation of the institution?

Effective management of the disruptive forces bearing down on most higher education institutions requires the adoption and relentless execution of a transformation-process model. Few institutions have such a model, and even fewer come close to making the most of the one they have.

Boards and presidents might want to consider using the eight-step change model developed by John P. Kotter, a professor at Harvard Business School and change expert. While, most often, for-profit companies outside of higher education have used this model, it is also quite applicable to higher education institutions.

In a *Harvard Business Review* article, Kotter explains that the purpose of the model is to increase an organization's "strategic agility—the ability to capitalize on opportunities and dodge threats with speed and assurance."³ He holds that the process "should be viewed as a dynamic force that constantly seeks opportunities, identifies initiatives that capitalize on them, and completes these initiatives swiftly and efficiently."⁴

He recommends that a broadly representative "Guiding Coalition," chaired or co-chaired by the president, should lead the ongoing transformation effort. At most institutions, one or two board members should join the coalition. The coalition should have significant authority to determine the direction of the transformation as well as to commission ad hoc teams to undertake strategic initiatives for its achievement, track the implementation, of the initiatives, and assess their impact on institutional performance. A key byproduct of this approach is widespread participation in the leadership and understanding of the institution's transformation strategy.

The Guiding Coalition should operate separately from the institution's traditional hierarchy, including the standing committee structure, to reduce the resistance to change that often comes from those quarters and to foster greater innovation and creativity. Kotter calls such an approach the "Two Systems, One Organization" strategy. The two systems are the traditional hierarchy and a network that includes the Guiding Coalition and the ad hoc strategic initiative teams it oversees.

Do we have sound strategies in place for changing our institutional board cultures?

Transformational change must start with a reconsideration of the current roles and responsibilities of the board, the president, and the faculty, which should include revisiting the shared governance concept defined in the American Association of University Professors (AAUP)'s 1966 Statement on Government of Colleges and Universities.² In a nutshell, the statement said that, through shared governance, the faculty should have decisional authority in academic and faculty personnel matters and a consultative role in all others. This division of labor, over the years, has become blurred and allowed the faculty at many institutions to de facto expand their authority, successfully resist change, and block much needed institutional evolution.

Boards need to revisit shared governance practice at their institutions, restoring that practice to the scope defined in the 1966 AAUP statement. At the same time, they should press their presidents to place a high priority on the implementation of a change management approach—Kotter's or something similar—to bring a significant proportion of faculty, staff, and students into meaningful involvement in the transformation of the institution. If this is done correctly, community members will be afforded meaningful opportunities to participate in shaping the transformation of their institution, particularly in areas directly related to roles they are likely to play in the future. Moving to this more participative approach will require robust change management practice and constant board support.



Effective management of the disruptive forces bearing down on most higher education institutions requires the adoption and relentless execution of a transformation-process model. Few institutions have such a model, and even fewer come close to making the most of the one they have.

One key to the success of this “Two Systems, One Organization” strategy is robust and regular communication between all elements of the coalition network and the institutional hierarchy. Cross appointments between the systems, with the expectation that those holding these appointments will keep colleagues in both systems informed of actions in the other system, can significantly enhance that communication. An example of this communication might be where an information technology staff member is appointed to a strategic initiative team to select and install an AI-powered course development tool to help faculty cut course development time. Other team members might be drawn from academic administration, the colleges, several academic departments, the registrar’s office, and the faculty curriculum committee. As the team’s work progresses, team members from IT would be

expected to inform members of their division of the work their initiative team was doing and carry back to the initiative team any guidance they might have for the team’s work.

Another key to success is the consistent use of the new planning and design tools that facilitate team collaboration, and creative and innovative thinking. Examples of these tools include facilitated design thinking to brainstorm and refine innovative strategies for achieving the vision; templates for organizing team work on strategy implementation; rapid innovation design tools; and Business Model Canvas to analyze the market and financial viability of program proposals emerging from the planning process.

Finally, the transformation process demands a well-orchestrated approach to implementing the strategic initiatives. If there is a critical failure point in higher education, it is in implementation of change. To avoid failure, presidents need to insist that the key implementation elements for each initiative: a clear strategy, strong and capable leadership, adequate human and financial resources, a supportive organizational culture, and the measurement and analytical tools to gauge progress and impact on performance are in place and carefully orchestrated to ensure a successful implementation.

Do our presidents and other senior leaders communicate effectively with the campus community about the institution’s challenges and future?

Boards and presidents have historically avoided candid discussions about their institution’s challenges to prevent fear and upheaval among various constituencies both internal and external. That has kept important stakeholders in the dark about the institution’s future, often leading to negative reactions to change. Establishing a regular, transparent, and optimistic dialogue with members of the campus community about the challenges and opportunities the institution faces and involving those community members in initiatives to address them is essential for gaining support for cultural change.

Communication should involve more active listening, personal presence, and storytelling. The president, their leadership team, and board leaders should meet with units and listen first to their thoughts before sharing their perspectives.

Are we preparing constituencies to perform in a radically altered future?

Boards must insist on the improvement of their institution's processes for the recruitment, retention, and care of faculty and staff members, ensuring that they are able to perform the various new roles that will emerge as technology advances and other aspects of the higher education landscape rapidly change.

Moreover, once they hire, far too many institutions fall woefully short in their incentive, professional development, employee support, compensation, and advancement programs. Colleges and universities must place a high priority on correcting these shortcomings to have an engaged and highly capable workforce that can ensure their success through both the challenges and the opportunities.

A vital adjunct to a stronger human resources practice is clear and regular communication from the board and the president to faculty and staff members that they will do everything possible to keep them safe, engaged, and employed if they are willing to participate actively in the transformation of their institutions.

Even so, it is unfortunately likely in these difficult times that some employees will have to be laid off or separated from the institution. In these cases, the institutional leadership should do everything in its power to minimize such personnel actions and to treat those who must be separated with the utmost care, compassion, and generosity. Aside from the fact that this approach is the right way to do things, institutional leaders must remember that a large segment of the employee population will learn how these employees are treated and assume that the institution would treat them in the same way if further reductions become necessary.

Is our institution's economic model sustainable?

Many of the challenges that institutions are grappling with are financial, so boards and presidents must understand their institution's economic model and regularly assess its sustainability. Those assessments must inform institutional strategies and decision-making in order to prevent financial precarity and distress, such as the recent sudden closings of a number of colleges and universities around

the country. Tools are available to help with this evaluation, and the National Association of College and University Business Officers Economic Models Project is a good resource on how to build a sustainable financial strategy.

Conclusion

In conclusion, boards and presidents must reconceive and significantly strengthen their roles to be effective in these highly disruptive times. Current governance and leadership norms are inadequate for today's challenges. Boards must fully exercise their authority and set much higher performance expectations for themselves and the institutions and presidents they oversee. While the structure of the boards and the frequency with which they meet may not need to change, their members must get to know each other better through retreats and time set aside for socialization. They also must set higher standards for member preparation for board meetings. With these changes, boards will much more likely have the knowledge and substantive give and take that characterizes the best boards.

Presidents must take a much stronger hand in the definition and realization of their institution's strategic directions. In these turbulent times, each should pursue their role as a calling and find fulfillment in providing effective and participative leadership to their institutions. With the assistance of their boards, they should also seriously pursue personal and professional development opportunities that allow them to become effective leaders who have the courage, empathy, drive, and tools to make a genuine difference at their institutions.

Boards and presidents with that level of commitment have a distinct opportunity to play a major part in transforming higher education and ensuring the brightest possible future for it. ■

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American Higher 2025

*Toward a More Perfect Silence or
a More Perfect Union?* BY JOHN SILVANUS WILSON JR.

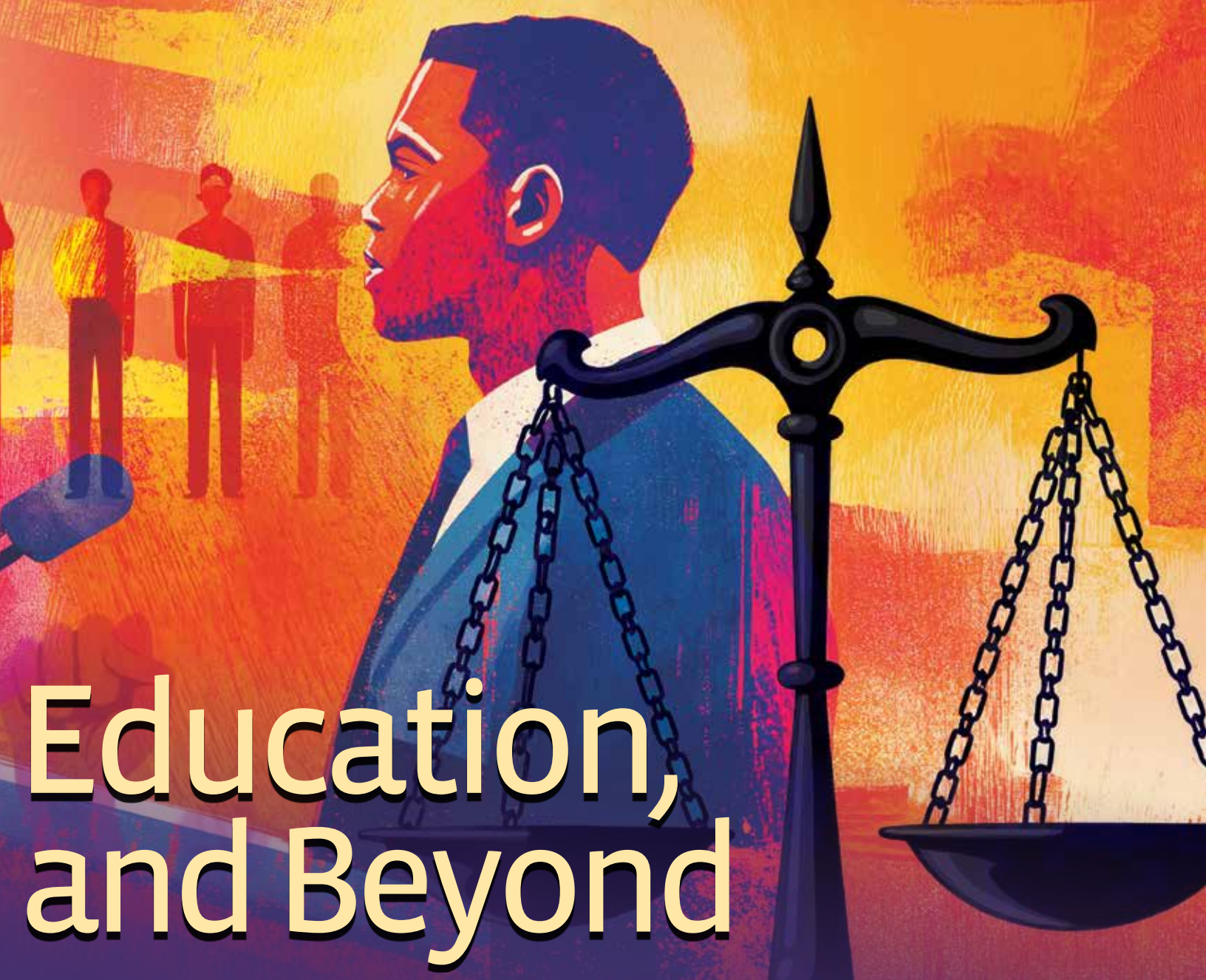
IN LATE 2016, while presiding at Morehouse College, I was one of more than 200 presidents who signed a letter addressed to President-elect Trump.¹ The sociopolitical climate was explosive, and we expressed concern that many people on and around our campuses felt vulnerable to the expected increases in “harassment, hate and acts of violence.” We were worried that his words and communication style were setting a virulent tone.

Our gesture was neither confrontational nor atypical. We simply invited the incoming president to prioritize and affirm “the core values of our democratic nation: human decency, equal rights, freedom of expression, and freedom from discrimination.”

We signed the letter believing that our campuses and our nation shared those ideals, even if we sometimes evinced an uncertain institutional commitment to epitomizing them.

**But it is not permissible that
the authors of devastation
should also be innocent.
It is the innocence which
constitutes the crime.**

James Baldwin
The Fire Next Time
(1963)



Education, and Beyond

More personally, I signed with a firm belief in the equality imperative that gives the Declaration of Independence its north star power. Our founding documents collectively commission us all to complete the process of becoming a pluralistic democracy, the sole contextual requirement for perfecting the union of humankind. I signed because our progress remains slow, our work remains vast, and our college campuses remain both obligated and able to do much more to help realize the loftiest of America's proclaimed aspirations.

In the nine years since we sent that invitation, higher education has experienced significant climate change. Several developments have made it unlikely that campus leaders will repeat such outspokenness.² The steady rise in political polarization has seemed to loosen America's collective embrace of democratic norms and values.³ Only inattentive campus leaders can have overlooked the clearly negative views—symptomatic of a deepening, general mistrust of American institutions—that many policymakers and the public now have of higher education.⁴

As the volatility has intensified, numerous state officials have taken aim and sought to reconstruct their public campuses. Between January 2021 and the end of September 2024, nearly half the states enacted educational gag orders and made a variety of other moves designed to constrain and control campus life.⁵ Driven more by political than educational motives, state officials have made efforts to restrict speech, shrink or terminate tenure, and shut down offices designed to ensure that campuses become more diverse, equitable, and inclusive. Given the controversy-laden news cycles, few who work in higher ed seemed shocked when a June 2024 Gallup poll revealed that 68 percent of adults think higher education is headed in the wrong direction.⁶ And of the 32 percent who had little or no confidence in higher education, 41 percent pointed to the perceived prevalence of campus-based political agendas, presumably carried out by various administrators and faculty members.

TAKEAWAYS

- Given the polycrisis facing us nationally and globally, many campuses, seeking immunization from controversy, have eagerly treated their new or strengthened institutional neutrality policies like a vaccine. But the worst thing presidents and boards can do, in their push to be perceived as wearing the noble garb of bystandership, is to assume outcome-agnostic mindsets concerning the fate of America and the world.
- The 1967 Kalven Principles have had a well-deserved, enduring influence on American higher education; however, John Hope Franklin—the preeminent historian and the last surviving member of the original Kalven committee—once offered a clear and timeless example of how the world’s strife can trigger the Kalven committee’s exception clause, which must then compel institutions to shift from silence to voice.
- Looking back, the norm in American higher education has been institutional silence in the face of human devastation. Yet, only two kinds of campuses in American history—the three abolitionist colleges and the Historically Black Colleges and Universities—succeeded in proudly operating as examples of how to counterbalance the normalized ethical failures of other campuses.
- What preceded affirmative action in higher education was not meritocratic race-neutral admissions, but the kind of race-conscious decision-making in college admissions that helped segregate Americans on and beyond our campuses. The effort to remedy that protracted multifaceted segregation should be called “corrective race-conscious admissions,” which the U.S. Supreme Court abandoned in 2023. It is absurd to think American higher education can spend 333 years systemically using race-consciousness to exclude people (1636–1969) and then correct it all by spending a mere 54 years tactically using it to include those previously excluded (1969–2023).
- In and beyond 2025, the most important decision campus presidents and boards will make is whether and how to ensure that their institution will use their campus cultures, curricula, and communications to perfect their silence, institutionally, or perfect our union, nationally.

Yet the substantial volatility roiling higher education since 2016 was not enough to push leaders toward the kind of viral silence that began infecting campuses in the spring and summer of 2024.

Initially, it was unsurprising when, amid the thickening haze of warfare and tensions erupting in Gaza in October 2023, many higher education leaders thought it wise to generate official statements. Like our 2016 letter, that was customary. For instance, when George Floyd was murdered in 2020, numerous presidents released statements to assert or clarify an institutional posture on racial injustice.⁷ And in June 2023, when the U.S. Supreme Court abandoned race-conscious decision-making in college admissions, many leaders publicly affirmed their commitment to pluralism. But unlike in those instances and myriad others before, when they released statements about the Israeli-Palestinian conflict, things got complicated.

Predictably, the statements had several objectives, including to console campus subcommunities; satisfy philanthropic allies; and clarify institutional ideals, goals, and policies. Although the net effect of those statements varied, few elevated their concerned stakeholders toward detectable campus harmony and understanding. Instead, the discord often worsened, typically with presidents in reactive, rather than proactive postures.

But as uncertain as the general higher education climate was steadily becoming, it was still striking when it all escalated in 2024 and led to the high-visibility presidential departures of Elizabeth Magill from the University of Pennsylvania, Claudine Gay from Harvard University, and later, Minouche Shafik from Columbia University.

One could conclude that Gay, Magill, and Shafik lost their presidencies because the national spotlight of congressional hearings exposed their perceived non-neutrality about the Middle East conflict. But that simple judgment blurs too many

complexities. Whatever convergence of forces drove each departure, however, it is safe to conclude that the American college presidency experienced a chill, which was only expected to worsen as the country approached its most high-stakes national election ever in the fall of 2024.

So, it was somewhat foreseeable when, in preparation for the 2024–25 academic year, countless campus leaders quietly or openly moved to affirm, reaffirm, or refine a posture of institutional neutrality.⁸ Free-speech and academic-freedom associations, among others, have tried to broaden the movement by urging more college presidents to embrace neutrality.⁹ In addition, as of early 2025, each of the trend-setting campuses, known as the “Ivy-Plus colleges” (the eight Ivy League campuses, plus the University of Chicago (Chicago), Duke University, the Massachusetts Institute of Technology (MIT), and Stanford University), had either adopted, or been pressured by stakeholders to adopt, some version of the Kalven Principles. Many leaders believe that by perfecting their silence, they can bolster their presidency, while blunting or avoiding campus controversy and unrest.

Yet, this is nothing new. Since a primary benefit of neutrality is perceived innocence, there are clear indications that its roots in higher education run deeper than most stakeholders realize. In their attempts to truly understand those roots, many observers tend to view the past from short range, as if from a balcony. But the gaze back from a higher perch, call it “a mountaintop,” is more illuminating. And it reveals the sheer folly, or perhaps the heresy, of a conscience-free curation of institutional neutrality, innocence, and silence in the face of today’s starkest inhumanities.

Combined, both vantage points—the balcony and the mountaintop—can provide current and future campus leaders and board members with navigational lessons for how best to consider institutional silence versus institutional voice.



Ultimately, by centralizing and valorizing academic freedom, the Kalven Committee insisted that, even as institutions struggle, they must maintain a silent detachment regarding how the world's great controversies are debated on campuses.

From the Balcony:

The 1967 Kalven Report

The way many campus leaders today view institutional neutrality can be traced to a report published decades ago: the University of Chicago's 1967 *Kalven Report*—named for Harry Kalven, the law professor who chaired the effort.¹⁰ Kalven and six other faculty members were charged by Chicago's president, George W. Beadle, to prepare "a statement on the University's role in political and social action" amid widespread student protests and nationwide angst over the Vietnam War.

At its best, the report underscores an inarguable truth: "A university has a great and unique role to play in fostering the development of social and political values in a society." It also acknowledges that, "by design and effect," when a good university "creates discontent with the existing arrangements and proposes new ones . . . it will be upsetting." By pointing to the nature of higher education as an arena for the often very difficult process of sifting and winnowing old and new meaning, the Kalven Committee recognized that disagreement, controversy, and debate are not unusual. Educational environments, while communities of care and growth, can generate both the light of truth and the heat of conflict.

Ultimately, by centralizing and valorizing academic freedom, the Kalven Committee insisted that, even as institutions struggle, they must maintain a silent detachment regarding how the world's great controversies are debated on campuses. The report specifically concludes that any public statements should be left to faculty members and other individuals at the institution with interests or

expertise, that "the university is the home and sponsor of critics; it is not itself the critic." As if to emphasize the point, it elaborates, a university community "cannot take collective action on the issues of the day without endangering the conditions for its existence and effectiveness."

But the Kalven Committee members also left an empty chair where anomalous circumstances might sit and warrant institutional adjustment. They set a different tone toward the end of their report by acknowledging, "From time to time, instances will arise in which the society, or segments of it, threaten the very mission of the university and its values of free inquiry. In such a crisis, it becomes the obligation of the university as an institution to oppose such measures and actively to defend its interests and its values."

Unfortunately, the committee's brief report offers no meaningful guidance about what "matters of large principal" should compel an institution to surrender its neutrality and instead raise its institutional voice. It generally leaves that up to individual university leaders and boards. In fact, the only specific guidance on that issue came from a lone member of the original Kalven Committee roughly 40 years after the report was issued in 1967.

In early 2007, the University of Chicago campus community was embroiled in a bitter debate about whether its leaders should divest its endowment holdings in Darfur, a region of western Sudan. Many insisted that the logic behind divestment seemed straightforward. More than 400,000 people had been slaughtered in what the United Nations, Congress, and many leaders and observers worldwide convincingly referred to as a clear case of

“I am of the opinion that the desperate situation in Darfur is so tragic that it qualifies as the exceptional instance where I have no difficulty in concluding that divestment is consistent with the core values of our report and the mission of the University.”

—John Hope Franklin

genocide. And because the activists cared very deeply about the sound of their institution's moral voice, the harmony of the endowment's moral voice mattered.

Many other campuses were having the same intense divestment debates, but the situation in Chicago was especially important as, by then, the terms of those debates were largely drawn from the oft-quoted *Kalven Report*. Thus, Chicago's conclusion about the matter was symbolically important. The debates generally boiled down to determining which acts or events should be viewed as stark enough to trigger the report's exception clause. Were Chicago's ties to Sudan among the “paramount social values” the report cited but didn't define? Was their endowment's connection to genocide compelling enough to exchange its habitual silent neutrality in favor of actions and statements? The activists believed ending Chicago's neutrality would neither become a slippery slope provoking more institutional statements nor chill the academic freedom of those who might disagree. It was a clear tipping point.

Yet, since Chicago's leadership had seemed so inflexible, the activists sought advice. Back in 1967, the chair of the university's history department, John Hope Franklin, was the only African American member to serve on the original Kalven Committee, and by 2007, also the only committee member still alive. Franklin had left Chicago in 1982 and was living in North Carolina, having retired as a faculty member at Duke University in 1992.

Given the stakes, the aid of Franklin seemed ideal: an esteemed coauthor of a seminal report reappears to provide clear and compelling guidance on how best to decipher its most important, yet ambiguous sequence. What could be better than a clarifying interpretation of original intent from one of the document's key framers? It represented a very rare circumstance where campus judiciaries could benefit from an authoritative and, presumably, debate-settling voice.

And when called, Franklin chose to remain neither neutral nor silent. He agreed that the genocide in Darfur indeed represented what the report called “an extraordinary instance,” and “a matter of large principle.” He released a statement saying, in part, “I am of the opinion that the desperate situation in Darfur is so tragic that it qualifies as the exceptional instance where I have no difficulty in concluding that divestment is consistent with the core values of our report and the mission of the University.”¹¹

The net result? Sixty-one institutions of higher education divested in Sudan because of the Darfur atrocity, including many peers of the University of Chicago, such as Columbia, MIT,

Yale, Harvard, and Stanford.¹² Yet, even with the venerable John Hope Franklin providing a precise elucidation of the Kalven Committee's motivating purposes, the Chicago board of trustees defiantly rejected the poignant clamor for divestment. Despite striking many people as insufficiently moved by the inhumanity in Darfur, it chose to deepen the university's institutional neutrality and silence.

In general, what happened at the University of Chicago mirrored the dramatic tensions that have regularly occurred in higher

education. Demonstrations against the Vietnam war erupted on more than 1,300 campuses in the 1960s; at least 500 college and high school campuses protested the genocide in Darfur in the early 2000s, and 100 campuses have had to grapple with sizable pro-Palestinian protests in the past year.¹³ And in none of those cases did the distance matter. For instance, Chicago's President Beadle felt compelled in 1967 to seek faculty counsel about the impact of atrocities more than 8,300 miles away in Vietnam. Forty years later, the campus was similarly embroiled in an intense debate about an off-campus horror happening nearly 7,000 miles away in Darfur. More recently, a pro-Palestine encampment was set up on the quad near Chicago's Swift Hall because many were intolerant of lives being taken almost 6,200 miles away in Gaza.¹⁴

Even as the violence crept closer to American shores, one theme was unmistakable: Wherever the inhumanity unfolded—Vietnam, Darfur, Gaza, or elsewhere—student and faculty protestors saw blood on their own hands. They concluded that their institution, while boastful about being a force for good in the world, was essentially endorsing, if not cosponsoring, some of the world's most negative features, as well. Most important, in no case was there meaningful evidence that any of the protestors even casually saw their institution as somehow neutral with respect to the stark and cruel instances of inhumanity.

Yet the balcony view provides only a snapshot of recent history. What might be gleaned from a longer-range view? In the face of earlier patterns of inhumanity, how did campus leadership respond? Were they, too, concerned about perfecting their institutional neutrality, innocence, and silence?

From the Mountaintop: Perceived Neutrality Before Kalven

The mountaintop view provokes a more sobering perspective on institutional conduct. Unlike the balcony view, the observable wrongdoing is not thousands of miles away and contained; it is

nearby and scaled. And the quest for neutrality, innocence, and silence developed not as much when each campus was founded, as it did over time, led by those preferring a nobler institutional legacy.

In America, the posture of early colleges and universities was determined by what preceded the emergence of higher education. In the century before Harvard was established in 1636, the European arrival had already triggered surges of warfare, disease, and famine, which reduced the Indigenous population in the Americas from roughly 60 million to six million.¹⁵ As higher education began to take shape, European settlers pushed west, seized land, provoked tribal conflicts, and forced the Indigenous peoples into territories and onto reservations. Simultaneously, in a nearby parallel universe of human suffering, the brutal enslavement of more than 10 million African Americans was well underway—and to quash their aspirations, all educational pursuits by enslaved Americans were deemed unlawful.¹⁶

Thus, as higher education expanded from one institution in 1636 to 381 institutions by 1860, the relatively youthful campuses were emerging in a world already largely defined and shaped by the scaled dispossession, eradication, and exploitation of othered human beings.¹⁷ The human devastation remains as difficult to calculate as it has been to face.

That contextualizes why the earliest institutions were so xenophobic. For instance, Alexander Lucius Twilight graduated from Middlebury College in 1823, becoming the first African American to do so. Institutional neutrality did not postpone that breakthrough. Those campuses that could have enrolled Twilight and other African Americans were far from neutral on the question of race. And for most of their existence, nor have such institutions been neutral about gender, religion, sexual preference, or any of the other categories still driving the artificial hierarchization of humankind.

Based on their undiversified enrollments, culture, and curricula, nearly all of the earliest campuses essentially advanced humanity's tribalization rather than its harmonization. And that is especially surprising since most were originally designed to produce a learned ministry, equipping enrollees with a "Christian" construction of reality. That factor alone enfeebls the logic of institutional and individual indifference in the face of human suffering. In fact, one would expect the opposite—that is, the early institutions and their graduates should have coveted reputational distinction for having clear moral voices. After all, their surrounding environment was rife with conditions in need of such voices.

For centuries, because the cultivation of institutional neutrality, innocence, and silence was the norm in American higher education, the narrative histories of most campuses became an ethical blur. We knew their leaders were too reflective of the mindsets behind the scaled wrongdoing to be corrective of them. We knew they never intended to equip students with the moral clarity to rally a scaled objection to stark inhumanity. But many of the details remained unclear . . . until 2003. That is when a fresh clarification of early higher education's general posture toward wrongdoing was stimulated by remarkable developments at Brown University. What happened there was powerful enough to trigger what one might call a long-delayed, widespread embrace of "veritas."

Just as she began an 11-year term, Ruth J. Simmons faced an immediate challenge powerful enough to define her presidency, for good or ill. After examining higher education and the slave economy, Harvard Law School's Charles Ogletree included Brown University among the institutions targeted in a reparations lawsuit. At the time, Brown's past involvement with slavery was opaque to Simmons and many others in her campus community. Yet she neither ignored nor minimized the controversy, perhaps by seeing it as too sour a note upon which to launch her tenure as the first African American woman to lead an Ivy League institution. Instead, she unblink-

ingly faced the challenge by appointing several faculty members to serve on what became known as the Steering Committee on Slavery and Justice. Simmons charged them to both "examine the university's historical entanglement with slavery," thereafter reporting the findings "openly and truthfully," and "to organize academic events and activities that might help the nation and the Brown community think deeply, seriously, and rigorously about the questions raised by the national debate over reparations for slavery."¹⁸

In October 2006, Brown released an atypically candid report, *Slavery and Justice*, that revealed its extensive ties to the slave economy via the Rhode Island slave trade and demonstrated that early campus leaders were far from neutral regarding America's inhumanity.¹⁹ It opened a new dimension of Brown's past, compelling the institution to revise its official history to honor the truth. The response also included academic initiatives, campus memorials, curricular adjustments, and stronger relationships with Historically Black Colleges and Universities (HBCUs).

But even as the report stimulated meaningful change on the Brown campus, its impact across higher education was more



Ruth J. Simmons

consequential. Finally abandoning neutrality, silence, and innocence, scores of colleges and universities launched similar efforts to probe and disclose their past ties with human enslavement and systemic racism. Among the discoveries and confessions: multiple Harvard presidents had owned enslaved Americans, enslaved employees outnumbered students at the University of Virginia (UVA), and enslaved people were sold at auctions held outside of the president's home on Princeton's campus.²⁰ On countless campuses, however, curricular materials and offerings had been molded to justify and sugarcoat all of the wrongdoing. The voluminous evidence of collegiate complicity drove MIT historian Craig Steven Wilder to conclude that, "The academy never stood apart from American slavery—in fact, it stood beside church and state as the third pillar of a civilization built on bondage."²¹

UVA's response was poignant. Even before releasing an official report in 2018, its leaders began convening all Virginia institutions grappling with their past ties to human enslavement.²² By 2015, their effort expanded into a formal consortium of National Universities Studying Slavery (USS). By late 2024, USS had become an international, multiinstitutional collaboration of 107 members sharing best practices, guiding principles, and curricular and programmatic ideas associated with long-awaited institutional truth-telling. And, like many other institutions, UVA decided to rewrite the official story it had been telling the world about its past.

Collectively, the protracted, palpable silence about such histories had helped cultivate untrue public perceptions of institutional innocence, valor, and nobility. The discordant storylines from a buried past were too inconvenient to revive or reference. Why even whisper a counternarrative centralizing the propulsive role of human enslavement, since it may one day become loud enough to contradict the prevailing virtue-laden chronologies of the academy's rise? Why destabilize the dignity of Latinized campus mottos signifying ideals like truth, light, knowledge, and wisdom? Yet, thanks to Simmons, whereas the previous historical narratives featured only a pride of trumpets, more recent campus leaders have been wisely adding a cry of violins.

What UVA historian Alan Taylor said of his institution seems generally true of many American campuses: "There is more to celebrate in what the University has become than in how it began."²³

Renouncing Institutional Neutrality: The Abolitionist Colleges

Two noteworthy exceptions feature institutions that proudly renounced the normalized ethical failures of their counterparts. Before the 250-year slave economy was finally abolished, not all of the nearly 400 colleges dotting America's landscape were neutral about or invested in it. Some can aptly be described as anti-slavery campuses, meaning they supported the movement to end the

inhumane practice, served as a stop on the underground railroad, or generally helped to stimulate a culture of resistance. Such campuses included Guilford College in North Carolina, Knox College and Wheaton College in Illinois, and Marietta College of Ohio. But while being an anti-slavery campus was progressive, only three institutions, or less than 1 percent of all antebellum campuses, matured as abolitionist colleges. There was a profound difference.

The three abolitionist colleges—Oberlin College of Ohio, Berea College of Kentucky, and New York Central College of New York—were distinctive because, in the middle of the 19th century, they explicitly conducted experiments in racial egalitarianism. As human enslavement increasingly drove the American economy, those three institutions transcended the beliefs of the anti-slavery campuses by becoming living examples of a world well beyond such barbarism.

Assumption University historian John Frederick Bell illuminates why the abolitionist campuses were well ahead of their time.²⁴ For instance, in 1833, Oberlin became the first campus to educate both White men and women. They extended that welcome to African Americans in 1835. By 1863, they had enrolled more African Americans than all institutions of higher education combined. Berea College essentially shared the trajectory-shifting ideals of the Radical Reconstruction era. In 1866, Berea's leaders proudly adopted an egalitarian mindset, which helps to explain why it became the first campus in the American South to enroll Black and White women and men, with Black enrollment accounting for between a half and two-thirds of the total from 1866 to 1893. New York Central's enrollment reflected egalitarian values, too, and it was America's first college to hire women and African Americans as faculty. Whenever White students departed after becoming intolerant of the egalitarian approach, all three successfully found others who were guided less by racial prejudice than by the equality imperative clearly ingrained in both the founding documents and the Bible.

In short, those institutional leaders coveted the perfect union described by America's founders. They demonstrated that colleges need not be neutral with respect to the major off-campus conflicts and controversies but can more explicitly compose and orient their campus communities and cultures to graduate pursuers of the common good. Accordingly, they fashioned their campuses to resemble the egalitarian world they wanted their graduates to help create, believing it was all pursuant to the American dream.

But those distinct efforts to make that dream come true were short-lived. New York Central lasted a mere 10 years before closing its doors in 1858. While Oberlin and Berea stayed alive, their egalitarian experiments were ended by World War I. Assessing the headwinds thwarting such equity-minded activism at and beyond both institutions, Bell saw campus communities under constant pressure to conform to the prevailing Jim Crow norms.

He summarized, “The principle of preservation can outweigh the preservation of principle.”²⁵

Renouncing Institutional Neutrality: The HBCUs

Only from the loftier mountaintop can one observe both of the most consequential decades in HBCU history. Twenty-six HBCUs were born in the 1860s, more than in any other decade. They included Howard University and Morehouse College, two exceedingly effective HBCUs as measured by the impact of their graduates. The 1860s also saw Congress pass the 13th, 14th, and 15th Amendments, which gave African Americans and others a pathway to enjoy new freedoms, legal protections, and the coveted right to vote. Indeed, W.E.B. Du Bois would later refer to that Reconstruction Era decade as, “the finest effort to achieve democracy . . . this world has ever seen.” At a time when a critical mass of HBCUs were born, the three amendments provided a firmer basis for actualizing the nation’s equality imperative.

Interestingly, as the reversal of the Reconstruction gains ushered in both Jim Crow and democracy’s further disrepair, HBCUs and their graduates began targeting those noxious conditions for correction. And it all culminated precisely one century after their first momentous decade. The 1940s and 1950s were seed time for eventually harvesting the generals and foot soldiers of an effort to bolster American democracy. The resulting civil-rights movement in the 1960s influenced the trajectory of American democracy almost as powerfully as their birth decade had.

This second momentous HBCU decade featured the emergence of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968. Du Bois, who died in 1963, just hours before King delivered his “I Have a Dream” speech, might have called it a second fine effort “to achieve democracy.”

But like the abolitionist campuses, the HBCUs faced problems sustaining and updating their uniquely aggressive efforts to surface America’s ideal character. While their movement successfully triggered the steady desegregation of campuses in the 1970s, it also diluted their captive audience of the best Black students and faculty. Enter again the ominous principle of preservation. HBCU leaders were forced to focus on institutional survival, largely because America’s philanthropic community failed to provide them with the kind of transformational investments that could encourage federal and state governments to abandon their long-standing posture of neglect.

Today, unlike their abolitionist and Civil Rights Era HBCU predecessors, few institutions have the clear and confident egalitarian voices required to pursue a perfected union. Even if they did, how many would boldly, or even detectably embrace that as our shared destiny?

Destiny Matters:

The Character of Our Perfected Union

In 1940, at age 72, W.E.B. Du Bois assessed his life as a Harvard-bred African American academic and activist. He had lived outside of the world that had credentialed him, because it was too distracted by his color to acknowledge his superior competence and character. Du Bois understood that his lack of neutrality and silence about that world’s hypocrisy came at a price. He was willing to pay it, because he knew his conscience would exact a higher price if he failed to speak truth to power.

Nonetheless, at the dawn of his eighth decade, a torn Du Bois grappled with his own mindset and saw signs of a fundamental flaw. In *Dusk of Dawn*, he critiqued the nature and meaning of his lifelong quest for inclusion, and he wrote, “It was as though moving on a rushing express, my main thought was as to my relations with the other passengers on that express, and not to its rate of speed or its destination.”

Du Bois’ insight about the lunacy of finding a great seat on a doomed train is not unlike Franklin’s timely advisory in 2007. Indeed, outcomes matter. Yet the DuBoisian analogy is weightier and more nuanced. It is also instructive in the context of the recent push for institutional neutrality.

As written, Du Bois’ “rushing express” referred to the flow of the Western world, led by America. But imagine the train as higher education on a commissioned journey to actualize a pluralistic democracy. What rate of speed has prevailed, to what degree has it been pointed toward democracy, and how might that inform today’s debate about neutrality-based institutional silence?

First, even if the sluggish rate of speed has been inexcusable, it is also somewhat logical. The early institutions were nurtured in a toxic womb—that is, they emerged and matured in a world largely shaped by white supremacist views. That explains their original devotion to racialized belonging and celebratory campus histories that were often as distorted and stunted as the values they concealed.

But what of the speed and outcomes since?

After taking nearly two centuries to graduate the first African American, another 146 years passed before higher education finally began taking desegregation seriously. The practice of corrective race-conscious admissions first surged in 1969 and into the 1970s, when a significant number of traditionally segregated colleges and universities began enrolling critical masses of African Americans and other minoritized people, including women. The corrective practice was then ended on June 29, 2023, when the U.S. Supreme Court ruled against its continued use.

In hindsight, it was a breathtakingly brief experiment in aggressively enrolling those categories of citizens largely denied admission for the majority of higher education’s existence. But leave aside the absurdity of thinking colleges can spend 333 years

systemically using race-consciousness to exclude people (1636–1969) and then correct it all by spending a mere 54 years tactically using it to include those previously excluded (1969–2023). Ignore, also, the recent work to optimize the newly diversified campuses. To wit, just since 2007 has a critical mass of campuses begun to enhance educational experiences by formally addressing inequity and exclusion.²⁶ Similarly, scaled initiatives to address the lack of belonging only began in 2020. The failure to regard all those efforts as fundamentally remedial is indicative of a larger mindset problem.²⁷

The proverbial saying, “if it ain’t broke, don’t fix it,” is a polite tagline for the mindset that has traditionally resisted such efforts, thereby impeding those seeking to democratize and humanize higher education. Perhaps unsurprisingly, that mindset drove how race neutrality functioned in the articulation of the Supreme Court’s 2023 majority opinion. With ahistorical gall, Justice Clarence Thomas used “race neutral” as a label for the pre-1969 higher education world, as if systemic fairness had been the longstanding norm that was then shattered by the unwarranted hammer of race-conscious admissions.²⁸

The gross distortion was not overlooked. Justice Sonia Sotomayor cautioned, “Race neutrality will entrench racial segregation in higher education because racial inequality will persist so long as it is ignored.” Her warning grew out of a concern she and fellow Justice Ketanji Brown Jackson shared about how race neutrality, real or perceived, can effectively harden a problematic status quo and painfully decelerate the rate of progress.²⁹

But the Kalven Committee’s guidance is for college presidents, not Supreme Court justices. Especially in the context of today’s polycrisis, expecting presidents to take formal institutional positions or release official statements regarding a random mix of humanity’s social and political conflicts would leave them little time to do anything else. Moreover, such statements, while chilling academic freedom, would inevitably generate more heat than light. That means, as a general practice, taking institutional positions on a variety of world affairs is both misguided and demonstrably incompatible with what transformational presidencies require and demand.

So, although the Kalven Committee’s overall reasoning is sound and justifies its abiding relevance, its exception clause is precisely



Justice Sonia Sotomayor



Justice Ketanji Brown Jackson

why and where history matters most. The mountaintop view reveals clear warnings about the dangers of both race neutrality and institutional neutrality. And considering those warnings amid today’s push to adopt Kalven-like principles, the worst thing campus leaders can do is assume an outcome-agnostic mindset.

For instance, it is contradictory for presidents to brag about the careers, titles, wealth, and generosity of their most consequential alumni yet then become agnostic about the trajectory of the troubled world that continues to emerge on their watch. It is the equivalent of being proud of where their graduates sit on the western train but remaining cruelly dispassionate about their too often tepid or toxic influence on the train’s speed and destination. Minimally, presidents should view the imperiled fate of our democracy and planet as two macro-destination issues that now warrant their collective attention—and that of all campus communities.

Yet a seat mindset now dominates, as much of higher education functions like a mill for training and credentialing jobseekers and wealth chasers, underscored by the corresponding shift from humanities majors to the technical disciplines. And it is telling that, for the last half century, the findings of UCLA’s

annual nationwide survey of incoming freshmen show that the goals for attending college have fully shifted from “developing a meaningful philosophy of life,” to “being very well-off financially.” We have experienced quite a regression of values. Sadly, institutions that were once wrestling places for the inquisitive are now breeding places for the acquisitive. Today, on too many campuses, a seat-culture is far more apparent than a destination-culture.³⁰

And that is another reason why the character of selected past leaders matters. As of 2025, the abolitionist colleges and HBCUs are still the most distinctive examples of deliberate institutional citizenship in American history. Embedded in the reason why is a timely mandate. While today’s neutrality push effectively lowers or silences presidential voices, many past leaders habitually raised their institutional voices, especially in favor of pro-democracy outcomes.

The abolitionist presidents envisioned and articulated a world beyond slavery and caste, characterized instead by “human brotherhood.” They shaped their campus communities mindful of that grand outcome, believing it was pursuant to America’s highest ideals.

And many Civil Rights Era HBCU leaders shaped their campus curricula, communications, culture, and character to ensure that their graduates emerged with both a skillset for a great seat on the train and a mindset for moving the train toward the destination of both a greater America and a greater world. Their education equipped them with the kind of dual competency that MIT Professor Otto Scharmer calls, “ego and eco consciousness.”³¹ Scharmer’s indispensable ecosystem awareness is consistent with having a destination mindset.

Both examples warrant the attention of today’s most ambitious, open-minded, and patriotic campus leaders and boards. The abolitionist and HBCU leaders shaped “high-definition institutions” by privileging identity over neutrality, voice over silence, courage over fear, and upstander engagement over bystander innocence. This work will be challenging to update, but it is required to actualize a better world.

Concerned with the rise of the corporate multiversity and the related dangers of our increasingly “jobbified” campuses, Boston College

educational philosopher, Chris Higgins brilliantly stresses our need “to recenter formative aims in higher education.”³² In my view, that is best done by first recentering in higher education the formative aims of America. After all, no outcomes seem worthier than a pluralistic democracy as destination and a more perfect union as destiny. ▀



John Silvanus Wilson Jr. has had a 40-year career in higher education, which includes serving as an advancement director at MIT, as the executive director of the White House Initiative on Historically Black Colleges and Universities and as the 11th president of Morehouse College, his alma mater. His trustee board memberships include Harvard University and Spelman College. He is the author of *Hope and Healing: Black Colleges and the Future of American Democracy*, released by Harvard Education Press in May 2023. He is now a higher education consultant, with an emphasis on institutional identity, leadership, governance, strategy, and advancement.

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An abstract illustration featuring a person in a white blazer running away from the viewer through a narrow, brightly lit corridor. The corridor is flanked by large, colorful geometric shapes in shades of orange, teal, and yellow. The background is a dark, complex arrangement of these same shapes, creating a sense of depth and movement. The overall style is modern and graphic.

RUNNING TOWARD

THE

BY R. BARBARA GITENSTEIN

FIRE



Leading a college often requires a president to deal with crises. Managing crises requires communication with the board of trustees as well as other stakeholders. Today, with the variety of crises facing higher education, understanding crisis management is crucial for both college presidents and trustees.

My husband, Donald Hart, earned a PhD in philosophy, and throughout my years in administration was that voice that reminded me of the central purpose of higher education—teaching and scholarship. Before we entered the academy, he served in the Navy during the mid-1960s, which was a very difficult time to be a servicemember in our country. When he returned from his six years of service, he brought with him a sense of pride in having done what he was supposed to do but also a feeling of guilt in being involved in a conflict that he had questioned before his years in Vietnam and protested in years following that service.

Some of what he learned from the time in country was invested in those conflicting feelings, but some of what he learned was the consequence of living for months on a “tin can” (destroyer) in the middle of the ocean. As a sailor, he was taught if there was fire on the ship, you did not run from it, as you might on land, you ran toward that fire.

I have learned a lot from Don about a lot of things but perhaps nothing was more important than that concept of running toward, not away, from a fire. That perspective served as my north star for dealing with crises on The College of New Jersey (TCNJ) campus during my years as president.

After 15 years teaching full time, I turned my attention to administration and approached the new responsibilities as another opportunity to teach—my students became not just tuition-paying students but other members of the higher education community as well. My job was to help faculty understand the reality of higher education in the 21st century, to guide (and be guided by) citizen trustees about the special qualities of the industry, to communicate clearly with political leadership about the values and import of quality undergraduate education, and to stand up for the ideals inherent in higher education.

Necessarily, I learned that doing this new kind of teaching was much more of a public act than teaching in the classroom and that the moment of teaching was rarely of my choosing. Furthermore, the teaching very often happened during moments of crisis, requiring communication with multiple audiences in high stakes situations with multiple critics eager to attack whatever message was coming from the president’s office.

As is true for almost every president I know, these crises did not wait for me to become acclimated to my new responsibilities. I simply had to jump into the deep water within months of assuming the title in 1999. A series of crises in those early months were seemingly unrelated but came to be perceived by the public and the students as interrelated. In March 2000, a number of troubling episodes were reported on campus—graffiti with racist and antisemitic overtones, reports of unidentified young men walking across the quad late at night wearing black trench coats reminding everyone of Eric Harris and Dylan Klebold from the Columbine shootings. In October 2000, the Jewish Student Organization received an email threatening violence to Jews. In spring 2001, an openly gay student reported messages to his email account that included threats to him on the basis of his sexual orientation.

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We could never determine the relationship between or among the episodes but clearly a new president was being tested in the public arena, and it mattered how I responded. While I had served as provost for six years, the voice of a president in times of crisis, particularly when students are frightened, is a category difference from the responsibilities and voice of any other leader on the campus. I had to train myself to become attentive both to the facts of each episode and to the patterns shared by all the episodes. I could not appear to be more attentive to one group; whether an African American, a Jew, or non-heterosexual, students (and their parents) needed to feel that I was concerned about her or his well-being whatever their identity. During these early months, I honed my skills in communicating across stakeholder groups, working closely with the communications team but always remembering it was my voice that the community needed to hear, not that of a professional communications expert. Values had to be at the center of each message, not simply concern about public perception. Furthermore, if at all possible, trustees should hear of crises from me before they read it in the press. I called every single trustee (fortunately, there were only 15 trustees at to alert them to any potential news story).

Just as it seemed we were coming out from under this cloud of threats to our community (and communities), I was on my way to a regularly scheduled association meeting on a beautiful fall day.

It was September 11, 2001. The details of that day are indelibly branded in my memory. At the beginning of that day, I tried to get my mind around the impact on our college community by trying to assess just how many of our students, faculty, and staff could have felt the personal impact of the attack. I enlisted all academic and student affairs offices and the human resources professionals to help us determine who lived in northern Jersey, who could have had a parent, a child, a relative who had been in the Twin Towers. Of course, the numbers were hugely speculative, but by the end of the day, we calculated that up to 2,000 members of our community could have lost someone (or at that time we hoped for injuries).

September 11, 2001, was a national event and it was felt all over the country, but for those of us in the Northeast, particularly those of us who had so many members of our community for whom the towers were part of their backyards, the experience was deeply personal. Students were desperate to go home, but roads were closed, and travel was being discouraged. No one knew who or why this devastation had occurred, and no one knew who or where was safe. Within hours of learning that planes had crashed into the World Trade Center, I sent an email to the senior staff telling them to get out of their offices, to be seen and present in public on campus. The provost and I worked as a team to keep the community informed about institutional actions as well as memorial and support services. This continuous communication, with the voices of the chief academic officer and the president at the core of the messages, stood us in good stead.

I had to train myself to become attentive both to the facts of each episode and to the patterns shared by all the episodes.



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Values had to be at the center of each message, not simply concern about public perception.

In early October, federal officials began receiving letters laced with anthrax. On October 18, one of the post offices nearest to the TCNJ campus was closed because of anthrax contamination. Soon a number of other local New Jersey post offices reported contamination. These facts reinforced that the story was not a national story, but also a local crisis. Provost Steve Briggs and I learned that the important message to the community was similar to the one in response to the hate-filled attacks earlier that year—that the senior administration was aware and attentive to the most recent events, that the members of the community (particularly the students) were at the center of our concerns. And as in the earlier episode, the trustees were kept informed, with the goal that they would never read something in the press about TCNJ before they heard from me or the assistant to the board of trustees.

Almost one year to the date of the attacks on the Twin Towers, which happened to be Yom Kippur, a race-baiting, antisemitic, homophobic, sexist appeared on our campus to preach his view of the world to our students. As a public institution, TCNJ has always been dedicated to the concept of the power of free speech on college campuses, resisting the temptation to silence even the most outrageous messengers. Reverend White tested those values, and the community was up in arms that he was allowed to speak in the center of our campus in the middle of the day. Students loudly protested, keyed his car and afterwards faculty joined students in complaining to me about my allowing his presence on campus. At first, I tried to have individual conversations with each person who contacted me. As the messages escalated in number and passion, I decided I needed to make a public statement. I reached out to the student newspaper, *The Signal*, to see if they would be open to an op-ed. I wrote:

Perhaps there is wide consensus on this individual, but what about Rush Limbaugh, Al Sharpton, Winnie Mandela, Jerry Falwell, Louis Farrakhan, Ariel Sharon, or Yasser Arafat? What guidelines should we use in these cases? I am also confident that The College would have substantial legal obstacles in developing such guidelines . . . We must encourage all community members to speak for themselves, to be able to hear an unacceptable viewpoint and respond . . . Speaking out fervently and passionately,



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citing contrary opinions, trying to engage the speaker in debate—all constitute such acceptable response. So does silence and absence . . . Whereas such speech, silence, and absence constitute acceptable response, violence, and vandalism do not . . .

The op-ed was not met with unanimous support, but the community came to understand my deep commitment to free speech, to the value of open and vigorous debate on thorny issues, and the board supported me throughout.

There are rarely times in the tenure of a president when life is calm, when there are no crises to confront, but there is one year during my presidency that stands out in my memory as one of particular upheaval. Early in the spring 2006 semester, the new governor made two announcements that would throw our life on campus into turmoil. In his budget address, Jon Corzine announced that his financial plan for the next year included a 32 percent cut to state funding for public higher education. Almost simultaneously, he proposed an executive order that would change the public reporting requirements for members of the boards of trustees that would most assuredly have decimated these voluntary boards. In early March, I was actively working with colleagues in the higher education community, with board members, with advocates to minimize these possibilities. Then on March 25, a freshman student went missing. My entire focus turned to the campus, to the missing student and his family, and to the impact of that student's absence on the rest of the TCNJ community.

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Within a couple of days, blood matching the blood of the parents of the missing student was found in the dumpster outside the student's residence hall and within six weeks his body was found in the landfill where our garbage was dumped. During the intervening weeks, the sounds of helicopters permeated our quiet; intrusive reporters accosted students at their residence halls; and gadflies from across the country spun stories of crazy conspiracies. In the face of the news, numerous public relations companies contacted me offering help in our managing the crisis. Partially in the face of the budget threat but also knowing the talent of the person who was our senior communications person, I decided that Matt Golden and I would be the voice of the campus, rather than expending precious college financial resources in crafting a response.

Throughout the spring semester, we sent out almost daily messages. Being truthful, open where we could and constantly reminding everyone that the focus was on supporting the student community, not giving into the speculation—those were the consistent themes throughout the spring. The board was tremendously concerned about The College and frankly about me, but some of that concern came to play out in troubling ways. Some board members began to reach into managerial responsibilities (particularly with regard to planning the budget for the 2007 fiscal year). I was then and am still now convinced that the trustees' impulse was all driven by genuine concern and real commitment to TCNJ. But trustees were forgoing their fiduciary and oversight responsibilities and were beginning to try to engage in administrative responsibilities.

During this very stressful time, I had to work to reengage the trustees at the appropriate level. I had to assure them of the importance of their insights and input but also remind them that they had to let me and the administrative team do the work that provided the proposals to the board for consideration—that it was not their job to create the proposals. In the end we were successful in navigating that re-learning of good habits. Part of that success was the fact that the board saw me as a strong advocate for the modification of the governor's executive order which would have either led to their resignations from the board or to their engagement in highly onerous reporting requirements. They knew that I valued their work.



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As I approached my final year as president, 2018, part of me fantasized that I would be able to glide toward retirement. No such luck! The year before my retirement, a group of students began a campaign protesting the name on a building. Paul Loser had been the Trenton superintendent of schools from 1932 to 1955. His son, Tom Loser, had been a generous donor to The College and my predecessor agreed to name a building that housed the admissions office and the School of Nursing in honor of his father. In the fall of 2016, a group of students in a history class uncovered archival research that revealed some questionable actions by Superintendent Loser. He had been taken to court by families who accused him of unlawfully assigning Black students to predominantly Black schools, not necessarily the schools nearest their homes; a community-based task force (Trenton Committee on Unity) accused him of failing to hire Black teachers and principals. In the case brought by the families, the New Jersey Supreme Court decided against Loser and the Trenton School District. In the report from the Trenton Committee on Unity, the statistics were stark: from 1942 to 1947, not one Black teacher was hired in a regular (not substitute) status in the school district and only one of the twenty-seven principals in the district was Black.

Ironically, none of this history was unknown either to the



Communication must be simple and honest and when information cannot be shared, that should be stated with the rationale for why it cannot be shared.

Trenton community or in fact to the TCNJ community (as previous students in a history class taught by the same professor had done similar research). But in 2016 the story captured the attention of a group of students—not just members of the history class that conducted the research who found unacceptable the celebration of a person they deemed racist. The protesting students began posting derogatory flyers across campus; then they occupied the conference room in my office suite.

Soon the group incorporated ancillary issues into their advocacy, including the argument against the closing of a School of Education (SOE) clinic for mental health counseling. To the protestors, these actions were all of a piece, indicating The College's lack of concern about its students, its neighboring community, and the commitment to racial disparities. In the face of the protests, I took several actions. First, I established a commission that had broad representation from the faculty, student, and alumni groups as well as a former trustee that would report to me with advice regarding my possible recommendation to the board of trustees for the change of the name of an asset. Second, I reconfigured the decision-making process for the decision about closing the SOE clinic, allowing more student voices to weigh in on what had previously been solely a financial decision, closely held within administrative offices. Finally, I opened myself up to public engagement

with advocates both for and against the name change and the clinic closing. Some of this engagement included the very difficult personal conversation with the daughter-in-law of Paul Loser (by the time of the episode Tom Loser had died). It also included some very tense interactions with students who were deeply committed to a goal which they saw as unyielding. I had to agree to some of their requests (I never accepted their description of requests as demands) and to reject others.

I ended up making some very difficult decisions (with regard to the clinic and recommendations (with regard to the name change). In both cases, I kept the board of trustees informed throughout. I deeply regretted two aspects of these results: first, having essentially to overturn a decision of the provost; second, having to deliver hurtful and damaging research and decisions to a college supporter whom I admired tremendously. These decisions were guided by my sense of the mission and

principles of The College and the best interest of the students, faculty, and staff.

While each of these crises had its own context and facts, they shared some things in common.

- These were issues that involved a large segment of the community.
- The feelings were strong and passionate and there was no consensus on what was the problem—nor what should be the solution.
- The issues had ramifications both on and off the campus.

In managing these crises, I learned the following:

- Communication is the key to managing crisis.
- The president's voice must be heard.
- That voice should be one of concern and kindness but also humility in the face of the crisis.
- The decision-making process could not be seen as rigid or resistant to contradictory and even angry input.
- My team had to recognize which stakeholder groups were primary audiences. When there is a concern about safety, students have to be seen as a primary audience.
- Trustees should be kept informed throughout the crisis and before any public statement.
- Communication must be simple and honest and when information cannot be shared, that should be stated with the rationale for why it cannot be shared.

Since retirement in 2018, I have spent a great deal of my energy thinking and writing about the centrality of strong presidential leadership in maintaining the health of the higher education enterprise. On July 11, 2023, I urged my colleagues to speak out about the place of higher education in a healthy democracy and the necessity of presidential voice on issues of social and political concern ("The Time is Now," *Inside Higher Education*). In January 2025, I published my second memoir, *Portrait of a Presidency: Patterns in My Life as President of The College of New Jersey* (Koehler Books). In both, I acknowledge that navigating crises has become a more fraught but even more essential part of the job of a president. In leading their institutions, presidents must keep the mission and purpose of the individual institution and of higher education at the center and learn from their own mistakes. ■



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An illustration featuring several hands of different skin tones holding large, colorful speech bubbles. The bubbles are in shades of pink, blue, yellow, green, and orange. The hands are positioned around the central text, with some holding the bubbles as if presenting them. The background is a light beige color with a faint, stylized illustration of a building interior with stairs and columns.

How to Make the Worst of Times Better

BY R. BARBARA GITENSTEIN



Higher education today is facing an unprecedented environment that is challenging tenets of academia: academic freedom, freedom of speech as well as institutional and board independence. Boards of trustees, institutionally related foundation board members, university presidents, and foundation leaders may be wondering how to navigate these murky waters, which is the present-day reality. Exceptional governance and understanding shared responsibility for the institution may be the antidote for present circumstances to ensure a thriving institution in the future.

“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of light, it was the season of darkness, it was the spring of hope, it was the winter of despair.” In this quotation Charles Dickens is describing the era of the French Revolution in his novel *A Tale of Two Cities*.

In fact, these words capture the turmoil and destabilizing feelings of any time of intense conflict. I believe that it is an apt description of the challenges before us in 2026, particularly for those of us who are deeply committed to higher education in the United States. Some might question how I could possibly believe that there was any way to describe the current status of higher education as the “best of times.” I would respond that this could be the “best of times” if we understand the great opportunity for transformation, advocacy, and reinvestment in our industry and embrace our responsibilities in effectuating that transformation. Such possibility will happen only if we who are advocates for higher education are thoughtful and proactive. I do not mean to suggest that this will be an easy task, but it is precisely the charge before us as leaders and guardians of our remarkable enterprise, American higher education. How do we respond to today’s challenges and create constructive change? What should that change entail? What must be preserved and what must be modified in higher education?

One of the most distinctive features of American higher education is the concept embraced and advocated by AGB, the bedrock of what we consider good governance. In “United We Stand: An Urgent Call for Leadership,” Ellen Chaffee provides a clear definition of this concept and the context for its development (in *Trusteeship*, September/October 2023). She writes:

American higher education institutions were established in the cradle of New World democracy. Their leaders deliberately separated the governance of churches, schools, and civil government. In authoritarian countries, education is directed by the government in line with the ideological wishes of those who have political power.

Americans also created a new model of for higher education to secure freedom of inquiry and expression based on expertise, facts, and reasoning rather than ideologies or politics. Subject-matter experts in this country determine the learning experiences of students, free of administrative or governmental control. Higher education depends on academic freedom and independent governing boards.¹

In other words, fiduciary citizen trusteeship is inextricably intertwined with democracy, independence of thought, academic and intellectual freedom, and, by implication, autonomy of both institutions of higher education and their boards of trustees.

All of us are aware of the powerful forces that are currently questioning the value of higher education in the United States. I believe that the thoughtful voices in this camp have much to

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teach us about improving our enterprise and improving our communication about the value that higher education provides not just for the individual, but also for the community at large, for democracy. But one of the features that some critics are questioning is the distinctive governance model we embrace. On this matter, the critics are wrong. In fact, the citizen trustee governance concept is the best platform for addressing the changes that higher education must make to continue to flourish. Only with healthy good governance will American higher education continue to change lives, promote democracy, and advance knowledge and scientific inquiry. An independent and autonomous board will assure that individual institutions meet the needs of the citizens of the country by remaining true to institutional mission. The responses of the board of trustees for a public community college cannot and should not be those of the board of trustees for a private research university. An institution that is governed well will not only survive these difficult times, it will thrive.

As leaders of higher education, we should acknowledge where our critics raise issues that can teach us to improve as we continue to commit to higher education, and we must forcefully reject when their attacks are at the core of what we contribute to society and would undermine our ability to improve. Those of goodwill who say that our concept of governance needs to be discarded likely do not understand what fiduciary citizen

trusteeship means and entails. And if they do not understand the concept, that is likely our fault, not theirs. Good governance does not mean unanimity of opinion; it does not mean unquestioning acceptance of everything brought forward by the administration; it does not mean complacency. The board honors the responsibilities of the faculty in leading the institutional academic offerings and the responsibilities of the administration in managing the institution. On the other hand, the board insists on its own role as the fiduciary body of the institution and the final locus of decisions.

In order to remain an honest fiduciary, however, the board as a whole and the individual trustee recognize they cannot make good decisions without informed input and that input comes either from the faculty or from the administration (many forward-thinking institutions also create platforms for staff and students to provide input to the board). Only with this kind of shared responsibility will higher education be able to rise to the challenges of today. A good board member asks good and hard questions, partnering with the president and administration in supporting the mission of the institution, allowing differences to be aired and decisions to be based on data, inquiry, and respectful dialogue. Once a decision is made by the board, individual trustees have one of two routes before them: Either support the decision or sever ties with the board. In either case, the deliberations of the board that are confidential must remain so.

The questions of our critics are serious and must be answered both locally and nationally, by systems and by individual institutions, by public universities and by private colleges, with data, with thoughtful analysis, and most importantly with respect.

Recently, there have been numerous polls and studies that reveal the growing rifts between those who attended college and those who did not on both what is a college education and the value of the investment. There are growing elements that believe that institutions of higher education are bastions of single-minded thinking. In some cases, these critics are turning to boards to “right the ship.” Their criticisms are sometimes ill-informed but not always. In either case, institutions must listen to the criticisms and analyze the rationale and validity of them. Outright rejection of these assertions is a foolish, unproductive, and frankly anti-academic response. The questions of our critics are serious and must be answered both locally and nationally, by systems and by individual institutions, by public universities and by private colleges, with data, with thoughtful analysis, and most importantly with respect.

Part of the responsibility of a good board is to help the administration address these public concerns, not to do the work for the administration in garnering the evidence, not to assume the intellectual leadership of the curriculum and input to the mission owned by the faculty, but to assure that evidence is gathered and that the administration is responsive to the public’s concerns and expectations. Only the kind of trustee envisioned by fiduciary citizen trusteeship can accomplish this task successfully. If trustees feel beholden to their appointing authority, they will not be honest brokers in listening and helping the institution analyze and respond thoughtfully to the criticisms.

Legitimate questioning of the value proposition of higher education does not lie in the governance philosophy so long celebrated as a distinctive and remarkable American achievement. Rather, as I have said above, this governance philosophy is precisely the platform for not only addressing these questions but also assuring that American higher education regains its status as one of the pillars of our society.

Why then is higher education governance under such threat? First, fiduciary citizen governance needs to be better understood. I must conclude that we in higher education have not done a particularly good job of communicating its meaning. Second, as advocates we must acknowledge that we have entered a new phase in the country’s expectations for higher education. Years of tuition increases greatly outpacing inflation, an American history of skepticism of the overly educated, the current uncertainty of the job market and the impact of technology (particularly artificial intelligence) on employment opportunities, have combined with a citizenry that is impatient with the somewhat condescending attitudes of the elites to create a petri dish for attacks on higher education.

The history of questioning authority has been further exacerbated by three important features. First, we need to ask ourselves if those who are in positions of leadership in higher education—presidents and board members—are the ones who should hold these jobs. How have we come to define their success in the roles? Are the right people holding these positions, do they have the appropriate backgrounds and temperaments, and do they understand their roles? I submit often that is not the case. Second, we must acknowledge that we have entered a time of hyper partisanship. It is no longer enough to say I disagree with someone on the other side of a topic; I have to say that I hate them; I must debase them; I must scorn them. Third, communication has become so overwhelmed by social media that many individuals have forgotten how to speak to someone with whom they disagree. Indeed, most do not even feel the need to do so. Our social media feeds are from people who already agree with us. We rarely talk in full sentences, and we feel no need to share fully developed thoughts; an emoji is adequate. Think of the impact of “six seven” (whatever that means) in classrooms today. We do not need to listen and learn—even from people with whom we agree, much less with those with whom we vehemently disagree.

Two recent books are helpful in understanding the circumstances of today and how we can begin to address the problems and continue to advocate for good governance. Scott L. Bok’s 2023 *Surviving Wall Street: A Tale of Triumph, Tragedy and Timing* ends with two chapters on his time leading nonprofit boards, the University of Pennsylvania and the Natural History Museum in New York City. After detailing the facts that led to Liz Magill’s resignation as president of the university and his as chair of the board, Bok writes:

While many aspects of the Penn saga were familiar to me—the protagonists, the tactics and boardroom drama were very similar to those of a typical corporate takeover contest—the stakes seemed higher. What was at risk in my view was nothing short of the soul of the university—and perhaps by extension of all leading universities. In my view, to continue to fulfill the noble purpose that universities had historically served they needed to be independent on matters of teaching and research, to pursue knowledge even when there wasn’t an immediate instrumental value in sight and to be open to hearing all perspectives.²

Bok also asserts the importance of the undergraduate years being times of personal exploration, allowing for the possibility, indeed probability, of youthful mistakes. Bok is reminding us that some of the problem currently being experienced in university

boardrooms is happening in all boardrooms or in any place of discourse—failure to communicate well, failure to agree to shared purpose, and an absence of civility. He also acknowledges that we should not be surprised at youthful protest, even when it pushes the boundaries of good taste or careful analysis. The question for institutions is not whether they allow such protest to happen, but how they react when protests inevitably do happen.

Christopher Eisgruber's 2025 *Terms of Respect: How Colleges Get Free Speech Right* is a powerful, lawyerly, and thoughtful defense of today's students. He recognizes that some of what the critics of students at institutions of higher education term failure to support "free speech" are actually examples of free speech. Shutting down the speech of a controversial speaker is not the same thing as shouting about that particular message. The second may be offensive to some, but it is in fact free speech. His chapter, "Polarization, Online Media, and American Civic Life" is an excellent explication of the two-pronged attack on our civil society—the heightened partisanship of our times and the impact of social media on our ability to communicate. Eisgruber writes:

Americans today communicate via platforms vastly different from what existed at the beginning of this century, and they do so in circumstance of intense and dangerous division. Digital communication may be partly responsible for America's political schisms; it certainly expresses and amplifies them. In this new discursive world, the civility rules that guided discussion in the past often prove inadequate: those rules were connected to audiences and social conventions that do not apply to online media, and they sometimes incorporated privileges or stereotypes that do not withstand scrutiny.³

In the face of these challenges, what should we do to clarify and enhance the power and meaning of good governance? Let's begin with who is in a position of power. Perhaps the most important jobs of a board of trustees involve choosing, partnering, and evaluating the president or chancellor of the institution. If the board has thought deeply about the mission of the institution and chooses someone who will be best able to lead that institution into its effective future, maybe the most important part of this aspect of the board's responsibility has been done and likely assures success. However, if the board becomes enamored of a program de jour, an *idée fixe* that will address all of higher education, a particular partisan hobby horse and not be attentive to the specific needs

Perhaps the most important jobs of a board of trustees involve choosing, partnering, and evaluating the president or chancellor of the institution.

of the institution, they will choose the wrong person. If they are enraptured by a candidate's ambition for him or herself rather than for the institution; if they focus only on the outreach, fund-raising, and public relations potential of the candidate, they will choose the wrong person. That candidate will not be able to lead

the institution through the crises that will inevitably come their way. Once the right person is chosen, the board must provide wise counsel, ask tough questions, support the president in difficult decisions, and let the president do the job of managing the enterprise. The board should provide thorough and thoughtful evaluation of the chief executive officer, and should they find the president lacking, provide advice and opportunities for remediation. If that remediation is not successful, then the board must respond in the appropriate manner. They should not assume the role of the

president. Rather, they must make the difficult choice of separating from the individual, graciously and respectfully, but expeditiously.

By the same token, if the board members are chosen only for their fundraising potential or political connections, they will forget that their fiduciary responsibility is to the mission of the institution. In the public sector, of course, trustees owe responsibility to the state in which the institution sits, but their primary fiduciary duty is to the individual institution. The only way they can exhibit their responsibility to the state and its citizens is by assuring that the institution that they hold in trust is true to its mission. They are not trustees of the state but of the institution. In the public and private sectors, a trustee should never assume that by virtue of some philanthropic generosity, they are owed allegiance by the institution. Rather the opposite is true: the trustee holds allegiance to the institution whether they are a major donor or not.

Let me reiterate what I have said earlier, trustees should challenge the administration. They must ask hard questions. But they are not there to substitute for the management work of presidents and their senior staff. They are not there to substitute their opinions for the expertise of the faculty in the development of the curriculum, even those trustees who possess academic expertise. They are not there to do the bidding of the appointing authority—whether that be the governor of the state or the alumni association. Being a trustee is a serious job that requires commitment, deep thought, and time. Board members bring to that job their individual knowledge and background, but their job is distinctive from that of management or faculty. Trustees must understand their role as the best leadership partners to oversee



Trustees must understand their role as the best leadership partners to oversee the future of the institution... Their perspective should always be at the 50,000-foot level, not eye level.

the future of the institution. Trustees are part of looking into the future and assuring that whatever is done today will be in the long-term best interest of the university. If they are trying to run the institution of today, they will simply not be able to accomplish that function. Their perspective should always be at the 50,000-foot level, not eye level.

While there are numerous AGB publications that define good board governance, two are particularly effective in delineating responsibilities. *Anatomy of Good Board Governance in Higher Education* (2018) effectively describes what characterizes an excellent board. *Principles of Trusteeship: How to Become a Highly Effective Board Member for Colleges, Universities, and Foundations* (2021) deftly describes those responsibilities with a focus on the individual trustee.

Anatomy posits that good governance is the result of three elements being in balance: the right people should be on the board, those people should be addressing the right issues, and the culture of the board

should assure the right relationships are maintained between board members and between the board and the larger institutional community, particularly between the board and the president and the administration. These features imply embracing the fair airing of a diversity of opinions but recognizing the shared commitment to action only by the full board. Actions of the board are collective, and all board members must accept that decision. Good board culture is based on respect and trust between and among all trustees.

According to *Principles*, a good trustee is someone who understands governance by accepting all aspects of a trustee's responsibility, honoring the differences between administration and board, and being an advocate for the institution as well as higher education as a whole. Exemplary trustees "lead by example."⁴ They are characterized by integrity in action and speech, independent thinking, and active listening. The trustees agree to think not only individually but also collectively, understanding that higher education

stands for equity of opportunity and appreciating the individual trustee responsibilities to the institution, to other board members, and to higher education as a vehicle for positive change in society. Finally, the individual trustee becomes a strategic thinker by knowing about the institution the trustee serves, asking good questions and focusing on the long-term sustainability of the institution they serve.

In *A President's Guide to Effective Board Leadership* (AGB, 2021), William Trout clarifies the responsibility of the president in effectuating good board governance. Trout argues that the president's responsibility begins with the president's being honest about the level of engagement that the president wishes to have with the board. If a president wants such trustee engagement to be deep and thoughtful, then the president must communicate that open and honest questions and discussions are welcomed. This commitment requires the work necessary to make trustee engagement meaningful. The president must put the effort and time into the project, implementing education programs and being responsive to trustee questions. In partnership of course with the chair of the board and/or the chair of the governance committee, the president's work will enhance the sense of shared community and a healthy board culture. In such an environment, the

challenges of today and those that have an impact on any institution—financial, public relations, and political—can be better managed.

As we reflect on good governance in these fraught times, one of the vehicles that I think higher education leadership should welcome more openly is the creation and nurturing of partnerships and allies. What are the organizations, associations, corporate entities, and industries that depend on quality higher education for their own success? What do we share with them and how can we work together to enhance the status of our communities and civil society in the United States? Some of these partnerships are easy to identify—business, industry, and public service. Sometimes, however, we might find that these partnerships are with unusual partners. Five years ago, it would have been unfathomable to imagine the Foundation for Individual Rights and Expression (also known as FIRE) partnering with PEN America on the seminal features of free speech and academic freedom. But both organizations care deeply about the future of the American experiment, and they recognize that while they may not share whole swathes of policy issues, they do share some principles. Are there such partners that higher education should think to approach? How do we reach out to establish foundations

[Exemplary trustees] agree to think not only individually but also collectively, understanding that higher education stands for equity of opportunity and appreciating the individual trustee responsibilities to the institution, to other board members, and to higher education as a vehicle for positive change in society.



for conversation and articulate shared goals that will enhance democracy and the economic future of the United States?

In 2024, the Mellon Foundation awarded AGB a \$1.1 million grant to enhance the understanding of good governance in higher education. The signature program supported by this grant is the Govern NOW Leadership Academy. Seventy individuals applied to participate in the academy and 29 were selected. The admissions process sought to identify individuals committed to learning about good governance and to represent the wide range of American higher education by both sector and geography. The goal of the academy is to equip trustees, presidents, and key board staff with the core governance principles for these times and the ways to act consistently with these principles, such as dealing with undue influence as a fiduciary; understanding what board independence and institutional autonomy mean in practice and ways of protecting these principles; and ensuring academic freedom and free expression as essential to American's colleges' and universities' ability to carry out their commitment to the common good.

The registrants will participate in three interactive virtual sessions and a culminating in-person session that will require them to put into practice what they have learned over the previous sessions. The work of the academy is informed by the wisdom or years of AGB publications, curated in the recent pamphlet *How to Govern for Institutional Autonomy: A Practical Guide for Higher Education Boards*, which includes checklists for analyzing and responding to any type of external intrusion that threatens institutional autonomy and a simple side-by-side presentation of the difference between the independent, fiduciary leadership model of higher education governance and the externally driven, ideological model of higher education governance. Ellen Chaffee's "United We Stand" article serves as introductory and clearly delineates the current landscape in higher education governance.

The Mellon grant report will be informed by these. The results of the interactions of the academy participants will be the foundation for a report that should provide further opportunities and learnings about how to continue to preserve and improve good governance for higher education.

I believe that leaders in higher education are doing good work to improve the public's understanding of the necessity of well governed institutions of higher education for the future of our country. But I believe that we must all commit to communicating better, to listening to the other side, to rejecting silos of communication, and to committing to shared purpose, as defined by institutional mission. It's brave to admit you made a mistake, to change your mind, but that kind of productive response can only be founded on the basis of shared community and in an environment that prizes civic discourse. Something matters more than your individual opinion, or the opinion of the appointing authority, or your discipline—that is the mission of the institution you serve. The shared learnings from the Governance NOW Leadership Academy and the commitment to strategic, open, and imaginative partnerships should provide a platform for a reinvigoration of higher education through good governance, recognizing the primacy of institutional mission, and autonomy.

Some feel that at this moment we are experiencing the worst of times for American higher education (though I would posit that the 1950s and the McCarthy era might compete), but our response in defense of good governance could and should be first steps in creating the best of times, or at least better times. We can make a real difference in the future for our students, our faculty, our institutions, and our country. We can only do so if we recommit to the concepts of fiduciary trusteeship, appreciating its centrality in the support of higher education as one of the most important foundations for the democratic experiment that is the United States. ■



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Endnotes

1. Ellen Chaffee, "United We Stand: An Urgent Call for Leadership," *Trusteeship*, September/October 2023, 33.
2. Scott L. Bok, *Surviving Wall Street: A Tale of Triumph, Tragedy, and Timing* (Wiley, 2025), 459.
3. Christopher Eisgruber, *Terms of Respect: How Colleges Get Free Speech Right* (Basic Books, 2025), 154.
4. AGB, *Principles of Trusteeship: How to Become a Highly Effective Board Member for Colleges, Universities, and Foundations*, (AGB, 2021), 1.



The Compact, Institutional Autonomy, Fiduciary Duties, and Academic Freedom

BY RICHARD J. JOSEPH

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Why does the Compact matter? In these challenging times in higher education, boards have the responsibility to understand how their fiduciary duties underscore institutional autonomy and what that means for upholding academic freedom.



College and university governing boards find themselves in an increasingly difficult environment. Federal proposals, especially those that condition economic benefits on their endorsement of a political agenda, have profound implications for institutional autonomy and academic freedom. The Compact for Academic Excellence in Higher Education¹ (“Compact”) appears to be one such proposal.² Trustees should view it not through the prism of partisan politics, but rather in light of their fiduciary duties; specifically,

- The *duty of care*, which requires them to make informed decisions in the best interests of the institution;
- The *duty of loyalty*, which mandates that they place the interests of the institution above their own personal interests, as well as the interests of any third party; and
- The *duty of obedience*, which calls for compliance with applicable laws and regulations, as well as faithfulness to the mission of the institution.

Because these duties are founded in the law, they represent *legal* obligations. According to judicial precedent,³ they are owed to the *institution*, not to any internal or external actor, including the federal government. Thus arises the question, *Does fulfilling their fiduciary duties to the institution require governing boards to endorse what is arguably the political agenda of the federal government?*

In addressing this question, trustees should consider not only their fiduciary duties, but also their ethical responsibilities, as set forth in the *AGB Statement on External Influences on Universities and Colleges*.⁴ Among these responsibilities are the dual obligations to preserve institutional autonomy and safeguard academic freedom (see sidebar).

Key Principles for Governing Boards

1. Preserve Institutional Independence and Autonomy

- Boards must ensure a high degree of independence from direct government control or any self-serving or political agenda.
- Decisions should be based on the institution’s mission and public trust.
- Boards should ensure that philanthropy and corporate partnerships do not inappropriately influence academic programs or the institution’s mission.
- Institutional policies governing research and private sector partnerships should be clear, current, and regularly reviewed.

2. Demonstrate Board Independence

- Boards should act as a collective, corporate body, with members applying their individual judgment and fulfilling

fiduciary duties of care, loyalty, and obedience.

- Board member selection should be based on merit and ability to fulfill responsibilities.

3. Keep Academic Freedom Central

- Boards must be standard bearers for academic freedom and due-process protections for faculty, staff, and students.

4. Assure Institutional Accountability to the Public Interest

- Boards serve as a bridge to the external community, advocating for and communicating on behalf of the institution.
- They must exhibit exemplary public behavior and ensure accountability to the public interest.

From the *AGB Statement on External Influences on Universities and Colleges*, 2012

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What aspects of the Compact are “positive”?

Let’s examine the “positive” aspects of the Compact, which is positive in the sense that they are aligned with trustee fiduciary duties and ethical responsibilities. In general, the Compact affirms two fundamental aims of American higher education: intellectual enlightenment and the pursuit of the truth.⁵ In addition, it professes support for many of its core values, including the following:

- Academic freedom
- Civil discourse
- Ideological diversity
- Integrity in academic assessment
- Student equality
- Norms of acceptable conduct

These affirmations are salutary because they comport with the ethical obligation of governing boards to foster a campus environment that is safe, inclusive, and conducive to learning.⁶ They also highlight factors that distinguish “institutions of higher learning” from other types of institutions.

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Academic freedom is a precondition for intellectual progress. Without it, faculty and students could not challenge conventional wisdom, discuss controversial issues, or pursue the truth, unconstrained by political or ideological considerations.

Intellectual enlightenment and the pursuit of the truth are the highest calling of a college or university. The former presupposes an environment that is safe, inclusive, and conducive to learning; the latter, the existence of objective facts, which are both discoverable and universally recognized as valid. Academic freedom is a precondition for intellectual progress. Without it, faculty and students could not challenge conventional wisdom, discuss controversial issues, or pursue the truth, unconstrained by political or ideological considerations. As a social protocol, civil discourse contributes to such progress. Besides preparing students for life in a democratic society, it facilitates constructive debate, which

often results in the dynamic synthesis of opposing ideas, leading to innovation. Ideological diversity and innovation go hand-in-hand, because the positing of diverse ideas is essential for the synthesis of new ones.

Moreover, academic assessment is critical to understanding what students have learned at the end of the day. To be valid, credible, and meaningful, it must be based on objective criteria and uniform standards. And student equality is basic to higher education. It implies that no student should be favored or disfavored because of race, religion, ethnicity, national origin, sexual orientation, gender, or gender identity. As a guiding principle, it promotes a “level playing field” in which all students are treated as “learners” on the same footing. Lastly, norms of acceptable conduct ensure that student activism coexists with order, safety, and respect for others. Without these norms, academic freedom, civil discourse, ideological diversity, and student equality would all be at risk.

What aspects of the Compact are “negative”?

Let us turn to the “negative” aspects of the Compact, which is negative in the sense that they appear to be at odds with trustee fiduciary duties and ethical responsibilities.

Institutional Autonomy

First and foremost is the risk that the Compact poses to institutional autonomy.⁷ For decades, institutional autonomy has been a defining feature of American higher education. It gives colleges and universities wide latitude to determine their own mission, strategy, curricula, policies, organizational structure, and academic standards. It also distinguishes U.S. institutions of higher learning from their counterparts in other countries. In many of these countries, the higher education system is centralized, and academic institutions are practically appendages of the central government. This condition often impairs their ability to challenge conventional wisdom, question government policies, and innovate, particularly in areas that do not advance the interests of the state.

As for the United States, the Compact risks the autonomy of American institutions by conditioning federal benefits on their endorsement of what is explicitly stated to be “the priorities of the U.S. government.”⁸



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“For decades, institutional autonomy has been a defining feature of American higher education.”

Their accepting this condition could be a step in the direction of a more centralized U.S. higher education system. Effectively, it would supplant the will of trustees, administrators, faculty, and students with that of federal government officials. Such a result would occur in five functional areas traditionally overseen by trustees, managed by administrators, and influenced by faculty.

The first is admissions. Usually, admissions policies are formulated by academic administrators with input from faculty. Frequently, they are based on a holistic approach to admissions, which takes into account aptitude, past academic performance, extracurricular activities, social diversity, personal motivation, and other factors associated with student success. The Compact would not only modify these policies but also dictate how they should be implemented. It would prioritize aptitude over all other factors⁹ and require colleges and universities “to screen out [foreign] students who demonstrate hostility to the United States, its allies, or its values.”¹⁰

The second is financial affairs. In university governance, trustees approve tuition rates and usually set them high enough to cover most, if not all operating costs. Their doing so is incidental to their duty of care, which mandates, among other things, that they exercise reasonable care to ensure the financial health of the institution. The Compact would undermine their effort by requiring boards to freeze tuition rates for the next five years.¹¹ The moratorium would go into effect right away in the context of escalating operating costs, mounting capital expenditures, and diminishing

margins. To make matters worse, the Compact would require institutions with an endowment exceeding \$2 million per undergraduate to exempt “hard science” majors from paying any tuition at all. The exemption would not only reduce revenues but also skew enrollments away from the social sciences and humanities toward the natural and applied sciences.

The third area is enrollment management. Generally, college administrators formulate enrollment policies with a multitude of aims in mind, including advancing the institution’s mission, ensuring student quality, promoting student diversity, and maximizing tuition revenues. The Compact would intrude into this domain by setting a 15 percent cap on foreign undergraduate enrollments, and a 5 percent cap on enrollments from any one foreign country.¹² Because foreign students typically pay tuition at the full undiscounted rate, these measures are likely to weaken the financial condition of American colleges and universities, just at a time when they face declining tuition revenues as a result of adverse U.S. demographic trends, and soaring operating costs because of rising inflation. The measures would also limit the ability of these institutions to attract the best and brightest of foreign student talent.

The fourth area is organization. Under the laws of most states, entities are free to determine their own organizational structure without government interference. The Compact would restrict this freedom by requiring colleges and universities to revise their governance structure and “transform or abolish units that purposely punish, belittle, and even spark violence

against conservative ideas.”¹³ What this means, in practical terms, is that under some circumstances the Compact could force a reorganization based purely on political and ideological considerations. Such a move would violate not only institutional autonomy, but also academic freedom, despite the Compact’s professed support for it.

The fifth is academic affairs. Typically, in a system of shared governance, the faculty propose degree requirements, while the president, provost, and board approve them. The provost and faculty formulate academic policies, such as those relating to transfer credits, subject to presidential approval and board oversight. The Compact would bypass this system and enter the realm of academic affairs first by requiring foreign students (but not U.S. students) to undergo instruction in civics¹⁴—presumably as a degree requirement and contrary to the principle of “student equality”—and second, by requiring college and universities to accept transfer credits earned by active and retired military.¹⁵ However meritorious the underlying policy goals may be to some, what is objectionable about these provisions is their “political overreach.” In pursuing the underlying goals through the instrumentality of the Compact, federal officials would effectively be stepping into the shoes of faculty, administrators, and trustees.

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Duty of Loyalty

Another “negative” aspect of the Compact is that endorsing it, arguably, would require trustees to breach their duty of loyalty. As previously mentioned, this duty mandates that trustees place the interests of the institution above their own personal interests, as well as those of any third party. The duty is owed to the institution. Here, the relevant “third party” is the federal government. Based on “best practices” in governance, college and university boards should always “take into consideration” the interests of the federal government, as well as those of the general public.¹⁶ However, according to

applicable court rulings, they should ultimately base their decisions on the interests of the institution.

In many respects, the interests of the federal government and those of U.S. colleges and universities coincide, as is evidenced by the parties’ professed endorsement of the fundamental aims of American higher education and its core values. However, the two interests are not identical, as is implied by (1) the explicit statement in the Compact that it “represents the priorities of the U.S. government,”¹⁷ and (2) its proposed intrusion into university affairs.¹⁸ Indeed, that the Compact was advanced in the first place suggests a broad divergence of interests.

Academic Freedom

Despite its professed commitment to academic freedom, the Compact would actually restrict it—at least for some internal constituencies. In a sense, it would create a three-tiered system of “expression rights”: the first, for representatives of the institution; the second, for foreign students; and the third, for everyone else.

The rights of institutional representatives, including trustees and administrators when acting in their official capacities, would be the most restrictive. Forced to embrace “institutional neutrality,” they could not engage in “actions or speech relating to societal and political events,” except where such events have a direct bearing on the institution.¹⁹

The rights of foreign students would be somewhat less restrictive. Despite the Compact’s professed support for “student equality,” they, unlike U.S. students, could not contest American or Western values, or endorse values that are “noxious”²⁰—presumably in the judgment of federal officials.

The rights of all faculty and U.S. students would be the least restrictive. They could broach just about any issue, and engage in just about any kind of behavior, so long as such behavior is not discriminatory, threatening, harassing, or disrespectful of the rights of other members of the university community.²¹

Although these restrictions are intended to restore order, civility, and dignity to campus life, they purport to do so in a way that abridges the rights of some, but not other members of the university community. The end-result is likely to be a chilling effect, not just for university representatives and foreign students, but also for everyone else.

What Is Troubling About the Compact?

From a social, political, and economic perspective, the Compact is troubling in several respects.

Public Disaffection

First, and foremost, it symbolizes public disaffection with American higher education. This sentiment is strong and widespread. A survey conducted by the Pew Research Center in September 2025 indicates that 70 percent of Americans believe that the U.S. higher education system is “generally going in the wrong direction,” which is up from 56 percent in 2020.²² This belief is shared by a majority of both Republicans²³ and Democrats²⁴—65 percent of the latter, and 77 percent of the former.

Aspects of American higher education that Americans find unacceptable include these:

- **Affordability:** nearly eight out of ten give U.S. colleges and universities poor or fair ratings on “keeping tuition costs affordable.”
- **Job preparation:** more than half (55 percent) give U.S. institutions poor to fair marks on “preparing students for well-paying jobs in today’s economy.”
- **Ideological diversity:** a large percentage (45 percent) give U.S. institutions poor or fair ratings on “exposing students to a wide range of opinions and viewpoints.”
- **Opportunities for self-expression:** a similar percentage (46 percent) give U.S. colleges and universities poor to fair marks on “providing students opportunities to express their own opinions and viewpoints.”

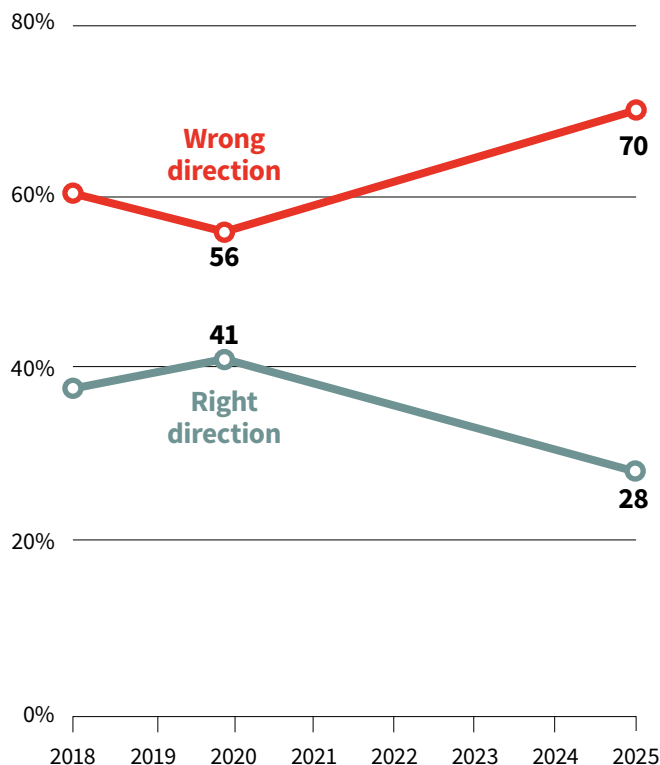
No doubt, federal officials are well-aware of this sentiment. They have responded by proposing in the Compact measures aimed at “restoring” the financial responsibility, ideological diversity, institutional neutrality, civility, order, and transparency of American colleges and universities.

Loss of Confidence

Equally disturbing is a lack of confidence on the part of federal officials, mainly conservatives, in the leadership of American higher education. In their eyes, college and university presidents have been passive in the face of rising antisemitism, the suppression of right-wing views, and the erosion of civil discourse. They have given “woke ideologues” free rein in the classroom and have allowed foreign students to subvert American values. They have endorsed policies that discriminate against students and faculty on the basis of race, ethnicity, gender, and other immutable characteristics, to the detriment of aptitude, merit, and equality. And they have been ineffective at controlling costs, holding down tuition rates, and forging rewarding career paths for college graduates.

7 in 10 Americans now say U.S. higher education is going in the wrong direction

% saying the higher education system in the U.S. is generally going in the ...



Note: Shares of respondents who didn't offer an answer are not shown.
Source: Survey of U.S. adults conducted Sept. 22–28, 2025.
Pew Research Center.

Through the instrumentality of the Compact, these officials have set out to fix these “problems.” In a sense, they have taken aim at university leaders for allegedly failing to promote ideological diversity, civil discourse, and student equality; foster a safe and non-hostile learning environment both conducive to learning and supportive of American values; and make a college education affordable.

“One-directional” Benefits

Another disturbing aspect is that by focusing exclusively on federal benefits, the Compact overlooks the enormous benefits that American colleges and universities generate for the U.S. economy. In 2024, for instance, private educational establishments contributed nearly \$335 billion to U.S. gross domestic product.²⁵ In the preceding year, public and private colleges, universities, and professional schools employed 3.1 million workers whose incomes served to broaden the federal tax base.²⁶ Also expanding this base

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By conditioning these benefits on their endorsement of the government’s “priorities for higher education,” the Compact presents U.S. colleges and universities with two unsavory alternatives: either reject the condition and forego the benefits, or accept the condition and forego their autonomy.

were the lifetime earnings of college graduates, whose knowledge, skills, and competencies were imparted by these institutions.²⁷ Scientific projects that research universities sponsor create new technologies, many of which are protected by patents and licenses that support tens of thousands of start-up ventures.²⁸

These outcomes demonstrate that American institutions of higher learning are not just passive recipients of government largesse. Rather, they are powerful engines of economic growth. By sparking technological innovation, providing instructional services, and increasing human productivity, they generate massive returns to the U.S. economy that justify “investing in them” with federal benefits.

“Heavy-handedness”

Also troubling is the Compact’s “heavy-handed” approach to the challenges facing American higher education. To many college and university leaders, this approach borders on “duress,” aggravated by unequal bargaining powers.

The benefits provided by the federal government to U.S. colleges and universities are numerous and varied. They include “access to student loans, grant programs, and federal contracts; funding for research directly or indirectly; approval of student and other visas in connection with university matriculation and instruction; and preferential treatment under the tax code.”²⁹ Valued at over \$250 billion,³⁰ they effectively subsidize college and university operations.

By conditioning these benefits on their endorsement of the government’s “priorities for higher education,” the Compact presents U.S. colleges and universities with two unsavory alternatives: either reject the condition and forego the benefits,³¹ or accept the condition and forego their autonomy. The first alternative could debilitate these institutions financially. The second would effectively subordinate their educational mission to the political ideology of the state.

Populist conservatives might argue that such “heavy-handedness” is justified because “woke ideologues,” who dominate the political conversation on U.S. campuses, are entrenched, and university leaders are either unable or unwilling to dislodge them. In their eyes, the Compact represents a “political correction,” necessary to set U.S. colleges and universities on a path more aligned

with their mission, and in the broader scheme of things, to reorient society ideologically.

A less onerous approach would have been for federal officials to work with college and university governing boards toward improving American higher education in a manner consistent with its fundamental aims and core values. Such an approach is founded on respect for the fiduciary duties of governing boards, as well as the autonomy of their institutions. No doubt, many trustees share the concerns of federal officials. Like a multitude of Americans, some believe that U.S. higher education is headed in the wrong direction. To coerce them into accepting the terms of the Compact is not only to ignore their well-founded views, but also to disregard their role as stewards of the institution, bound by legal obligations and ethical responsibilities. It is also to dismiss the possibility of a constructive “partnership” between U.S. colleges and universities and the federal government.

In Closing

Ultimately, college and university governing boards must decide for themselves whether to accept or reject the Compact for Academic Excellence in Higher Education. In their deliberations, they should consider the degree to which it comports with their legal obligations and ethical responsibilities. They should also consider the extent to which it aligns with the fundamental aims of American higher education and its core values. As a sound practice, they should take into account the priorities of the U.S. government. They should also bear in mind the legitimate concerns of the general public. In the final analysis, however, they should strive to fulfill their fiduciary duties to the institution by endeavoring to act in its best interests. ■



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Endnotes

1. The full text of which is published by *Nerve* at <https://nerve.news/news/full-text-of-trumps-compact-for-academic-excellence/>.
2. In its introduction the Compact explicitly states, “To advance the national interest arising out of this unique relationship [between the U.S. government and the U.S. university system], *this Compact...represents the priorities of the U.S. government* in its engagements with universities that benefit from the relationship. Compact for Academic Excellence in Higher Education [italics added],” *Nerve News* at <https://nerve.news/news/full-text-of-trumps-compact-for-academic-excellence/>.
3. *Squeri v. Mount Ida College*, No. 19-1624, 2020 WL 1445400 (1st Cir. Mar. 25, 2020).
4. *AGB Statement on External Influences on Universities and Colleges*, 2012, as affirmed in *AGB Statement on Influences Impacting Governing Board Independence and Leadership*, December 8, 2023, <https://agb.org/agb-statements/agb-board-of-directors-statement-on-influences-impacting-governing-board-independence-and-leadership/>.
5. See Robert J. Thompson, Jr., *Beyond Reason and Tolerance* (Oxford University Press, 2014).
6. *AGB Board of Directors Statement on Governing Board Accountability for Campus Climate, Inclusion, and Civility* (AGB, 2016), https://agb.org/wp-content/uploads/2019/01/agb-statements/statement_2016_campus_climate.pdf; and *Freedom of Speech and Diversity, Equity, and Inclusion on Campus* (AGB, 2022), <https://agb.org/product/freedom-of-speech-and-diversity-equity-and-inclusion-on-campus/>.
7. With respect to private institutions, the principle of institutional autonomy was endorsed by the U.S. Supreme Court in *Trustees of Dartmouth College v. Woodward* (1819). With respect to the public institutions of many states, the principle is protected by constitution or statute. For example, Article IX, Section 9 of the California Constitution, which established the University of California, states in relevant part, “The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs...” Cal. Const. art. IX, § 9.
8. See Note 2.
9. The Compact mandates that undergraduate admissions be based on standardized tests, which purport to measure aptitude.
10. *Id.*, Section 8
11. Section 7 of the Compact states, “Signatories acknowledge that universities that receive federal funds have a duty to reduce administrative costs as far as reasonably possible and streamline or eliminate academic programs that fail to serve students. Toward this end, signatories to this compact commit to freezing the effective tuition rates charged to American students for the next five years.” *Id.*
12. *Id.*, Section 8
13. *Id.*, Section 2
14. *Id.*, Section 8
15. *Id.*, Section 7. The original credits would be recorded in the Joint Services Transcript, “an academically accepted document approved by the American Council on Education (ACE) to validate a service members military occupational experience and training along with the corresponding ACE college credit recommendations.” Joint Services Contract website, at <https://jst.doded.mil/jst/>.
16. See the *AGB Board of Directors’ Statement on Influences Impacting Governing Board Independence and Leadership* (AGB, 2023), p. 5, https://agb.org/wp-content/uploads/2023/12/AGB-Board-Statement_Influences-Impacting-Board-Independence-Leadership_web.pdf.
17. *Id.*, Introduction.
18. See the previous discussion under “Institutional Autonomy.”
19. Compact for Academic Excellence in Higher Education, Section 4, *Nerve* at <https://nerve.news/news/full-text-of-trumps-compact-for-academic-excellence/>.
20. As inferred from the following passage in the Compact: “Federal permission for foreign student visas is intended to further America’s national interest to the extent...the selected students are introduced to, and supportive of, American and Western values, ultimately increasing global understanding and appreciation for the United States and our way of life. Universities that rely on foreign students to fund their institutions risk...if not properly vetted, saturating the campus with noxious values such as anti-Semitism and other anti-American values, creating serious national security risks.” *Id.*, Section 8. While the drafters of the Compact might have intended this statement to apply primarily to foreign applicants, ensuring that foreign matriculants are “supportive of American and Western values” and do not “saturate the campus with noxious values,” would, for all practical purposes, require restrictions on their expression rights, as the current practice of deporting foreign students clearly indicates.
21. Caveat taken from *Id.*, Section 2.
22. See <https://www.pewresearch.org/short-reads/2025/10/15/growing-share-of-americans-say-the-us-higher-education-system-is-headed-in-the-wrong-direction/>.
23. Including Republican-leaning independents.
24. Including Democrat-leaning independents.
25. U.S. Bureau of Economic Analysis, GDP by Industry, Table 14. “Gross Domestic Product by Industry Group: Level and Change from Preceding Period,” available for download at <https://www.bea.gov/data/gdp/gdp-industry>. Although corresponding data for public educational establishments is unavailable, these establishments, being more numerous, probably contributed a larger dollar amount to U.S. gross domestic product.
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27. For the median weekly earnings of college graduates in 2024, see U.S. Bureau of Labor Statistics, “Employment Projections, Earnings and Unemployment Rates by Educational Attainment, 2024,” <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm>; also, Jaison R. Abel and Richard Deitz, “Is College Still Worth It?” *Liberty Street Economics*, Federal Reserve Bank of New York, at <https://libertystreeteconomics.newyorkfed.org/2025/04/is-college-still-worth-it/>.
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Governing Boards and Faculty Members **A CRITICAL PARTNERSHIP**

BY ANN E. AUSTIN AND BRENDAN CANTWELL

Faculty members are the backbone of academia as they are on the frontlines to educate students to prepare them for their future careers and as good citizens. Because higher education operates via a shared governance model, faculty members also have a stake in governance. Board members and college presidents can collaborate with faculty members to propel their institutions forward through understanding their responsibilities to the both the institution and the student body and working together with mutual respect to form a lasting partnership.

GOVERNING BOARDS, PRESIDENTS, AND FACULTY members all play important roles in ensuring their higher education institutions fulfill their missions and purposes. In the current context, when higher education institutions are under extreme pressure from the government and are increasingly being used as tools in partisan struggle,¹ the partnership between governing boards, presidents, and the faculty is more essential than ever to institutional effectiveness, success, and resilience. Presidents and boards are typically in frequent contact and must collaborate well, and boards are often well-attuned to their relationship with presidents and other senior administrative leaders, but the faculty are also indispensable institutional stakeholders.² Faculty members and board members may sometimes feel remote to one another and may not actively understand themselves to be partners. In this article, we highlight the importance of the relationship between boards and the faculty, explore their respective responsibilities, and encourage commitment to mutual respect, collaboration, and partnership.

Colleges and universities are organized around knowledge. They also engage in many practical activities, such as preparing students for the workplace, contributing to economic development, and running athletics programs. However, it is its fundamental commitment to knowledge that makes higher education distinct from other social and economic sectors. As Christopher P. Long, provost at the University of Oregon, explains, higher education's commitment to knowledge "invites us to imagine what it might mean to situate the search for truth and the love of wisdom at the very heart of civic life so that ... citizens might cultivate the habits of dialogue and discovery that enrich our relationships with one another and deepen our understanding of the world we share."³

This invitation to exploration and discovery is central to higher education. It also implies special responsibilities. One set of responsibilities is about what colleges and universities should do to fulfill their missions. They must keep knowledge central to their core missions of teaching, research, and outreach and engagement. While the relative emphasis on and mix of each of these aspects of the mission is determined by institutional type, history, and identity, higher education generates, preserves, transmits, and applies knowledge.

Another set of responsibilities is about how colleges and universities must operate in the fulfillment of their missions. The invitation to exploration and discovery through higher education should be extended to everyone, which means that colleges and universities must encourage and cultivate an environment that values curiosity, tolerance, respectful debate, and the ability to listen to and examine ideas different from one's own.⁴ This responsibility extends to preparing students for their lives in the fullest sense—as citizens, community and family members, and employees—by developing values of listening, examining and exchanging ideas, and developing perspectives and positions on the basis of evidence.

Higher education's role as scholarly teaching and learning knowledge organizations dates to at least 1088 with the establishment of the University of Bologna, when a group of students hired scholars to lecture them and confer formal qualifications to recognize their learning. The research mission blossomed in the 19th century after the University of Berlin was founded as a research-intensive university. The outreach mission took hold with the development of land-grant colleges and universities in the United States. Today, higher education's vibrant social role is under intense pressure from technological and economic forces, and from populist politics that are hostile to established knowledge.⁵

Since the first medieval universities, faculty and the academic profession have been at the core of higher education. Faculty are indispensable in delivering on college and university missions and are at the center of fulfilling higher education's responsibilities. Contemporary colleges and universities are complex organizations led by academic executives and governed by lay-boards. The pressures bearing down on higher education today can make decisive action feel urgent. Boards and presidents may feel tempted to take quick and decisive action to meet the challenges they face. Sometimes decisive action, such as the move to bring instruction online during the early days of the COVID-19 pandemic, is necessary and appropriate. However, most often, academic leaders are best able to create conditions that support institutional mission fulfillment when governance processes and decision-making are thoughtful, distributive, and collaborative.⁶

We believe that it is imperative for college and university boards (as well as their presidents) to actively collaborate with the faculty in making important decisions and ensuring that their institutions can withstand current pressures and thrive in the future. Faculty, in turn, have an obligation to be active citizens of their institutions and to engage with academic leaders within terms of mutual goodwill. In what follows, we address both board members and faculty members, offering a set of perspectives on the responsibilities of each group that are informed by our work as experienced professors and higher education scholars. We keep in mind higher education's core responsibilities to discover, create, and advance knowledge in advancing these perspectives.

Responsibilities of Boards in Relation to the Faculty

Given these purposes of the university, what are the responsibilities of governing boards with regard to the faculty of their institutions? We believe that this question is especially urgent in the current climate. Recognizing the full purview of the responsibilities of academic governing boards, we see four primary duties for boards to fulfill regarding their support for the work of the faculty.

First, board members must be fully knowledgeable and supportive of the historically grounded purposes of higher education institutions and committed to articulating and emphasizing those purposes publicly. They need to be adept at explaining the

essential role of the university in creating knowledge, which involves asking difficult questions, challenging accepted assumptions, seeking and pursuing evidence and its implications, and following opportunities to apply the knowledge created, even if those questions and evidence are unaligned with popular or partisan viewpoints. Board members must also recognize that a core element of the university's role in advancing knowledge is to create opportunities for vigorous debate around contested ideas—and in fact to teach learners how to frame questions, engage in such debate, and develop the skills of analysis, argument, and critical thinking needed by participants in a robust democracy.

While all colleges and universities are fundamentally oriented to the advancement of knowledge, they do not (and should not) fulfill their purposes in the same ways. Related to their role in advancing the core purposes of higher education, board members should cultivate a well-honed understanding of the particular history, mission, culture, and purposes of their specific institution. A public research university and a private religiously affiliated institution, for example, will have different historical contexts that guide specific aspects of their missions, and board members have the responsibility to protect and advance those specific priorities.

Second, closely related to this responsibility to articulate and advance the core mission and purposes of higher education and the specific mission of their institution is the responsibility to advocate for resources to enable the institutional mission to be pursued and advanced. Board members should be well-attuned to their fiduciary role, but their commitments should extend beyond legal obligations. This responsibility is especially pertinent at the current time, given the range of factors undermining fiscal stability and security at many institutions. Application trends and related tuition resources are creating

considerable challenges at many institutions, as are shifts in workplace needs and growing public skepticism about the necessity of higher education for ensuring employment opportunities. The volatility in federal grant resources are challenging research-oriented universities, and changes in student aid resources and international student visa conditions are of wide concern. Board members have an obligation to encourage financial support from external stakeholders, and to clearly and transparently communicate fiscal realities to the faculty through messages that help to build a mutual understanding of the opportunities and challenges that an institution faces.

Third, boards of trustees do not only have the responsibility to advance the core mission and purposes of the institution and ensure fiscal resources are available to accomplish that work. They also must recognize faculty as the institution's key resource in accomplishing those purposes. This recognition does not diminish appreciation for the indispensable work of institutional administrative leaders nor commitment to the central role of students in institutional activities. However, the faculty are essential to addressing the

core mission of creating, advancing, and applying knowledge. Since the faculty are integral to fulfilling the purpose of higher education, decision-making habits that regularly overlook or even exclude the faculty could result in an institution that is unable to fulfill its promise to students and society.⁷ Thus, a key responsibility of boards of trustees is to interact with faculty members as respected partners in carrying out the purposes and work of the institution.

Productive interaction with faculty as essential and respected partners in fulfilling the mission and purposes of the institution requires board-faculty relationships characterized by mutual respect, transparency in decision-making processes, and involvement of faculty in decision-making about institutional matters. Such a respectful partnership requires more than abstract, philosophical acknowledgement. It requires creating opportunities for regular dialogue and conveying messages that faculty voices are invited into and valued in considerations of institutional directions and priorities. Such respect might also take shape, for example, in board efforts to preserve programs that faculty have initiated and believe important to fulfilling institutional priorities. Overall,

Faculty are indispensable in delivering on college and university missions and are at the center of fulfilling higher education's responsibilities.



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proactive effort by a board to demonstrate interest in and respect for the perspectives of the faculty signals recognition that the well-being of the institution rests on the mutual efforts and dedication of the full community. Fostering a relationship based on shared commitments provides a strong foundation for making challenging decisions that the current context often requires of the boards of higher education institutions.

A fourth board responsibility as it pertains to working with faculty deserves particular emphasis in today's context: boards must protect the responsibility of the university or college to fulfill its purposes in the face of challenges from external and political pressures that may strive to diminish or undermine its work. Higher education researchers have recently described this responsibility by suggesting that governing boards must act as intuitional umbrellas that provide "strategic cover for their institutions as they navigate uncertain policy terrain."⁸ This responsibility involves protecting academic freedom and open debate about contested and difficult questions. Certainly boards, as well as presidents, must be attentive to politicians and the public; however, they must also guard against simply capitulating to public and political demands when those demands are antithetical to academic freedom and threaten higher education's commitment to knowledge. Instances of institutional dismissal of faculty whose teaching content is not aligned with specific political views or of sanctions on assigned readings relevant to course subject-matter but highlighting topics unpopular with specific societal or political groups raise grave worries about possible undermining of the tradition and protection of academic freedom. Enacting the missions of higher education to advance knowledge and create spaces for vigorous debate in pursuit of new insights requires faculty to have the academic freedom to discuss, teach, and debate the full range of ideas relevant to their areas of expertise—even when, and especially when, those ideas are not shared by the full population. Determining the long-term viability of ideas requires debate, questioning, and efforts to determine if supporting evidence is robust. To do their work of pushing boundaries of knowledge, challenging assumptions that may constrain new discoveries and understandings, and guiding learners to develop powerful thinking skills for their own use as citizens, employees, and active members of their communities requires academic freedom within the academy. Faculty members expect their boards of trustees, and their presidents, to defend academic freedom as a core and essential element for higher education institutions to fulfill their roles in society.

Responsibilities of Faculty in Relation to Boards

Just as governing boards have responsibilities to the faculty, so too do the faculty have responsibilities to their institutions and the boards that govern them. Gaining understanding of their responsibilities as faculty members begins in graduate school, where those



Decision-making habits that regularly overlook or even exclude the faculty could result in an institution that is unable to fulfill its promise to students and society.

wanting to develop the tools of inquiry, analysis, and thinking associated with their disciplines and the overall academic profession are guided by experienced scholars.⁹ Thus, being a member of a discipline or field is a critical element of how faculty construct their identity and of how faculty members understand and engage in their work. In addition to gaining disciplinary knowledge, a key element of graduate school socialization is immersion in the overarching norms and values of academe, which have roots going back centuries, but which also were refined in relation to contemporary higher education during the second half of the last century.¹⁰ Some of the core values associated with academic work, across disciplines, are rigor, peer review, adherence to the criteria that define excellence in one's field, and especially, autonomy and academic freedom.

The norm of autonomy is essential for protecting the right and privilege of faculty members to decide what is important to study, what topics and questions deserve their time, and how to pursue the questions they identify. The value of academic freedom protects the right of faculty members to study what they deem important and then to speak publicly on issues upon which they have expertise, regardless of whether those ideas are widely popular or are spurned by some in the public sphere. In the current context, threats to academic freedom appear in the form of pressures on faculty and their institutions from political leaders, state legislative bodies, and public statements in the press or other forums attracting wide attention. As we argued above, defending the rights of the faculty to enjoy autonomy and academic freedom and to use historically established processes such as peer review to determine



quality, impact, and merit falls on institutional leaders and governing boards. At the same time, however, faculty members must recognize the responsibilities that accompany the privileges accorded them through the traditions and norms of academic freedom and autonomy. We delineate these responsibilities here.

First, all faculty members have the responsibility to understand and commit to the purposes of higher education institutions and understand their roles as faculty members in fulfilling those purposes. Within the overall mission of knowledge creation and advancement, faculty members have the responsibility to engage in the scholarly work of their fields, to identify critically important questions that deserve attention, and to organize their time to address those questions in systematic ways that produce evidence-based answers or (in the arts) that provide fresh creations that stir new insights. At virtually all institutions, faculty have the responsibility to teach learners, either undergraduate students in courses that introduce the basic premises and insights of a field, those taking their first steps as “majors” to go deeper into the questions, assumptions, methodologies, and traditions of the field, or those choosing to pursue graduate work that enables them to become active members of the discipline or field themselves. Faculty also have responsibility for knowledge or artistic creation, with the degree of emphasis on this role dependent on institutional type. In addition to teaching and advancing knowledge in their fields, some faculty members also actively engage in working with broader communities to identify problems, frame questions, and seek answers; they become adept at translating the approaches and discoveries of their fields in ways that directly address society’s problems and challenges.

While the particular form and relative balance of these activities depend on the faculty member’s discipline or field, institutional context, and individual proclivities, board members should be able to rely on the institution’s faculty members to fulfill these core functions of their appointments. Faculty members have the responsibility to strive for high quality and excellence in their teaching and research; to show commitment to norms of scholarly integrity, including accuracy in reporting research, data, and findings; to participate in processes of community self-regulation,

including peer review and support for standards of intellectual rigor as understood in specific disciplines; and to engage with other scholars to maintain and advance the vehicles through which scholarship is supported and assessed, such as review panels for grants, journals, and promotion decisions.

Second, faculty members have the responsibility to be active members of their employing institution and its community, partnering with others (including other faculty, administrators, and staff) to fulfill society’s expectations of higher education. While the academic profession carries with it privileges of autonomy and academic freedom, these long-established rights do not mean faculty members are solely independent agents without obligations to the academic community. Rather, faculty members have explicit responsibilities that accompany membership in the institutional community of their employing institution.

A reciprocal relationship between institution and faculty member means that, while the faculty members assume the roles of carrying out the mission and purposes of the institution, autonomy and academic freedom are protected by institutional leaders and policies.¹¹ That is, within the institutional context, faculty members are partners with the other faculty, administrators, and staff and with the institution’s board to support and enact the mission and purposes of that specific institution. The notion of different stakeholder groups acting as partners to carry out the missions of the institution is a counter-vision to the notion sometimes popularized among faculty of the necessity of adversarial relationships between faculty and boards. While occasions may arise when the views of faculty, administrators, and boards may differ on specific issues and thus require substantive debate, the responsibility for the institution still resides across all three stakeholder groups. That is, fulfilling the work of the institution rests on the engagement, commitment, and respective roles of faculty, administrative leaders, and board members working in partnership and with a sense of mutual respect. Thus, we urge faculty members to understand themselves as essential members of a partnership of stakeholders whose collaboration advances the work of the institution. Being part of this collaborative partnership requires all involved to express curiosity and respect, assume mutual goodwill and commitment to the good of the institution, and listen to and respect an array of ideas and perspectives.

Third, in addition to understanding their overall roles as partners in their institutions, we urge faculty members to consider the specific requirements of their roles as institutional citizens. Of course, institutional responsibility includes teaching, engaging in research, and contributing to the community, in ways aligned with institutional type and mission. But it also means engaging in the ongoing tasks needed to run a university or college. Without a doubt, many faculty and staff members feel the burden of high workloads and the strain of compensation that too often fails to

keep up with the growing cost of living.¹² Under such circumstances, it is understandable that some faculty may want to limit involvement in what can feel like uncompensated work. Nevertheless, a secure academic position, whether a position in the tenure-system or a term appointment with similar protections, is a privilege that carries obligations. The conditions of autonomy and academic freedom, accompanied by employment protection and security, require day-to-day dedication and effort, carried out by the faculty as institutional citizens, to maintain that environment and ensure the continuation of those privileges.

What does the responsibility of institutional citizenship look like for faculty members? We argue that faculty members, as institutional citizens, have a responsibility to learn the meaning of shared governance, with its roles for the different stakeholder partners. They also have a responsibility to learn how a university or college works in terms of decision-making processes, the management of fiscal issues, and hiring, evaluation, and promotion processes.

Another element of effective institutional citizenship is understanding and respecting the different but complementary roles and responsibilities of faculty members, administrative leaders, and board members, and learning how faculty can effectively and productively engage in idea exchange about institutional directions, difficult fiscal decisions, and institutional priorities among competing possibilities. Faculty members who see themselves as partners and institutional citizens also agree to take on their share of the many duties of running a department, college, and institution. Leading a committee, participating in a task force, or agreeing to serve as a department chair or governance committee leader is, for many faculty members, less intrinsically exciting than delving into their research or teaching. Nevertheless, this institutional work is essential for accomplishing the overall mission and purposes of higher education institutions. Thus, an essential responsibility for faculty members is becoming involved in the working processes of their institutions and approaching such work as a partnership between faculty, administrative leaders, and board members, all recognized and respected for their dedication to the institution and its mission.

Concluding Thoughts

In the face of criticisms and sometimes intense pressures to abandon the values and norms that have ensured excellence in knowledge discovery, application, and transmission, higher education institutions can best meet the demands and challenges of the times we are facing by re-committing to their missions and purposes. Such re-commitment, however, does not mean avoiding or resisting adaptation or proactive change. Rather, the path forward requires understanding the norms and values that have ensured excellence and quality in the work of higher education institutions, while also recognizing areas for improvement, innovation, and

change. Creating the path forward depends on the collaborative work of all stakeholders within academe, including governing boards, administrative leaders, and the faculty. We especially urge governing boards to consider how they can effectively support faculty who do the core work of fulfilling the institutional missions through their teaching, research, and engagement and protect the conditions of autonomy and academic freedom so necessary for the success of that work. At the same time, we urge faculty members to recognize their roles as institutional citizens and to understand and engage in the partnership across stakeholders that is essential to the success of a higher education institution. ■



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Preserving Academic Freedom in Turbulent Times

BY DAVID M. RABBAN

People usually cite academic freedom as a bedrock tenet of higher education. But what does academic freedom mean? And how does it influence the governance of universities today and the decisions board members will have to make going forward?

The answers to those questions are rooted in the history of academic freedom in the United States. Long before the U.S. Supreme Court recognized it as a First Amendment right, the 1915 Declaration of Principles on Academic Freedom and Academic Tenure, the founding document of the American Association of University Professors (AAUP), established it as a professional norm. Today, more than a century later, that 1915 Declaration remains the most thorough American analysis of academic freedom. Its principles provide the intellectual basis for institutional regulations governing academic freedom in many American universities today.

For its part, the Supreme Court first identified academic freedom as a First Amendment right in 1957. Initially applied to professors, in the 1970s the Supreme Court extended the First Amendment right of academic freedom to universities as institutions.

Both the professional and the constitutional understandings of academic freedom address the role of university trustees. The current growing challenges to academic freedom underline the importance of board familiarity with these understandings.

The 1915 Declaration

The 1915 Declaration began by recognizing that trustees are “the ultimate repositories of power” in universities and, therefore, can determine the extent of academic freedom within them. It stressed that the “ordinary” university, whether funded by the state or through private endowments, is a “public trust” and that its trustees “are trustees for the public.”¹ The ordinary university appeals to the public for support as “a nonpartisan institution of learning.” It violates the public trust if it places “restrictions upon the intellectual freedom of its professors.”

The 1915 Declaration differentiated the ordinary university from a “proprietary” institution, which is “designed for the propagation of specific doctrines prescribed by those who have furnished its endowment.” Whereas the ordinary university is a public trust, a proprietary institution is a “private trust” whose trustees are obligated to support those specific doctrines. In contrast to ordinary

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universities, proprietary institutions, at least with respect to one subject, do not accept principles of free inquiry and are not committed “to advance knowledge by the unrestricted research and unfettered discussion of impartial investigators.” Rather, they prescribe “inculcation of a particular opinion upon a controverted question.”

As examples of proprietary institutions, the 1915 Declaration cited universities established by religious denominations to profess certain religious views, a university established by a wealthy manufacturer to promote the advantages of a protective tariff, and a university endowed to promote socialism. While expressing no opinion on the desirability of proprietary institutions, it stressed that they “should not be permitted to sail under false colors” by presenting themselves as ordinary universities. And it observed that proprietary institutions were becoming increasingly rare, pointing out that many religious universities had abandoned their previous commitments to spread specific religious doctrines.

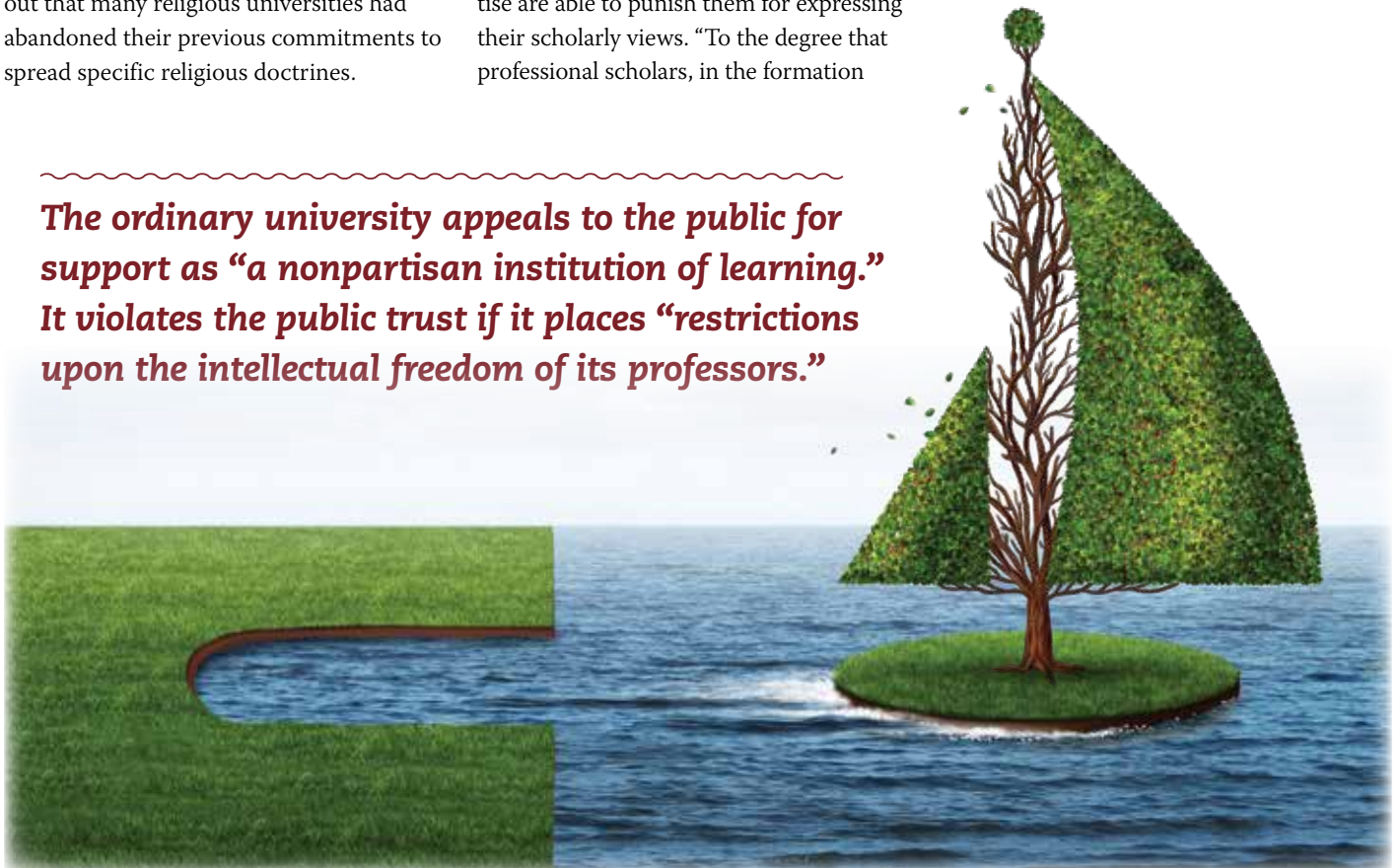
Many trustees, the 1915 Declaration asserted, understand the distinction between proprietary and ordinary universities. But it regretted that this distinction “is not yet so universally accepted as it should be” and that the trustees at some universities still conceive their relationship with professors as analogous to the one between a private employer and his employees. This “conception of a university as an ordinary business venture,” in which employers have almost unlimited authority to fire employees, manifests “a radical failure to apprehend the nature of the social function discharged by the professional scholar.”

That function, the 1915 Declaration stressed, is the production and dissemination of knowledge based on expertise gained through lengthy study. Professors cannot perform this societally valuable function if people without academic expertise are able to punish them for expressing their scholarly views. “To the degree that professional scholars, in the formation

and promulgation of their opinions are, or by the character of their tenure appear to be, subject to any motive other than their own scientific conscience and a desire for the respect of their fellow-experts, to that degree the university teaching profession is corrupted; its proper influence upon public opinion is diminished and vitiated; and society at large fails to get from its scholars, in an unadulterated form, the peculiar and necessary service which it is the office of the professional scholar to furnish.”

Observing that infringements of academic freedom had varied over time, the 1915 Declaration reported that during the early development of American universities, the main threat came from ecclesiastical pressure on the disciplines of philosophy and the natural sciences. Calling recent infringements less frequent but still significant, it maintained that the subjects of the threats had shifted. Though

The ordinary university appeals to the public for support as “a nonpartisan institution of learning.” It violates the public trust if it places “restrictions upon the intellectual freedom of its professors.”



ecclesiastical pressure remained, most recent threats attacked the political and social sciences.

Perhaps bending over backwards to be ideologically neutral, the Declaration identified threats from both the right and the left. The document observes that from the right—and particularly in private universities—trustees, donors, and parents often belong to the more “prosperous” and, therefore, “conservative classes.” They object to academic views they deem “ultra-radical.” In state universities, by contrast, “the danger may be the reverse” because the state legislatures that fund them may be dominated by progressives who object to academic views they deem “ultra-conservative.” Whatever the source of pressure, the university should be “an intellectual experiment station” free from the “tyranny of public opinion.” They should serve as a place where “new ideas may germinate” yet also as “the conservator of all genuine elements of value in the past thought and life of mankind which are not in the fashion of the moment.” To assure public confidence in universities, the 1915 Declaration reiterated, universities must be organized in ways that preclude “any exercise of pressure upon professorial opinions and utterances by governing boards of laymen.”

After stressing the importance of academic freedom in protecting the societally valuable function of professors in universities, the 1915 Declaration cautioned that academic freedom entails “correlative obligations.” Those obligations include following scholarly methods and standards, setting forth the “divergent opinions” of other scholars, and refraining from indoctrinating students. Consistent with its justification of academic freedom, the Declaration insisted that professors should take the lead in evaluating any alleged departures from these obligations. Not only are professors distinctively competent to make this determination, but also involvement by others who lack competence inevitably raises suspicion that improper motivations played a significant role.

The 1915 Declaration conceded that lay boards of trustees are competent to resolve disputes about neglect of duties and “grave moral delinquency.” But with respect to academic speech, intervention by the board destroys “the essential nature of a university,” a place dedicated to the expression of expert academic views by trained scholars. In making these points, the 1915 Declaration emphasized that it was not asserting

“the absolute freedom of utterance of the individual scholar, but the absolute freedom of thought, of inquiry, of discussion, and of teaching, of the academic profession.”

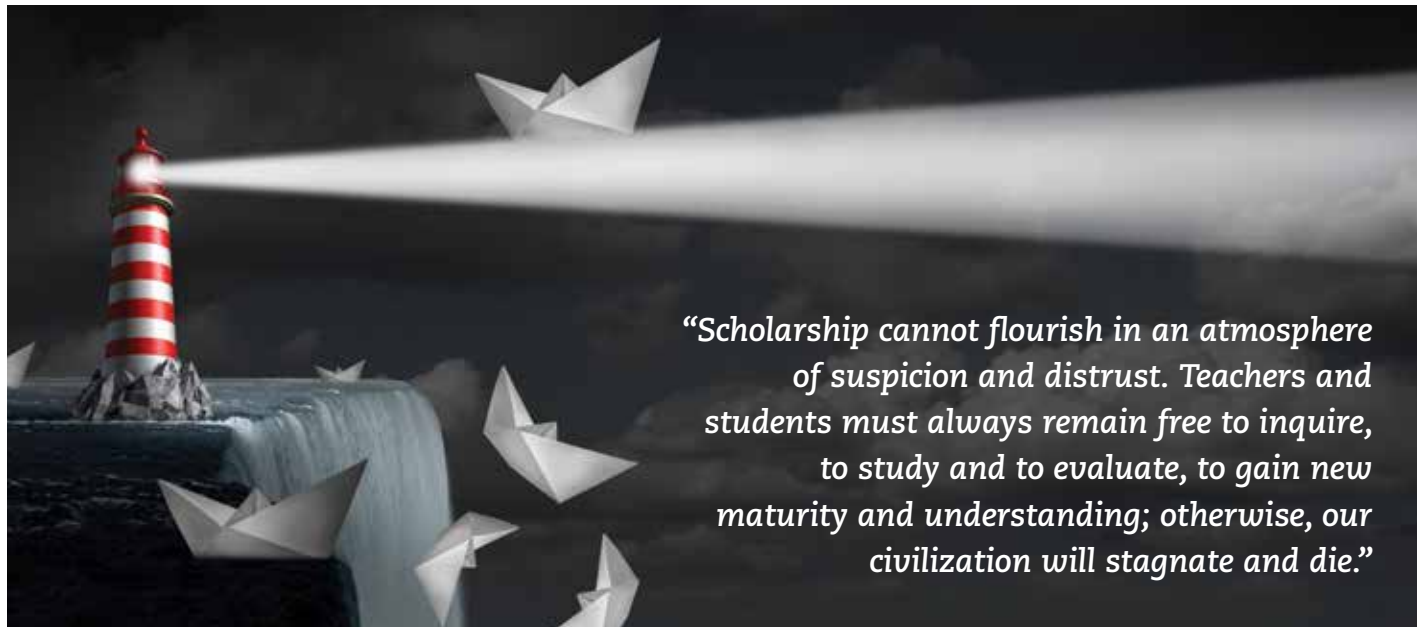
“To impose any straight jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.”

Academic Freedom as a First Amendment Right

Whereas the relationship between trustees and professors was at the core of the analysis of academic freedom in the 1915 Declaration, the Supreme Court focused on the relationship between the *state* and professors in its early decisions identifying academic freedom as a First Amendment right. Paul Sweezy, a Marxist economist who had delivered an invited guest lecture in a class at the University of New Hampshire, was the plaintiff in *Sweezy v. New Hampshire*, the 1957 decision in which the Supreme Court initially associated academic freedom with the First Amendment. The New Hampshire attorney general, as part of his investigation during the Cold War of possible violations of a state law prohibiting government employment of subversive persons, asked Sweezy if he advocated Marxism and the theory of dialectical materialism in his lecture. Relying on the First Amendment, Sweezy refused to answer. State courts in New Hampshire rejected his First Amendment claim and held him in contempt.²

Writing for a plurality of four of the nine justices, Chief Justice Earl Warren declared that Sweezy’s conviction for contempt “unquestionably was an invasion” of his First Amendment right to academic freedom. He emphasized that professors play a vital role in a democracy by guiding and training students. “To impose any straight jacket upon the intellectual leaders in our colleges and universities,” he asserted, “would imperil the future of our Nation.”³

In the paragraph of his opinion that addressed academic freedom, Warren added: “No field of education is so thoroughly comprehended by man that



“Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.”

new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise, our civilization will stagnate and die.”⁴

Justice Felix Frankfurter, who had been a professor at Harvard Law School before his appointment to the Supreme Court, wrote a concurring opinion reiterating “the dependence of a free society on free universities.” Joined by Justice John Marshall Harlan II, this concurrence, combined with the four justices who signed the plurality opinion, provided a majority of six justices who treated academic freedom as a First Amendment right. Frankfurter emphasized “the grave harm resulting from government intrusion into the intellectual life of a university” while objecting to the attorney general’s attempted compulsion of *Sweezy* “to discuss the content of his lecture.”⁵

To support his views, Frankfurter quoted from a recent South African statement on academic freedom, which identified “the four essential freedoms of a university: to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”⁶ The *Sweezy* case involved the academic freedom of a lecturer; the University of New Hampshire was not a party. But in the 1970s, when the Supreme Court extended the First Amendment right of academic freedom from professors to the educational decisions of universities, judges at all levels of the judiciary often quoted or cited this sentence as the core meaning of institutional academic freedom.

In *Keyishian v. Board of Regents*, decided a decade after *Sweezy*,

the Supreme Court majority again invoked the First Amendment right of academic freedom while invalidating a New York law designed to prevent the employment of subversive people by state educational institutions. The majority called academic freedom “a special concern of the First Amendment.”⁷ Frustratingly, the many subsequent judicial decisions that quoted this phrase approvingly have not elaborated *how* academic is “special” or its relationship to general First Amendment rights of free speech. Yet the substantial case law on the First Amendment right of academic freedom does reveal the broad consensus, consistent with the analysis of the 1915 Declaration, that it protects the *content* of expert speech by professors in teaching and scholarship so long as it meets academic standards.

Justice Lewis F. Powell Jr.’s opinion in the famous 1978 affirmative action case, *University of California v. Bakke*, was the first time that a Supreme Court justice explicitly extended the First Amendment right of academic freedom to a university. Quoting Frankfurter’s concurring opinion in *Sweezy*, Powell relied on the fourth of the freedoms identified in the South African statement, “who may be admitted to study,” to assert that the “freedom of a university to make its own judgments as to education includes the selection of its student body.”⁸

In *Bakke*, Powell wrote only for himself, but 25 years later the Supreme Court majority endorsed his analysis. And even when the Supreme Court majority in 2023 invalidated the affirmative action programs at Harvard and the University of North Carolina while reinterpreting the constitutional meaning of racial discrimination, it continued to identify institutional academic freedom as a First Amendment right.

Legal cases have applied the First Amendment right of institutional academic freedom in numerous contexts. In most of those cases, the administration acted on behalf of the university. But in some cases, a faculty body did. In an important unanimous decision in 1985, for example, the Supreme Court treated the decision of a faculty committee to dismiss a student on academic grounds as a legitimate exercise of the university's academic freedom. "When judges are asked to review the substance of a genuinely academic decision," the opinion observed, "they should show great respect for the faculty's judgment."⁹

Decisions about institutional academic freedom, like decisions about the academic freedom of professors, have not resolved many important issues about its scope. But just as the cases about the academic freedom of professors have reached a consensus that it protects the *content* of expert speech that meets academic standards, the cases about institutional academic freedom have reached a consensus that it protects the *educational* decisions of universities so long as they do not violate other laws, such as the prohibition against racial discrimination.

Recent Legislation and Demands from the Trump Administration

Recent legislation in some states and demands on universities from the Trump administration in 2025 have challenged the judicial interpretation that has prevailed since the Supreme Court initially recognized academic freedom as a First Amendment right in the 1957 *Sweezy* case. Such legislation prohibits teaching "divisive concepts," often related to issues of race and sex. Demands from the Trump administration condition federal funding of academic research on requirements that universities place academic departments in receivership; create new programs; hire new faculty with viewpoints acceptable to the government; base the admission of students on purely "objective criteria"; restrict the percentage of foreign students; and close diversity, equity, and inclusion programs.

These restrictions involve substantially *more government intrusion* into the intellectual life of universities than the Supreme Court *invalidated* in *Sweezy*. The court concluded that even *asking* *Sweezy* about the content of his visiting lecture violated his First Amendment right to academic freedom. By restricting the scholarly content of classroom expression, these recent intrusions go much further. They also interfere with all four of the essential academic freedoms of a university identified in the South African statement quoted in Frankfurter's concurrence: "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study."¹⁰

Some universities have acquiesced to these restrictions. But litigation at four universities has challenged them on First Amendment grounds. Three of the four legal decisions, consistent with the

overwhelming consensus of existing law, found that the government violated the First Amendment. The fourth decision rejected the First Amendment challenge to an Alabama law while recognizing that precedents in most jurisdictions did not support this result.

The boards of trustees at these four universities had very different positions in the litigation. The President and Fellows of Harvard College sued the Trump administration. By contrast, the Board of Governors of the State University of Florida System and the University of Alabama Board of Trustees were defendants in lawsuits challenging state legislation with which they complied. The University of California was not a party in the case challenging the Trump administration's intervention at UCLA, which was brought by the AAUP and various labor unions representing UCLA employees.

As additional litigation unfolds, it will be interesting to see if courts continue to follow the consensus of existing law about the First Amendment right of academic freedom. It will also be interesting to see what positions university trustees at various institutions might take in future litigation. Knowing how courts have interpreted and applied this right will help them make much more informed decisions. ■



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Editor's Note: Many quotes in this article are from the 1915 Declaration of Principles on Academic Freedom and Academic Tenure, the founding document of the American Association of University Professors. There is an initial citation for the first instance in which the document is mentioned but other short mentions from it are not listed as endnotes to provide better readability.

Endnotes

1. American Association of University Professors, *Declaration of Principles on Academic Freedom and Academic Tenure*, 1915.
2. David M. Rabban, *Academic Freedom: From Professional Norm to First Amendment Right* (Harvard University Press, 2024), 62–63.
3. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).
4. *Id.*
5. *Sweezy v. New Hampshire*, 354 U.S. at 261–63 (Frankfurter, J., concurring).
6. *Id.* at 263.
7. *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967).
8. *Regents of the University of California v. Bakke*, 438 U.S. 265, 312 (1978).
9. *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985).
10. *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (Frankfurter, J., concurring).

The Imperative of Board Independence in a **Presidential**

A PRESIDENTIAL SEARCH is one of the most important activities that a governing board oversees. The ability to do so with integrity and autonomy is critical, and yet the higher education media is replete with recent reports of boards being influenced by outside forces exerting their opinions (in some cases mandates) on these searches. In this article, a selection of AGB Search's principals and executive search consultants share their impressions about why board independence is essential, the potential consequences of sacrificing board autonomy, and how boards can best prepare themselves to withstand the pressures they may face as they conduct a search for a new president.



Search

Why is board independence so important in presidential/chancellor searches?

■ **Melissa Trotta:** Higher education is facing many external pressures as well as close scrutiny of how institutions operate and the value they provide. If a perception exists that a search is not being conducted as a bona fide, authentic search and that a board is simply carrying out the wishes of an external individual or group, the credibility of the search and the appointee will be questionable from the outset. Internal constituents including staff, faculty, and students may resist supporting the appointee, and the presidency will be challenging before it even begins. There is also reputational risk for the institution among its alumni, friends, benefactors, and the broader public if they perceive that a new president or chancellor was appointed to appease an outside individual or entity.

■ **Kim Bobby:** Presidential searches are among the most consequential responsibilities a governing board undertakes. When trustees approach the process with humility, curiosity, and fidelity to the institution's mission, they create conditions that allow candidates to envision themselves thriving in partnership with faculty, staff, students, alumni, and community stakeholders. At their best, boards send a signal of stability and shared purpose that attracts outstanding leaders.

The opposite is equally true. When trustees interfere with operations or impose personal agendas on the process, candidates see warning signs. In an era when board dynamics are widely reported in the press and amplified on social media, internal conflicts cannot be hidden. Prospective presidents quickly learn whether a board is cohesive or fractious. Many strong candidates simply walk away, unwilling to risk stepping into a role defined more by conflict than by mission.

■ **Jerry Gilbert:** Governing boards of institutions of higher learning need to stand strong in the storm of today's tumultuous political strife. An independent board that does not bend to outside pressures is better situated to operate in the best interest of the institution and help maintain an academic environment where all opinions and ideas are valued and respected. Ultimately, boards with integrity, transparency, and resistance to outside influences attract higher quality candidates for presidential searches, have broader support from their constituencies, and are able to better function properly as they partner with the president or chancellor to lead the institution.

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■ **Carlton Brown:** Political interference erodes board independence and can lead to mission drift or mission distortion. Gubernatorial and legislative interference also especially move toward the homogenization of higher education and the removal of institutional character and uniqueness that make the institution particularly important to its primary clientele.

■ **Fred Moore:** Trusteeship of a higher education institution is an honor that only a small portion of our society experiences. That honor carries with it a fiduciary duty to always act in the institution's interest. Such actions, especially in a presidential/chancellor search, must be grounded in an independent assessment by the board as a collective body. The board does not share this responsibility with anyone else and its decision must reflect independent judgment.

What are some potential consequences when outside forces unduly influence a search?

- **Kim Bobby:** The consequences are clear:
- Searches take longer. With qualified leaders opting out, committees often restart searches or re-open pools.
 - Candidate pools shrink. Talented presidents protect their reputations and avoid institutions where governance disputes dominate headlines.
 - Turnover rises. Boards that struggle to align around their role experience short-lived presidencies at great financial and reputational cost.
 - Reputations suffer. Public awareness of board intrusion undermines not only searches but also donor confidence, faculty recruitment, and student trust.

These patterns take a human toll. Candidates describe contentious searches as demeaning. Campus communities, already weary from frequent leadership changes, grow skeptical of the process itself. Faculty and staff lose faith when institutional priorities are eclipsed by board discord.

■ **Carlton Brown:** Trustee interference in a search does not always get exposed, and even if exposed, not in a manner timely enough to save a candidate. In private institutions, the possibility of interference can be fairly expansive and avoid public exposure. Candidates

may not become aware until they have either been rejected or receive an offer. Additional potential consequences are that searches have to be relaunched and will likely not attract the same caliber of candidates, and internal resistance to the new appointee can be very disruptive and long-lasting.

How can boards prepare themselves to withstand all the pressures that they may face, particularly when preparing for and conducting a presidential or chancellor search?

■ **Fred Moore:** A board can and should listen to the voices of those interested in a presidential/chancellor search. Indeed, listening is not antithetical to independence. In the final analysis, however, only the board can decide whom to appoint as president or chancellor and so listening cannot lead to a delegation of the board's duty. The board cannot allow anyone to substitute their judgment in place of the trustees, no matter what pressures are brought to bear.

■ **Melissa Trotta:** True alignment of the board is essential. A board that has done the work to reflect on what is most needed in the next president or chancellor, that adheres to a structured process, and that values transparency in how the search is being conducted will be most effective. Acknowledging upfront that there may be outside individuals or groups who want to exert their influence helps prepare the board should that come to pass, and experienced search consultants can also help to provide guardrails and reminders about best practices.

■ **Carlton Brown:** I try to lead board members to focus on the relationship between the institution (mission, values, student needs, sense of community, and so forth) and the board. This should be the only relationship that matters regardless of how one came to be a board member.

■ **Kim Bobby:** Boards that see themselves as learning boards—willing to reflect, adapt, and recalibrate—show courage in self-correcting. By clarifying the distinction between oversight and operations, engaging in governance education, and recommitting to the institution's mission, trustees can realign their behavior with the values they hope to see in their next president.



The ideal environment at an institution of higher learning is one where the board and the president are united in philosophy and vision.

Do you have any other thoughts you would like to share about the importance of boards maintaining their independence and staying focused on what is best for the institution as they engage in executive leadership searches?

■ **Melissa Trotta:** To reiterate what my colleagues noted earlier, keeping the institution's mission front and center is the touchstone for a search for a new president or chancellor. Having honest discussions as a board about how each candidate under consideration would honor and deliver on the institution's stated mission (versus, for example, carrying out a particular political agenda) is challenging but important work. Putting students at the center of decision-making can also shed important light on the right candidate for the institution's current circumstances and most pressing needs.

■ **Jerry Gilbert:** The ideal environment at an institution of higher learning is one where the board and the president are united in philosophy and vision. That requires trust and transparency. A president who can trust their board to be independent is one who can focus on the important task of advancing the mission of the institution and not overly worry about outside pressures on themselves or their board.

■ **Kim Bobby:** Ultimately, the presidency is not just another hire; it is a covenant between a leader and a

community. Boards that embody respect, restraint, and humanity in the search process make it possible to attract leaders who can advance the institution with confidence and integrity. In demonstrating the humility to learn and the courage to self-correct, boards safeguard both their institutions' futures and the promise of higher education leadership.

About AGB Search

AGB Search offers executive search, interim search, executive coaching, and compensation evaluation services exclusively for higher education institutions. Founded by the Association of Governing Boards of Universities and Colleges (AGB) in 2010, AGB Search has a deep understanding of the qualifications critical for effective higher education leadership. The firm's affiliation with AGB ensures clients receive access to valued governance resources and training, in addition to highly regarded search services. Preferred pricing on all services is extended to all AGB member institutions. www.AGBsearch.com. 

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Jerome (Jerry) Gilbert, PhD, executive search consultant, AGB Search and former president, Marshall University.

YOU CAN'T SAY THAT!

Government
Censorship of Colleges
and Universities

BY KEVIN P. REILLY AND AMY REID

Censorship on college campuses has risen drastically in recent years, with state and federal governments attempting to dictate what can and cannot be said on campus, what must and must not be taught in the curriculum. In this environment, it is essential that boards ensure the integrity and independence of their institutions.



HIGHER EDUCATION has confronted overwhelming challenges since January 2025. Not only have individual institutions faced investigations, lawsuits, and coercive “offers” from the federal government, but whole swaths of the sector have had to adapt to rapidly shifting landscapes. Once stable structures for accreditation, financial aid, research funding, curricular standards, and visas for international students, researchers, and faculty now teeter. Even the principles of institutional autonomy and campus free expression are called into question.

In this climate, much attention has been focused on the impact of the federal administration’s moves, and with good reason. Whether one considers the impact of billions of dollars of cuts to research funding, the targeted attacks on some of the nation’s most storied private and public research universities, or the more than 8,000 student visas that have been revoked, the scale of the onslaught is staggering. The immediate and long-term consequences of these unprecedented federal initiatives reverberate outward from campuses, impacting local communities, international cooperation, and the health of many Americans.

But that is only part of the picture. The groundwork for the havoc on the federal level was laid over years of ongoing and coordinated attacks on all sectors of higher education coming from state capitals across the country. As reported in PEN America’s recent annual report, *America’s Censored Campuses 2025: Expanding the Web of Control*, 2025 was “a year of catastrophe” for higher education, with record-breaking levels of state legislation that directly and indirectly censors the education available to America’s college and university students.¹

State Interventions

State legislatures set three troubling new records in 2025:

- the highest number of laws censoring higher education in a year (21)
- the largest number of states passing those bills (15)
- the highest number of states passing their first higher education censorship bill (8)

That last number in particular speaks to the dangerous spread of educational censorship across the country.

As a result, now over 50 percent of American college and university students attend school in one of the 23 states that have passed at least one higher education censorship bill since 2021, when PEN America first began tracking this legislation.

PEN America’s report details the rapid proliferation of state-level legislation impacting higher education and the amplification of those efforts on the federal level. As such, it’s an important resource for trustees. Its in-depth analysis maps out the most pressing challenges facing college and universities today: from challenges to institutional autonomy over tenure, shared governance and curricula, to the rise of jawboning demanding the firing of specific faculty and the dismantling of the accreditation system. It also includes a comprehensive overview of the higher education censorship laws and policies passed by states in 2025. While changes in state-level law and policy sometimes fly below the radar, they have immediate and long-term impact on students at both public and private campuses: limiting conversations on the quad and in classrooms, canceling classes and student-life programming, sidelining faculty in campus governance and curricular decision-making, and undermining tenure. To drive home the real and personal costs of these policies, PEN America also launched in December a blog series, *Snapshots of Censorship*, featuring the stories of faculty whose research, teaching, and service have been disrupted by government censorship.

TAKEAWAYS

- Attempts by the federal and state governments to censor colleges and universities are growing at an alarming rate.
- Trustees have a unique, indispensable role in safeguarding academic freedom and free speech at their institutions.
- Preventing political parties from exerting ideological control over higher education is essential to American democracy.

What Counts as Censorship? Direct vs. Indirect Tactics

To explain the impact of state legislation on higher education, PEN America draws a distinction between “direct” and “indirect” censorship. Some state legislation is easy to identify as censorship, because the bills explicitly or *directly* limit or prohibit what can be taught or discussed in a college or university classroom. These “educational gag orders”—for example, Mississippi HB 1193 (2025), which restricts how race and gender can be discussed in both K–12 and higher education classrooms²—were the first sort of censorship measures that PEN America began to track. Gag orders are effective, as are sledgehammers, but they’re also open to legal challenges. A preliminary injunction was issued in August 2025 blocking implementation of certain provisions of Mississippi’s HB 1193, for example.³ And yet, there were seven gag orders passed in 2025, a significant rise over the four that were passed the year prior.

As predicted in PEN’s 2024 report, however, over the past two years there has been a real strategic shift from direct to indirect censorship, with state legislatures diversifying their approaches and, as we put it, “refining the art of censorship.”⁴ In 2025, the vast majority of censorship bills and policies introduced and passed across the country are what PEN categorizes as “indirect censorship.” These include measures that chill the climate for campus free speech and indirectly censor the curriculum

by placing limits on general education or curriculum requirements, imposing “intellectual diversity” or “institutional neutrality” mandates, restricting faculty involvement in shared governance, limiting tenure, or undermining the accreditation process. All told, there were 78 state bills introduced across the country in 2025 that included “indirect” censorship provisions, more than double the number that included “direct” censorship measures, 37 (some bills, we note, included both direct and indirect measures). That ratio holds up, too, as we compare the bills that were signed into law: 20 indirect measures became law, or almost three times the number of gag orders that did. The rapid proliferation of these bills is in part explained by the circulation of model legislation authored by groups including the Goldwater Institute and the Civics Alliance.⁵

Examples of indirect censorship passed in 2025 include Indiana’s HB 1001, which relegates faculty senates in the state’s public universities to an “advisory” role only in academic affairs⁶—a move we’ve seen in legislation in Texas,⁷ Ohio, and Utah⁸ as well. Or consider Idaho’s SB 1198, which stops short of banning specific content, but instead stipulates that, with minimal

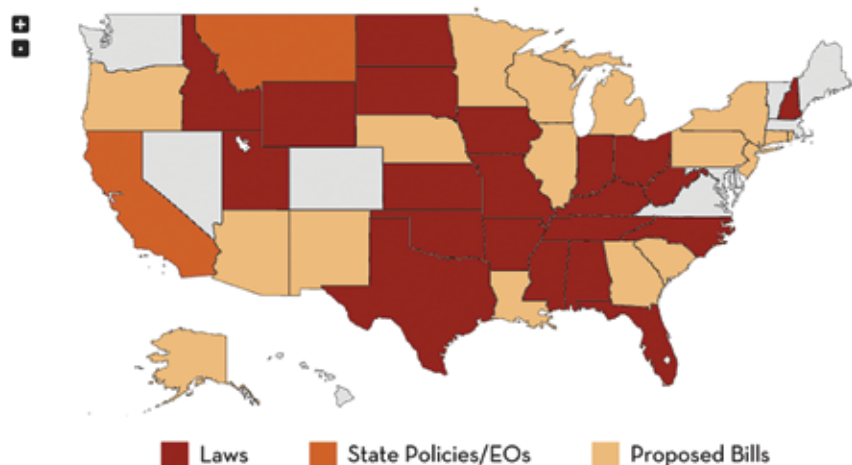
exceptions, courses on “critical theory” cannot be required for completion of a major, minor, or certificate, thereby limiting opportunities for students to engage with meaningful or challenging content.⁹ Kansas SB 125 ominously expands the scope of previous “DEI bans” by micro-managing how state employees, including faculty, communicate, specifically prohibiting them from indicating their pronouns in emails or “any other form of communication.”¹⁰ Each of these provisions makes it less likely that faculty and students will be able to engage in free and open discussion in classes and across campus.

Challenges to Accreditation

Another tactic to indirectly censor education on campus—and one that has been replicated in multiple states in the 2026 legislative session—is to undermine the accreditation system. Florida was at the start of this push, passing SB 7044 in 2022, which required public universities to switch accreditors.¹¹ In 2025, Florida coordinated the launch of a new accreditor, the Commission for Public Higher Education (CPHE), as a state-based alternative to regional accreditors. Nationally, the pivot to using accreditation to drive campus

CHART 1

Higher Education Restrictions, including educational gag orders and other restrictions

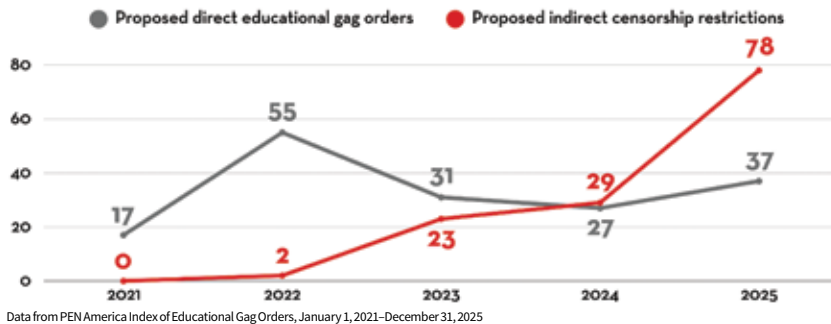


Source: PEN America’s report, *America’s Censored Campuses 2025*.

CHART 2

Direct vs. indirect proposed censorship bills affecting higher education

Bills that include both direct and indirect censorship provisions appear in both lines



Source: PEN America's report, *America's Censored Campuses 2025*.

which to fire; what topics to research and how: these decisions should not be dictated by government.

Elected officials do have a clear interest in assuring that the public colleges and universities they help fund serve the public good. And let's be clear: the combination of state and federal funding—which includes funds for student aid and loans and a robust program of research support across all fields—has guaranteed the global success and achievements of the U.S. higher education sector. To be blunt, the largest single source of revenue in the home institution of one of the authors of this article, the University of Wisconsin-Madison, one of the nation's top-ranked public research universities, is federal dollars.¹⁹ But the success of the American system is predicated on both the interdependence between higher education and federal, state, and local governments and the independence of both public and private institutions from government overreach. Trustees who place the interests of the institution and its students above personal or political interest play a leading role in this. If governing boards merely rubber stamp decisions from above, why not just dismiss all the trustees and establish a centralized ministry to govern the sector? Does anybody think that's a good idea?

We are not saying that colleges and universities have always gotten things right. Some colleges and universities, including

policy is championed by the Heritage Foundation, which markets a model bill for that purpose, "Rejecting Racism in Postsecondary Institutions and Postsecondary Accreditation." Bills weakening the accreditation system were introduced in multiple states in 2025, including South Carolina¹² and Michigan,¹³ and Tennessee passed SB 2528.¹⁴ In 2026, more states have jumped on the accreditation bandwagon, with bills introduced in West Virginia,¹⁵ Oklahoma (HB 3132 and HB 3134),¹⁶ Missouri,¹⁷ and Iowa.¹⁸ Trustees should expect to see more of these sorts of bills coming in the next year, upending the established system of independent accreditors and destabilizing institutions in the process.

The Responsibility of Trustees

What should college and university trustees be expected to do in the environment documented in the PEN America report? Getting consensus on a reasonable answer to this question involves asking: Why do we have governing boards overseeing higher education institutions in America?

The genius of American higher education since colonial times has been the *absence* of a Ministry of Education that controls the operation of colleges and universities. This arrangement grows out of the very American notion that in a democracy, people need access to reliable information. A free and autonomous higher education sector that leads in the

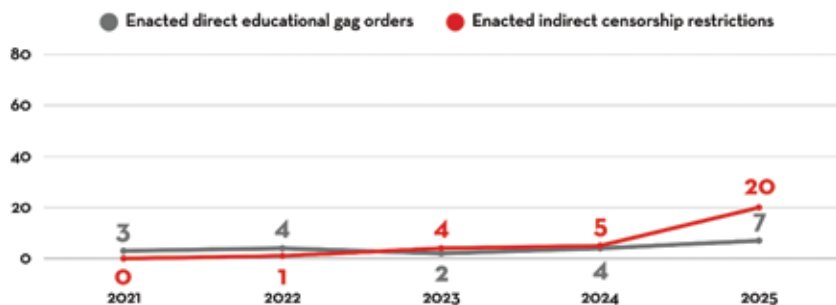
discovery and dissemination of new knowledge is, like a free and independent press, essential for the health of a democracy, for the common good. We cannot afford to have colleges and universities reduced to being echo chambers for those who occupy elected office.

For colleges and universities to fulfill their mission, their governing boards need to work in tandem with faculty and administration to ensure that teaching, research, and community service serve the needs of the people broadly speaking, not impose the agenda of any political party or official. What can and can't be said on campus; what must and must not be taught in the curriculum; which students to admit and which to expel; which faculty to hire and

CHART 3

Direct vs. indirect enacted censorship bills affecting higher education

Bills that include both direct and indirect censorship provisions appear in both lines



Source: PEN America's report, *America's Censored Campuses 2025*.

some of the most prominent ones, have adopted policies and practices or permitted behaviors that can limit intellectual diversity on campus and stifle free speech, such as mandatory diversity statements from job candidates, speech codes that discourage honest questions, shout-downs of conservative speakers, and tolerance for antisemitic rhetoric. One of the purposes of higher education is to have students encounter views very different from their own, wrestle with them, engage in civil dialogue with the people who put them forward, and decide what they think and believe in a newly informed way. We think governing boards that work closely with faculty and administrators are in a better position to promote policies that will achieve this than are politicians far removed from campus who seek to impose a top-down, one-size-fits-all approach.

How Do Students Experience Campus Free Expression?

If you listen to what the majority of students and alumni have to say about campus climate, you will hear a different story from the one that has been pressed on the public. The Gallup organization and the Lumina Foundation released a new report earlier this year entitled *The College Reality Check: What Students Experience vs. What Americans Believe* based on a survey of 4,000 undergraduates and 6,000 college graduates. Among its consequential findings:

- Between 64 percent and 74 percent of

Higher education cannot fulfill its unique obligation to think ahead on behalf of society unless it is able to push society's boundaries.

Democratic, Republican, and independent students say all or most of their professors encourage students to share their views and support speakers and audience alike during controversial discussions.

- Most students say they feel free to express their opinions on campus, including 76 percent of Democrats and 69 percent of Republicans.
- Just 2 percent of all college students, including 3 percent of Republicans, say they feel they don't belong on their campus due to their political views.²⁰

By and large, higher education's "customers" do not believe that they are caught in some kind of progressive echo chamber.

Boards should always be supportive of more spirited debate and serious dialogue on campus. But they should never ally themselves with government efforts to control or structure or referee that back-and-forth. While most Americans don't have a feel for or care much about academic freedom, they generally don't much like censorship, especially not when it's imposed by the government. They hate

the idea of any government telling them or their kids how to think or what to say. And in all honesty, no amount of social pressure from your peers—or even the occasional faculty member—can justify legislation or policy that threatens to undermine educational institutions if they fail to comply with the will of the political party in power. There is no equivalence in these two threats to the mission and viability of higher education.

Trustees are the border runners between the party in power and government entities on the one hand and the university on the other. At their best, they act as a conduit to bring public opinion—and sometimes public criticism—into the university, while at the same time buffering it from interference that gets in the way of its always messy search for truth and its service to the commonwealth that derives from that mission. There is an inherent paradox in that mission. Higher education cannot fulfill its unique obligation to think ahead on behalf of society unless it is able to push society's boundaries.

AGB's Advice for Trustees

As AGB puts it in its Govern NOW toolkit, "We believe that governing bodies should act with integrity as stewards of mission and public trust, not as ideological operatives. We emphasize partnership, accountability, and independence."²¹ When government influence and accountability turn into direct intervention, when they manifest as heavy-handed government prohibitions and mandates with the force of law and threats of devastating defunding behind them, trustees need to stand together in defense of academic freedom and the institution they serve.

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CHART 4

Indirect censorship bills enacted in 2025 that affect higher education, by category

Bills with multiple provisions are counted in each appropriate category



Data from PEN America Index of Educational Gag Orders, January 1, 2021–December 31, 2025

Source: PEN America's report, *America's Censored Campuses 2025*.



The PEN America report makes the case that we are at a crucial juncture. Now is the time for trustees to articulate the values that undergird our higher education system and to hold to them: sector autonomy, intellectual rigor, and academic freedom for faculty and students. Political winds do change. It is incumbent upon trustees to take a longer, principled view, so that colleges and universities are not endlessly whipsawed between successive competing demands to promulgate the prevailing orthodoxy.

Trustees need to be able to criticize and defend and help change the institutions they oversee with the long view in mind, with bravery and steadfastness. They need to try to convince elected and appointed political folk that letting trustees do that is a better approach than imposing laws and policies in a short-sighted effort to gain control of colleges and universities that will inevitably boomerang. That's what our democracy should be able to trust trustees to do.

The national landscape for higher education has shifted drastically over the past five years—and that means that the challenges and responsibilities of governing boards have shifted as well. The norms of shared governance that had allowed small colleges and large universities, both public and private, to function, if not always smoothly, at least with a reliable sense of stability have been challenged, leading to sector-wide uncertainty about the path ahead. Now more than ever, board members need to carefully weigh their responses to this moment so that the successful model of American higher education long admired around the world can continue to do its part to advance American democracy. ■



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PROTECTING

Academic Freedom *and* Institutional Autonomy

A SYSTEMS APPROACH

With academic freedom being in the spotlight—now more than ever—all campus stakeholders must play their part in protecting this tenet of higher education and champion institutional autonomy. Board members must be selected and educated for their role; presidents must be encouraged and rewarded for service; faculty must be prepared for their involvement in governance and leadership; and students must be considered partners in transformational learning.

BY ROBERT A. SCOTT

THE FOUR PARTIES to academic governance and academic freedom constitute a system that can counter the increasingly corporate style of higher education institutions that has fostered criticisms both on and off campus. To change course, board members must be selected and educated for their role; presidents must be encouraged and rewarded for service as chief purpose officer (CPO) as well as chief executive officer (CEO); faculty must be prepared for their involvement in governance and leadership; and students must be considered partners in transformational learning, not customers in a transactional experience.

While the accusations and demands of the federal government against Harvard, Columbia, and other elite institutions have garnered most of the national headlines, the administration's Compact for Academic Excellence in Higher Education offered to other universities should give further pause. The Compact would confer preferred access to federal research funds in exchange for submitting to dictates regarding academic freedom and institutional governance, including shared governance.

Most of those offered the Compact have said “no” as it would violate basic principles of academe. It also would interfere with student admissions, faculty hiring, academic programming, and international relationships as well as mandate institutional neutrality. But institutional neutrality does not mean higher education cannot advocate for its values.

Furthermore, the demands for compliance were accompanied by unsupported claims or selective evidence of institutional wrongdoing that do not follow the federal government's own guidelines for regulatory action.

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The 2024 winter congressional hearings that challenged several university presidents to make statements about political issues resulted in many institutions adopting policies of “institutional neutrality.” By resolution, boards of trustees of numerous colleges and universities declared that they would not take public stands on controversial issues.

Many of these policies cite the so-called “Chicago Principles” enunciated in the “Kalven Committee: Report on the University’s Role in Political and Social Action,” issued in 1967 by the University of Chicago. Such issues include international conflicts, investments in certain products and countries, and stands taken by elected officials.

In essence, the report states that, to protect free speech and freedom of inquiry, university leaders should not engage in speech that would appear to infringe on others’ speech. It argues that the university should be a protected, neutral place for the expression of all ideas, a safe space for “strong disagreement, independent judgment, and the questioning of stubborn assumption.”¹

There are good reasons for universities to avoid taking political stands. When a board of trustees or president issues a public statement, it can stifle contrary views; it can appear to suppress disagreement and debate on divisive issues. This would be in violation of the university’s responsibility to foster questions and respect the role of expertise. Making statements about some issues but not others places the institution in jeopardy of a double standard: indicating that some issues deserve comment, but others do not. Such statements can put the institution in a partisan controversy, a place it should avoid.

However, the Kalven Report does not assert that institutions are prohibited from commenting on public policies that would affect institutional autonomy and the freedom of scholars to pursue truth no matter where that pursuit may lead. The report explicitly states that the university must defend itself, and I would say “boldly,” against attacks on its principles of academic freedom and institutional autonomy. It reminds us that the university is home to scholars and students who may comment freely and responsibly but the institution itself should not take positions on other than academic matters.

Now, governors and state legislators are promoting policies that proscribe what subjects can be taught, what books can be read, and who can be hired to teach. State lawmakers have issued “educational gag orders that restrict college teaching” and “ideologically motivated attacks on university operations, including

faculty governance, academic curricula, and diversity, equity, and inclusion initiatives,” according to PEN America.²

These actions, based on unproven allegations and often without due process and respect for the law, expose the vulnerability of colleges and universities, despite Supreme Court decisions.

Dartmouth College v. Woodward (1819) and *Sweezy v. New Hampshire* (1957) both affirmed that universities must remain free from government interference in their teaching, hiring, admissions, and governance. Institutional autonomy and board independence are fundamental to academic freedom, educational excellence, and the fulfillment of fiduciary duties.

In the *Sweezy* case, Supreme Court Justice Felix Frankfurter wrote, “It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment, and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university—to determine for itself *on academic grounds* (not political or ideological grounds) who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”³

An important service for institutional and academic leaders is accreditation, both institutional and programmatic. Voluntary accreditation has served higher education well and has become a model for global higher education. By active participation, we in higher education can save it from a government assault that characterizes regional accreditation as a “cartel” and urges the creation of new accreditation alternatives. This is a blatant attempt to undermine quality controls and support predatory proprietary schools.⁴

University leaders must use these precedents to protect academic freedom for faculty and students and institutional autonomy

By active participation, we in higher education can save it from a government assault that characterizes regional accreditation as a “cartel” and urges the creation of new accreditation alternatives.

for the campus. These priorities are embedded in state-awarded institutional charters and regionally accredited campus mission statements. They are supported by many agreements on academic freedom and tenure over the years, including AAUP in 1915 and 1940, and the joint statement the “Government of Colleges and Universities” of AAUP, ACE, and AGB in 1966.

These policy agreements define higher education as a moral enterprise chartered by the public and dedicated to the public good. This compact between the public and institutions is based on a commitment to advanced learning, the advancement of society, and the preparation of citizens and professionals. Universities and colleges are intended to be places where ideas are in contention and truth is sought through dialogue



Institutional leaders and faculty should not only consider the campus as a community but higher education at large as committed to common values and purpose, realizing that an attack on one is an attack on all.

and discovery as so well stated in Abraham Flexner's "The Usefulness of Useless Knowledge."⁵

But what do we mean by academic freedom? This form of freedom is *not freedom from* responsibility to students, colleagues, institutional mission, or society. Instead, *it is freedom to* inquire, i.e., interrogate assumptions and assertions to expose the questions hidden by answers, as James Baldwin said, and special interests in government, media, or even institutions.⁶ It is the freedom to think independently, to have rights, and to consider consequences, both intended and not.

It also is the freedom to imagine, to be curious, to consider what might be and how humanity might develop its humaneness. It is freedom to express ideas without fear of reprisal or censorship.

Finally, it is the freedom to innovate, to realize what is imagined in new forms and methods.

We know these priorities and principles. Do we know how to promote and protect them? How do we prepare university trustees for their roles as fiduciaries and guardians of them? How do we prepare presidents for their duties as "Chief Purpose Officers" responsible for ensuring that the principles guide decision-making? How do we prepare faculty for their responsibilities in governance and leadership? What are the dynamics at play in their roles and responsibilities to benefit from and protect academic freedom and institutional autonomy? What about students?

Governing Boards

Boards of trustees are responsible for preserving academic freedom and institutional independence, which are necessary for teaching and scholarship that challenge assumptions and assertions. Furthermore, college and university boards have three legal duties like those of corporate boards. These are the fiduciary duties of care, loyalty, and obedience. The duty of care means that board members must prepare diligently, participate actively, and protect the institution through appropriate oversight, including guarding against external interference.

The duty of loyalty requires that board members act in good faith and in the institution's best interests, not out of self-interest or in the interest of a particular constituency, including alumni or a governor. This duty specifies that a trustee should not have mixed loyalty, only allegiance to one institution at a time.

The duty of obedience means that boards must uphold the institution's charter and mission, maintaining public trust through transparent stewardship. These three duties protect academic freedom as a principle.

Surprisingly, fewer than 15 percent of American college and university trustees have any professional experience in higher education. This fact underscores the need for rigorous orientation in academic governance, the meaning of mission and academic freedom, the higher education landscape, and what is higher about higher education.



Can one imagine a company such as Google or Chase declaring that 85 percent of its board members have no experience with the firm's unique attributes, business model, competitive position, and financial and personnel policies? Well, this is the case in higher education. The increasing demands on governance have made it necessary for university board members to be knowledgeable about the purposes and history of higher education at large as well as the heritage of the institutions they serve.

This is why it is helpful for boards to include members from non-overlapping academic institutions who are knowledgeable of higher education's history, principles, and priorities as well as context and challenges.

Board members may wish to serve because they believe it is time to give back to an institution that was important to them at a critical time in their lives. While this motive is honorable, it does not reflect the true nature of what is needed for the position. Board service, if done well, is work and takes energy, imagination, and commitment—not old sentiments revisited. Board members should know the positive reasons they wish to serve and understand what is rewarding and challenging about serving. They should know how the board chair and president can help them be more effective in their roles on the board. Board members help frame the issues; in this way the board not only governs but also leads.

An essential function of boards is to monitor the alignment of mission, goals, strategies, resource allocations, rewards, and results, as well as the timeline for accomplishing goals. That this function is not exercised fully is demonstrated by the

non-alignment of educational missions and graduation rates.

The university horizon is long term, while a private business, unless it is family owned, generally operates with a short-term horizon. This perspective affects the approach to developing new programs in the university, which expects a long life, as compared with new products at a firm, which require a fast payback.

State institution higher education board members are either elected by the public or appointed through a political process involving the governor and legislators. Private institution board members generally are elected by a self-perpetuating board according to its own criteria, usually with fundraising as a major consideration. In neither case is governance acumen or higher education expertise a primary criterion.

The President

The second consideration to be examined is the evolution of the college and university president's role. Campus presidents have variously been described as mediators, cheerleaders, budget masters, lobbyists, high-stakes panhandlers, promoters, and entrepreneurs. Too seldom are they thought of as educators, the keepers of an institution's mission and legacy for transformational teaching and learning, and protectors of academic freedom.

Much of what was written above about boards can apply to campus presidents because boards hire, evaluate, and retain or dismiss presidents. However, presidents have the opportunity and responsibility to define how they fulfill their roles. Are they a CEO or a CPO?

CEOs focus on size and scale; organization and delegation; short-term goals; the efficiency of means, money, and markets; customers; personnel; and labor. By contrast, CPOs focus on purpose and meaning, the long-term, the integrity of ends and means, the quality of programs and services, student success, and faculty as partners in a moral enterprise. They consider heritage (such as ideas and values of the past) as well as history (such as the experiences of the past) in developing plans. How the president views the role is due in large part to the composition and expectations of boards. In both cases, CEO and CPO, there is concern about money and markets, whether state appropriations, fundraising, or debt service, and state and federal compliance requirements.

The board of trustees should encourage presidents to engage in professional development as mission-oriented institutional leaders and as leaders of higher education as an enterprise. The president should remind everyone that each institution is part of a larger, national, indeed international, community of higher learning.

The board of trustees should encourage presidents to engage in professional development as mission-oriented institutional leaders and as leaders of higher education as an enterprise. The president should remind everyone that each institution is part of a larger, national, indeed international, community of higher learning. Too often presidents and boards think of competition instead of cooperation for the common academic good. Colleges and universities represent a community, a compact for advanced learning.

Some presidents organize an advisory council of accomplished persons from the various professions represented by the academic programs of the institution. These groups can be helpful in bringing expertise to problems and by being ambassadors for the institution and its values to the public and elected officials. They also can serve as practice settings for future board presentations.

It is wise for presidents to practice leadership by walking around. Talking with students, faculty, and staff about what is going well and what they think should be fixed provides a rich menu of ideas. This form of listening reveals local knowledge about policies and processes that more formal forums often conceal. Only by knowing the campus community can a leader protect it and its freedoms.

Finally, the president must be an effective communicator, using occasions such as faculty meetings, student government meetings, and external community gatherings to remind constituents of the institutional mission and priorities, seek feedback, the importance of academic freedom and institutional autonomy, and reaffirm the value of institutions cooperating in defending these principles.

The Faculty

A third consideration regarding academic freedom is the failure of boards and presidents to prepare faculty members for their roles in governance and leadership. After all, faculty are closest to the students whom institutions are chartered to serve and are integral to the fulfillment of institutional missions. Higher education leaders cannot fulfill their commitment to shared governance if the parties to it are unprepared for their roles in it.

The faculty is the guardian of academic standards. The curriculum is a covenant in fulfillment of the mission for student learning. This requires a focus on students, third-party quality reviews, and faculty as partners in governance and leadership. These roles require preparation.

To prepare for their role in governance, faculty can participate in regular sessions on campus dealing with such topics as accreditation, academic program reviews, enrollment management, strategic planning, budgeting, and political interference. They also should receive publications about higher education issues and be encouraged to attend regional if not national conferences. Much can be learned by talking with colleagues at other institutions, including the insight that others may have it worse.

Contingent faculty, whether called adjunct, lecturer, or graduate teaching assistant, are employed to fulfill the responsibilities of regular faculty but without the protections of tenure or ongoing contracts. Contingent means “depending upon something else,” “likely but not

We want our students to be compassionate, to think globally, and to think for themselves, even in groups. We want them to promote democratic ideals, informed citizenship, and peaceful resolutions to disputes, whether personal or political.

certain to happen.” Yet, according to the AAUP, nearly 70 percent of teaching appointments in American higher education are contingent positions not eligible for tenure.⁷ Given their importance in fulfilling the institution’s mission, these faculty also need training in governance and leadership.

Some faculty appointed to administrative functions don the *persona* of “amateur,” indicating that they are not trained in management and do not intend to stay an administrator beyond the term of the appointment. Nevertheless, having academics in key administrative roles can foster the viability of shared governance that includes the board of trustees, the administration, and the faculty, usually by means of a faculty senate. But this cannot happen by chance. Presidents, with the support of the board of trustees, should assist faculty in developing leadership skills and in learning about effective governance to advance and protect the institution and academic freedom.

Students

We want students to be educated, to question assertions, and challenge assumptions, to know that words matter and actions have consequences. They, too, benefit from the freedom to inquire, imagine, and innovate. They also must know that their assertions and assumptions will be tested and their actions judged. This is the mark of an inquisitive mind.

We want students to benefit from a liberal arts education, which some consider a counter to a conservative education. This is incorrect. Liberal in this usage means liberating, an education for free citizens.

We should educate students through general education courses and major subjects of study. Our goal is to educate them to advance in knowledge, both general and expert; to cultivate skills such as writing and speaking with coherence and clarity; abilities such as analysis and leadership; and values such as respect for others and teamwork. In general education courses, we teach students to understand the world they meet upon birth—the world they make through science, creativity, and entrepreneurship—and ethics, the systems of thought by which we learn to mediate between the world we meet and the world we make. These are the means to identify the essential questions of life.

We provide opportunities for student engagement in the campus through student government and other organizations. In these ways, they can contribute to campus planning and priorities. Our responses to student activism should not be to berate, bully, and

beat them. Instead, we should work to promote dialogue and negotiation. After all, they are our students and we are their teachers, and at times they are our teachers.

We want our students to be compassionate, to think globally, and to think for themselves, even in groups. We want them to promote democratic ideals, informed citizenship, and peaceful resolutions to disputes, whether personal or political. We adults should model these behaviors.

Conclusion

Institutional leaders and faculty should not only consider the campus as a community but higher education at large as committed to common values and purpose, realizing that an attack on one is an attack on all. It is in our common interests to ensure that *Sweezy* remains a foundation of academic freedom.

Finally, trustees and presidents must monitor the alignment between mission and goals on the one hand and rewards and results on the other. By monitoring alignments, the parties to shared governance can ensure that the goals for academic freedom and student learning are supported by resource allocations and rewards. In this way, the freedoms to inquire, imagine, and innovate will be defended and advanced. ■



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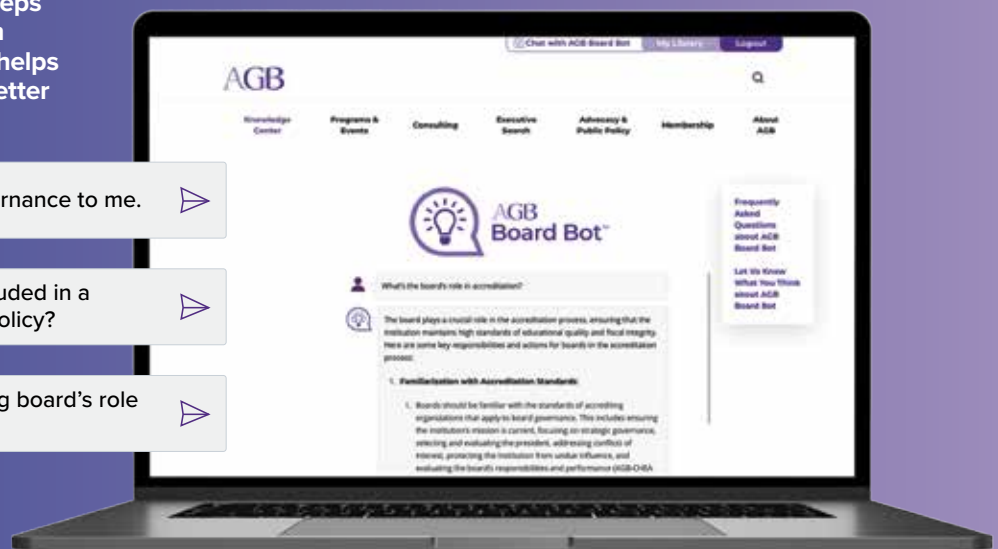
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Academic Freedom

Questions
and Action
Steps for
Boards

BY JACQUELINE PFEFFER MERRILL

Trustees should understand that the principle of academic freedom is the underlying foundation of higher education. And while challenges to academic freedom have been met successfully in decades past, academic freedom is under threat once again. This is a critical moment for trustees to understand why academic freedom matters and what boards can do to support it.

Boards of trustees may come across many different challenges, but today, there seems to be a greater focus on academic freedom at U.S. higher education institutions. Whether it is at an event, in the media, or a publication in a specific academic discipline, academic freedom across campuses has become a hot-button issue. Many trustees come from the business world or other professional fields and may not have the knowledge about the tenets of academic freedom and its importance in upholding an institution's mission to advance knowledge and viewpoint diversity; however, there is no better time to learn about academic freedom than now.

Consider the following scenarios:

■ **Case #1:** A faculty member pens an op-ed that praises a controversial author and cultural figure. State politicians demand the university fire the professor. Recognizing the pressures on the college, the professor offers his resignation. The board of trustees votes to refuse his resignation.

■ **Case #2:** A college president appears before a hostile legislative committee to answer questions about the expression of opinions on campus that some legislators deem unpatriotic. In his opening statement and answers to questions, the president adamantly defends toleration of all views.

■ **Case #3:** A campus club invites a polarizing speaker. Alumni, politicians, and editorials call upon the university president to disinvite the speaker. During a marathon, three-hour board session, one of university's trustees persuades a majority of his fellow trustees that the club should be allowed to host the speaker. The speaker's visit takes place without incident.

Trying to place these stories among the controversies since the October 7, 2023, Hamas attack or the second inauguration of Donald Trump? Understandable. But these stories are from history books:

■ **Case #1:** The year was 1903, and the faculty member was historian John S. Bassett of Trinity College in North Carolina, later to become Duke University. The figure Bassett praised was Booker T. Washington. (Bassett praised Robert E. Lee in the same op-ed—but Bassett's praise of Lee was not controversial!).¹

■ **Case #2:** The year was 1949, and the college president was University of Chicago President Robert Maynard Hutchins. He appeared before the State Seditious Activities Investigation Commission, which summoned him to discuss, among other matters, the campus presence of a communist club.²

■ **Case #3:** The year was 1956, and the Whig-Clivosophic Society of Princeton University invited Soviet spy Alger Hiss, recently released from prison, to speak. Judge Harold R. Medina, no friend of communism, persuaded his fellow trustees that the university must tolerate even deeply controversial speakers.³

The three stories above appear in the 2024 reports of the Academic Leaders Task Force on Campus Free Expression: *Campus Free Expression: A New Roadmap for Trustees* and *Campus Free Expression: A New Roadmap for Presidents*.⁴ The task force is chaired by a bipartisan pair of former governors and includes six current or former college or university presidents, a chief diversity officer, a faculty member, and leaders of national civic organizations, including one who served as a trustee of a flagship institution. I serve as its lead staff advisor, overseeing the project for the Council of Independent Colleges.

As these three stories reveal, for all the talk of “unprecedented threats” to academic freedom and institutional autonomy, grave threats to academic freedom and institutional autonomy have been present at other periods of U.S. history, including the early 20th century and the McCarthy era. While academic freedom principles

TAKEAWAYS

- Academic freedom is a core principle of higher education: It protects opportunities to advance the frontiers of knowledge and to foster cultures of dialogue and disagreement in the classroom, quad, and faculty lounge, as well as among a global community of scholars.
- Academic freedom is once again a hot-button issue. Boards must focus on academic freedom to protect teaching, learning, and scholarship and to manage institutional risk.
- While academic freedom has common features across all higher education institutions, a board—in partnership with the president and provost—must ground its approach to academic freedom in their institution’s unique mission, history, and community.
- Board oversight of academic freedom must include periodic review of academic freedom policies and procedures to confirm that they are up-to-date, easy to access, and consistently enforced.
- Upholding academic freedom requires playing a long game, fostering a culture of academic freedom that is lived out every day while also being ready to craft a principled response to academic freedom crises and controversies.

require perennial affirmation, there are periods when defending these principles has been at the top of trustees’ duty roster. Today is one of those periods.

While threats to academic freedom from the federal and state governments have sharply increased in the last five years, these are not the only threats to academic freedom. Academic freedom has been undermined within higher education by social and professional pressures exerted on professors and students whose views fall outside the campus and professional mainstream. The Academic Leaders Task Force on Campus Free Expression began its work in 2020—long before October 7, 2023, the second Trump inauguration, and the Charlie Kirk assassination—because its members were already deeply concerned about the erosion of academic freedom norms within too many higher education institutions. Task Force cochairs former Governor Chris Gregoire (D-WA) and former Governor Jim Douglas (R-VT) warned in 2022, “Campus leaders need strategies to get ahead of the curve on free expression issues to discourage legislative interference in matters that are properly matters of campus governance.”⁵ Well, that ship has sailed: political interference in academic freedom and institutional autonomy is increasingly a matter of course.

You and your fellow trustees are the ultimate guarantors of your institution’s mission. Any higher education institution worthy of the name is grounded in a knowledge mission: its pursuit, its preservation, and its transmission through scholarship and teaching. Your institution surely has additional missions—such as preparing students for workplace entry and civic life, providing medical services, or serving a religious credal community. But the core mission is knowledge, and academic freedom is an essential prerequisite for that mission. Boards of trustees must resolutely defend academic freedom and institutional autonomy against those that would attack it from outside or undermine it from within.

Crises require clear thinking and a level head. At this juncture, when trustees are steering their institutions through stresses on academic freedom (perhaps along with financial pressures, enrollment declines, and other pressures), boards must be pellucidly clear about

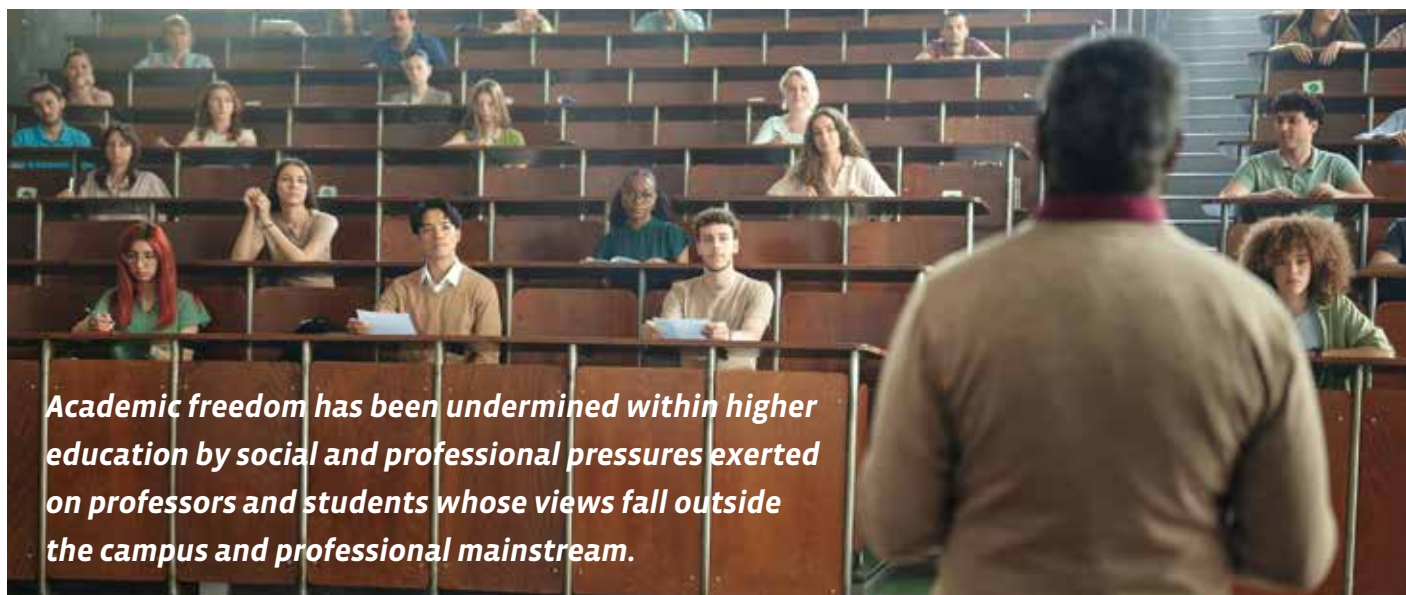
the institution’s mission and values. Here are three fundamental questions to ask and four follow-up steps to take on academic freedom and institutional priorities.

Three Fundamental Questions How is academic freedom connected to our particular mission?

Academic freedom is not a self-evident concept. For a trustee who is a chief executive officer or business owner and who would fire an employee who criticized company leadership on social media, it may be counterintuitive to think that if a professor publicly criticizes the school’s leadership, academic freedom almost certainly protects him from any formal consequences. These academic freedom protections make more sense knowing that faculty across the country began to develop the U.S. concept of academic freedom in reaction to the successful efforts of Jane Stanford, widow of railway magnate Leland Stanford, to press the Stanford University president to dismiss an economics professor because the professor criticized railway monopolies.⁶

Academic freedom principles generalize the notion that what economics professors teach in their classrooms cannot depend on the whims of a founder or donor. Academic freedom encompasses all liberties necessary to follow the quest for knowledge wherever it leads. It certainly includes rights of faculty to conduct research, teach, participate in shared governance, and to speak and act as citizens off campus. Many argue that academic freedom also encompasses the rights of students to study and learn, and rights of the institution as a whole. Academic freedom is not identical to free expression or the First Amendment. It carries responsibilities as well as rights; professors, for example, cannot use classrooms as forums to express opinions extraneous to the course topic (a chemistry professor couldn’t use class time to teach about the consequences of monopoly power, even if an economics professor can).

Academic freedom principles are essential to the knowledge-seeking purpose of higher education, but how these principles are connected to a particular college or university’s mission is a nuanced question. Trustees should ask: How does the mission statement speak to academic freedom? How do our institution’s



community ties and history inform our understanding of how academic freedom relates to its mission? (Has it often hosted controversial speakers? Was it associated with Abolitionism or the Civil Rights Movement?)

What are our institution's red lines?

Principled leadership requires drawing red lines. Harkening back to Case #1: When Professor Bassett offered his resignation to the Trinity College board in 1903, the board and its members were under strong pressure to accept it. Clergy and other leaders were counselling parents not to send their children to Trinity; individual board members could expect social and business consequences from defying Southern Democrats. However, a majority of the board, in an 18–7 vote, drew the line at creating a political litmus test for “correct” opinions. This was Trinity College President John C. Kilgo’s red line too: should the board accept Bassett’s resignation, he was prepared to resign.

In today’s charged political environment, this is a time for boards—and individual trustees—to take a gut check: What accommodations to the political environment are you willing to make, and what red lines will you draw?

There is no single right answer, as each institution has a unique mission, history, and circumstances. Boards have navigated the current environment in different ways. Harvard University rejected the Trump administration’s demands, while other elite universities, which faced different demands, opened negotiations. In Virginia, the Trump administration made it known it wanted the resignation of University of Virginia President James Ryan—and got it; the board was apparently divided in its views on President Ryan.⁷ After the Trump administration expressed displeasure with another Virginia university president, Gregory Washington of George Mason University, the board voted to give President Washington a raise.⁸ In the wake of the January 2025 Executive Order on Ending Illegal Discrimination and Restoring Merit-Based Opportunity, some

institutions shuttered DEI offices and laid off staff, others have closed DEI offices but continued DEI efforts under other names, while yet others have kept open DEI offices.⁹

A board discussion of how academic freedom is connected to your institution’s particular mission should set you up for a conversation about red lines. Ideally, you’ll find board consensus on red lines. However, it is valuable to know, before a crisis, whether there is disagreement among trustees.

Are we on the same page with the president?

Boards’ most important responsibilities are to hire and evaluate the president; if necessary, to dismiss the president; and otherwise to support the president. For an essential academic value such as academic freedom, it is vitally important the board be on the same page as the president. The board is on campus only a few days each year; those on campus every day, especially the president, shape a culture that upholds academic freedom, free expression, and open inquiry.

The most important thing a board can do to support academic freedom is to support the president—as well as the provost, as chief academic officer—to create a campus ethos where these values are lived out every day. The board should include the president in its discussions of how academic freedom is connected to the institution’s mission and its red lines. The president and provost can also provide context about how those values are lived out—and challenged—on campus.

With the average tenure of a president down to five years, many college trustees are (or will soon be) searching for a new president. Consider how you want commitments to academic freedom and freedom of expression to appear in the position description. During interviews, probe candidates about their views on these values and their track records of advancing them. With a new or a long-serving president, placing academic freedom as a regularly recurring topic for board discussion can ensure the board receives regular updates and opportunities to raise questions and concerns.

Four Action Steps

Consider adopting a board statement on academic freedom.

More than 100 boards have adopted statements on free expression in the last decade, beginning with the University of Chicago's 2015 adoption of its "Chicago Statement." Less commonly, boards have adopted statements on academic freedom. This should change. Boards should consider charging the president or provost with developing a statement that affirms academic freedom

principles and connects them to institutional mission. That statement should be submitted for board review and approval.

Indeed, more boards are doing so, and these can serve as models. Three examples are as follows:

- The Western Washington University Board of Trustees adopted a Statement on Academic Freedom that addresses both faculty and student academic freedom.¹⁰
- The Wake Forest University Board of Trustees adopted a Statement on Freedom of Expression and Academic Freedom, which explicitly grounds these principles in the university's history.¹¹
- Seton Hall University's board directed the provost to lead the development of a Statement on Academic Freedom Beyond the Classroom informed by the university's Catholic identity, which it then approved.¹²

Revisit or create a policy on institutional speech.

College and university presidents increasingly made statements about social and political issues in the first quarter of this century, a trend that accelerated during the pandemic and continued through the 2022 U.S. Supreme Court *Dobbs* decision. Since October 7, 2023, colleges and universities have made a U-turn; an increasing number of institutions have curbed the tendency to issue statements, and some have adopted a policy of institutional neutrality.

While the motive for the new restraint on institutional speech may be to stay out of the crosshairs of the federal and state governments, the core reason for restraint on institutional speech is protection of academic freedom and free expression. When the college president makes a pronouncement, the campus is divided between "insiders" who share that view and "outsiders" who dissent. Professors, especially untenured and contingent faculty, and students, will be chary of expressing a contrary view.

This is the moment to revisit your institution's policy on institutional speech—and, if there isn't such a policy, to create one. The policy must be grounded in mission and reflect the institutional red lines. Many boards, especially at public universities, have endorsed institutional neutrality except on issues that have a direct impact on university mission and operations.¹³ However, institutional neutrality is not the only principled approach, even

While the motive for the new restraint on institutional speech may be to stay out of the crosshairs of the federal and state governments, the core reason for restraint on institutional speech is protection of academic freedom and free expression.

for public universities. Some examples to consider:

- The University of Chicago, "Kalven Committee: Report on the University's Role in Political and Social Action," commonly known as the Kalven Report, is the classic statement of institutional neutrality¹⁴
- The University of Iowa, Policy on Public Statements¹⁵
- Claremont McKenna College, Statement in Support of Institutional Nonpartisanship¹⁶
- DePauw University, Policies on Institutional Communication¹⁷
- The College of the Holy Cross, Our Statement on Statements¹⁸

Protect academic freedom and manage institutional risk with updated academic freedom policies, consistently enforced.

While the best protection for academic freedom is an academic culture that upholds these values, up-to-date and consistently enforced policies and procedures are important. Many colleges and universities reviewed and updated their student handbooks as well as major events and protest policies in the wake of protests that disrupted many campuses during the 2023–24 academic year. Academic freedom policies likewise merit periodic review. If, for example, your school's academic freedom policies have not been updated to reflect how personal and academic communication takes place on social media, you're opening your institution to the risk of a controversy that could have reputational and financial consequences.

While academic freedom policies will be set by the provost or other senior administrators, in consultation with the faculty senate and stakeholders, boards should review these policies to ensure they are up-to-date, easy to access on the university's website, and consistently enforced. Some presidents charged task forces to review and recommend changes to academic freedom policies.

Examples of institutions where the president or provost established such task forces include:

- Virginia Tech University, Task Force on Freedom of Expression and Inquiry¹⁹
- University of Southern California, Task Force on Academic Freedom and Responsibility²⁰
- Carnegie Mellon University, Commission on Academic Freedom and Freedom of Expression²¹

Deepen board understanding of academic freedom.

Every college trustee should understand academic freedom principles and their connection to mission. They must understand these not only on the level of theory but in application.

For example, if a faculty member refuses a student's request for a letter of recommendation for an internship at a pro-life

organization, not because the student is unqualified but on the ideological grounds that the professor supports abortion access, is that professor's refusal protected by academic freedom?

Or consider: If a department chair assigns a professor to teach less desirable courses after the professor criticizes decisions made by the chair, is that an acceptable, even routine, administrative decision or retaliation and a violation of the professor's academic freedom to participate in shared governance of the department?

While controversies about letters of recommendations or course assignments rarely rise to board attention, when controversies arise (as they inevitably will), trustees should be versed in how academic freedom principles and policies apply in practice.²² Trustee orientation and board meetings should include opportunities to

discuss academic freedom principles. One effective way to do so is to use tabletop exercises, such as those published in the 2024 Academic Leaders Task Force report *Campus Free Expression: A New Roadmap for Trustees* published by the Council of Independent Colleges, 2024.

Academic freedom is essential to any college or university's mission—and today academic freedom is being stressed from within and without campuses. Boards must be bulwarks of academic freedom as a mission-critical value. Doing so requires a board to ask itself tough questions and to take steps of principled leadership. ■



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■ FOCUS ON THE PRESIDENCY

Understanding Faculty Culture to Foster Institutional Success

BY KATHRYN A. MORRIS

THROUGHOUT MY CAREER IN HIGHER EDUCATION, including service as a faculty member, provost, president, and trustee, I've had many conversations in which trustees, who often don't come from academic career pathways, have expressed confusion around the concepts of academic culture and the associated foundational principle of academic freedom. Similarly, I have observed occasional trustee frustration with the pace of change in the academy. Sometimes, the very faculty trustees laud as professors who changed their lives are cast as obstacles to progress at the institutional level.

As someone who grew up adjacent to a college campus with parents (and neighbors) who were faculty, and who went on to become a professor, I had been immersed in higher education from my earliest childhood. Academic culture, academic freedom, and tenure were concepts I understood implicitly. When my career advanced to a point that I began interacting with trustees regularly, I wondered how I might draw on my own experiences as a higher education insider to translate academic culture to those less familiar with it.

Five tenets of how academia works stand out that I'd like to share. I hope that

doing so further enhances trustees' ability to support the institutions about which they care so deeply.

Understanding Academic Freedom and Tenure

Let me begin with a brief explanation of the foundational principle of academic freedom, and how tenure is tied to it. Simply put, academic freedom refers to the ability of professors, as experts in their respective fields, to teach the knowledge, theories, and facts associated with their disciplines without interference of outside entities that may have a vested interest in what is taught (and

what is not taught). Academic freedom is a foundational principle on which higher education is based precisely because of historic attempts of governments, religious leaders, and others outside the academy to mandate what students should and should not learn. Tenure is granted by institutions to professors who have meticulously documented their excellence as teachers and scholars, and who have gone through a rigorous, multi-level evaluation over an extended probationary period (often six years). The purpose of tenure is to assure those professors who have established their competence through this review that the



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institution will protect them in the face of criticism about the teaching or scholarly work they do.

Let me provide a concrete example. Consider the case of a psychology professor who teaches a course on human sexuality. At the beginning of each semester, the professor surveys the students about what they most want to learn in the class and tailors the syllabus to address their responses. And imagine that the students are most interested in learning more about reproductive health. Thus, the professor typically spends several weeks at the beginning of the semester in this course on that topic, sharing up-to-date research on topics ranging from birth control to sexually transmitted diseases. One can easily imagine parents, politicians, business, community, or religious leaders may have opinions about what information they would like to be covered (or not covered) in the course. Such interested individuals may contact the president's office with complaints. And they could even demand that the professor be censured or fired for what they are or are not teaching. Tenure provides the professor with academic freedom—with the protection to teach the current scientific understanding of the content, independent of outside influences. Professors in all disciplines teach controversial topics. Critical thinking and communication skills develop when students wrestle with difficult topics. Particularly in the contemporary (contentious) social climate, our faculty rely on their institutions to support them as they challenge students to think about difficult topics from multiple angles.

Accountability to the Academy

Beyond academic freedom and tenure, there are other ways in which colleges and universities operate differently than the workplace settings familiar to many trustees. In corporate contexts, supervisory relationships are clearly articulated both structurally and functionally. The same is not true among faculty in many academic settings in which the structures and functions often lead faculty to feel a stronger sense of accountability to their faculty peers (in the department and in the discipline) than to the administration.

Structurally, the faculty member may have a department chair, academic coordinator, or area head with

whom they interact on a regular basis, while their actual supervisor may be a dean with whom they rarely interact. In addition, when trustees extend shared governance to faculty bodies (e.g., faculty assembly, faculty senate, faculty council), those bodies do not “report” to anyone. They are responsible for speaking and acting on behalf of the faculty on academic matters as specified in the bylaws of the institution. Although the president or provost can ask faculty organizations to consider certain things, they cannot tell the faculty body what to do.

Functionally, academia relies on peer review as a central component of responsibility and accountability. Whether annual performance reviews, pre-tenure reviews, tenure and promotion reviews, or scholarly engagement, faculty are evaluated by their peers—both on campus and by national or international experts. It is not surprising, then, when faculty feel a deep sense of responsibility to their faculty peers, department, and academic discipline relative to their sense of having an administrative supervisor.

Although this model may feel foreign to those who come to trusteeship from corporate environments, it is one that trustees should strive to understand as key to the function of the colleges and universities they support. Academic culture demands a different style of leadership than exists in hierarchical organizational environments. College and university trustees and presidents must work with faculty leaders in a collaborative—and not directive—way to bring about new initiatives, change, and significant institutional work.

Save Time: Build Consensus

Being collaborative takes time and patience. Academia is not a corporate environment in which a CEO sets expectations and middle level managers execute. Rather, effective presidents and provosts work with faculty governance bodies to clarify the questions to be answered, set timelines for feedback, and then make decisions.

Along the journey of shared governance, it is important to remember that faculty, as experts who operate in a community of experts, place tremendous

Trustees need to rely on and support their presidents, provosts, and other institutional leaders as they lead effectively in a shared governance context.

value on expertise and voice. Within the faculty world, there is a commitment to having the opportunity to learn and to weigh in on the topic at hand. Faculty not only want this opportunity for themselves, but also for their faculty colleagues (and by extension, their staff colleagues and students). Thus, faculty governance relies heavily on processes that ensure widespread engagement and the building of consensus.

Across time, I have encouraged trustees to value the passion and thoughtfulness that faculty bring to the decision-making process, and to respect the value faculty place on process and consensus building. When presidents and provosts face pressure from trustees to speed up the pace of progress and to skip steps along the way that allow for engagement by the faculty, they may be met with faculty frustration and resistance. All too often, this results in a hard reset that ultimately takes more time than it would have taken had the initial process sought widespread engagement and input.

Faculty Are Gifted Critical Thinkers

Throughout my career, I have often asked those with whom I interact, whether fellow trustees, higher education leaders, faculty, staff, parents, alumni, and students—some version of this question: “What is the most important thing to learn in college?” The answers are uniform and focus on two things: critical thinking skills and communication skills. CEOs, HR leaders, and hiring managers alike emphasize the importance of new professionals being able to think critically and communicate well.

Fortunately, college students are taught by faculty who are experts in critical thinking, and who are adept at communicating in a way that demonstrates their critical thinking skills. After all, the terminal degree held by many faculty is the PhD (a doctorate in philosophy). Regardless of academic discipline, those who hold a PhD have gone through rigorous training to become expert critical thinkers and communicators. They poke holes in arguments and find inconsistencies

in logic. And they passionately engage in intellectual debate. Indeed, colleges and universities hire faculty to model, teach, and foster these same skills into their students—skills that will position students for success in the professional world after they graduate.

And yet—when faculty apply their critical thinking skills to matters of institutional concern, whether aimed at trustees or senior institutional leaders, it can feel as if they are being adversarial, constructing roadblocks to progress. In such situations, it is important to remember that faculty are displaying the precise skills and passions for which we hired them and that we ask them to instill in our students.

Shared Governance Is Good Governance

Faculty work within an academic context where the culture is different than one finds in other organizational settings, especially in corporate contexts. Within that academic culture, faculty educate students, create new knowledge, and advance their professions. In fact, trustees delegate governance over academic matters to faculty precisely because of their expertise.

Trustees, then, need to rely on and support their presidents, provosts, and other institutional leaders as they lead effectively in a shared governance context. Institutional leaders need to get to know the faculty, and especially the faculty leaders, engage them in appropriate processes, foster consensus where possible, and then make decisions to move the institution forward. Presidents and provosts who have spent significant portions of their careers in higher education have learned on the job how to lead their institutions—even when faculty may not feel accountable to them, expect an inclusive process for expression of opinion prior to decision making, and bring their best critical thinking to their interactions with the administration.

In reflecting on my own experience growing up, both personally, and professionally, in the academy, and serving as a professor, provost, president, and trustee, I am deeply grateful for the independent and cooperative roles faculty, administrators, and trustees each contribute to the daily operations and future directions of their respective institutions. Understanding the mindset of our key partners—the faculty, has been invaluable in my career and across roles. I hope others will benefit from a lens into this mindset as well. ■

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College Presidential Leadership Today

BY ROGER H. HULL

A **S A FORMER COLLEGE PRESIDENT,** I know better than many about the challenges of the job and the difficulty of dealing with varied constituents. I also obviously know that presidents approach the job in different ways.

The latter point was clearly evidenced by last year's Gaza demonstrations on college campuses. Some presidents handled the challenge well, while others seemed to believe, if they did nothing, the crisis would pass.

Whenever I saw presidents on television, I inevitably found myself mouthing responses to the questions hurled at them. Although it is always good to be measured when one speaks, one must believe strongly, if not passionately, in what one is saying. During these televised hearings, too often things were left unsaid and rarely was passion expressed.

It is easy to sit in the "cheap" seats and to comment on things from afar. Admittedly, I never had to deal with politicians seeking to enhance their reputations through Congressional hearings and on-site visits regarding my handling of campus demonstrations.

Unless, though, presidents ran complex positions before, whether business, educational, or political, the chances are overwhelming they simply never faced a situation comparable to Gaza. Still, a varied professional background may well have given them the experience to more easily handle issues like it.

Unfortunately, the performances continuously shown on television demonstrated yet again a real failing in the presidential selection process. Percentagewise, the path to a college presidency is through the teaching ranks. Despite a temporary 50 percent increase (from 10 percent to 15 percent) in nontraditional presidents three decades ago, 90 percent of colleges today are once again led by former administrators who have spent their entire careers in academia.

Who is to blame for the present situation? Not the presidents selected, but the boards of trustees who all-too-often seem to have delegated the selection process to the faculty on search committees.

The lack of non-academic experience during the Gaza demonstrations clearly showed. As colleges

moved towards graduation, it was obvious that a number of presidents were engaged in "kick-the-can-down-the-road" leadership in the hope everything would die down after commencement.

As presidents hoped, tensions did come to a halt following graduation. However, since peace has not returned to Gaza, much of the territory has been destroyed, and the conflict is no longer contained within its boundaries, many leaders on campuses may well find themselves again where they were last spring (and some already have as protests have resumed on their campuses).

What should college presidents do then? And what should they do when future events trigger other campus demonstrations?

For starters, presidents should shed the "kick-the-can-down-the-road" mantel, be clear in their words and decisive in their deeds and keep all students safe and the institution secure at all times. Despite their many responsibilities, obviously nothing is more important than protecting students and the institution.

All institutions have regulations concerning student conduct. Legally, presidents must firmly adhere to them. However, they should ensure students, who may be inadvertently violating those regulations, are fully aware of the consequences of doing so. To make sure there can be no misunderstanding, presidents should consider personally going to the "frontlines" to remind demonstrators of the institutions' regulations.

Should events appear to be getting out of control, presidents need to be crystal clear in letting demonstrators know what they will defend and what is beyond the pale. Importantly, presidents must then make sure the institution does what they said will be done.

Part of that message should be that amnesty will not be granted if students are harmed or there is damage to the institution. Perhaps not surprisingly, amnesty is often the first demand of demonstrators. Unfortunately, even if harm occurs, it is often granted.

No matter what presidents do, they will be criticized. Rather than trying to determine how to please everyone, presidents need to understand it is far better simply to do what they believe to be right.

Presidents should always protect the right of students to express their views at all times even when their speech is objectionable or even hateful (certainly, verbally attacking the president is always acceptable). However, presidents have the right and the obligation to speak out when they disagree with what is being said. While students have free speech rights presidents should defend to the death, presidents also have that right.

Recently, some colleges adopted the policy of refraining from commenting on matters external to the institution. Some individuals also argue it is wrong for college presidents to criticize students because of the “power differential” that exists between them. While presidents should be judicious in the number of outside events on which they comment, a blanket prohibition seems misguided. So, too, does the prohibition of not criticizing students.

Students need to be exposed to different viewpoints. If, for instance, someone on one side of an issue is invited to give a talk, an invitation should immediately be extended to a speaker with a contrary perspective. After all, if a college is incapable of broadening students’ views of the world through the civil exchange of competing positions, which institution is?

Of course, no one can make students attend those talks. However, presidents can, and should, always ensure that students have an opportunity to be exposed to both sides of an issue, with the obvious recognition that some positions, like defending slavery and denying the Holocaust for example, should not be given a platform.

When students don’t take the time to learn the history of the issue they are challenging and familiarize themselves with facts before mouthing catchy slogans, they, perhaps unintentionally, heighten tensions. The Gaza demonstrations are a perfect example.

How many demonstrators chanting, “From the river to the sea, Palestine shall be free,” knew the genesis of those words? Very few, I suspect, were aware the phrase originally was a Zionist call that existed long before Israel’s 1948 creation.

Fewer still were probably aware the August 18, 1988, Covenant of the Islamic Resistance Movement (Hamas’s formal name) asserts, “Israel will exist and will continue to exist until Islam obliterates it,” and also states, “Peaceful solutions . . . are in contradiction to the principles of the Islamic Resistance Movement.”

While students should know presidents will always defend their First Amendment rights, they should also know there are limits to their words and actions. Should students threaten other students or impede the operations of the college in any way, campus security and, if necessary, the local police should be asked to intercede.

Presidents’ red line? Absolutely. It is a line that should never be crossed without consequences.

Presidents need to understand, though, when outside forces are called in, the college immediately loses control of the situation. The horror of the 1970 Kent State massacre made that point crystal clear. So, presidents should make sure college personnel are properly trained and call in outside forces only if demonstrations cannot be controlled internally.

College presidencies are not sinecures, and all presidents today face a range of incredibly difficult challenges. However, the failure of some presidents to understand their role, articulate in simple, commonsense terms what is and is not permissible on their campus, and enforce the college’s regulations is inexcusable.

No matter what presidents do, they will be criticized. Rather than trying to determine how to please everyone, presidents need to understand it is far better simply to do what they believe to be right.

A naive formula? Perhaps—but it works. ■



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■ FOCUS ON THE PRESIDENCY

Rebuilding Trust Through Institutional Restraint

BY SIAN BEILOCK

THERE'S NO QUESTION IT'S A DIFFICULT TIME TO LEAD IN HIGHER EDUCATION. I'm in my third year at Dartmouth and I'm already one of the longest serving Ivy League presidents. My peers and I are navigating intense debates over free expression and protest, questions about academic freedom and institutional autonomy, and relentless pressure concerning affordability, access, and whether a college degree is still worth the cost.

It's coming from all sides—students, faculty, donors, politicians, families.

And what unites these seemingly disparate issues is something more fundamental. We've lost trust. Not with one constituency but across the board. According to the Pew Research Center, seven in 10 Americans say higher education is headed in the wrong direction.¹ Increasingly, the public sees universities not as places of learning but as political actors advancing particular ideologies.

Some of this criticism is unfair, and in fact trust in higher education is starting to creep upward. But much of it is legitimate. We have given the public reasons to question whether we are staying true to our mission.

Over time, many universities became more willing to issue statements on divisive national and international issues far removed from education and research. In doing so, we blurred the line between institutional voice and individual expression, signaling orthodoxy rather than fostering inquiry. When universities look like partisan actors, we invite political intervention. The irony is painful: By acting as political organizations, we turned ourselves into political footballs.

The solution, as I see it, is mission-driven reform. And at the heart of that reform is what we at Dartmouth call institutional restraint—a policy developed by a faculty-led committee and recently endorsed by our board of trustees. It's



simple in concept: universities should be disciplined about when they speak and when they don't. We should make statements on public issues only when they directly affect our mission. And in that case, one could argue we have an obligation to speak up.

To be clear: Faculty and students should absolutely engage the day's political issues—debate them, research them, write about them. The goal of restraint is to create the widest possible latitude for free expression and viewpoints, without the institution itself signaling a "correct" view.

Why does this matter? At Dartmouth, our north star is straightforward: attract the broadest swath of talented students

possible and give them the skills to debate and disagree productively—preparing them to be the next leaders of our democracy. That requires creating environments where students encounter diverse perspectives and learn to engage them seriously, where questions remain open, where disagreement is expected, and where changing one's mind based on evidence is a strength, not a weakness.

Institutional restraint serves that mission. Institutional statements on divisive issues undermine it.

Social psychology research backs this up. In the 1950s, Solomon Asch conducted experiments showing that when groups converge on a single view—even an

We're not recruiting students who think alike. We're recruiting students who like to think.

incorrect one—individuals feel intense pressure to go along, suppressing their own judgment out of fear of social consequences. But introduce just one dissenting voice and suddenly individuals feel permission to think independently. When institutions signal “correct” positions on contentious issues, we create exactly the conditions Asch identified. When we practice restraint, we create space for the genuine disagreement that learning requires.

This matters urgently because our democracy needs citizens who can engage productively across differences. Research shows that polarization threatens democratic function and that dialogue skills can counteract those effects. Universities have a responsibility to teach these skills—but students can't learn them in environments where disagreement feels dangerous or where institutional positions define orthodoxy.

At Dartmouth, we've invested heavily in this through our Dartmouth Dialogues initiative. The program teaches dialogue skills, facilitates structured conversations inside and outside the classroom, and brings diverse speakers to campus so students hear directly from people whose views challenge their own. The goal isn't for students to change their minds—though they might. It's the practice of engaging with different viewpoints that sharpens arguments, forms beliefs, and builds the capacity to disagree productively.

The results are striking. A recent assessment by Sean Westwood, associate professor of government

at Dartmouth, found that 85 percent of Dartmouth students express confidence in their ability to engage respectfully with differing viewpoints.² More than 90 percent believe engaging with challenging perspectives is essential to their education. And two-thirds of incoming students identified dialogue programming as a factor in choosing Dartmouth—close to half pointed to institutional restraint itself. We're not recruiting students who think alike. We're recruiting students who like to think.³

Some worry that restraint means cowering to political pressure. It doesn't. A university should respond when its mission is directly threatened—when academic freedom is undermined or when research funding is politicized. This is true whether the government leans more conservative or liberal. And, by being disciplined about when universities speak, our voice carries more weight when we do need to defend our mission.

Rebuilding trust will require more than restraint, of course. Universities must also demonstrate commitment to mission through concrete actions aimed at affordability, access, and its return on investment. At Dartmouth, we offer free tuition for families earning \$175,000 or less. We're also building toward a guarantee that every student who wants a paid internship will have access to one. We brought back standardized testing in our holistic admissions process because a faculty-led study showed test scores help identify

talented students from every background—particularly those from less advantaged families who might otherwise be overlooked.

These reforms share a common thread: they emerge from educational mission, not political pressure. They require the institutional autonomy that restraint protects. And they demonstrate to families that universities are focused on what actually matters—preparing students for meaningful lives and careers.

Institutional restraint is how we return to that mission. It creates the conditions where diverse perspectives can flourish in which students learn to engage productively across differences, and where universities can rebuild the credibility and trust that public confidence requires.

That is how we lead in this moment. ■



Sian Beilock, PhD, is president of Dartmouth College.

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Student Activism and ESG Investing

BY JEFF JACKANICZ

SOCIAL JUSTICE—including our longstanding record of environmental, social, and governance (ESG) investing—is at San Francisco State University's core: the *Wall Street Journal* and *U.S. News* recently ranked us among the top five most diverse schools in the country and among the top 10 nationally for upward socioeconomic mobility, respectively. Similarly, student activism holds a significant place in San Francisco State's institutional history, most notably the student strike of 1968 that led to the establishment of ethnic studies as an academic discipline and the first-ever College of Ethnic Studies. In more recent years, the Palestinian-Israeli conflict has proven to be a particularly challenging flashpoint on our campus, in which the university struggled—with uneven success—to balance free speech, academic freedom, and the right of all our students to feel safe and welcome on campus. Last spring semester, we were among the many institutions nationally where student activists established an encampment protesting the war in Gaza. Given our history and the mission we're proud to serve, in spring of 2024 we earnestly sought a way to find potential in this moment of turmoil, even as our university community continued to digest the dual tragedies of the Hamas attacks of October 2023 and the massive civilian deaths in Gaza.

The San Francisco State University Foundation (SF State Foundation)—the university's institutionally affiliated foundation—proved able to work with student activists and the administration to effect positive institutional change while building on our core commitments to a broadly inclusive university community. While the student activists initially sought full divestment of all university resources and programs from Israel, San Francisco State University President Lynn Mahoney quickly stated that the university would not discuss any region-specific changes. She proposed, instead, a summer-long dialog with the SF State Foundation leadership, including myself and members of our investment committee, during which we could

Current guidance limiting our investment in fossil fuels while emphasizing investments which advance race and gender equity were expanded to remove investment in any company whose revenues come from weapons manufacturing.

forge common ground on enhancing our already strong ESG commitments to reflect a global commitment to human rights, increase transparency into our endowment, and include weapons manufacturers in our screenings. Importantly, all these changes were region-neutral and not specific to any single conflict.

Over the course of the summer, this ESG Working Group of student activists, foundation representatives, faculty advisers, and our university president met to assess the endowment's current alignment with our institutional values and how we could make additional improvements. We were proud to share with our students the leadership position we already occupied in ESG institutional investing—especially since a comprehensive rewrite of our investment policy statement that included ambitious climate change and racial/social justice goals, the SFSU Foundation and its investment adviser have built a portfolio that deeply reflects our core values.

Following a region-neutral lens, the working

group recommended immediately tightening certain specific screens used to evaluate investments. Current guidance limiting our investment in fossil fuels while emphasizing investments which advance race and gender equity were expanded to remove investment in any company whose revenues come from weapons manufacturing. The Foundation's Separately Managed Accounts (SMAs) will use the conservative metric of 5 percent for defining the revenue threshold for weapons manufacturing, and while our comingled investment strategies already align strongly with core ESG values, we believe we can engage with fund managers over time to discuss changes which could have further positive impacts. While our existing exposure to this sector proved to be extremely limited, these new screens flagged a small set of companies that we subsequently removed from our holdings.

Similarly, we drafted additional language for inclusion in our investment policy statement—which already included significant principles around racial/social justice and climate change—that articulated a global commitment to supporting human rights. These provisions will provide our investment advisor and fund managers with additional guidance on what investments align with our values.

This change will also commit us to a continued evolution by evaluating new human rights screens as they become available. Following the foundation's governance procedures and processes, the final vote on the implementation of this updated policy is scheduled for its December 2024 meeting.

Lastly, we have built out an enhanced ESG investing component to the SF State Foundation's website that includes more transparent holdings and performance information. These new features will include information on the composition of our investments that will put our foundation on the leading edge of disclosure while still respecting the prerogative of portfolio's fund managers to retain the degree of confidentiality necessary to retaining their competitive performance advantages.

What worked best for the SF State Foundation is not necessarily applicable to other universities' unique institutional contexts. However, we are proud to have improved the ways in which our endowment reflects and advances our values, while retaining a broadly inclusive campus ethos that works for the well-being of all our students. ■



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Balancing Foundation Independence and Institutional Alignment

How foundation leaders are balancing independence and institutional alignment as political pressure on higher education intensifies

BY KRISTIN HANSON

WHEN THE STATE OF ILLINOIS EXPERIENCED A BUDGET CRISIS IN 2015–16, a member of the General Assembly came to Jim Moore’s office with a question. The state was short on money—could it borrow some from the University of Illinois Foundation?

Moore, who has led the foundation for more than a decade as its president and chief executive (CEO) and ran foundations in Arizona and Colorado before that, had never fielded a request quite like it. The conversation was cordial, he recalls, and his answer was “no.” But the question itself stayed with Moore.

“It dawned on me that there’s really this misunderstanding about what these organizations actually do for these institutions that they exist to serve, and how our fiscal resources are structured,” he says.

That misunderstanding matters more than it used to. The independent, mission-centered model of governance that has supported American higher education for more than a century is under attack. A 2025 Center for American Progress analysis describes a rise in elected officials turning boards into “vehicles to impose state legislators’ political will.”¹ In some cases, they’re doing this through statutes that give trustees powers traditionally held by faculty and campus administrators.

The scale is hard to miss. PEN America counted at least 60 bills in the first half of 2025² aimed at indirectly undermining academic freedom, a category that includes placing governing boards under the direct ideological control of government. By year’s end, 15 states had enacted higher education measures PEN America classifies as censorship. In states such as Ohio³ and Texas,⁴ lawmakers moved to give governing boards direct power over university curricula.

The reach also extends to money. A 2025 federal tax law raised the excise tax



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on the wealthiest private university endowments from 1.4 percent to as much as 8 percent.⁵ In one of its provisions, the law directed that the assets of related organizations, such as supporting foundations, be attributed to the university itself for the purpose of the tax.

Caught amid these pressures, board chairs and foundation CEOs increasingly find themselves pulled into political disputes that take their attention away from their institution's long-term needs. As Moore's example illustrates, foundations aren't powerless against external pressure. But the tools and tactics available to them depend in part on how each foundation is built.

Which of the Three Foundation Models Is Yours?

Foundations that support colleges and universities generally sort into three categories. Dependent foundations are effectively departments of the institution. They're barely separate in legal terms, governed mostly by people who hold institutional posts, and their finances are often counted on the institution's books. Independent foundations stand as their own organizations. They're run by a self-governing board whose fiduciary loyalty is to the foundation itself, not the institution. Interdependent foundations, also known as institutionally related foundations, are the most prevalent model among American colleges and universities. These are distinct legal entities whose operations, staffing, and purpose are intertwined with the institution they were created to serve.

Where a foundation sits on that spectrum shapes how much room it has to move under pressure.

Dependent foundations have little leeway to respond if a legislature, governor, or politically aligned governing board wants to freeze spending, redirect money, or

attach conditions to funding. They're also subject to statutory obligations, such as public records and FOIA exposure, state hiring and procurement rules, and laws the legislature passes. And the people making the decisions are institutional officers, not an independent board. That means the same leadership that's absorbing political pressure also controls the foundation.

Cheryl Lindsay, president and CEO of the James Madison University (JMU) Foundation, runs an independent foundation but speaks regularly with peers who don't. Under political pressure, she says, leaders at dependent foundations have the least room to adapt.

"You're part of your university, so you have to stay in line with those things without much flexibility," Lindsay says. "There's some confinement, in a way."

On the other hand, the separation between independent and interdependent foundations and the institutions they serve offers flexibility when external pressures arise. Their assets are owned by the foundation, not the institution, so a distinct corporation stands between a donor's gift and any official who wants to reach it. Their boards answer to the foundation's mission and to donor intent rather than to politics. And their trustees are usually donors and alumni, not appointees. Because they operate at an arm's length from the institution, they largely sit outside the statutory machinery that governs it. This gives independent and interdependent foundations more latitude to hire, set their own priorities, and move quickly when threats appear.

The Power of Partnership and Communication

Regardless of legal status, Lindsay and Moore stress that strong partnership and clear communication are essential tools that any foundation should use to prepare for and push back on external pressure.

Moore's University of Illinois Foundation covers three universities (each led by a chancellor) with a system president above them. Managing those stakeholders, in addition to his own 501(c)3 organization, only works when everyone commits to the partnership. And for Moore, that means a lot of face time.

Although he doesn't report to the system president, Moore sits on his cabinet and meets with him frequently—roughly every 10 days. The system president also sits on the foundation's board as a non-voting member; he and all three university chancellors attend the foundation's three annual board meetings. And the vice chancellors for advancement for each University of Illinois campus have dual reporting lines, half to Moore and half to their chancellors.

"We operate with a principle of what I call distributed partnership," Moore says. "Every day, I get up and work with all five of those partner entities, and it works best when we're aligned around the importance of coordinating, collaborating, and communicating."

For Lindsay, communication is the linchpin. Foundation leaders must be in constant communication with not only university leaders but also directors of development and the fundraisers' meeting directly with donors. These lines matter most, she says, when the foundation has to say "no."

"There can be times when you're asked to do something that, maybe, you can't do. Maybe it doesn't fall within your framework of not-for-profit rules and regulations," Lindsay says. "To be able to discuss that with your university partners and come up with some other solutions, I think communication is the number one key."

That kind of openness can be harder for an independent or interdependent foundation than for a dependent one, she acknowledges. The foundation, after all,

sits off to the side rather than in the midst of the institution. But the distance is what makes communication deliberate and, in her view, indispensable.

When in Doubt, Turn to the MOU

But the most valuable tool a foundation can wield in asserting and protecting its independence is its memorandum of understanding (MOU), which determines where a given foundation lands between full independence and full alignment. Fights over control almost always begin when that position slips or when one side tries to move that position from one side to the other.

How much importance an MOU carries depends on the foundation's model. In a dependent foundation, an MOU is essentially an internal policy. For an independent foundation, an MOU can be the only thread binding it to the institution it supports. In interdependent models, MOUs are critical—and sometimes contentious—roadmaps. MOUs dictate who owns which assets, who can accept which gifts, how data and records should be handled, who appoints board members, and how the two sides settle disputes.

Moore is currently revising an MOU for the University of Illinois Foundation that's close to 20 years old. With both the foundation and the university working well together, there wasn't a pressing need to update the document. But with Moore and the system president both contemplating succession plans, they decided it was prudent to codify current practices for whoever inherits their positions. Built loosely on AGB's model template, the revision restructures the document and elevates the chancellors as principal partners of the foundation, alongside the system president.

Lindsay says the JMU Foundation conducts regular reviews of its MOU with the university every five to 10 years. A few years ago, prompted in part by data security

compliance and questions of IT governance, the foundation revised its MOU to clarify where it operates independently and where it relies on the university. Both entities own their own systems, but the MOU spells out how the two integrate their data flow.

There's no hard and fast rule that determines when a foundation should revisit its MOU. Any kind of leadership change, at the foundation or the institution, merits an MOU review. Many institutions—like JMU—review MOUs at prescribed intervals. Others revise MOUs when laws or regulations change. Often, the impetus for an MOU change is an adverse event, like a data breach.

But the best course of action is to address MOU issues before bad things happen. Early symptoms of a weakening MOU can be found in a foundation's annual services and management agreement, Moore says.

"Where are you on an annual basis with your partner in defining what your foundation does and what remit or consideration it gets for what it does?" he asks. "If that's out of alignment, it's probably time to take a good look at the MOU."

Built to Hold the Line

To Moore, serving as a foundation CEO in today's charged political climate—particularly at an independent or interdependent foundation—is a little bit like standing in the middle of the road.

"And my father used to tell me, if you stand in the middle of the road, you'll get hit coming and going," he quips.

What's changed is that the traffic isn't letting up. The wave of state bills, the board takeovers, the federal endowment tax—none of it looks like a passing political season. It looks like the terrain foundation leaders will be facing for years, and CEOs can't wait for the road to clear.

The discipline Moore and Lindsay describe is now simply the job. The strong partnerships, the constant communication,

the MOU revisited before someone else forces the issue: all of it comes down to knowing exactly where a foundation stands and being able to hold that ground. A foundation that does this work in quiet stretches is one that can still function when the pressure comes.

What CEOs are protecting isn't abstract. A foundation is the corporation that stands between a donor's gift and anyone who'd like to redirect it. The legislator who came to Moore's office a decade ago was, in a cordial way, testing that wall. The next person who comes asking may be less easily turned away. But the foundation CEOs who can say "no" and make it stick are those will be the ones whose leaders did the patients work of drawing the line before anyone tried to cross it. ■

Kristin Hanson is a freelance writer based in Baltimore, Maryland. She has written extensively on advancement and higher education, worked as a senior editor for *CASE Currents* magazine, and served as a senior associate director for development communications for Johns Hopkins University and Johns Hopkins Medicine.

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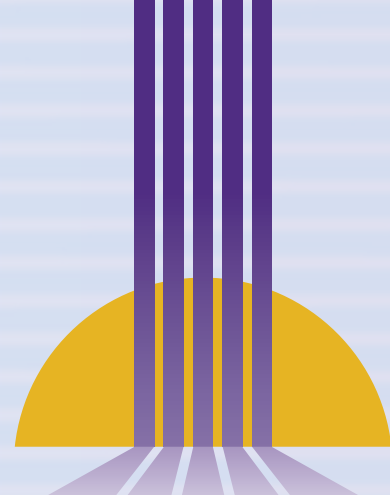
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When Governing Boards Lose Their Independence, They Lose Everything

BY RICHARD D. LEGON

THIS COLUMN IS BEING WRITTEN IN OCTOBER as the world is confronting multiple painful wars, and the U.S. national election is only 30 days in the offing. The stakes are high, and the tension is palpable across a very divided nation. And as our college and university campuses are well into their respective fall semesters, circumstances remain much as they were when campuses closed for the summer. For those campuses on which Islamic and Jewish protests defined much of last spring's semester, there remains angst over what happens next. Will campuses erupt again with tent encampments and disruptions to the normal activities of classes, fall sports, and other traditional campus activities? Last spring's semester also concluded with the departure of several presidents of elite institutions who became political targets in the Congress about antisemitism and campus protests. We witnessed these issues and tensions, most of them falling under higher education's historic protection of freedom of expression and academic freedom—frequently hyped by the media, politicians, and the public.

So higher education begins anew, as it always has this time of year, albeit with a sense of uncertainty. The concerns about more traditional challenges confronting higher education remain front and center—tuition prices and student success remain issues because they seemingly always are. Institution leaders, including their governing boards, grapple with these concerns as they address overall financial models of changing student demographics, enrollment declines, and other risks to their institution business model. We've seen some institutions close programs and layoff faculty and staff. We've seen some merge or even close their doors just as we've seen legislative bodies assert (or threaten to do so) their authority over funding and taxing institutions with the largest endowments. In the eyes of some, our higher education institutions require more aggressive external direction and control by policy makers to ensure that they achieve their mission and purposes.

As a business predicated on continuous academic improvement and new and creative models of business improvement, aggressive assertions of policy authority can have a limiting effect on a college or university's drive to take risks and to address the needs of the future—all while the public calls for higher education

to do more, to do it for less, and to explore new and adaptable research discoveries. So, while much of the public seems to understand that higher education is an indisputable value-added resource, many elements of that same public appear increasingly comfortable when policy leaders show their teeth and in support of limiting, controlling, and therefore hampering that which our colleges and universities do best.

That's not to argue that our colleges and universities are infallible; looking forward is filled with risk and even failure. But to intrude on institution missions and initiatives is to pull the rug out from under the core of what our system of higher education—public and private—is about.

Balancing Board Leadership and Independence

The case for higher education's core values and success should rally those who bear ultimate authority for how these institutions will serve their internal and external stakeholders. It's the men and women who serve on institution governing boards and who share a similar set of fundamental fiduciary responsibilities. Higher education's governing boards hold a unique set of responsibilities and expectations—perhaps



foremost among them the protection of their board's independence. The expectation and authorizing principles of independent governing boards of colleges and universities was part of the structure of this nation's Colonial Colleges, and it was affirmed by the U.S. Supreme Court in the Dartmouth Case in 1819, which recognized the limits of government intrusion into college board governance. The job of fiduciary boards isn't an easy one; it carries the interests of many stakeholders who are beholden to the decisions and good judgment of the board. Service on the board of a college or university isn't for the faint of heart; it can be a lonely task shared only with board colleagues.

Today those responsibilities are at risk. Board members of public higher education institutions are increasingly being selected more for their political loyalty than for their background, expertise, and good judgement. The political appointment process, while historically infused with politics, has become exacerbated and is corrupting the essential expectation of board and board member independence from external interference. Clearly, there's a bit of naivete to expect politically appointed board members to accept an appointment without some commitment to the interests and priorities of those making those appointments. However, recognition of board and board member independence—a necessity for a board to establish policy and make decisions—should be foremost in the minds of appointing authorities and among a board's own members. Board independence also helps to ensure that higher education

isn't the ping pong of political upheaval. Sadly, we are seeing the opposite in many states and within too many governing boards. The harsh political divide across much of the country is also increasingly playing out in board rooms of private colleges and universities. At the core of independent boards is a commitment to protect and respect an institution's mission, history, and academic priorities; it is to protect campus academic freedom and free expression of ideas—most especially when those freedoms are seen as divisive. In the end, isn't that what we should be valuing for our colleges and universities and our students and faculty?

The initiatives among some state governors and legislatures to claim control of what is to be taught (or not taught), and calling for the elimination of specific academic programs, puts government exactly in the place where it has no business being. Debating fact-based teaching of history, revising policies designed to elevate inclusion across an institution's administration, or making determinations about gender policies on campus are among the important decisions that belong in scope of authority of institution leadership. Boards will ultimately be asked to address such initiatives that might be recommended by institution administrators, some after appropriate input and consultation with faculty. But how and what boards determine to be best policy for the institution they serve should be maintained for the board room—neither developed, mandated, or influenced by external stakeholders. Board members are not foot-soldiers of gubernatorial campaigns or political

Serving as a fiduciary is among the highest callings of public service—board members must be willing to stand firm and even be willing to step aside if political expectations compromise their sworn independence.

rhetoric nor do individual board members have authority to act on behalf of their board—fiduciary boards can act only as a corporate body. Serving as a fiduciary is among the highest callings of public service—board members must be willing to stand firm and even be willing to step aside if political expectations compromise their sworn independence.

So, How Best to Proceed in this Moment of Uncertainty?

We are watching governing boards and institution chief executives confront a broad array of challenges and crises. With a new presidential administration in Washington D.C., we can hope that policies will be offered that advance and continue to improve higher education, including a long-awaited reauthorization of the Higher Education Act. Some specific recommendations might be helpful for higher education leadership to consider:

Recommendations for Higher Education Leadership

Board Independence: Some 50,000 men and women serve on the boards of public and private colleges and universities. Regardless of the method of selection or appointment, institutions are defined, in part, by the experience and quality of those who serve as fiduciaries. Board members should be more about good judgement of what is best for the institution than to be expected to be a “representative” of an appointment process or to an individual. The best boards assert and protect their independent authority and make difficult choices for the long-term good of their institution, keeping in mind that their primary fiduciary responsibility is a duty of loyalty to the institution they serve.

Institution President and Governing Board

Relations: We are seeing an increasing number of institution presidents who are retiring early from their positions, and we are seeing a decline in quality candidates stepping forward to assume these essential positions. Governing boards need to respect the balance of authority that defines the responsibilities of presidents and those of the governing board. Board members need to resist the inclination to roll their chairs up to the president’s desk and to “help” run the institution during stressful moments or campus crises. It is helpful for boards to recognize that they hired their president based, in part, on how their CEO will lead during the worst days. Boards need to allow their president to lead.

Campus Protests: Campus protests are a part of the learning experience of students. The campus educational experience benefits both from in-class learning as well as learning to live in a culture of differences and debate—including student protests. So long as students and the campus are safe and the education business of the institution can continue, then a campus protest can be among the most important lessons students can receive.

Inclusion Policies: The broad effort of many colleges and universities over the past couple of years to establish DEI departments and initiatives have often met with political pushback. And yet campus inclusion remains an important opportunity for progress. While some states have directed institutions to terminate their DEI offices, boards would be wise to rally to the importance of the initiative and to work with institution leadership to advance this societal value.

American higher education is recognized as the best in the world. We’ve been at this for nearly 400 years, and it will take continued effort to continue to improve the sector and to make it available for all who choose to attend. Governing boards, with a healthy respect and commitment to protecting their independence, will play an enduring role in the sector’s continued improvement. Getting governance right is job #1 for all boards and board members. ■



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■ FORUM

Bowing to the Mob Is a Dangerous Game

BY JOHN C. CAVANAUGH

BOARDS OF TRUSTEES ARE BEGINNING TO SET DANGEROUS PRECEDENTS regarding two situations. The first involves the willingness to make snap judgments regarding a president's continued employment. The other involves the willingness to negotiate the release of funding being held hostage on the basis of a collection of amorphous allegations and politically motivated investigations.

When an angry mob storms the board's social media account (or the campus), it does not show up small or quiet. More typically, hundreds, perhaps thousands, of often anonymous members scream that a certain individual, a president, say, is guilty of some perceived egregious behavior, even if the alleged behavior either didn't happen or has been grossly mischaracterized, and that punishment, such as termination, must be carried out immediately. The demands

for action tend to be very loud and relentless, often amplified by media influencers, who feel like an undeclared war of attrition. As the situation devolves into hostile personal attacks, and possibly in-person confrontational activities, the board seeks an off-ramp.

Similarly, having one's institution bullied on the basis of vague accusations, or casual threats of unilateral actions, such as defunding or visa denials or investigations,

that would threaten the institution's existence (or at least its financial stability) is not something most boards are prepared to handle. Besides, if accusations are repeated often enough, even if untrue, people will start believing them if the person doing the repeating is viewed as a trusted source by the listeners. Again, boards start seeking off-ramps.

The public reasons given for setting these precedents of ending a presidency or



negotiating a settlement often invoke the board's responsibility to do what is in the best interests of the institution under the guise of fiduciary responsibility. That attitude is nominally both correct and essential to good governance. From this perspective, one can understand why jettisoning an institutional leader or negotiating with a powerful political leader could demonstrate that the board takes its fiduciary responsibility seriously and will do what it takes to "save" the institution. And perhaps the outcomes from creating the precedents are short-term benefits.

Or perhaps not.

Even if it gets better in the short run, there is an extremely serious long-term consequence that may be overlooked in the rush to take the off-ramp of least resistance. That consequence is this: Once precedents are set, they also tend to lock in a defined response to the precipitating events. Once mobs and bullies taste victory, a return visit with new, more threatening demands and consequences is inevitable. By knee-jerking or bowing at first occurrence, it becomes exceedingly difficult for the board to not do it again. If the board relents and adopts those behaviors repeatedly, then instead of "saving" the institution, the board will have unwittingly put the institution in significant jeopardy. The board will have actually failed in its fiduciary responsibility.

There is an overlooked corollary to giving in. By knee-jerking to a mob's demand to remove the president on the basis of unsupported allegations of disagreeable behavior by an employee or student (who the mob also wants terminated), the board implicitly agrees to accept whatever litigation comes from the terminated

Once mobs and bullies taste victory, a return visit with new, more threatening demands and consequences is inevitable. By knee-jerking or bowing at first occurrence, it becomes exceedingly difficult for the board to not do it again.

parties. Since many of these situations involve speech, the mob determines to be disagreeable, the board is deciding that they will be happy to defend any and all suits based on the denial of First Amendment rights filed by the now-terminated employee or student. Again, the board has opened the institution to significant jeopardy, not the least of which is significant legal fees.

What's a board to do, then, when the threats are made? Perhaps the most important step is to demonstrate core principles of good governance. Make certain the board truly understands the nature of the demands, their situational contexts, and the long-term consequences of possible courses of action. The board should bear in mind it has a responsibility to the president, who will likely be the "face" of the institution on the board's behalf. For example, the board must support the idea of taking a reasonable amount of time to establish the trustworthiness of the allegations. The board must be mindful of the policies and procedures it established regarding due process and support them, clearly stating that the board will not rush to judgment. In situations regarding threats of consequences unless changes are made to the curriculum or scholarly endeavors, ensure that the processes of shared governance are not only respected, but implemented. The board should gather evidence on the financial implications of various scenarios, as well as reputational issues and

such other factors as talent poaching. Only after such appropriate steps have been taken will the board entertain discussions about a course of action.

Additionally, boards must be aware of policy consistency issues between them and the institution. For example, many boards have adopted policies barring institutions from taking positions on controversial or partisan political issues. At those institutions, it would not be advisable for the board to act precipitously in a way that appears to support a clearly partisan position when they would prohibit the institution from doing the same thing.

The optimal strategy for boards is to take the time to discuss these issues and a set of appropriate responses before a mob shows up. Boards could develop a plan, parallel to its disaster and continuity of operations plans, then use a retreat to engage in professional development through a tabletop exercise. Of course, planning will not prevent a crisis, but it will provide a backdrop for handling current scenarios better. It will also help boards understand the need to look beyond short-term gains to see the unintended consequences of hasty action. ■



John C. Cavanaugh, PhD, served as president and chief executive officer of the Consortium of Universities of the Washington Metropolitan Area, chancellor of the Pennsylvania State System of Higher Education, and president of the University of West Florida.

Getting Governance Right in Challenging Times

BY RICHARD LEGON

WHEN I USED TO WRITE ABOUT AND ADVOCATE for the essential habits of effective college and university governing boards—while they were not always easy—they were largely accepted across public and independent institution fiduciary bodies. That was then!

Today, we are in the throes of a national effort to reset higher education, one of this country's iconic assets—and a center piece of American democracy. Our institutions are carefully monitoring and participating in a substantial shift in the value proposition of American higher education that is arguably putting some of its core principles at risk and compromising the academy's many contributions to the nation. The sector is confronting a difficult and multi-part question: what is the right amount of government influence, when does that get to be overboard and unacceptably intrusive, and how do institutions (and their boards) tell the difference?

While not all threats to our colleges and universities are currently impacting every institution or university system, too many of our colleges and universities have to operate while looking over their shoulder at federal intrusion into admission criteria (at a moment when the population of traditional age students is declining), curriculum standards, academic freedom and freedom of expression, research funding, and perhaps coming soon, changing criteria for accreditation. Additionally, over the last year, we have witnessed intrusions into the right to assemble on our campuses. It's a bit of a strange new world for our academic institutions that have rightfully taken great pride in their autonomy and innovation. The potential risk of standardizing our higher education academic product is the stuff of autocracies. For many institutions, declining trends in enrollment and public funding alongside at-risk trends in



philanthropic support should be a tell in the overall trajectory of one of the country's prized assets and its historic role of enabling a more substantial future for our citizens and the nation's priorities.

To address the risks of today's more chaotic higher education sector we must ensure that college and university decision-making remains in the hands of excellent administrative leadership, supported by voluntary governing boards that respect the mandates of state and federal law that define governance standards. These boards consisting mostly of citizens from outside of the academy must bring their commitment to supporting innovative agendas, while respecting the historic roles and cultures of the institutions to which they provide strategic direction. At the core of board member service should be the mission of the institution they serve. Respect for and a willingness to listen and consider external advocates' priorities are part of effective governance; however, independent board judgement and decision-making, much like institution autonomy, are the primary drivers that must not be sacrificed to short-lived political agendas.

Those "habits" of an effective board that have stood the test of time are today the stressed tectonic plates that are putting higher education at unnecessary risk. In recent years the governance in many public and private institutions has become far more partisan and contentious—a trend that can undermine the sector's historic contributions to society. It has exacerbated the challenges confronted by those leaders who are currently heading institutions as presidents and chancellors as well as those who might strive to lead our colleges and universities in the future. A failure to set aside differences and to work collaboratively risks compromising fiduciary obligations—shifting support from mission-related initiatives and longer-term strategies to short-term external influences or mandates from state or national leaders. Throughout American history, the independence of our colleges and universities to diversify and innovate—regardless of how or by whom they were founded—has regularly positioned American institutions of higher education at or near the top of most international rankings. Our colleges and universities have been the recognized standard bearer of excellence in education for the world—defined by academic excellence, opportunity for all, and the advancement of research discoveries—the benefits of which are worth far more than their cost.

Those standards and centuries long achievements are now at risk—whether it's scrubbing a long-standing commitment to equality and advancement or making hard choices about research funding and

While not all threats to our colleges and universities are currently impacting every institution or university system, too many of our colleges and universities have to operate while looking over their shoulder at federal intrusion.

innovation. Compromising institution mission and values based on external political mandates is not good for current or future students or for those dependent on institution programs and research results. And it's not sufficiently protective of the requisite standards of independent decision-making on the part of those volunteers who, for a period, are called upon to advance their institution's mission. In fact, it's a moral violation of that very commitment. In addition to their fiduciary responsibilities, board members should be willing advocates on behalf of the unique governance model for which they are the guardians.

American higher education has been advancing its global standard for longer than the 250 years we are about to celebrate. From the earliest colonial colleges, beginning with Harvard University in the 17th century, we have led the way—admittedly progress has often been slower than it should have been, but that's really the point. Our institutions, having achieved their independence from state or national intrusion in the historic *Dartmouth College v. Woodward* decision of 1819, have continued their long road of progress. We shouldn't go back; we can't go back. To the extent that readers believe that a nation's impact reflects its academic institutions' contributions and their ability to lead and discover, today's more traumatic threats to higher education need to be resisted.

At this point, I'm guessing that there will be those academic leaders (and board members) who aren't comfortable with my message. They will be inferring a political argument or complaint, and they won't be entirely wrong. Yet this isn't intended as a partisan message; I respect each person's political point of view. In the past year, our country has become highly factionalized across most sectors, with those who haven't fallen in line being demonized just as those who are concerned with the aggressive reset feeling aggrieved. The attacks on higher education are part of a full-on

assault on some of our core cultural values.

The point is that we must work together, as some boards have done, to avoid board members compromising their responsibilities and moral commitment to their institution's long-standing impact and mission. It is a reminder and an appeal to higher education's governing bodies in whose hands hold the responsibility to advance their institution's mission and, in a sense, to defend and strengthen the reputation of higher education. And to step up and lead appropriately to save this most essential part of the American story. Clearly our national government as well as many state governments, and even some governing boards, have stepped over the line, moving from a mostly supportive role to a full-on micromanagement and control philosophy that has had consequences that extend beyond the campus. Closing the federal agency that was established to be a supportive partner to this country's education system sends a chilling signal about partnership versus national fiat.

So let us recommit to the correct role of higher education governing boards, especially in this current environment. For me, it starts with how board members are selected, elected, or appointed to their significant responsibilities. When I was nominated for service to a public higher education institution governing board, the governor who asked me to serve was clear that once he advanced my name, that he and I would agree not to discuss higher education policies about that specific institution again. A good guide for current board members: it's not how you get to the boardroom but rather what you do when you get there. It's about getting governance right—especially now in these more challenging times—most assuredly supporting and defending the board's

requisite responsibility to maintain its independence at all costs.

I previously wrote "The 10 Habits of Highly Effective Boards" for *Trusteeship* (in the March/April 2014 issue). A refreshed list of the essentials (habits) of effective boards might best emphasize the following:

- A culture of respect and inclusion of all board members
- Respect for fiduciary principles
- Primary focus on institution mission, autonomy and board independence
- A healthy and supportive relationship with the institution president/chancellor
- Selection of an effective and respected board chair who recognizes board independence to be non-negotiable
- A strong board governance committee (in both private and public institutions)
- Respect for and commitment to shared governance, academic freedom, and free expression
- A willingness to take risks as appropriate and to be advocates for mission and independence

In these challenging times, if you believe that your board is veering off course, I urge you to encourage board leadership to take a step back and consider the larger implications of the actions being considered: Are we acting in a way that puts our most essential responsibilities at risk?

In the end, higher education's governing boards should serve as the guardians of an independent higher education—a long and valued cornerstone of democracy. ■



Richard Legon served as president and CEO of AGB from 2006–2019. He served on the governing boards of Virginia State University, the University of Charleston, and Spelman College. He serves as an AGB senior consultant and senior fellow.

The Institutional Neutrality Myth

BY BRIAN SOUCEK

MOST UNIVERSITY ADMINISTRATORS AND TRUSTEES have recently been encouraged (by campus speech groups like FIRE and Heterodox Academy), pressured (by extortionate federal funding conditions), or forced (by some state legislatures) to get their institutions to stop speaking out on political or social controversies. “Institutional neutrality” is sweeping the country, and Heterodox claims that over 160 schools have signed on in just the last two years.

Many of them have enacted a policy like the now-famous Kalven Report, adopted by the University of Chicago in 1967. It claims that a school that takes a stand on political and social issues undermines the academic freedom of faculty and students there who disagree, thereby “endangering the conditions for its existence and effectiveness.”¹ As a past provost at Chicago put it: “Once a university takes sides, it is no longer a university.”²

Tough luck for Chicago, were this true. Because in the decades since the Kalven Report took hold, the University of Chicago has issued statements on everything from affirmative action to DACA (Deferred Action for Childhood Arrivals), the Trump Muslim ban to *Dobbs v. Jackson*, and the Supreme Court’s 2022 abortion decision. This isn’t to accuse Chicago of hypocrisy, however. The Kalven Report, like most of its descendants, actually comes with a carve-out: when political events or issues “threaten the very mission of the university,” the report says “it becomes the obligation of the university as an institution to oppose such measures and actively to defend its interests and its values.”³ In other words, there is a “heavy presumption” not to speak unless the mission is at stake, in which case speaking out becomes an obligation.

Here’s the catch: If Chicago follows its institutional neutrality policy to the letter, it will quickly find that it cannot be neutral. With each choice about whether to speak, a university faithful to the Kalven Report will end up expressing something about



its mission. And there is just no neutral answer to the question of what a particular university’s mission is to be.

The University of Chicago presumably saw all the issues above—restrictions on affirmative action, immigration, and abortion—as threats to its mission. Does it follow that any other school that adopts the Kalven Report, or something like it, would also be obligated to speak on those topics? Of course not! In the legal brief it filed in the Muslim ban case, the University of Chicago made clear it was speaking because it “has a global mission” that depends on its “ability to welcome international students, faculty, and scholars.”⁴ Not everyone has that kind of mission. Similarly, Chicago’s interest in speaking about reproductive rights stems from the fact that it has a medical school and hospital where choices about what care to provide are unavoidable. That’s not the case at most schools.

The unavoidability of Chicago’s institutional choice about abortion suggests how hopeless it often will be to seek neutrality even on some of the most politically divisive issues in America today. The University of Chicago will either teach its students and offer its patients certain types of reproductive care or it won’t (same with gender-affirming care and end-of-life options). There’s no possibility of neutrality on these issues, at least at some schools.

Interestingly, the same was true of the very issues that prompted the Kalven Report in the first place. A faculty committee led by eminent First Amendment scholar Harry Kalven was convened in the wake of student protests at Chicago over divestment from apartheid South Africa and the sharing of class ranks with the draft board during Vietnam. Neither was a call for an institutional statement; these were calls for action. The university was

going to divest or not, share class ranks or withhold them. Once again, neither option would have qualified as neutral. Even today, divesting from fossil fuels or weapons companies would surely count as a non-neutral endorsement of particular, contested values. But so too is a choice to value profit maximization at all costs. Any school with an endowment that says it stays neutral on social issues is selling the public a bill of goods.

And this applies also to most any university that chooses names for its schools, buildings and faculty chairs, or paintings and sculpture for its walls and lawns, or political figures or celebrities to speak at its commencement ceremonies. Universities regularly weigh in on contested political and social issues with each of these choices.

My law school, at the University of California, Davis, made a statement by taking the name King Hall after Martin Luther King Jr's assassination. But so did the University of Chicago when it established, with great fanfare, the Milton Friedman Institute and, with no fanfare at all, renamed its Robert A. Millikan Distinguished Service chair, presumably because Millikan's association with eugenics. Sure, many schools and buildings are named after donors, but only as long as they stay on the right side of history. This puts universities in the decidedly non-neutral position of choosing which side of history counts as right. When Yale decided in 2017 that it could no longer stomach having a residential college named after one of the nineteenth century's leading advocates for slavery and southern secession, it thoughtfully acknowledged that "the University speaks through its building names," and "when the University speaks, it chooses its message in light of its mission"—or should.⁵

Neutrality talk has the pernicious effect of making certain choices about the values at the heart of a university's mission appear inevitable—and thus beyond challenge or even discussion. When one side gets deemed neutral, the other side is made to look like a politicized deviation.

This, to me, is the real point. There is no principled distinction between the political stances universities take through their statements and those they express through their actions. In neither context is the goal to somehow remain "neutral." What would that even mean? The goal should instead be to advance the university's mission. For all the "statements on statements" and committee reports on "institutional voice" that have proliferated in the past few years, the best and simplest insight is that a university should speak, just as it should act, only when doing so advances its distinctive mission.

On the concept of a university's mission, we would do well to acknowledge the pluralism that has long been the great strength of American higher education. Most of us chose a university for school, work, or our donations because of something that made it unique. Its particular strengths and values and goals reflect (or maybe complement or challenge) our own. Missions vary. Yale recently made headlines for narrowing its mission statement: improving the world and educating aspiring worldwide leaders are out; its stated goal is now just to "create, disseminate, and preserve knowledge through research and teaching." But all universities do that. Were that the end of the story, we wouldn't be able to acknowledge the ways that Yale differs from my school, or yours, and why someone might choose one over the other. Yale has mistaken definitional criteria for a mission. It's hiding the ball about the true values and goals that make it unique.

The push for institutional neutrality is asking us all to hide the ball. Universities are being told to keep quiet and avoid controversy instead of speaking up for their own distinctive mission. And this is happening at a time when the Trump administration is cutting funding, demanding settlements, and offering deals like the (fortunately failed) Compact for Higher Education, which would have forced universities to adopt the administration's values on everything from admissions to financial aid priorities, transgender rights, and the inclusion of foreign students. Not incidentally, the Trump Compact would have required institutional neutrality too.

Neutrality talk has the pernicious effect of making certain choices about the values at the heart of a university's mission appear inevitable—and thus beyond challenge or even discussion. When one side gets deemed neutral, the other side is made to look like a politicized deviation. Take diversity, equity, and inclusion efforts. In 2021, when the American Enterprise Institute wrote about the use of diversity statements in faculty hiring, it titled its report *Other Than Merit*. The question-begging assumption was that by asking applicants what they had done to advance diversity, equity, and inclusion in their professional lives, schools were considering something extraneous to academic achievement. Ensuring that a diverse set of students flourish in someone's class, or that research addresses the needs of a diverse population, gets treated as some sort of unnecessary

ideological consideration. But there is nothing “neutral” about defining academic merit in a way that abstracts from questions about who benefits from the work academics do. It’s one substantive choice among several.

So too with campus speech regulations, which many schools have tightened in the wake of recent protests and encampments. New rules are justified as *content-neutral* time, place, and manner restrictions, which sound beyond reproach, given their evenhanded neutrality. But at universities committed to the First Amendment, time, place, and manner rules always have to “leave open ample alternative channels for communication.” And this forces universities to make non-neutral decisions about how much expression counts as ample and what counts as suitable alternatives to the types of protest universities have banned. When deciding how to balance open discourse against nondiscrimination, efficient operations, and other things it values—as it can’t help but do—a university takes another step in shaping its distinctive mission.

Neutrality talk allows universities to pretend that none of this is happening. It allows them to sidestep the debates—and the hard work of shared governance—that should occur whenever a university is determining its mission and deciding how best to advance it. And yet these steps are crucial if, as I’ve argued, a university should be making a statement if and only if doing so will advance its particular mission.

Properly employed, this limiting principle provides a crucial check on universities that might otherwise speak too much. (Institutional neutrality proponents are right in worrying that statements have a tendency to beget more statements, often with diminishing returns.) There are no general rules to follow, however. The choice is necessarily going to vary based on the context and each school’s mission. I suggested earlier that universities with medical schools may have different, mission-related reasons to talk about abortion than do liberal arts colleges, much less Catholic universities and others with similar pro-life commitments. But even the former might decide, particularly given their state’s political climate, that speaking out isn’t the best idea. Other actions—like arranging for medical students to visit out-of-state hospitals for some of their rotations—could ultimately prove more effective.

There is one particularly important way that making a statement might fail to advance the university’s mission: if doing so chills speech or undermines the academic freedom of faculty. That was the reason Chicago’s Kalven

Report offered for adopting a strong presumption against institutional speech. But any potential chilling effect can be lessened by the process used to make a statement (for example, requiring an anonymous vote within a department) and by the way statements are framed—especially insofar as they invite further discussion or dissent. An institution’s background policies and past practice that demonstrate a commitment to protecting academic freedom will do even more to lessen any chilling effects. And it’s worth remembering that statements aren’t the only university actions that can chill dissent. Hiring and curricular and funding decisions obviously do so too, especially when made without shared governance, protected by academic freedom. Focusing only on institutional speech can lead university leaders to underestimate how many of their other actions can affect academic freedom—whether for better or worse.

In the face of decisions as unavoidable as these, neutrality is not just a myth, it’s a dodge. American universities have thrived because of their autonomy: their constitutionally protected right to decide for themselves what they value and aim to be. If universities aren’t willing to speak up to defend their chosen values and aims, plenty of outsiders have proven all too willing to make those choices for them. ■



Brian Soucek, JD, is the Martin Luther King, Jr. Professor of Law at the University of California, Davis, and the author of *The Opinionated University: Academic Freedom, Diversity, and the Myth of Neutrality in American Higher Education*, recently published by the University of Chicago Press.

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VIEW FROM THE BOARD CHAIR

The Board's Role in Free Expression on Campus

BY TONYA THOMAS FINTON

DEBATES REGARDING THE VALUE AND DEFINITION OF FREE EXPRESSION are nothing new on college campuses but they have assumed a bigger role at the forefront of the many recent tensions and events we have witnessed this year. As noted by David Maxwell in a recent issue of this magazine, it is essential that governing boards affirm and ensure the centrality of free expression to the mission of their institution and work with administration, faculty, and staff to articulate and practice those values.¹

In 2019, Executive Order 13864 mandated that institutions of higher education receiving federal funds must comply with existing federal law and regulations involving free academic inquiry.² While public institutions are expected to uphold the First

principles and encompass a wide range of activities related to free expression: classroom discussion, invited speakers, political debates, visual displays on campus, social media usage and protests. It was also designed to supplement, not circumvent,

Rather than simply presenting the draft policy to the board of trustees for feedback, we took a more inclusive approach in the final step before its release. At its March 2024 meeting, the board invited faculty, staff, and students who held leadership roles in campus governance to a strategic discussion focused on free expression. Five groups, each containing trustees, students, faculty, and staff, were given a different scenario to discuss against the draft, with the goal of identifying challenges and limitations in the policy.

Scenarios included a student athlete “taking the knee” during the national anthem, controversial guest speakers for a public lecture or class, and a social media post on a faculty member’s private account. Following the discussions, participants regrouped and reported key takeaways and action items needed to address any concerns in the policy. Issues that were identified included determining if the “educational environment” extended to athletics, allowing for a spontaneous event, incorporating social media guidelines, and stretching the scope of “political” to include ethical, behavioral, or controversial issues.

The president of the college and vice president for marketing and communications made edits based on the feedback from the March meeting. At the June 2024 meeting, a Policy of Free Expression was



Amendment, private colleges are expected to comply with their own stated and published institutional policies on freedom of speech. As such, Hood College began work in early 2020 on a policy specific to the entire community rather than relying on constituent handbooks. The policy was meant to be a statement of underlying

existing policies and procedures such as the faculty code, student handbook, and employee manual. The initial drafts, written by the president of the college and vice president for marketing and communications, were shared in several rounds with faculty, staff, and student leaders for feedback and revision.

presented to the board for its review and endorsement. The decision to ask for the board's endorsement versus approval was to not only avoid board overreach of mandating administrative policies and procedures but also to recognize the importance of this policy and the board's affirmation of its foundational values. Wide dissemination of the policy to the campus community includes the college website, communication from the president, and incorporation to existing policy and governance documents. In addition, instruction on the policy and its purpose is incorporated into both new student and faculty orientation, the annual campus forum, student government meetings, and similar opportunities. The policy will also be part of every new trustee's orientation. The goal is not only to make it a well-known document to all community members, but also that it serves as a living document, one that will continue to be refined and adapted, given both the complexity and evolving nature of these issues on college campuses.

In spring 2024, colleges and universities across the nation faced unrest, cancellation of classes or commencement ceremonies, and police presence to maintain campus safety. Hood College was not immune to student activism, especially with the ongoing Israel-Palestine conflict. Students walked out of classes, held protests and peace walks, and had silent sit-ins. The students were aware of institutional guidelines, and the college respected their right to protest.

Students called for retiring U.S. Senator Ben Cardin (D-MD) to be disinvited as the commencement speaker and replaced with a neutral party. If he continued to be the speaker, the students confirmed their intent to protest.

The president and administration were guided by the Policy of Free Expression and Hood's values, asking if Senator Cardin's values were in opposition to the college's, and found that they were not. Per policy, the college controls the time, place, and manner of peaceful protest on campus. Accordingly, the "rules of engagement" were clearly outlined and communicated with the campus community. They included the following:

- No person may interrupt, disrupt, impede, or block any part of the commencement ceremony.
- Banners, flags, and signage will not be permitted within the graduate seating area or as graduates traverse the stage.
- Graduates who wish to peacefully protest may do so while seated.
- A designated area, patrolled by a campus safety officer, was created for peaceful protest.

Hood College created an inclusive process involving all the constituencies of the college community to talk and to listen, to work together and to problem solve, and to agree to disagree—all with the common goal of crafting a policy that accurately reflects our values and empowers students to have a constructive exchange of opposing, divergent viewpoints.

At the close of the academic year and commencement exercises, Hood students honored the policy they had a role in creating and stayed true to our values, conducting themselves with civility and respect. The college did not cancel classes or require police presence on campus.

At the end of the day, Hood created an inclusive process involving all the constituencies of the college community to talk and to listen, to work together and to problem solve, and to agree to disagree—all with the common goal of crafting a policy that accurately reflects our values and empowers students to have a constructive exchange of opposing, divergent viewpoints. Through robust intellectual exchanges, Hood College prepares students to actively participate in democratic processes, which thrive through inclusive participation and empowerment. As an institution of higher education, these ideas are critical to the learning process.

From the board of trustees and administration to faculty, staff, and students, Hood College is committed to creating a climate of intellectual diversity, dignity, and respect. We recognize that this document is a living, breathing policy that will be reviewed annually and updated as necessary. The collaboration of all college constituents strengthens the policy, and our community is more united because of its existence. ■

Tonya Thomas Finton is a 1978 graduate of Hood College and chair of the Hood College Board of Trustees.

1. David Maxwell, "A Nation at Risk," *Trusteeship*, 32, no. 3, (May/June 2024): 24–31.

2. Exec. Order No. 13864, 84 FR 11401, <https://www.federalregister.gov/documents/2019/03/26/2019-05934/improving-free-inquiry-transparency-and-accountability-at-colleges-and-universities>.

VIEW FROM THE BOARD CHAIR

The Colonialization of the Mind

BY ANTONIO E. PUENTE

DÉJÀ VU... on November 6, 1960, my parents took my brother and me, along with a change of clothes and \$300 from Habana, Cuba, to Miami, Florida. The president of Cuba suspended elections, the judicial system, and the free press, nationalized all bank accounts, and politicized the educational system.

When I was elected President of the American Psychological Association (APA) in the fall of 2016, we discovered that the association had a \$9 million deficit, the *New York Times* reported a major organizational problem involving national security and ethics that involved APA, and because of the uncovered situation, 75 percent of the association's executive management leadership were fired or retired.

Let's see. Cuba: After a period of familial insecurity involving food, shelter, related resources, and documentation, obstructions were eventually overcome. APA: After a period of significant self-doubt and organizational doubt, APA split into two separate but mutually intertwined organizations; a 501(c)(3) nonprofit organization (APA) and a 501(c)(6) organization (APA Services, Inc.), with a vision to serve all, founded on

of the governance board and leadership of a special institution of higher education.

Albizu is indeed a unique institution. Established 60 years ago by Carlos Albizu, a Puerto Rican native who, after pursuing a PhD in clinical psychology at Purdue University, returned to the University of Puerto Rico (UPR). Neither the knowledge he brought back from the States nor what the UPR administration thought matched what the island wanted or needed. The potential solution was a free-standing, nonprofit professional psychology school established to help develop a culturally sensitive interpretation of North American psychology with a special focus on social justice. The university is thriving and has grown to almost 4,000 students, three campuses, including one in Miami, the inclusion of related disciplines, an undergraduate program, and the producer of the most significant number of doctorates in Spanish-speaking psychologists approved by APA *in the world*.

Albizu focused on educating those who were qualified, not those who were privileged; those who sought to understand and serve all, especially the Spanish-speaking, not those who were privileged. Albizu prompted those students (and faculty) to serve the community during disasters (such as Hurricane Maria) and during everyday challenges (like poverty), seeking primarily to serve the disenfranchised. As with every institution of higher learning, the board of trustees is charged with developing and revising strategic plans. It was time to take on this charge. Further, this charge aligned with a paradigm shift in the role of the federal government in colleges and universities. Our unique mission turned out



When faced with insurmountable obstacles, the human and organizational spirit can, in some of her kindest moments, allow for the resurrection of what is valid, meaningful, and sustainable; of what, deep down, we are all here to do on this earth.

After my tenure at APA, I was elected president of the board of trustees of Carlos Albizu University in 2023. Thereafter, executive orders posted in rapid-fire order indicated that higher education was under fire, becoming a perceived enemy of the state. Diversity, equity, and inclusion were, by order of the president of the United States, no longer part of the mission and vision of institutions receiving federal support. Before long, academia began to experience a seismic shift toward the almost-century-long legacy of the federal government as the largest and most important supporter of academic pedagogy and science.

What would likely have happened in each of these situations if unusually challenging situations had not occurred?

science and advocacy. Albizu: After significant turbulence, a heart-wrenching retreat in Santo Domingo, the board of trustees, with the engagement of the administration and leadership, reconsidered and reframed everything—from who we were as a university to where we needed to go—and from the ashes, a beautiful phoenix arose.

When faced with insurmountable obstacles, the human and organizational spirit can, in some of her kindest moments, allow for the resurrection of what is valid, meaningful, and sustainable; of what, deep down, we are all here to do on this earth. What is common to the three challenges presented? What is common to their solutions? And why should we and how should we transfer these emerging commonalities to the structure and function

to be in the bull's-eye of many unrelenting, unexpected, and discriminatory federal policy challenges. The board and university leadership were faced with unexpected pressures. And instead of relenting, running away, or even challenging them, we came together to develop a strategic plan that recognized the guardrails we needed to legally adhere to, accepted who we were and where we were, and, finally, where we needed to go. Our board has a history of looking inward and micromanaging the university leadership, sometimes even the board chair. The combination of a scheduled revision of the strategic plan and an assault by new federal policies forced the board to have soul searching discussions, eventually leading to a brighter, more sustainable future.

The first and most critical question is not what we are facing with these new executive orders, but who we were, and more importantly, how we restructure to ensure we remain true to core concepts such as cultural sensitivity and social justice. Most importantly, we believed that who we were and what we offered should not be limited to Puerto Rico and Miami, but to all the United States and beyond, especially to Latin America. The challenges became an opportunity to sharpen our vision, mission, and strategy, making Albizu's dream a solution to the demands of a complicated, chaotic, and crumbling world.

The recalibration and unification of the board and leadership could not have been accomplished without the riskiest proposition of all: putting everything on the table, subjecting it to deep and impartial scrutiny, and aligning our interpretations with the marketplace of intangibles around us. This mindset allowed for shifting from worrying about what people thought of us, the new federal restrictions, and our budgets and enrollment, to asking and answering who we were, how the world was at present, and and what it was (and is) moving toward, and how we matched both would yield the solution organically. Instead of fitting a

square peg into a round hole, we developed the peg and the hole simultaneously by being courageous, by questioning deeply, by risking everything.

Cuba, APA, and the current socio-political climate affecting Albizu all have similarities. All pose challenges that, on the surface, appear destructive of the self and institutions, as well as insurmountable. The bottom line: Were our minds and our institution going to be subjugated, and were our minds going to be colonized by powers and ideas that do not represent the best that our societies, colleges, and universities have stood for more than a thousand years? Similarly, the scenarios described all present opportunities unlikely to be realized under the status quo. In each of these circumstances described, change occurred only after periods of deep questioning, extreme self-doubt, bouts of depression, and a sense of learned helplessness and despair. Change occurred only through thorough analysis, acceptance of core beliefs, reframing challenges as opportunities, and nightmares and sleepless nights transforming into dreams and radical positivity.

How did Albizu and its board of trustees and leadership make this paradigm shift?

Core beliefs. Many members of the board and leadership read Albizu's biography, and all of us reviewed his life and goals for a university in the "new" world. We intensely debated who we really had been, who we were currently, and, maybe most importantly, who we should be. And despite having a long-standing appreciation of the university's history, vision, and mission, that debate calibrated and clarified who we were and where we should be going.

Reframing. Albizu was founded in San Juan, Puerto Rico, during the 1960s, not only a time of change, but also seriously different from the 2020s; or was it? Statistical presentations of demographics, analyses of the nation's psychological state, and descriptions of who our students and the marketplace were, or should be, took much of our energy and

breath, but eventually led to a forward-facing yet historically connected and sustainable as well as robust strategic plan.

Dreams and radical positivity. Instead of worrying about budgets, enrollments, executive orders, and Department of Education interpretations, we set aside Rorschach interpretations of impossible data. Instead, we turned our attention to an organic understanding of our students, communities, psychological appreciation, and potential questions, solutions, and landscapes. With that recalibration, a mindset and a strategic plan emerged, full of dreams and radical positivity.

The following steps after the recalibration were for a similarly deep study by the executive leadership of the university and, in turn, the development of a practical, documentable, and sustainable plan of action ranging from KPIs to budgets, together with policies and procedures that were developed with the integration and input from the students, staff, and faculty.

Our goal was to reinvent a university whose history was based on cultural sensitivity and social justice, dedicated to the understanding and eradication of behavioral health problems of historically disenfranchised individuals, especially Spanish-speaking ones, during a socio-historical-political culture that has been fast-paced, problematic, and discriminatory of those not in a position of power and privilege. Our small and special university has begun waging a war against a modern version of colonializing minds.

We are not only sustaining the original dreams of Carlos Albizu but also evolving them to help shape and resolve the national discourse on the mind and mental health, not just for our country, but also for our hemisphere and possibly the world. ■



Antonio E. Puente, PhD, is immediate past chair (2023–2025) of the Carlos Albizu University Board of Trustees and professor of psychology at the University of North Carolina Wilmington.

■ A QUESTION FOR

How Can Boards Support Free Speech on Campus?



MICHELLE N. DEUTCHMAN, JD, is the inaugural executive director of the University of California (UC) National Center for Free Speech and Civic Engagement, which explores the intersection of expression, engagement, and democratic learning, and considers what can be done to restore trust in the value of free speech on college campuses and within society at large. In her role, Deutchman oversees the center's operations, programming, and research. This includes facilitating workshops for staff, students, and administrators around the country on First Amendment and academic freedom principles and how to safeguard these values while maintaining an inclusive campus climate.

What should boards know about fostering an inclusive environment while supporting free speech on campus?

This is a hard balance to strike. People on your board, in the president's cabinet, and across campus will disagree (often vehemently) about how expression-related conflicts should be resolved. It will be challenging and frustrating and oftentimes it will feel like no one is happy. That is likely evidence you are doing it well.

Go back to basics and start with your board. Board members should receive regular education about the First Amendment and how its principles apply to public and private institutions of higher learning. They should (1) understand that virulently bigoted and mean-spirited speech is protected by our Constitution, (2) be able to explain why protecting ugly speech is valuable at a college or university, (3) be prepared to articulate what campus community members can expect from the institution if they encounter hateful speech, and (4) be able both to distinguish between free expression and academic freedom and to explain why each are vital to the ongoing survival of higher education.

Don't wait for controversy to find you. Create and regularly review speech-related policies before you are in the news. Prepare by practicing how your campus leadership will gather and synthesize information and make tough but thoughtful decisions under intense time pressure.

Make concerted effort to include and listen to representatives of all campus

constituencies when policymaking. Invest in dissemination and training of policies.

Be transparent whenever possible.

Hold fast to your mission and values in the face of political pressure. Succumbing to such pressure can lead to the suppression (unintended or otherwise) of voices on campus. Finding the courage to stand up for expression, even when it is objectionable, is not only the principled choice, but it may also be the strategy that wins the day.

How has the UC National Center for Free Speech and Civic Engagement helped to support free speech on UC campuses and across the country?

Education is at the core of everything we do. Individuals cannot protect and defend what they do not understand. Studies show that most American adults cannot name the five freedoms covered by the First Amendment nor do they realize that the Constitution is about protecting individuals from the government (not from other individuals or from private companies). Without a fundamental understanding of what our constitutional rights entitle us to and how we can use them to further dialogue, dissent, and the continued creation of new knowledge, we will be unable to maintain our enviable system of higher education, a cornerstone of our democracy.

Through workshops, presentations, webinars, podcasts, annual conferences, research and fellowship opportunities, the Center has created numerous entry points for exploration and discovery about campus

expression. In 2025, more than 2,000 people attended Center workshops, more than 4,000 listened to our SpeechMatters podcast, and more than 140 colleges and universities and 37 civil society organizations were represented at our annual conference.

Relying on nuance, integrity, and the power of community, our programs and research create connections between people who are courageously using the power of expression to respond to the gravest threats American institutions of higher learning have faced in the past century.

What is your top piece of advice for institutions looking to safeguard free speech while also maintaining a safe and inclusive campus climate?

There is no singular formula for "how to" safeguard expression while also maintaining a safe and inclusive campus climate. So, rather than search for a silver bullet, commit to incorporating the question of "how to" at every step: when you discuss your college or university's mission, your values, your initiatives, your recruiting, your messaging. Consistently ask: How do the institution's decisions continue to reflect your commitment to dissent and discussion, as well as to the promise of inclusivity and belonging? How do you show the diverse members of your community that you are meaningfully investing in this endeavor? ■

—Interview by **Justine Ballard**,
Trusteeship assistant editor

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■ A QUESTION FOR

Why Does Free Speech Matter on Campus?



KRISTEN SHAHVERDIAN is the director of higher education and free expression at PEN America. The program focuses on defending the right to teach and learn against legislative infringements and on building a robust culture for free expression on campuses. Before joining PEN America, Shahverdian was a senior lecturer at the University of the Arts in Philadelphia and an adjunct professor at Rowan University and Temple University.

Why is freedom of speech essential to the mission of higher education, and why is it so important at this moment in time?

The open exchange of ideas is essential to the mission of higher education. For intellectual exploration and innovation to flourish, free speech and academic freedom must be protected and upheld.

We are in a time when free speech and academic freedom are being compromised, challenged, and in some states, outright trampled upon. The situation confronting us in the higher education sector today involves not only local controversies over commencement or other invited speakers, but also a raft of state laws and federal policies oriented toward exerting ideological control over what can be taught, learned, and even researched at the institutions.

Free speech is also essential to democracy. Campuses occupy a unique position in a democratic society, where the rising generation learn and practice free expression, and where free expression and academic freedom must be protected and upheld for the institution to thrive. At this moment, when higher education is being attacked by federal and state actors and where there are external pressures on colleges and universities to restrict free speech, it is critical that we continue to remind the sector, and those that wish to weaken it, that the academy cannot function without upholding freedom of expression for all.

How is PEN America working to help protect free speech on campuses?

PEN America's approach has always been both defensive and affirmative. We defend higher education from legislative infringements to free speech and academic freedom in order that faculty and students have the freedom to teach and learn without censorship. We also seek to bolster the sector's ability to uphold free speech through educational programming and resources. We know that defending the sector is critical at this moment when there are so many forces seeking to undermine free speech on campuses. We also believe that in order to work toward a culture of free expression for all, we must project that vision and help campuses achieve it.

Our ethos is that more expression is better than less. In our defensive work we invest in coalition building and public

commentary, research (such as our yearly America's Censored Campuses report), and advocacy. In our affirmative work, we help campuses take proactive steps to promote and embrace a culture of free expression by providing educational programming and resources (such as our Campus Free Speech Guide) grounding all campus constituents on the values of free speech. Campuses that take proactive steps to promote and embrace a culture of free expression are better prepared to handle controversies as they arise. Reactions to speech challenges should err on the side of protecting speech and avoid implementing restrictions that could infringe on the essential openness of the campus environment. At the same time campus leaders must address the impacts that speech can have on their communities and invest in the ongoing work of building trust, relationships, and the necessary support systems to uphold the rights of all students to participate freely and equally.

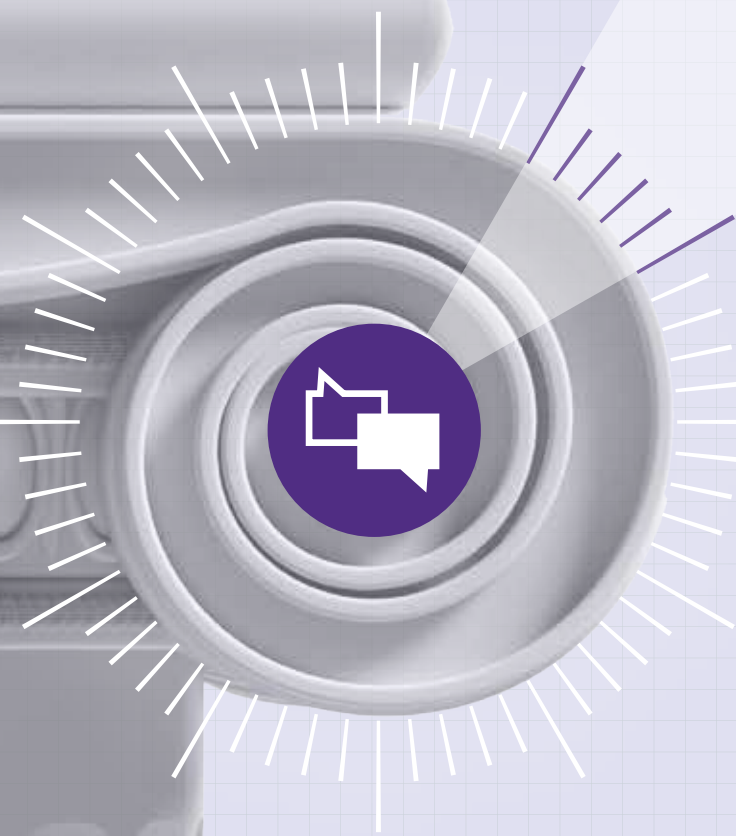
What is your top piece of advice to boards and college presidents currently navigating increased legislation around what can and cannot be said on campuses?

Stand by your institutional commitments to free speech. Do not fold quietly and do not over comply. We need our college presidents and boards to remain firm that they must uphold their obligations to free speech and academic freedom. Campus leaders must be free to assert and affirm their institution's values as they see fit.

For the academy to thrive, its core functions, including research, teaching, admissions, and hiring, must remain independent and free from political influence or control. Such institutional autonomy is a necessary prerequisite for academic freedom and the freedom to learn and for ensuring universities remain drivers of a free and democratic society.

Boards and presidents need to look at their policies and ensure that they clearly articulate the institution's commitments to free speech and academic freedom. Equally important, they must ensure that these policies are not in name only, but that there are articulated mechanisms by which they will uphold these principles in practice. ■

—Interview by **Justine Ballard**, *Trusteeship* assistant editor



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