

## **What's Governance Got to do With It?**

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Once upon a time, just over a century ago, there was an outspoken economics professor named Edward Ross. Ross had some very particular views on the western railroads' use of Chinese immigrant labor—and did not hesitate to make them known. As it happened, his employer was none other than Stanford University—which was founded in 1885 by the railroad magnate Leland Stanford and his wife Jane. Mr. Stanford thought nothing about Ross' opinions, for he had passed away several months before Ross arrived in Palo Alto. But his wife, then the University's sole trustee, took exception to Ross's views—and insisted that he be relieved of his professorship.

Mrs. Stanford's actions ignited a local firestorm. Seven other professors—among them philosopher Arthur O. Lovejoy—resigned in protest. A national debate about free expression on campus ensued, fueled through the years by similar episodes at other universities

<sup>1</sup> By 1915, the nation's professors had decided to organize. Lovejoy and Columbia philosopher John Dewey founded the American Association of University Professors (AAUP) with the express intention of establishing academic freedom—then a new concept in America—as a foundational professional principle.

The story of how American academics secured their autonomy through a steady and principled defense of academic freedom and tenure is a familiar one. It occupies a prime position in the AAUP's account of its origins and also figures in histories of academic freedom and the university in the United States.<sup>2</sup> Mrs. Stanford's punitive pursuit of Professor Ross is an old chestnut, a foundational fable that unites academics (and often administrators) through a shared commitment to principled professionalism—and to defending that professionalism against the inappropriate intrusions of lay trustees. As such, it's a tale that cuts two ways: it provides

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American academics with a sustaining “myth of origin,” but also urges them to understand themselves as perpetually—even inevitably—under siege.

This essay explores the origins and evolution of American academia’s double-edged biography, tracing how clashes between academics and trustees have shaped their mutual perceptions (and misperceptions). Paying particular attention to how those perceptions have affected both groups’ understanding of what academic governance is and ought to be, it locates the dysfunction in higher education governance as a byproduct of interpreting trustees’ role as one of unquestioning deference and delegation. It also examines how, over the last decade, policy changes, calls for reform, and rising public awareness have enabled trustees to reconfigure their roles to meet their legal and fiduciary responsibilities toward the colleges and universities they oversee.

### **A Brief History of Trusteeship**

Mrs. Stanford was not the first intrusive trustee—nor was she the last. Her behavior was part of a broader context in which trustees and presidents took analogous action at the University of Wisconsin, the University of Chicago, Brown University, Indiana University, Northwestern University, and a host of other schools.<sup>3</sup> Indeed, the 1890s and the early years of the twentieth century saw a steady spate of clashes between outspoken professors and trustees—along with an emerging consensus about trustees’ nefarious intentions.

In 1901, for example, Ruskin College dean Thomas Elmer Will published an essay entitled “A Menace to Freedom: The College Trust.” In it, he argued that conflict between “the industrial monarchy” and free inquiry was “inevitable.” Since “free investigation is all that is necessary to expose the rottenness of the existing economic system,” he wrote, “our plutocracy

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has issued its edict that the colleges and universities must fall into line.”<sup>4</sup> Will’s portrait of earnest, right-thinking professors being systematically and unfairly quashed by powerful vested interests—his stark contrasting of intellectual “freedom” against interested “menace”—set the tone for academic attitudes toward trustees despite, or perhaps because of, its overbroad and antagonistic strokes. Over the years, contemporary commentators adopted and developed his framework—as did the AAUP when it issued its founding document, the 1915 *Declaration of Principles on Academic Freedom and Academic Tenure*.<sup>5</sup>

The *Declaration* is a memorable, inspiring evocation of what academic freedom is and why it matters—and it is also a stinging indictment of the danger posed by intrusive governing boards. Echoing Will’s influential “Menace to Freedom” essay, the *Declaration* outlines the “menace to academic freedom” posed by attempts to control or limit scholarly inquiry. It also adopts, in slightly diluted form, Will’s caricature of trustees as wealthy conservatives who must be prevented from imposing their partisan will upon free-thinking, presumably liberal professors:

... as the governing body of a university is naturally made up of men who through their standing and ability are personally interested in great private enterprises, the points of possible conflict are numberless. When to this is added the consideration that benefactors, as well as most of the parents who send their children to privately endowed institutions, themselves belong to the more prosperous and therefore usually to the more conservative classes, it is apparent that, so long as effectual safeguards for academic freedom are not established, there is a real danger that pressure from vested interests may, sometimes deliberately and sometimes unconsciously, sometimes openly and sometimes subtly and in obscure ways, be brought to bear upon academic authorities.

Casting trustees as sources of “conflict,” “danger,” and “pressure,” the *Declaration* places strict limits on trustees—who are viewed as unreliable, antagonistic, and even uncivilized enemies.

Boards that impose their will on professors are simply—here the *Declaration* quotes Harvard president Charles Elliott—“barbarous.”<sup>6</sup>

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In his 1951 classic, *Academic Freedom in the Age of the University*, Walter P. Metzger calls Will's "thesis of conspiracy" "simplistic," noting that it prefers sweeping generalization to detailed contextualization and declaring, that, "like all highly partisan theories, it falsely ascribed to one faction—in this case, to economic conservatives—a uniquely sinister role." Metzger goes on to note that in fact, "virtue was not monopolized by 'liberals' and that guilt was very widely distributed."<sup>7</sup> It isn't hard to see why that would be. Between 1883 and 1913, the percentage of young adults attending college more than doubled and the size of the professoriate tripled; the curriculum expanded and diversified, placing greater classroom burdens on faculty even as standards of professionalism began to shift toward the research model still in place today. Concerns about defining and ensuring faculty quality led to debates about graduate school training, recruitment, hiring, promotion, and compensation.<sup>8</sup> Likewise, board composition changed dramatically; business magnates began making major, multi-million dollar gifts to colleges and universities, and board membership naturally came to reflect this philanthropic infusion. Many trustees frequently brought with them a businesslike orientation, and an expectation that matters such as management and faculty employment would follow the corporate lines to which they were accustomed.<sup>9</sup> Meanwhile, the concept of academic freedom was not something that was widely understood by trustees—or even by professors themselves.

All in all, the late nineteenth and early twentieth centuries were, for American academia, a time of rapid change accompanied by widespread uncertainty about what sort of entity an institution of higher learning was, about how colleges and universities differed in organization and purpose from businesses, and about what those differences meant—if anything—for how they ought to be run. The situation was ripe for precisely the kinds of clashes that took place—and the clashes themselves were often far more complex than history has made them out to be.

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Edward Ross, for example, was not exactly an innocent, unsuspecting victim. As he later recounted in his memoirs, he went to Stanford with the express intention of setting Mrs. Stanford up: “I would test this boasted ‘academic freedom,’” he wrote of his arrival at Stanford; “if nothing happened to me, others would speak out. . . . If I got cashiered, as I thought would be the case, the hollowness of our role of ‘independent scholar’ would be visible to all.”<sup>10</sup> For years, Ross went out of his way to offend his employer’s sensibilities, publicly advocating for public ownership of utilities and free silver, proposing a ban on Chinese immigration, and articulating a socialism that was closely aligned with that of the controversial labor organizer Eugene V. Debs. Mrs. Stanford, for her part, was neither so imperious nor so autocratic as we tend to remember. She tolerated Ross’s attempts to bait her for years before insisting that he be fired, and when she did, she expressed a not unreasonable concern that “however brilliant and talented he may be . . . a man cannot entertain such rabid ideas without inculcating them in the minds of the students under his charge.”<sup>11</sup> If Mrs. Stanford got the practical points of governance wrong with Ross (it is now generally agreed that academics must have freedom of extramural utterance), she was at least aware of the importance to the educational enterprise of professors not using the classroom to indoctrinate—something the AAUP took care to address in its 1915 *Declaration*.<sup>12</sup> Ross, for his part, skillfully parlayed his planned termination into a national scandal. Notifying the press the day after he was fired, he anointed himself as a *cause célèbre* for academic freedom.<sup>13</sup> He remains one today.<sup>14</sup>

As this brief history shows, debate about the nature of higher education governance—and trustees’ role within it—has a long and complex lineage, one rooted at least as much in cultivated mistrust as in real experience. And small wonder. Unlike public corporations, universities do not

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generally pursue profit, compete in the marketplace, or have shareholders to hold them accountable. Nor do universities face litigation for failure of fiduciary responsibility. As a result, higher education governance has historically been defined by those with the greatest immediate interest—namely, the faculty. For the most part, the story of higher education governance has been told by faculty groups. And while these groups pay lip service to the fact that governing boards are ultimately responsible for their institutions, they have defined higher education governance in such a way as to suggest that trustees should not actually have full fiduciary power.

The concept of “shared governance,” formalized by the AAUP’s 1966 Statement on Government of Colleges and Universities, was motivated in part by continuing faculty concerns about inappropriate trustee intrusion. Issued in conjunction with the American Council on Education and the Association of Governing Boards of Universities and Colleges, the Statement announced that “the colleges and universities of the United States have reached a stage calling for appropriately shared responsibility and cooperative action among the components of the academic institution.” Pledging to foster “constructive joint thought and action, both within the institutional structure and in protection of its integrity against improper intrusions,” the Statement insisted that faculty participate in institutional decision-making, from the setting of policy to long-range planning to budgeting to allocating resources and facilities to presidential searches.<sup>15</sup>

The faculty carried its point. As campus turmoil and faculty discontent escalated during the decade, trustees delegated ever more authority to the faculty in the name of academic freedom.<sup>16</sup> Harvard’s seven-member governing board began including faculty membership and the University of California Board of Regents delegated to the faculty all matters even minimally

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related to the classroom, with scarcely a mention of continuing oversight or verification.<sup>17</sup> Over the years, “shared governance” has largely come to mean that trustees should serve as fundraisers or boosters of the academic enterprise, deferring to faculty and other internal constituencies on everything else.

The facts surrounding academia’s long struggle to establish and defend academic freedom as a recognized professional value should neither be diminished nor denied. As we have argued, however, part of the history of academic freedom in America is the history of how, almost from their inception, conceptions of and debates about academic freedom have been refracted through an overwrought, partisan, and divisive rhetorical lens. If trustees have deserved to be regarded with some wariness, their academic critics have also done their part to solidify rather than ameliorate a tendency to see boards as untrustworthy enemies.

So it is that, decades after the first AAUP statements, academics are still invoking the mistrust of governing boards that animated the struggle for academic freedom. It was back in 1914 that Princeton professor Charles Osgood argued that “[t]his power, which is properly that of the Faculty, declines in many institutions to almost nothing, and is, I believe, more gravely menaced every year.”<sup>18</sup> But you would think it was only yesterday. In 1989, the AAUP quoted Osgood’s comment as a key moment in the association’s founding. And in 2002, Princeton professor and former AAUP Committee A chair Joan Wallach Scott incorporated Osgood’s comment into an AAUP lecture about the “major threat” (her words) that intrusive boards pose to American higher education. Osgood’s words, Scott observed, “could have been written today.”<sup>19</sup> Through such language, academics’ original sense of professional “menace” is kept alive and well.

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The result is impasse, a framework in which it is impossible to imagine how necessary change could occur. Stanley Fish, for instance, acknowledges that too many professors have politicized the classroom, and has devoted an entire book to the premise that they should “save the world on their own time.” But even though Fish knows faculty are misbehaving, he doesn’t argue in the book that trustees should hold them accountable: to the contrary, if trustees had that sort of power, he contends, they would “simply take over the university and conform its operations to neoconservative imperatives.”<sup>20</sup>

### **Calls for Trustee Accountability**

Throughout the 1980s and 1990s, faculty and education leaders adamantly insisted on hands-off trustees. But higher education’s rapidly changing landscape made this paradigm increasingly untenable. During these years, higher education moved from a post-war boom to an era of limited public resources; from decades of low tuition to tuition increases far in excess of the rate of inflation; from a system that exposed students to broad areas of knowledge to one that forced students to choose from a smorgasbord of narrow and trendy course offerings. Political correctness grew commonplace and inflated grades became the norm. Meanwhile, scandals over executive pay, student loans, conflicts of interest, accreditation, and research misconduct regularly made headlines. Student attrition and substance abuse rose. College sports programs grew rife with corruption. Teacher education schools became cash cows that failed to prepare qualified teachers. Tenure began to disappear as colleges and universities relied increasingly on adjunct teachers; academic freedom hung in the balance. In short, higher education experienced problems of accountability at all levels.<sup>21</sup>

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More to the point: the reigning model of governance began to be seen as part of the problem. While shared governance was premised on faculty participation and self-policing, there was growing evidence—and growing concern—that faculty were interested in neither. Recognizing that something had to be done, a few iconoclastic academic leaders began calling for greater trustee involvement and accountability.

An early, stinging salvo came from Martin Anderson, whose 1996 *Impostors in the Temple: A Blueprint for Improving Higher Education in America* attributed higher education's woeful lack of accountability to the failure of governance. Acknowledging that “plenty of people ... can be blamed for the decline of the American university,” he concluded that one group bore “the chief responsibility for the current sorry state of affairs.” According to Anderson, this was the “group of men and women who constitute the governing boards of our universities and colleges—the trustees, the overseers, the regents”:

We should not blame those who play by the rules laid down or condoned by the trustees of the universities. We should blame those who make the rules, for they are the ultimate governing bodies, they are the ones who bear the guilt and the shame. These governing boards, not the presidents or the faculty, are primarily responsible for the scandals of recent decades. When Stanford was casting out of its curriculum some of the canons of Western Civilization and cheating the taxpayer with phony research charges, it was James Gaither who was chairing the board of trustees, not president Donald Kennedy. When Harvard was violating the nation's antitrust laws by price-rigging of tuition fees and financial aid, it was Samuel Butler, not president Derek Bok, who was overseeing the overseers. When Dartmouth was infringing on the academic freedom of a student newspaper, the *Dartmouth Review*, it was George Monroe, not president James Freedman, who headed the trustees. When the University of California was substituting students for professors to teach its freshmen and sophomores, it was Roy Brophy, not president David Gardner, who chaired the board of regents.<sup>22</sup>

Anderson's comments took root. In June 2002, former Yale general counsel and federal judge Jose Cabranes weighed in with a pointed speech before the National Association of College and University Attorneys. While conceding that higher education was not a business *per se*, Cabranes asserted that, universities shared some “deep similarities with business corporations,”

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and predicted dire consequences if these similarities were not reflected in their governance practices. “Failing to see the similarities,” said Cabranes, “may obscure the need to run universities in conformity with the basic standards we expect of businesses—and obscure the need to impose on universities mechanisms of transparency and accountability similar to those we impose on business corporations.”<sup>23</sup>

Cabranes and others argued that universities’ increasing reliance on public and private funds obligated them to reassure the public that they would not abuse or squander the public investment—or trust. “A university board that cannot ensure transparency and accountability in allocating the investments of its co-owners,” said Cabranes, “will have trouble attracting such investments in comparison with an institution that does ensure transparency and accountability.”

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In 2006, former Harvard dean Harry Lewis provided a further gloss on the problem, this time with a scathing indictment of university governance practices at his alma mater, Harvard. Noting with apparent approval the growing scrutiny on corporate trustees, Lewis expressed concern about the relative lack of attention to the failure of nonprofit trustees to do their job:

... as the school has adjusted to relentless scrutiny from external media, the institution that historically provided “public” scrutiny, the alumni-elected Board of Overseers, has become carefully managed and quite docile. Its members learn of important changes at Harvard by reading about them in the papers. Remarkably, this shift has continued even as the regulation of corporate governance in other businesses has intensified as a result of the misdeeds of notoriously inattentive boards of directors. . . . Changing direction requires candor about the forces that have caused the errant course. It also requires leadership that views the university idealistically, as something more than a business and something better than a slave to the logic of economic competition.<sup>25</sup>

Offering a similar observation was another well-known Harvard figure, former Harvard president Derek Bok, whose 2007 *Our Underachieving Colleges* called for trustees to become more engaged. Acknowledging that faculty and administrators did not tend to care about educational

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quality, Bok called on trustees to make sure that their institutions fulfilled their academic responsibilities:

Who else [but the trustee] is capable of altering the current system of incentives and rewards to hold deans and presidents accountable for the quality of their educational leadership? No faculty ever forced its leaders out for failing to act vigorously enough to improve the prevailing methods of education. ... If trustees ignore the subject, there may be no one to press academic leaders to attend to those aspects of the educational program that are in greatest need of reform.<sup>26</sup>

Bok's call to action built on his longstanding conviction, articulated in his 1990 *Universities and the Future of America*, that the trustees' function "is not merely to interpret and justify the university to the larger society but to convey the legitimate needs of that society to the institutions they serve and to inquire whether more imaginative, more effective responses should be forthcoming."<sup>27</sup>

In line with these voices, policymakers and elected officials have begun demanding more of trustees, insisting that they re-orient towards greater engagement and accountability. Governors, for example, began looking more closely at their appointing function. Former Virginia governor James Gilmore personally interviewed all public university trustees and instructed them in the importance of engaged and thoughtful stewardship.<sup>28</sup> Former Massachusetts governor Mitt Romney re-energized the Public Education Nominating Council to identify the most able and dedicated citizens to serve. Ohio governor Ted Strickland gave Ohio regents authority to overhaul and unify the state university system.<sup>29</sup>

Alumni have begun speaking up as well, demanding that their alma maters—and by extension their trustees—provide high quality education at the lowest possible cost. Concerned alumni's articulate defense of academic excellence provided the impetus for CUNY trustees to vote for curricular reform. University of Chicago faculty, students, and alumni had such success

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in prompting trustees to resist changes to the Chicago core that the president who proposed the changes had to resign.<sup>30</sup>

Donors, too, have begun to flex their muscles, seeking redress from boards for failure to uphold their donative intent. This in turn has gotten the attention of state attorneys general, who are responding to more complaints about university governance. In the last year alone, attorneys general in Connecticut, New Jersey, and Illinois have pointedly pursued boards of trustees for malfeasance and failure to do their job. Meanwhile, prominent experts such as Judge Cabranes have called for legislators to expand donors' standing to bring lawsuits against individual trustees.<sup>31</sup>

On the federal level, high-profile scandals involving presidential compensation at American University prompted the Senate Finance Committee to get involved—going so far as to review and recommend structural and substantive changes to board practices. Internal Revenue Service reporting requirements are now more extensive than ever before, and universities such as Harvard, Yale and Stanford have found themselves subject to wide-ranging requests on the management and administration of large endowments, an area previously assumed to be an appropriate and exclusive domain of college and university trustees. The Bernie Madoff scandal – and its ever-expanding fall-out- did not leave the academy unscathed. In a mass email to Yeshiva students, the president announced the university would be examining existing conflicts policies, procedures and governance structures after Yeshiva suffered an endowment loss of \$110 million. Madoff was treasurer of the board and eight percent of the institutional funds had been invested in Madoff-tied funds.<sup>32</sup>

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Given the growing chorus of concern, it was no surprise that higher education's accountability shortfall formed the centerpiece of the 2006 report from the Spellings Commission on the Future of Higher Education. A watershed moment in higher education assessment, *A Test of Leadership: Charting the Future of U.S. Higher Education* devoted considerable attention to the interlocking issues of access, affordability, and educational quality, noting that our ability to gauge and improve our colleges and universities is marred by "a lack of clear, reliable information about the cost and quality of postsecondary institutions, along with a remarkable absence of accountability mechanisms to ensure that colleges succeed in educating students."<sup>33</sup> The absence of information and accompanying accountability measures, the report noted, "hinders policymakers and the public from making informed decisions and prevents higher education from demonstrating its contribution to the public good." To resolve the problem, the report enjoined colleges and universities to "become more transparent about cost, price, and student success outcomes" and to ensure that this information is "available to students, and reported publicly in aggregate form to provide consumers and policymakers an accessible, understandable way to measure the relative effectiveness of different colleges and universities."<sup>34</sup>

To do so, it called explicitly on trustees. Rather than assuming trustees were passive players, there only to ratify or confirm actions of faculty and administrators, the Commission called explicitly on "higher education governing and coordinating boards, entrusted with the responsibility to ensure both internal and external accountability, ... [to]work with colleges to improve information about costs as well as prices for consumers, policymakers and institutional leaders."The Spellings report offered several recommendations for how institutions of higher learning should collect and disseminate data, as well as for how accountability mechanisms could be established along the way. It also bundled those recommendations with something

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closely resembling a plea: “We urge the creation of a robust culture of accountability and transparency throughout higher education. Every one of our goals, from improving access and affordability to enhancing quality and innovation, will be more easily achieved if higher education institutions embrace and implement serious accountability measures.”<sup>35</sup> Implicit in this statement is an admission that higher education lacks those very things—that in its present state, academic culture is anything but a “robust culture of accountability and transparency.” The anthropomorphic suggestion that colleges and universities should “embrace” the ideal of accountability likewise suggested that it’s time for professors, administrators, and trustees to kiss and make up.

That’s easier said than done, as the history chronicled here reveals. If academic culture is not committed to accountability and transparency, that’s because the tradition and practice of shared governance are actively estranged from those values. Over the past century, faculties, administrators, and trustees have formed a governance culture that is not only unaccustomed to the ideals of accountability and transparency—but may even be said to be actively opposed to them. Defining trustees as a “menace” to their “freedom,” academics have set a tone that presumes bad faith from trustees and presidents—and that urges professors to focus foremost on protecting themselves from the depredations of others. For decades, professors have been encouraged to think of governance as something that is always fraught with conflict, and to see boards and administrators as threats to the academic enterprise. Receptiveness to change and openness to evaluation do not follow logically from these premises.

It is for this reason that calls for academic accountability are so often described by professors as “attacks” on academic freedom. And it is for this reason, too, that when boards attempt to become more actively engaged in oversight, they often find themselves embroiled in

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controversy, accused (sometimes with justification, and sometimes not) of overstepping their bounds. A century of mistrust has not prepared the ground for the new era of academic accountability; in fact, it has done quite the opposite, producing so many impasses, roadblocks, and stalemates that we now have what University of St. Thomas professor Neil Hamilton calls a “crisis of ethic proportion.”<sup>36</sup>

This is not lost on a post-Enron public alive to the need for new standards of governance. As the accountability principles established by the Sarbanes-Oxley Act make their way into the nonprofit world, academe’s governance issues are becoming all the more visible, acute, and anomalous. And, as the Spellings report shows, our national conversation about the future of American higher education is in many ways a conversation about how academic governance must change. Toward that end, the American Council of Trustees and Alumni and others have issued recommendations for what trustees can and should be doing to fulfill their fiduciary responsibilities, challenging the ruling assumption that faculty and administrators *are* the governance structure, and that trustees exist to serve the institution first and the public interest second.<sup>37</sup> As such, these efforts mark the beginning of a long overdue debate about what shared governance is, where faculty prerogatives end and fiduciary responsibilities begin, and what kinds of practical changes our colleges and universities need to make if they are to be truly accountable to the public trust. But debate about proper procedure will be pointless—and may even fuel the ongoing problem—if it is not accompanied by a concerted effort to reform the dysfunctional institutional culture that makes that debate so necessary.

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### **Rules of Engagement: Accountability in Twenty-First Century Academe**

How, then, should the needed reforms be made? There are many answers—and that may be one reason why discussion thus far has centered on the more tangible aspects of policy and practice. Still, it seems clear enough that we should begin with education. Trustees are the ultimate fiduciaries of their institutions. But they cannot perform their duties if they don't know what that means. And all indications are that trustees are not being properly trained, integrated, or socialized into academic culture. A 2009 survey found that most board orientation sessions last less than half a day; only 20 percent of orientations are a day long.<sup>38</sup> This is slight training, to say the least—but it's consonant with the reigning assumption that boards should be kept at arm's length, and should not be fully empowered to exercise their fiduciary roles. As a 2007 study conducted by the *Chronicle of Higher Education* found, less than 15 percent of trustees felt “very well prepared” for their role on the board. Forty percent said they were either “slightly” or “not at all” prepared.<sup>39</sup> This lack of preparation was strongly correlated with board members feeling undervalued, dissatisfied, and at odds with the president—their primary liaison with the institution in their care. These factors, in turn, were associated with lack of interest in continuing as a trustee.

Given the general lack of training, it's not surprising, then, that boards often suffer from the fiduciary equivalent of a personality disorder. Some are hyperactive and controlling micromanagers, intruding where they do not belong. Confusing governance with micromanagement, they insert themselves into decisions that are far beyond their fiduciary purview.<sup>40</sup> Others take an entirely hands-off approach, believing that their job is to raise money, wield the rubber stamps, and then get out of the way. Still others descend into variants of sociopathic behavior, using their positions to perform political favors or to pad their wallets.<sup>41</sup>

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Nor is it surprising that faculties, for their part, often adopt oppositional stances rather than cooperative and proactive ones. “Many of my colleagues understand the power they have to stonewall proposals, filibuster new ideas, and engage in general foot dragging that effectively kills the ability of their organizations to react to the changing needs of society,” writes East Tennessee State professor Sam Minner; “More than a few academics do not stonewall, but ... they simply do not move.”<sup>42</sup> In their struggle to secure and protect academic freedom, faculty may, indeed, have become their own worst enemies. Writing about professors’ tendencies to engage in obstructionist behavior,” Minner notes that “If we in the academy do not change in this respect, then board members or some other group (e.g., administrators) should act, and they should not feel bad when the howls of faculty protest begin.”<sup>43</sup> Similar comments have been made with respect to professors’ less-than-stellar record with the self-policing work of peer review. “It is imperative that we in higher education take the initiative to examine ourselves,” writes former University of Colorado president Hank Brown. “There are many lawmakers at the state and federal level willing to intervene if we do not do so.”<sup>44</sup>

Senator Lamar Alexander has echoed this refrain. In the wake of the Higher Education Act reauthorization, Alexander put it bluntly: “If colleges and universities do not accept more responsibility for assessment and accountability, the federal government will do it for them.”<sup>45</sup>

Such statements speak to the manner in which systemic procedural and cultural lapses among faculty are compromising their ability to justify both their participation in governance and their independence from regulatory intrusion.

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Neil Hamilton has eloquently described how the professoriate has become so fixated on blocking and preventing such intrusion that it “has been failing for many years in its ethical duty to acculturate new entrants into the tradition and ethics of the profession.” This failure not only yields scandalously bad behavior, but also results in academics’ self-defeating unwillingness—or inability—to explain and defend their interests to boards and to the public. “The boards at many colleges and universities have been renegotiating a sweeping change in the academic profession’s social contract over many years to reduce the profession’s autonomy and control over professional work,” Hamilton observes. But, he continues, that does not necessarily mean that trustees are deliberately attacking academic freedom and its associated professional prerogatives. Rather, it points to how academics have produced a perilous self-fulfilling prophecy: “The predictable result of an anemic defense of a profession’s social contract,” he argues, “is that the society and employers will restructure control of the profession’s work toward the regulatory and employer control typical for other occupations—essentially the default employment arrangements in a market economy. This is what has been happening to the academic profession.”<sup>46</sup>

As with individuals, then, so with boards and faculties—ignorance, willfulness, and lack of training produce destructive behavior. Presidents, deans, and provosts—those whose work it is to bridge the gap between trustees and faculties—are caught in the middle: Regarded by the faculty as the managerial enemy, they are often either micromanaged or given far too much autonomy by boards.<sup>47</sup>

Trustees should be properly trained for their fiduciary roles—and that training should include not only nuts-and-bolts procedural information, but also background on the history, philosophy, ethics, and legalities of governance, as well as substantive guidance on central

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educational values. Faculty, likewise, need systematic preparation for the “duties correlative with rights” (the words are those of the AAUP) that together form academic freedom. They should know and understand that the privileges of relative professional independence are predicated upon the expectation that they will hold themselves to high ethical standards and that they will be constructive participants in institutional affairs.<sup>48</sup> Administrators, for their part, need the managerial skills to work effectively with both faculty and trustees: they should understand and respect the interests of both, and serve as a solid and fair bridge between them. All ought to know the history and mission of their institution, and all should be aware of how their governance roles complement those of other constituents. If academia is to create a “robust culture of accountability and transparency”—this is the place to begin.

### **Change—and Hope: Accountability Gains**

Higher education’s new era of accountability offers trustees a clear path to enhanced transparency, productivity, and, ultimately, educational quality. As such, it empowers trustees to ensure that the institutions in their care truly serve the public interest. And there is growing evidence that trustees are doing just that. Numerous boards are already modeling trustee accountability, performing their fiduciary role in a way that protects the integrity and autonomy of our universities, honoring academic freedom while also serving the public trust.

In the face of a challenging economic recession, some boards are illustrating the important role trustees can play in controlling college costs. Atlanta’s Spelman College has cut a community-outreach program for budget reasons, and the president credited the board with helping the college deal with the backlash.<sup>49</sup> In 2004, the trustees of the University of Maine voted to restructure the state system, combining the three smallest campuses into one institution.

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While the plan was ultimately scaled back, it demonstrated a concerted trustee effort to reduce costs through strategic administrative and academic restructuring.<sup>50</sup> Tulane University offers another case in point. There, in the face of heavy losses brought on by Hurricane Katrina, leaders aggressively restructured the university to make it both more student-focused and cost-effective. The president, working with his board, consolidated undergraduate colleges into one unit and promoted a common cohesive academic experience for undergraduates. Tulane pledged to focus limited resources on those programs that displayed the highest level of excellence, while suspending those that did not. And while the changes have not been without their critics, especially the AAUP, the record number of applicants attests that Tulane's leaders are succeeding.<sup>51</sup>

More broadly, some boards are tackling the concept of accountability head-on, devising systematic metrics for ensuring excellence, efficiency, and integrity across the board. In 2006, for example, the Curators of the University of Missouri responded to cuts in state appropriations by eliminating redundant programs, streamlining the administration, and creatively using technology. They saved \$20 million—while still ensuring that students complete sound coursework in composition, mathematics, and science (a real mark of distinction compared to most other universities). In 2009, the board, working with the system head, unveiled a comprehensive list of “accountability measures” aimed “to provide transparency and accountability regarding the University’s overall performance.” The metrics included headcount enrollments, applicant acceptance rates, yields, student diversity, retention rates, graduation rates, cost and financial aid, pass rates on licensing exams, and number of inventions received.<sup>52</sup> Similar metrics have been explored by a vice chairman of the Massachusetts Board of Higher Education.<sup>53</sup>

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Accountability metrics in turn come with self-study—a long-neglected practice that is finally coming into its own. The University of Georgia board of trustees, for example, recently commissioned a major, system-wide self-study of the campus climate, publishing its results in 2008 and promising to repeat the survey annually. Faced with evidence of a lack of intellectual diversity on campus, the Georgia trustees also took steps to ensure that grievance policies at all campuses provided students with effective channels through which to voice concerns about classroom bias, speech codes, and similar matters. A similar self-study has been conducted at the University of North Carolina.<sup>54</sup> Such proactive board endeavors help identify problems—and strengths; as such, they help trustees, administrators, and faculties understand what kinds of change may be needed and to grasp how change might best be implemented.

Most dramatic of all has been trustees' work to guarantee consistent and high educational quality. In 1999, the trustees of the State University of New York voted to require a system-wide core curriculum. Today, SUNY can boast not only of its size—it is the largest public university in the country—but of the rigor and depth of its undergraduate academics. Since the fall of 2000, all SUNY baccalaureate degree candidates have been required to complete a firmly defined core curriculum centered on natural and social sciences, mathematics, foreign languages, Western and world civilizations, American history, humanities and the arts, information management, critical thinking, and communications. Rather than expecting eighteen-year-old freshmen, still inexperienced in the ways of the world, to figure out what they need to know, the trustees exercised their judgment and identified critical areas for students to study. Since adopting the core, SUNY has seen rising enrollment and admissions standards—both clear signs of heightened academic quality and increased educational prestige.<sup>55</sup>

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While the SUNY trustees were working to establish a comprehensive core, the California State University trustees voted to approve a sweeping “Cornerstones” program aimed at increasing educational accountability and raising academic standards. The program charged professors with setting learning objectives for general education and degree programs and also required them to develop means of assessing students’ progress in meeting those objectives. Many faculty members opposed the accountability measures, voting no confidence in Chancellor Charles Reed; however, the Chancellor and the board remain firmly behind the program.<sup>56</sup> The City University of New York has a similar story. Faced with an outspoken group of concerned alumni, the CUNY board voted in the late 1990s to raise CUNY’s educational quality and institutional profile through solid remediation reform.<sup>57</sup>

As these examples suggest, governing boards are gradually but decisively adjusting their historically defined roles, becoming more knowledgeable and engaged, and assuming greater fiduciary responsibility for the institutions in their care. There has been grumbling, as there always is when change is afoot. The SUNY faculty strongly opposed the core curriculum that is now a jewel in its crown. Likewise, when the University of the District of Columbia trustees decided to raise standards and demand excellence, both faculty and students reacted with protests and a chorus of objections. Most memorably, when former Harvard president Lawrence Summers attempted to address issues curricular quality, ROTC, and faculty accountability, the faculty voted “no confidence,” the Corporation rolled over, and Summers was forced to resign. Still, the era of accountability is here to stay—and the boards, administrations, and faculties that embrace it are the ones most likely to be steering successful, sustainable institutions far into the future.

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### **What's Governance Got To Do With It?**

According to a 2009 survey by the National Center for Public Policy and Higher Education, a majority of the public believes that a college degree is key to getting ahead. But despite high expectations, public confidence is dropping. Americans express growing concern that they are losing ground in the battle to pay for higher education. Significant numbers wonder whether the ever-rising cost is justified for what is received. And there is mounting evidence that accountability can be achieved only if there is more informed leadership from those vested with the financial and academic health of our colleges and universities—namely, trustees.<sup>58</sup>

Responsible decision-making by college and university governing boards is key to reforming—and preserving—higher education. That means rejecting an entrenched campus culture that resists active trusteeship and tries to limit the flow of independent information. It also means radically reshaping a board culture that views service as an honor and a perk, rather than a responsibility. For too long, ignorance, misbehavior, and mistrust have shaped academic governance. We can and should expect more. It is time to replace dysfunction, factionalism, and irresponsibility with the awareness, understanding, and intelligent engagement that can only come from systematic preparation for trustees, faculty, and administrators alike. This will be empowering and enabling for all. It will help ensure a bright future for our colleges and universities—and for the young men and women these institutions prepare them for work, citizenship, and life.

Much of our current conversation about higher education focuses on symptoms rather than root causes. When faced with rising costs and declining quality, scandals and loss of public confidence, people expect to see administrators trimming budgets and faculties doing a better job of teaching and staying out of trouble. In the midst of so many kinds of crises, it's easy to forget

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about trustees. But the reform we need begins with them. The answer to the question, “What’s governance got to do with it?” is, in the end, very simple indeed. The answer is: Everything.

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<sup>1</sup> This story is recounted in detail in Walter P. Metzger, *Academic Freedom in the Age of the University* (New York: Columbia University Press, 1955), 139–93.

<sup>2</sup> See <http://www.aaup.org/AAUP/about/history/>.

<sup>3</sup> See Metzger, *Academic Freedom in the Age of the University*, 139–93.

<sup>4</sup> Thomas Elmer Will, “A Menace to Freedom,” *Arena* 26 (1901): 246–47.

<sup>5</sup> Examples include James McKen Cattell’s 1913 collection *University Control* and Thorstein Veblen’s 1918 *Higher Learning in America: A Memorandum on the Conduct of Universities by Business Men*, both of which Metzger sees as characterized by “Jacobinic” rhetoric and “splenetic” metaphors. Metzger further notes the Carnegie Foundation’s Henry S. Pritchett 1913 statement that “Everything about the college is under the fire of the critics—its government, its ideals of social life, its right to exist at all.” Likewise, he observes, Edwin Slosson, then on Columbia University’s journalism faculty, claimed that “Our universities are under fire right now from many quarters.” See “Origins of the Association,” *AAUP Bulletin* (Summer 1965): 230, 234.

<sup>6</sup> American Association of University Professors, “1915 Declaration of Principles on Academic Freedom and Academic Tenure,” <http://www.aaup.org/AAUP/pubsres/policydocs/contents/1915.htm>

<sup>7</sup> Metzger, *Academic Freedom*, 176.

<sup>8</sup> Metzger, “Origins of the Association,” 230–33.

<sup>9</sup> Metzger, *Academic Freedom*, 139–93.

<sup>10</sup> Edward Alsworth Ross, *Seventy Years of It: An Autobiography* (New York: Arno Press, 1977): 64–65.

<sup>11</sup> Orrin L. Elliott, *Stanford University: The First Twenty-five Years* (California: Stanford University Press, 1937): 339–40, 343–44.

<sup>12</sup> The *Declaration* notes that: “The teacher ought also to be especially on his guard against taking unfair advantage of the student’s immaturity by indoctrinating him with the teacher’s own opinions before the student has had an opportunity fairly to examine other opinions upon the matters in question, and before he has sufficient knowledge and ripeness of judgment to be entitled to form any definitive opinion of his own.”

<sup>13</sup> Metzger provides a detailed history of Ross’ highly tactical tenure at Stanford in *Academic Freedom*, 163–66.

<sup>14</sup> See American Association of University Professors, “History of the AAUP,”

<http://www.aaup.org/AAUP/about/history/default.htm>.

<sup>15</sup> See <http://www.aaup.org/AAUP/pubsres/policydocs/contents/governancestatement.htm>.

<sup>16</sup> “The Robert L. Levine Distinguished Lecture: Myth and Reality of University Trusteeship in the Post-Enron Era,” Jose A. Cabranes, *Fordham Law Review* 76: 960: “Today, the faculty’s authority is exercised separately from, and even in spite of, the board’s formally prescribed authority. Regardless of the role of the trustees as legal representatives of the university in its dealings with external forces, it is still the faculty that actually governs.”

<sup>17</sup> James L. Fisher, “Harvard limping along with weak president position,” *TCPalm* (Oct. 1, 2009) “The Corporation (the president and the fellows of Harvard College) originally held power, but gradually that authority was ceded to the various faculties. Professors were added to the membership of the Corporation and subsequently decision making authority was granted to the faculties. Since 1985, the Corporation has consisted of two businessmen, one lawyer and two professors...” See Bylaws of the Regents of the University of California, § 12.2 Committee on Educational Policy (giving the Regents responsibility to “consider and report on . . . substantive aspects of policies and programs related to the educational philosophy and objectives of the University . . . [as well as] academic planning, instruction, and research.”), available at <http://www.universityofcalifornia.edu/regents/bylaws/bl12.html> (last visited Nov. 10, 2009); see also Policy on Policies of the Regents of the University of California (stating that Regents policies will be “broad statements supporting the purpose, principles and philosophy of the tripartite mission of the University” and that policies will be acted upon after “appropriate consultation with . . . faculty”), available at <http://www.universityofcalifornia.edu/regents/policies/5999.html> (last visited Nov. 10, 2009).

<sup>18</sup> Quoted in “75 Years: A Retrospective on the Occasion of the Seventy-Fifth Annual Meeting,” *Academe* (May–June 1989): 5.

<sup>19</sup> Joan Wallach Scott, “The Critical State of Shared Governance,” *Academe* (July–August 2002), <http://www.aaup.org/AAUP/pubsres/academe/2002/JA/Feat/Scot.htm>.

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<sup>20</sup> Stanley Fish, *Save the World on Your Own Time* (New York: Oxford University Press 2008 pp. 122-23.

<sup>21</sup> Statement of Anne D. Neal, President, American Council of Trustees and Alumni before the Commission on the Future of Higher Education, April 7, 2006, Indianapolis, IN, at [www.goacta.org/publications](http://www.goacta.org/publications).

<sup>22</sup> Martin Anderson, *Impostors in the Temple: A Blueprint for Improving Higher Education in America*, pp. 195-96 (1996).

<sup>23</sup> José A. Cabranes, “University Trusteeship in the Enron Era,” National Association of College and University Attorneys Annual Meeting (June 26, 2002), available at [http://www.nacua.org/documents/enron\\_speech\\_07-23-02.pdf](http://www.nacua.org/documents/enron_speech_07-23-02.pdf); see also Richard Posner, *The University as Business*, [www.theatlantic.com/issues/2002/06/posner.htm](http://www.theatlantic.com/issues/2002/06/posner.htm).

<sup>24</sup> Cabranes, “University Trusteeship in the Enron Era.”

<sup>25</sup> Harry L. Lewis, *Excellence Without a Soul: How a Great University Forgot Education* 15, 18 (2006).

<sup>26</sup> Derek Bok, *Our Underachieving Colleges* 333-34 (2007).

<sup>27</sup> Derek Bok, *Universities and the Future of America* 112 (1990). This observation eloquently acknowledges the unique role of lay trustees in governing American institutions of higher education.

<sup>28</sup> In Virginia, boards thereafter manifested a relatively high level of engagement – provoking pushback by the faculty. The George Mason University board voted to implement a comprehensive core curriculum that included Western Civilization and American history. Despite a faculty vote of no confidence, the board’s action was implemented. The James Madison Board similarly demanded, and received, assurance from the administration that American history would remain part of the college core. See also Institute for Effective Governance, *Restoring a Core: How Trustees Can Ensure Meaningful General Education Requirements* (ACTA October 2009).

<sup>29</sup> Of course, given misconduct by trustees at various times and places, most recently at the University of Illinois where trustees were implicated in an admissions “clout scam,” recommendations are regularly put forward by university insiders to diminish governors’ appointing authority when it comes to public university governance—but these “solutions” only deepen existing problems. See Anne D. Neal, “Governor Should Appoint U of I Trustees,” *Chicago Sun-Times* (Aug. 1, 2009) “Whether or not the trustees have engaged in misconduct – and there is substantial evidence to believe they have – the system of gubernatorial appointment that produced them remains the structure most likely to ensure accountability to the people of Illinois. Whereas the governor represents the interests of all citizens, a revised structure along the lines proposed would heavily weight the system in favor of insiders – those loyal alumni, fund-raisers and boosters who would receive the support of the alumni association. . . . One need only look at recent battles at Dartmouth, Hamilton, and Colgate, to learn that alumni associations are largely extensions of the development office and the administration. . . . Under the current system, if the appointees fail, the governor is accountable to the people and can be voted out of office. IN a system that splits the appointing power – whether by giving it to the alumni association, the Legislature or even the voters as do several states --- responsibility is harder to pin down and the people have less recourse.”

<sup>30</sup> Karen Arenson, “Hearing Brings Out City University’s Staunchest Defenders,” *New York Times* (Jan. 6, 1999); Ben Gose, “U. of Chicago President’s Plan to Resign Doesn’t Quiet Debate Over His Agenda,” *Chronicle of Higher Educ.*, A43, June 18, 1999, available at <http://chronicle.com/article/U-of-Chicago-Presidents-Plan/16150/>.

<sup>31</sup> Cabranes, University Trusteeship in the Enron Era.

<sup>32</sup> Carrie Coolidge, “Blumenthal May Investigate Charities Ripped Off by Madoff,” *Forbes Magazine*, [www.forbes.com/2008/12/22/madoff-blumenthal-charities-biz-wall-cz\\_cc\\_1222charities](http://www.forbes.com/2008/12/22/madoff-blumenthal-charities-biz-wall-cz_cc_1222charities) (Dec. 22, 2008); Scott Carlson, “What College Trustees Could Learn From the Madoff Scandal,” *Chronicle of Higher Education* (Dec. 18, 2008).

<sup>33</sup> U.S. Department of Education, *A Test of Leadership: Charting the Future of U.S. Higher Education*, 2006, <http://www.ed.gov/about/bdscomm/list/hiedfuture/reports/final-report.pdf>, p. x.

<sup>34</sup> *Ibid.*, 4

<sup>35</sup> *Ibid.*, 21

<sup>36</sup> Neil W. Hamilton, “A Crisis of Ethic Proportion,” *Inside Higher Ed*, June 12, 2009, <http://www.insidehighered.com/views/2009/06/12/hamilton>.

<sup>37</sup> See ACTA’s numerous trustee guides at <https://www.goacta.org/publications/index.cfm?categoryid=7E8A88BF-C70B-972A-68008CC20E38AF8A>. The Association of Governing Board’s publications are available at <http://www.agb.org/>. Anne D. Neal, “The Potty Trained Trustee,” *Inside Higher Ed* (July 23, 2009) . See also José A. Cabranes, “How to Make Trustees Worthy of Their Constituents’ Trust,” *Chronicle of Higher Education*, October 18, 2002, <http://chronicle.com/article/How-to-Make-Trustees-Worthy/6459/> and Derek Bok, “The Critical Role of Trustees in Enhancing Student Learning,” *Chronicle of Higher Education*, December 16, 2005, <http://chronicle.com/article/The-Critical-Role-of-Trustee/26139/>.

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<sup>38</sup> Paul Fain, "Trustees Are More Engaged but Still Need Improvement, Survey Finds," *Chronicle of Higher Education*, July 15, 2009, <http://chronicle.com/article/Trustees-Are-More-Engaged-but/47378/>.

<sup>39</sup> Jeffrey Selingo, "Trustees More Willing Than Ready," *Chronicle of Higher Education*, May 11, 2007, <http://chronicle.com/article/Trustees-More-Willing-Than/15883/>.

<sup>40</sup> See Richard P. Chait, "How to Keep Trustees From Being Micromanagers," *Chronicle of Higher Education*, May 6, 2005, <http://chronicle.com/article/How-to-Keep-Trustees-From/5821/>. See also Chait's "When Trustees Blunder," *Chronicle of Higher Education*, February 17, 2006, <http://chronicle.com/article/When-Trustees-Blunder/3038/>.

<sup>41</sup> It is perhaps not surprising that, given the current combination of expectations, structure and faculty attitudes, trustees behave in this way, and many good people steer clear of the jobs. If trustees begin to engage in legitimate, constructive governance and leadership, expectations for an enhanced appointment process and accountability can be expected to rise.

<sup>42</sup> Sam Minner, "Improving Shared Governance," *Chronicle of Higher Education*, September 25, 1998, <http://chronicle.com/article/Improving-Shared-Governance/10246/>.

<sup>43</sup> *Ibid.*

<sup>44</sup> Hank Brown, "Tenure Reform: The Time Has Come," *Inside Higher Ed*, March 26, 2007, <http://www.insidehighered.com/views/2007/03/26/brown>.

<sup>45</sup> David C. Paris, "The Clock is Ticking," *Inside Higher Ed*, Nov. 6, 2009, <http://www.insidehighered.com/views/2009/11/06/paris>.

<sup>46</sup> See "A Crisis of Ethic Proportion."

<sup>47</sup> See Chait, "How to Keep Trustees From Being Micromanagers" and "When Trustees Blunder."

<sup>48</sup> See <http://www.aaup.org/AAUP/pubsres/policydocs/contents/1940statement.htm>

<sup>49</sup> Paul Fain, "Tight Times Call for Trustees Who Push Back, Presidents Say," *Chronicle of Higher Education*, 21 April 2009

<sup>50</sup> Michael Arnone, "U. of Maine Trustees Approve a Scaled –Back Reorganization," *Chronicle of Higher Education*, 1 October 2004.

<sup>51</sup> See [http://tulane.edu/news/tulanian/renewal\\_academic\\_reorganization.cfm](http://tulane.edu/news/tulanian/renewal_academic_reorganization.cfm).

<sup>52</sup> Review of System Accountability Measures, Resources and Planning Committee, University of Missouri Board of Curators (August 2009). See also ACTA, Show Me: A Report Card on Public Higher Education in Missouri (October 2008).

<sup>53</sup> G.L. "Peter" Alcock, Jr., *Essays In Perspective: Metrics for Effective Governance* (ACTA Institute for Effective Governance, Nov. 2008)

<sup>54</sup> *Shining the Light: A Report Card on Georgia's System of Public Higher Education* (ACTA: Washington, DC, Feb. 2008); *Protecting the Free Exchange of Ideas: How Trustees Can Advance Intellectual Diversity on Campus* (ACTA: Washington, DC, 2009).

<sup>55</sup> SUNY Annual Report; Anne D. Neal, "The SUNY Core Curriculum in Context" delivered at the SUNY 60<sup>th</sup> Anniversary Conference (Albany, NY), April 3-4, 2009.

<sup>56</sup> Jeffrey Selingo, "Plans to Reshape California State U. Disturb Many Faculty Members," *Chronicle of Higher Education*, 5 February 1999; Jeffrey Selingo, "Cal State Approves Controversial Academic Plan," *Chronicle of Higher Education*, 26 March 1999.

<sup>57</sup> "Advisors to Regents Back CUNY's Remedial Plan," *New York Times*, October 1, 1999.

<http://www.nytimes.com/1999/10/01/nyregion/advisers-to-regents-back-cuny-s-remedial-plan.html>. Some years later, when Brooklyn College attempted to deny tenure to the accomplished historian KC Johnson on the grounds he was not collegial, the board and the chancellor intervened to reject the departmental and presidential recommendation and to grant him tenure. This marked a rare instance of the board engaging personnel matters for which they have fiduciary responsibility.

<sup>58</sup> John Immerwahr and Jean Johnson, *Squeeze Play 2009: The Public's Views on College Costs Today*. February 2009.