



GOVERNANCE IN AMERICAN UNIVERSITIES

by

Edward R. Beauchamp
Professor of Historical and Comparative Educational Studies
University of Hawaii
Honolulu, Hawaii, USA

The Nineteenth International Conference on the Unity of the Sciences
Seoul, Korea August 19-26, 1992

© 1992, International Conference on the Unity of the Sciences

"Governance in American Universities"

Edward R. Beauchamp
University of Hawaii

Introduction

Relations between universities and the state in the West have traditionally been characterized by legal and de facto obligations to an external sovereignty alongside a measure of internal autonomy. It would, indeed, be as difficult to find an example of perfect autonomy as it would one of complete accountability. "The most accountable institutions of recent times, the nineteenth-century German universities, allowed professors a high degree of autonomy to handle internal affairs and press their academic interests within a system which assured final authority to the state through its educational ministry" (Duryea, 14).

This paper will examine a number of issues focusing on the governance of American universities in the twentieth century. Its primary focus will be on public colleges and universities although, occasionally, the private sector will be peripherally treated. There is a substantial literature which suggests some disagreement on such basic questions as the desirability of governing boards, their composition and functions, their size, etc.

Leon Epstein has suggested that "a governing board of externally chosen non-academic citizens . . . represent[s] the public in university policy making." This arrangement provides a reasonable degree of accountability without being intrusive on the day-to-day operations of the university. Epstein argues persuasively that this arrangement "implies that [public] higher education is a distinctive state service requiring a distinctive political status. The board exercises authority in the name of the people of the state, but it is not directly responsive to the will of the people as are governors and legislators" (Epstein 68)

Perhaps, the most commonly held view is that responsible

outsiders represent a larger interest, that of the general public, in a public institution

or a specific constituency and supporting group in a private institution, or some combination of the two. They are the long-run caretakers, finally responsible for the fate of the enterprise, and, as a body, are commonly the legal owners or legally established managers. [It can be viewed as] as a form of dispersed public control, with specific publics, as narrow as a few families or as wide as the population of a state. . . . (Clarke, 117).

Among the questions examined in this paper will be how useful are governing boards ? How are governing boards selected ? How are governing boards composed ? What kinds of restrictions are placed on governing boards ? What are the legal bases under which these boards function ? How have these above questions been modified, if at all, by broad political social trends since the end of World War II ? The questions raised and the analysis provided in this paper are only tentative and subject to revision.

Background

William H. Cowley, well known university administrator and scholar of higher education, traced the idea of lay governing boards to municipal committees overseeing the University of Bologna in the fourteenth century. At a time when student guilds had effective control over the the university, "some of professors joined forces with the city government against the students, the common enemy of both. Following the neglected precedent of various cities during the Hellenistic and Roman eras, they got the town to appoint them public professors. As such they received salaries from the public purse [freeing them from financial dependence on the students]. This action led to the founding of lay boards of control to supervise their salary payments, and from this source American higher education eventually derived its system of external control" (Cowley & Williams, 1991:45).

Thus, Hastings Rashdall writes, "In the course of the fourteenth and fifteenth centuries a [lay] body . . . was established by the city government or prince in all Italian universities, and the real control of the university more and more passed to this body of external governors, which by the sixteenth or seventeenth century succeeded in destroying the student autonomy or reducing it to a shadow" (Rashdall, 1936, I).

The American system of university governance by external lay boards was directly established (in whole or part) with the creation of external, i.e. non-professorial, boards of control at all nine colleges of colonial New England, a form of academic governance with roots in fourteenth century Italy. "John Calvin adapted [this] plan to his purposes upon his founding of the Geneva Academy in 1559; and from there it spread through Calvinistic channels to the University of Leyden, to the four Scottish universities, to Puritan-initiated Trinity College, Dublin, and from these sources to America." (Cowley and Williams, 91). As publicly supported institutions of higher education began to appear in the United States during the following century, not surprisingly, these new institutions followed the existing basic external lay board pattern.

By the 1920's the U.S. Office of Education reported that all states had "vested general authority over the land grant colleges in the governing boards," and that these governing boards are "accountable to the State and its people" (Klein, 1930: 52).

The legal mandate enjoyed by governing boards is as broad as it is important. Arthur Klein tells us that:

Whether specifically stated or implied in the laws, the governing boards have jurisdiction over the administrative and business procedures; the election of a president, the employment and discharge of teachers, officers and employees; the prescribing of courses of instruction; the fixing of entrance requirements of students; the determining and conferring of appropriate degrees; and the making of rules for the conduct of the students.

(Klein, 1930: 52)

One of the most influential studies of modern American higher education has been Thorsten Veblen's *The Higher Learning in America* (1918). In it Veblen vigorously attacked the existing organizational and governing structure of American colleges and universities. "The typical modern university," he wrote, "is in a position, without loss or detriment, to dispense with the services of any board of trustees, regents, curators, or what not Indeed, . . . the boards are of no material use in any connection; their sole effectual function being to

interfere with the academic management in matters that are not of the nature of business, and that lies outside their competence and outside the range of their habitual interest." Not content with this criticism, Veblen went on to charge that "governing boards . . . are an aimless survival from the days of clerical rule, when they were presumably of some effect in enforcing conformity to orthodox opinions and observances among the academic staff" (Veblen, 1918: 65-66).

Veblen's view that governing boards were not only not useful, but pose a threat to academia has been a minority one throughout the years. Whatever the merits of Veblen's critique, it is not difficult to understand how the predominance of business on boards has occurred. In part it reflects the traditional high status of business in the United States, particularly for the purpose of exercising the trusteeship of educational, philanthropic, and similar institutions. In addition, it also partly reflects the availability of businessmen for unpaid, pro bono service.

A generation after Veblen's landmark study, the Ford Foundation for the Advancement of Education, in 1957, named Dr. Milton Eisenhower to chair its Committee on Government and Higher Education. The brother of President Dwight D. Eisenhower, Milton Eisenhower served as President of The Johns Hopkins University, and enjoyed a deserved reputation as an educational statesman of the first order.

Under Milton Eisenhower's leadership, the committee undertook a broad-based survey of some 344 state supported colleges and universities offering baccalaureate or advanced degrees. Although the committee's survey was not focused on the question of governing boards, its report noted that "occasionally it is asked whether a legislative committee or some other state agency could not take over the task of representing the public interest in the government of colleges and universities" The committee concluded, however, that governing boards were essential "to harmonize the freedom of higher education with the responsiveness to the public interest." Its report went on to suggest that:

The distinctive characteristic of the board . . . is that at its best it provides for continuous, experienced and perceptive scrutiny of higher education by members of the community who are brought within the university

family by their role as trustees. Regents are thus in a position to view the operations of institutions of higher education at close range and to pass judgment on educational policy with intimate awareness of the complexity of the issues involved. This is a vantage point no other state agency has, and it is a function no other state agency can perform.

(Moos & Rourke, 1959:310-312)

This position was reinforced by a 1973 Carnegie Commission report, *Governance of Higher Education*, which concluded that governing boards are "an essential institution in higher education" because "no other mechanism can provide governance so well, not the faculty, not the students, not the faculty and the students together" (Carnegie, 1973: 32).

It must, however, be pointed out that governing boards are not a panacea, and on occasion there are abuses of authority by individual trustees or, less often, governing boards themselves. Having recognized this, however, one observer concluded that "when the uses and abuses of trustees are weighed, I suspect that the trustee boards' overall record in recent years shows a positive contribution to the cause of higher education" (Heilbron, 1973: 225).

Legal Foundations

The Nature of Governing Boards

What to call governing boards has always presented a problem to American universities. The term trustee or regent are far and away the most common terms used, and for the purposes of this paper will be used interchangeably. Some have suggested that the term "trustee" is more appropriate for boards governing private institutions since, legally, they hold property "in trust." Using the same logic, the term "regent" is a more accurate name for those in the public sector since they are, clearly, acting or governing on behalf of the state.

How are board members selected? Sociologist George S. Counts, writing in 1926, identified thirteen different ways used to select board members at 43 state colleges and universities. The

most common method was appointment for a specified period by the state governor. Other methods involved the governor in a power-sharing appointment process (Counts, 1927:18-19).

Gubernatorial appointment is clearly a highly political act, and its impact is countered only partially, although sometimes significantly, by provisions for long tenure of board members. Many actors have a vested interest in the appointment process in addition to the governor. Perhaps nobody has a greater stake in new appointments than the state university president. Since the regents hire and fire the president, and more normally support or oppose his recommendations, he naturally wants a some influence in the selection process, but influencing the governor as he makes his choice is not always easy for him. Private university presidents, on the other hand, has more convenient access to the selectors of his trustees (almost always the current trustees or an alumni group). Assuming that the private university president has the confidence of his trustees, he should probably be able to wield considerable influence over their eventual choice(s).

For a state university president to have this kind of influence requires that he have unusual political advantages. The most desirable is undoubtedly personal rapport with the governor, but this is no guarantee of success.

In a handful of cases, governing boards are elected either by the general public, or by their state legislature. Edward Elliot, at the time President of Purdue University, favored appointment of trustees by the governor, without legislative ratification, on the grounds that this would result in "the highest possible concentration of responsibility, since the executive must bear full responsibility for his choices" (Elliot, 1935:49-50). Counts' overall findings, however, are generally an accurate portrayal of the broader situation among public institutions of higher education.

One point on which there is virtually unanimous agreement is that of adding active politicians, especially governors, on governing boards. Indeed, the Carnegie Commission on Higher Education (1971) vigorously opposes the inclusion of a governor (or other active politicians) on a university board of regents. This opposition probably reflects problems at the University of California by former Governor Ronald Reagan's very active participation as a regent. The general view is that a conflict of interest arises between their role as regents, representing the university's claim for funds, and their role as legislative or executive reviewers of budgetary requests from the university as from other state agencies.

The size of governing boards, however, is another matter. The size of boards have, in the past, ranged from as few as three at North Dakota Agricultural College (1927) to 102 at the University of North Carolina (1947). The most usual number of members in the several studies done between 1926 and the present is in the neighborhood of 9-18. Charles W. Eliot, Harvard's President for over 40 years, believed that:

The best number of members for a university's principal governing board is seven; because that number of men can sit around a small table, talk with each other informally with waste of words or any display or pretence, provide an adequate diversity of points of view and modes of dealing with a subject in hand, and yet be prompt and efficient in the dispatch of business. In a board of seven the different callings and professions can be sufficiently represented.

(Eliot, 1908:3)

Eliot's preference for small governing boards has been shared by most chief executive officers over the years. An experienced higher education administrator, and former trustee, Raymond Hughes (1951:9), concluded that:

It is the general opinion that a board of from seven to fifteen is preferable to one larger or smaller. If the board is too small it is difficult to maintain on it a sufficiently wide representation of the people, and there is danger of board members becoming too active in the detailed direction. On the other hand, as the board is increased above twelve or fifteen, it is hard to maintain its entire membership with persons of as high a type as desirable, and with larger numbers the sense of responsibility of individual members decreases.

(Hughes, 1951:9)

Finally, in July 1980, the Association of Governing Boards, recommended that at least nine members should comprise a governing board (Higher Education and National Affairs, 1980:4).

Profile Sketch of Appointees

Whether appointed, elected or chosen in some other way, probably most important aspects of membership on governing boards are the qualifications and competence of those selected for this important position. The traditional view espoused by former Harvard President Charles W. Eliot (see above), emphasizes "high type" individuals who are broadly representative of the community. In Eliot's day this effectively restricted board membership to older, affluent, white, male professionals -- the proverbial "pillars of the community" -- and no consideration was given to the young, women, minorities, non-professionals or the less affluent.

Indeed, in all the studies of the composition of governing boards which I have been able to locate, men have predominated far out of proportion to their percentage of the total population. Scott Nearing, for example found that, depending upon the size of their student enrollment, state colleges and universities had between 2 percent and 6.5 percent females serving on their governing boards (Nearing, 1917: 298). Almost a decade later, George Counts was able to identify only 7.6 percent of trustees as women (Counts, 1927: 41). The situation has not changed in any meaningful way until very recently. Indeed, in 1974 a California legislative study found that of governing board members at large public research universities, between 86-89 percent were males (and one might add overwhelmingly affluent white males).

The overwhelming evidence contained in the literature shows convincingly that governing boards are still overwhelmingly composed of white males. Depending upon the particular study or survey that is examined, anywhere from 85 percent to 98 percent of board members are white males.

Too often, another "qualification" for appointment was being politically active in the dominant political party, and therefore, deserving of appointment. Things have not changed significantly in this regard, and will be discussed below.

A few years ago, the Association of Governing Boards (AGB) survey concluded that political connections were still an important variable in the selection process: "More than two-thirds of the respondents believe that appointive authorities do not tend to place

the ablest persons on boards of of public institutions" (Scott & Kohn, 1981:18).

Shortly thereafter, the Association established a National Commission on College and University Trustee Selection. While recognizing the reality of politics in the process, the Association argued that appointment was a better method of appointment.

The appointment process provides an opportunity for more careful search for and screening of candidates than is possible under most electoral systems.

Appointment allows the public to hold the appointing authority accountable for the quality of trustees and boards.

Appointment, as opposed to election, reduces certain barriers to becoming a trustee such as the need to raise funds to conduct a political campaign Removal of these barriers, it is hoped, would increase the number of highly qualified people who could be persuaded to accept a trusteeship.

(Scott & Kohn,1981:19)

It also appears that the appointment process may be a more effective avenue for ensuring a greater diversity among trustees (women, minorities, etc.). As multicultural issues become further embedded in the political process, elected officials feel a greater need to broaden the nomination pool to enhance their own political futures. That may appear to be a cynical position, but the reality is that the United States is a functioning multicultural society struggling with a political reality that dictates an expansion of opportunity for all citizens in all walks of life.

On the other hand, it is certainly true that not only trustees, but also appointees to virtually every public position are too often "chosen because he or she had been a major contributor to the governor's campaign." Thus, the AGB Commission report recommended a non-partisan nominating process that would serve to assure a high degree of political independence:

A thorough search and screening process should be conducted prior to the selection of new trustees. In the public sector, the appointing authority, generally the governor, would select a committee of at least five people, . . . taking into account the diversity (age, race, geographic, location and so forth) of the region served by the institution It would be responsible for assessing board needs, locating potential trustees, reviewing candidate's qualifications by checking references, and holding interviews, and making recommendations. . . . In the public sector, a list of three nominees for each vacancy would be presented to the appointing authority who would make the appointment within thirty days.

(Scott & Kohn, 9181: 18-19)

Although the proposed procedure is far from perfect, it would serve to insulate the appointing authority from some of the pressures of making purely political appointments, and serve to ensure that all short-listed candidates would be at least minimally qualified for the position.

This procedure would not guarantee women and minorities greater access to the short-list, but if the nominee selection panel is truly representative of its region, that would be a more likely result.

Restrictions on Board Membership

Over the years, a number of restrictions (not all embedded in statutes) have grown up with the expansion of governing boards. The practice of having ex officio members on governing boards is apparently not uncommon, but there exists a broad consensus against this practice. This position is best summed up by Charles W. Eliot's view that they were "ordinarily undesirable" because they were chosen for reasons other than "their fitness to govern a university" (Eliot, 1908:4). Henry Suzzalo, as President of the University of Washington, agreed with Eliot's view, but thought that the university president "should be the equivalent of a regent with a seat and a voice, but without a vote" (Suzzalo, 1924: 89).

The question of having elected public officials on a board is almost universally opposed and, one student of the governance process, suggests that "On balance, it seems preferable to exclude them" (Heilbron, 1973: 23). The influential Carnegie Commission on Higher Education also is on record as opposing "politically elected officials serving ex officio on boards of public institutions" (Carnegie, 1973: 33).

Faculty membership on their institution's governing board has an historical precedent in the United States, but is generally uncommon today. Harvard College's first charter made provision for faculty participation in the governance process through membership in the Harvard Corporation, but that gradually diminished and, after 1806, no faculty were appointed to the Corporation.

The first institution to address the issue of faculty participation on governing boards in this century was Cornell University in 1912. In that year President Jacob Schurman recommended that Cornell's faculty should have "a larger measure of participation in its government," and in 1916 the faculty was allowed to elect three non-voting members to Cornell's board of trustees. (Duggan, 1916: 231). Faculty participation on governing boards since this time been a common phenomenon. Indeed, a 1977 study, indicated that of a total of 632 boards, not a single one had a provision requiring faculty representation (Gomberg & Atelsek, 1977: 16).

Another issue which re-emerged from the student protests of the 1960's is the question of students serving on their institution's governing boards. Majority opinion has opposed student representation on governing boards, although there has been some significant sentiment favoring some sort of an arrangement in which student views can be transmitted to governing boards.

In 1973 a Carnegie Commission report opposed both "faculty members and students. . . serving on the board of the same institution because of potential conflicts of interest" (Carnegie, 1977: 33-34). Shortly thereafter, the National Commission on College and University Trustee Selection concluded that "students and faculty not be permitted to be voting members of institutions in which they are enrolled or employed" (Higher Education and National Affairs, 1980: 4).

Others, however, while opposing specific student representation on governing boards, are in favor of qualified young people serving as full, voting members. The major difference with this approach is that they not specifically serve a student constituency, but broader community interests.

As early as 1927, some 27 states had statutory requirements relating to membership on college and university governing boards. Thirty years later, another study of 519 public boards of trustees found that more than 21 percent (111 boards) of them had some residence requirements, often a minimum period of citizenship in the state, and a further 8.5 percent (44 boards) required their boards to reflect a bi-partisan political character (Martorana, 1963: 37).

At about the same time, the Fund for the Advancement of Education suggested that the governing boards' purpose was "to provide a governing board drawn from major interest groups within the community" (Moos & Rourke, 1959: 305).

Concluding Comments

The system of external lay board governance is a typical American arrangement. It attempts to balance the need for efficiency and the specialized knowledge necessary for the operation of a modern university, with the political realities of the society in which the institution is embedded. Perhaps its role is best summed up in the words of former Yale President Kingman Brewster who defined the role of trustees as being "concerned only that the original understanding which chartered the institution shall be faithfully adhered to, as free as possible from the temptation to conform to the dictates of political or other passing pressures" (Brewster, 22). The system of trustees or regents has served American higher education well over the past two hundred years.

Honolulu, Hawaii 96825
May 17, 1992