

BOARD TENSIONS AND ACTIVIST TRUSTEES: CURRENT DOMESTIC CASES AND IMPLICATIONS FOR THE ENROLLMENT MANAGER

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Utilizing five recent highly-visible case studies of campus tensions between boards of trustees and trustee activism, the researcher examined each case, the history of trustees, the shift in trustee activism, what happened and what can be learned from each case, institutional context, the role of the trustee, and several responses. The researcher concludes by providing specific recommendations to effectively minimize trustee activism and tensions in the future and describes how these tensions specifically affect the university enrollment manager.

Problem and Assessment of the Current Status of Problem

The *Chronicle of Higher Education*, in its 2015 *Trends Report*, identified one of the 10 “key shifts” facing American higher education as growing governing board tensions. The executive summary lists key themes in order to recap recent higher education domestic tensions. Among the trends are for boards to be critical of presidents and institutional finances: “Economic pressures, polarized politics, and increasing public skepticism about the value of a degree have led to a troubling trend, especially at public institutions: the rise of the activist trustee” (“The Trends Report,” 2015, para. 10).

In the past few years, several visible examples of these themes have appeared in both *Inside Higher Ed* and the *Chronicle of Higher Education*. Governing board tensions can specifically be seen in domestic cases, including five at (a) Penn State University during the Sandusky scandal; (b) the University of Virginia, with the board ousting and later rehiring President Sullivan; (c) University of Texas between Regent Wallace Hall, President Powers, the transparency of the admissions process, and abuse of public power; (d) Sweet Briar College, as the board voted to close the college for financial reasons without faculty input; and (e) University of Mississippi, as the board is ousting

the chancellor over differences in management philosophy. Each case is different, illustrates this shift, and has unique implications for campus enrollment managers (see Table 1).

CASE 1: PENN STATE UNIVERSITY

The Penn State board, as a result of the Sandusky sexual abuse scandal, had to react to failed university leadership, get rid of leadership overall and in athletics, and deal with the challenges of unprecedented NCAA sanctions. These conflicts were in the legal and economic realm, as the football program generates tremendous revenues. Bass and Newman (2013) provided an overview of the situation:

... Jerry Sandusky was convicted of 45 counts related to sexual abuse in June of 2012. The abuse stemmed back as far as 1998 when a concerned mother contacted university police when her 11-year-old son told her he took a shower with Sandusky and hugged him several times. No criminal charges were filed and Sandusky retired the next year. In 2000 and 2002, members of the University staff (a janitor and graduate assistant coach, respectively) witnessed Sandusky sexually assaulting young boys in the football facility showers. Head football coach, Joe Paterno, the Athletic Director, and University President were

told of the 2002 allegations but police were never contacted. (p. 23)

Penn State appointed new leadership, has new trustees, and is actively working to aid campus security so events like those that took place never happen again. For the enrollment manager, Athletics created a challenging environment to recruit students overall to the university.

CASE 2: UNIVERSITY OF VIRGINIA

At the University of Virginia, President Sullivan was ousted by the head of the board with little or no input from other stakeholders. After two weeks, the board reinstated her as president and she currently serves in this capacity. Discussing the case, University of Virginia faculty senate chairman George Cohen remarked:

We believe that the forced resignation of President Sullivan was an error in judgment by the board. We believe that the process leading up to and resulting in the forced resignation was flawed and, most important, inconsistent with the principles for which President Sullivan—and the university—stand. It was done in secret. It was done without full and open discussion within the board. It was done without consulting constituents inside and outside the university. (Kiley, 2012, para. 12)

Table 1. A View of Five Recent Cases of Board Tension and/or Trustee Activism

Case	Institutional Context, Organizational Structure	Examples of Tensions Between What Parties	Some Major Internal and External Factors	Outcome
1. Penn State University	Public	Board, administration, law, Athletics, NCAA	Athletics revenue, lack of institutional control, victims	New leadership, fines paid, compliance issues addressed; recovery ongoing
2. University of Virginia	Public	Board, president	Political, online education	President still in office
3. University of Texas	Public	Board, president, activist trustee, admissions	Political, trustee oversight prevents daily operations	President still in retired on own terms, provost named successor, trustee censured, admissions leadership left
4. Sweet Briar College	Private	Board, faculty, alumni, current students	Finances	Tensions still prevail; college remains open with help of state attorney general unrestricting funds
5. University of Mississippi	Public	Board, chancellor	Medical facility	Chancellor will step down and turned down short contract extension; at least \$20 million in donations lost, provost of University of Kansas named new chancellor

Upon her return, Sullivan called for increased communication between the board across the university. These conflicts were in the political realm and about the quality of the UVA degree and the progress of online education. For the enrollment manager, their ability to communicate these happenings to prospective students and families becomes challenging.

CASE 3: UNIVERSITY OF TEXAS

University of Texas Regent Wallace Hall, a political appointee of Texas Governor Rick Perry, was on a quest to oust President Bill Powers and ordered numerous documents under open records requests, held the admissions office to an increased level of scrutiny, and disrupted the daily operations of the university to serve his political personal gain. Ultimately, out of an annual incoming freshman class of 7,000, about 70 students were found to have gained admission to the university, per year, due to presidential influence. Powers, who publicly completed the “Campaign for Texas” \$3 billion capital campaign in 2014, helped create the Dell Medical School on campus and retired on his own terms, and the provost, an engineer, has been named his successor. The director of admissions, Dr. Ishop, has relocated to the University of Michigan, and Regent Hall was censured for his actions by the Texas House of Representatives. Jaschik (2014) explained:

The Texas House Transparency Committee voted Monday to censure Wallace Hall, a member of the University of Texas System Board of Regents. ... Hall has engaged in lengthy investigations, complete with mammoth document requests of the University of Texas at Austin, and many have accused him of a witch hunt to try to force the ouster of President Bill Powers. (para. 1)

These conflicts are political and economic, as some students may have been admitted to the university who were aligned with presidential political favors. This environment is challenging for the enrollment manager because the role on campus changes from being strategic to reactive to the member’s wishes.

CASE 4: SWEET BRIAR COLLEGE

Earlier in 2015, the board of Sweet Briar College, a women’s college in Virginia with a large endowment,

voted to close its doors due to financial pressures. There were political and economic implications and questions regarding escalating debt. The board and president did not communicate with the faculty and alumni until after the decision was made and are actively seeking other institutions for their current students to transfer to this spring semester. Jaschik (2015) describes:

Sweet Briar students and alumnae took to social media as word spread on Tuesday to mourn an institution they loved. As they did so, many experts on higher education started to consider the board’s actions. Several told *Inside Higher Ed* they thought the board had made a courageous, difficult decision. Some didn’t want to be quoted by name as they didn’t want to appear to be suggesting that other colleges should make the same decision. But they suggested that they believe some boards may be fooling themselves into thinking they have sound strategies—and that delaying the inevitable would only hurt students, faculty members and other employees. (para. 23)

Sweet Briar alumni are raising funds to prevent this from happening, and they are working with the state attorney general to explore all possibilities. In challenging times, the board made a tough decision that is not popular with stakeholders. Other colleges facing similar financial woes across the country may have to follow this board’s lead. The fact that the enrollment manager may or may not be employed at the college in the near future makes it difficult to lead a team to actively recruit new future students.

CASE 5: UNIVERSITY OF MISSISSIPPI

Recently, the chancellor and board had differences in opinion surrounding the University of Mississippi Medical Center. Initially, Chancellor Jones’s contract was not renewed. Then, he was offered less than a two-year extension and turned it down because he will not be able to fundraise, build consensus, and attract quality leadership. In this case,

Trustees voted March 20 to let Mr. Jones go after his contract expires in September, with board members later citing concerns over financial and contracting procedures at the University of Mississippi Medical Center. After the decision set off campus protests, the

board renewed contract talks, but the chancellor ultimately rejected an offer that provided for a 21-month extension, to be followed by his retirement. Mr. Jones said such “lame duck” status would make it hard for him to hire top administrators and woo donors. (“Chancellor Rejects Ole Miss Offer,” 2015, para. 1)

The chancellor left, and a new chancellor was recently named. The conflicts are political and economic and resulted in funding being pulled from donors. Enrollment managers need to train admissions counselors in the field how to navigate the change in leadership and how to interact with upset Ole Miss alumni.

Historical Perspective

What is the current role of the board, and how did these tensions develop? Bastedo (2009) traced the development of the governing board from its roots prior to the colonies in the United States:

In England, universities were charitable corporations chartered by the state to serve the public interest; on the continent, universities were civil corporations with joint oversight by secular and religious authorities. Early leaders in the colonial colleges largely drew upon their personal educational experiences in Reformation-era Scottish, English, and Dutch universities as well as their participation in a wide variety of voluntary associations, many of which had some form of external governing board composed of prominent local citizens. (p. 356)

In the United States, struggles between public and private and between state and institution, differing from its European roots, appear in the landmark *Dartmouth* case:

In *Dartmouth College v. Woodward* (1819), the U.S. Supreme Court, under Chief Justice John Marshall, rules the original charter was a contract between the state and the college, protected by the commerce clause of the U.S. constitution, and therefore could not be altered or invalidated without the agreement of both parties. (Bastedo, 2009, p. 357)

This allowed for trustees to exercise their own opinion that may or may not be aligned politically or otherwise and created a stable environment. Bastedo (2009) continues:

Thus the expectations for trustee autonomy declared in *Dartmouth* established the norm for the vast numbers of public and private universities ... institutional structures took root that sought to balance the autonomy of governing boards with legitimate state interests. ... As a result, trustee independence in the 20th century was far stronger than it had ever been. (p. 357)

Over the past four decades, institutions and boards worked to implement mission differentiation to continue to modernize distinct pathways for increased student access (Bastedo & Gumport, 2003, p. 342). For the enrollment manager, in addition to a strong focus on recruitment, retention, and making data-informed decisions, this can be seen through differences in organizational structure and mission in order to create, implement, and assess unique strategic enrollment plans linked to institutional strategic plans by institution type.

THE ROLE OF MODERN-DAY BOARDS AND TRUSTEES

Turning from the historical roots of trustee independence to new tensions in the early 21st century, Trower (2015) discussed boards’ roles and what the best boards do: “The best boards not only reflect the values of the institution they serve, but they also are the physical manifestation—the epitome—of its most deeply held core values” (p. 1). In changing political and economic climates, it is hard for trustees to hold the same university core values as a collective body in contrast to personal politically charged values unless they are actively engaged in the overall strategic planning process of the institution.

IDENTIFYING THE SHIFT IN BOARD TENSIONS AND TRUSTEE ACTIVISM

Higher education identifies a shift in the role of the trustee and growing governing board tensions. Bastedo (2009) discussed trustee political and financial conflicts as major themes that can arise, addressing these tensions:

Inappropriate external influences on a governing board have great potential to skew an institution’s priorities and compromise its capacity to serve the

public interest. They also may weaken a board's governing integrity by creating imbalance that favor certain interests over others. ... The intuition is made vulnerable to control by single interests—economic, political ideological, or professional. (p. 355)

He also frames research on the activist trustee: "Activist trustees have reconceptualized their role as trustees to prioritize their interpretation of the public interest ahead of traditional conceptions of governing in the institutional interest" (Bastedo, 2009, p. 359).

After reviewing what boards should do and shifts toward battles and trustee activism, Leslie and MacTaggart (2008) identified the trustee's role: "Trustees should take purposeful action to ensure that, collectively and individually, they perform their full fiduciary responsibilities. Failure here could jeopardize the good name of the board and the institution, invite further government intervention, and erode public confidence in higher education" (p. 10). The role of the trustee, and tensions among boards, have been documented, and the identified shift can be explained by factors contributing to conflict and disagreement in the higher educational environment. These include decreased state funding and the rise of tuition and fees, increased oversight of fiscal matters, elected or appointed trustee politics, different views of corporate versus higher education governance, and the power struggle among leadership—including system coordinating boards, institutional boards, presidents, the governor, and state legislatures.

Organizational Perspective

Due to differences across individual colleges and universities, it is imperative when looking at each institution to investigate (a) institutional context, (b) organization and governance structure, and (c) internal and external constituencies with aggregate and specific interests. It is important to note since 1985, at least 22 states have centralized higher education governance in a statewide coordinating board (Knott & Payne, 2004). As a result of coordinating board creation, increased political tensions exist that were not present over the preceding three decades.

INSTITUTIONAL CONTEXT: DECREASED STATE FUNDING FOR HIGHER EDUCATION

As states have continued to cut higher education budgets, colleges and universities have shifted to increase net-tuition revenue models and grow auxiliary enterprise income. According to the most recent State Higher Education Executive Officers (SHEEO) report for the 2014 fiscal year, "Per-FTE constant dollar educational appropriations increased in only three states between 2009 and 2014. Nationally, educational appropriations per student were down 13.3 percent, during that period" (p. 11). These actions have sought to shore up budgets and have largely been passed on to the student. A clear source of tension exists between university leadership who sees need for state funding and board members appointed by a governor who did not provide the funding.

INCREASED FINANCIAL OVERSIGHT AFTER EXTERNAL CORPORATE BLUNDERS

In addition, federal legislation after the failure of Enron have led to significantly increased oversight of financial reporting standards in both higher education and corporate worlds. Leslie and MacTaggart (2008) assessed the changes due to high-profile corporate failure and increased federal government regulation: "Expectations of trustees have undergone a dramatic change in the wake of the Enron debacle, the new structures of the Sarbanes-Oxley Act, and several new state policies, laws, and executive actions" (p. 1). Trustees, collectively, have to make tough choices based on financial data, as in the Sweet Briar case, to ensure institutional stability and healthy financial oversight.

INSTITUTIONAL CONTEXT: ELECTED OR APPOINTED TRUSTEE POLITICS

Tensions can arise when politics place trustees on boards. Are they carrying out the agenda of the governor, political party or working to independently or collectively aid the institutions they serve? Stripling (2015) defined this political tension, "Activist trustees, particularly those who are politically appointed at public colleges, are often accused of carrying out the agendas of lawmakers or governors" (para. 11).

In addition, trustee placement in office is important. Lowry (2001) focused on differences between trustees selected by external versus internal politics. He shared, “Trustees selected by elected officials or through popular election are likely to place greater weight on low prices relative to large budgets than are trustees selected by internal, ‘academic’ stakeholders” (p. 849). This is important because trustees may not have a background in managing higher education institutions and an intricate understanding of institutional mission.

INTERNAL AND EXTERNAL CONSTITUENCIES: POWER STRUGGLES

In addition to economics and political politics, tensions because of leadership agendas do arise. Board members want their way. Alumni board members want their way. Board members may want what governors or state legislatures want independently of presidents, administration, faculty, coordinating boards, other alumni or students want on particular issues. Several competing interests meet a crossroads between constituencies used to accomplishing significant goals. In addition to the historical perspective, organizational perspectives contribute to board tensions and the activist trustee.

ORGANIZATION AND GOVERNANCE STRUCTURE: A VIEW OF DIFFERENT MODELS

Gayle, Tewarie, and White (2003) described different ways universities are organized and governed by presenting different models of organizational structure types including bureaucratic, bureaucratic-academic, academic-bureaucratic, and academic universities:

In *bureaucratic* institutions, administrators predominate, faculty and departmental autonomy is minimal, and labor relations are adversarial. In *bureaucratic-academic* colleges, however, a faculty senate and college-wide committees make decisions within narrowly defined areas. In turn, in the *academic-bureaucratic* university, an extensive set of academic policies and procedures are in place, monitored by curriculum committees. Finally, in *academic* institutions, curricular decisions, as well as promotion and tenure, are firmly vested with faculty in departments or colleges. (p. 30)

In addition to structures of the university, tools exist leaders can successfully use in different institution types to effectively govern and cater to different institutional cultures:

For instance, in *collegial* systems, it is essential for senior administrators to avoid giving orders that will not be obeyed. In *political* systems, in turn, leaders are encouraged to help clarify group values and to reduce participation costs in the interests of inclusiveness. By contrast, in *bureaucratic* systems, decision making is compartmentalized and highly structured, while in *anarchical* organizations, goals are vague and decision-making processes obscure. Finally, in *cybernetic* systems, leaders must balance persistence and flexibility while learning what to remember and what to forget. (Gayle et al., 2003, p. 31)

Board members, faculty, and professional staff need to effectively understand their unique institutional context in order to increase cross-departmental collaboration across their university.

How Socioeconomic Context Has Shaped the Issue

Along with historical and organizational perspectives, socioeconomic context has shaped board tensions in the United States because trustees and stakeholders have not previously encountered challenges they are currently facing with who is attending higher education (see increasing amounts of diverse high school graduates by race/ethnicity in Table 2 that have created varieties of campus challenges including aiding first generation college students and developmental education needs arising from the K–12 pipeline). Also,

Table 2. Increasing Amount and Diversity of HS Graduates by Race/Ethnicity

Actual U.S. High School Graduates by Race	1996–1997	2008–2009
American Indian/Alaska Native	22,132	32,428
Asian/Pacific Islander	105,077	165,297
Black non-Hispanic	309,580	452,313
Hispanic	234,075	481,698
White non-Hispanic	1,690,806	1,888,922

Source: Prescott & Bransberger (2012, p. 71)

increased cost of tuition and the burden it plays on students and competition for students between institutions in the external marketplace, how colleges budget with decreased state funding (e.g., currently taking place at Louisiana State University), and with the proliferation of new higher education systems (e.g., Southern New Hampshire University, Arizona State University, and through massive open online courses [MOOCs], among others).

RISE OF ASSESSMENT AND ACCOUNTABILITY

There are new challenges with the rising assessment and accountability culture in higher education. Gayle et al. (2003) described the changing landscape:

Accountability denotes a process of providing broad quantitative information to oversight bodies, usually including state legislatures, on measures such as net expenditure per full-time enrolled student, the number of lower-division classes taught by adjunct professors, or student retention and graduation rates. (p. 38)

Significantly terrible atrocities occurred at Penn State. With the rise of assessment and accountability across the nation in accreditation standards, financial aid regulation, and financial management in higher education, Penn State Trustee Anthony Lubrano discussed the role of the individual trustee within in a large board to make sure the information they are provided is correct by conducting due diligence and interacting with others inclusive of faculty and staff. He emphasized:

Serving as a university trustee requires commitment, engagement and time. It also requires a willingness to challenge the status quo. A trustee must be unafraid to question information he or she receives, and has a responsibility to verify it. Trustees need to engage with their board colleagues as well as with faculty and staff members. By doing so, a trustee minimizes the risk that he or she is uninformed. (Lubrano, 2015, para. 7)

Due diligence does not need to be taking up university time and resources but can provide adequate data-driven decisions, as in the case of accreditation standards for continuous improvement.

Responses by Institutions, States, and the Federal Government

INDIVIDUAL INSTITUTIONAL RESPONSES

In the case of Penn State, the university reorganized and hired new leadership, while complying with federal, state, and NCAA regulations. In the case of the University of Virginia, Sullivan was placed back into office two weeks later. In the case of the University of Texas, President Powers was allowed to retire on his own timeline. Sweet Briar College remains open. The University of Mississippi's chancellor was offered a 21-month contract extension and turned it down. Last week, the University of Mississippi named the University of Kansas provost its new chancellor.

STATES RESPOND

In the Penn State case, the state aided the investigation, and the governor was highly visible when communicating to the external community. In the University of Texas case, the regent was publicly censured. At the University of Mississippi, a search for a new chancellor just concluded. The attorney general of the State of Virginia ended restrictions on a portion of the restricted endowment, so Sweet Briar remains open and Sullivan continues to lead UVA.

FEDERAL RESPONSE

President Obama has responded with a ratings system and proposals for free community college that will have both positive and negative impacts for tensions among boards and for activist trustees. The Department of Education continues to ensure Clery Act compliance and institutional financial aid composite scores ratios to assess compliance for colleges and universities in the Direct Loan program. As the value of the degree is under increased scrutiny with measuring graduates' gainful employment, additional metrics and assessment as a result of tensions will continue to escalate. Enrollment managers will have to continue to use strategies to address student debt, comply with gainful employment regulations, increase graduation rates, and effectively communicate these initiatives to the federal government and higher education institution presidents and boards.

Strategies and Innovative Responses Recommended for Solutions to Board Tensions and Activist Trustees

RECOMMENDATION 1: STRONG ORIENTATIONS FOR NEW TRUSTEES AND CLEAR EXPECTATIONS

As an initial recommendation to a college or university confronted with board tensions and trustee activism, the literature suggests that orientation programs for each trustee must clearly define his or her role and expectations while he or she is in office. MacTaggart (2015) offered advice on what boards can do to keep activist trustees in line. He shared:

The best antidote to such a toxic trustee is prevention. Before their selection (or appointment, in the case of public boards), potential trustees should sign off on a crisp list of their responsibilities. They must learn the fundamental rule that individuals hold no authority independent of the whole board. A strong orientation program emphasizing the fiduciary role of the board can help curb deviant behavior. (para. 5)

RECOMMENDATION 2: STUDENT LEADERSHIP ON THE BOARD

In order to make sure there are constituencies represented that align and represent the interests of the students they educate and develop, universities should make sure they include multiple student leadership on governing boards. This could be the student body president, a graduate student or even a student that has made significant advances in scholarly research. Schmidt (2015) shared data on effective students who serve as public trustees that had a sample of 30 present or past student trustees across 21 states. Schmidt (2015) explained, “Primarily, students said that they were well received, so they were able to reach out to the other board members. They had a good relationship with the campus president or system president” (para. 5). Recommendations included having multiple students on the board: “Think about potentially two members or even three members on the board, so there is also that sense of collegiality, not just with the larger group but among those student trustees who know what it is to be a student” (Schmidt, 2015, para. 9).

RECOMMENDATION 3: INCREASED INTERNAL AND EXTERNAL COMMUNICATION

When assessing challenges to institutional context, organization and governance structure and working with multiple internal and external constituencies, there is a strong need for increased internal and external communication. Stripling (2015) discussed communication as a problem with the University of Virginia case. He described:

At the University of Virginia, in 2012, the board leaders grew so frustrated with Teresa A. Sullivan’s performance as president that they forced her out without so much as a meeting of the full governing body. They provided little public explanation for their action but privately expressed misgivings about pace at which the university was exploring online education. (Stripling, 2015, para. 3)

RECOMMENDATION 4: INCLUSIVE STRATEGIC PLANNING

Add an inclusive strategic planning process, inclusive of all stakeholders used to communicate the vision of the university and align planning, expectations, implementation, and assessment to continuously improve. This is especially important because of the historical institutional context of the institution, and because of the multiple important internal and external parties. According to Gayle et al. (2003):

A clearly defined vision of the desired end result helps identify the critical path to get there. Sometimes the path actually taken may be the most efficient; other times it may simply be the path of least resistance. ... Building trust within the institution is critical to overall success. This trust can be earned only by a clear vision that is shared by the community, meaningful values that are plainly articulated and that authentically represent the community, and a credible link between words and actions on the part of academic leaders. (p. 64)

Board members are often heads of companies, and sometimes their agendas reflect presentations of what is happening at the university rather than actively engaging capable trustees in a decision-making processes. Make sure boards are not just receiving reports but are

consulted for advice, expertise, and a fresh perspective, and have opportunities to align their goals with fellow stakeholders in the process (Trower, 2015).

Implications for the Enrollment Manager

In addition to relying on data to aid the strategic enrollment planning process and the work of admissions counseling staff providing on-campus information sessions, campus tours, outreach visits to high school and community colleges, the forward thinking professional will now have to become more aware of escalating board tensions that may lead to big changes throughout the university community. Understanding that recent developments at both public and private domestic institutions can aid enrollment managers in understanding different types of conflict that could arise from boards on their campus is key to proactive planning—for both internal messaging in admissions offices to team members and external messaging when engaging prospective students, parents, high school counselors, alumni, and community leaders.

Over the next few years, these types of tensions may also lead to the migrant enrollment manager in search for the ever-evasive board tension-free latest campus leadership opportunity.

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