

Louisville, Slugged

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In the future, everyone will be the University of Louisville president for fifteen minutes.

Within the last twelve months, the university has had three different presidents. It has also had four boards of trustees, two provosts, three directors of its endowment foundation, and six unconfirmed deans. The events that have unfolded at Louisville since last spring are not easily summarized, but these numbers provide a snapshot of the turmoil that has ensued since Kentucky governor Matt Bevin first paralyzed the university's board of trustees when he failed to appoint required members and then, three months later, unilaterally dismissed the board and created a new one.

All three branches of state government have been involved: the governor with his executive orders and backroom deals, the legislature with two new laws touching not only Louisville but every public college and university in the state, and now the state supreme court with the attorney general's court challenge. The events also have involved the university's accrediting body, the Southern Association of Colleges and Schools (SACS), which placed the institution on probation in December because of Governor Bevin's actions. SACS cited violations of both core and comprehensive standards, including those relating to external influence, board dismissal, and evaluation and selection of a president.

How did it come to this?

University in Crisis

By the time former president James Ramsey was photographed dressed up in stereotypical "mariachi" garb for an office Halloween party in 2015, many on campus had already had enough of him. Only two years after he presided over an amazing run of academic and athletic successes that led Louisville to dub 2013 "the year of the Cardinal," Ramsey was widely regarded as financially shady and autocratic. The university's endowment had cratered in the wake of high-risk investments and apparent self-dealing. The university hospital's merger with a Catholic health-care agency worsened patient care and working conditions while imperiling women's health care. The men's basketball team was under investigation for recruiting violations involving strippers and prostitution. To some, Ramsey's conduct had begun to seem arrogant, defensive, and unprofessional. By early 2016 the faculty senate was conducting a vote of no confidence.

It was at this point that the board became the principal locus of struggle—precisely and paradoxically because it was unable to act at all. The original board deadlocked on Ramsey's budget proposal and, in a rare breakdown of decorum, engaged in public infighting between Ramsey's supporters and detractors. It scheduled its own no-confidence vote, but before it could

act, it was hamstrung by a lawsuit settlement. The previous governor, Democrat Steve Beshear, had ignored statutory requirements for the board's racial diversity. As a result, the Justice Resource Center—a local African American organization that has tilted conservative in recent years—sued on racial representation grounds in summer 2015. Rather than rectify the situation, Beshear fought the suit, leaving it unresolved by the time he left office. Then, in March 2016, the newly elected Republican governor, Matt Bevin, jumped in and settled the suit. The settlement specifically enjoined the board from acting until Bevin appointed two racial minority trustees.

Bevin never did get around to appointing those trustees. Instead, he circumvented the board by directly negotiating Ramsey's departure and, in June, issued executive orders dismissing the board for supposed "dysfunction" and replacing it with a new, smaller board of his own choosing. These actions not only amounted to a coup against the board; they also bypassed the only role that campus constituencies have in institutional governance. Faculty, staff, and student representatives remained on the replacement board, but Bevin took the decisive actions without having sought their input.

Faculty, staff, and students rose up against the governor's executive orders, and the attorney general, Andy Beshear—son of the former governor—sued. Beshear won, Bevin lost, and the original board was reinstated. It was, however, still unable to act because of Bevin's failure to appoint racial minority trustees.

Rather than meet his obligation under the legal settlement with the Justice Resource Center, Bevin waited for the election, which turned out to be Christmas in November as far as he was concerned. Kentucky voters put the legislature fully into Republican hands for the first time in nearly a century, and that one-party rule enabled Bevin to seek a legislative fix. In a shock-and-awe first week in office that also brought "right-to-work" legislation, ended prevailing wage rules, and restricted abortion in two different ways, the legislature passed S.B. 12, which in effect merely legalized Bevin's executive orders. (Bevin quickly reappointed virtually the same board he had previously appointed, and it is now seated.) Yet it was clear that S.B. 12 did nothing to address the accreditation concerns and, in fact, clearly exacerbated them by laying bare just how much political meddling was intended. To make matters worse, both houses then passed another piece of legislation—S.B. 107—that gives the governor broad unilateral powers to abolish the governing board of any public university or college in the state. This effort imperils the accreditation not only of the University of Louisville but also that of the state's other large research university, the University of Kentucky; the five regional comprehensive universities; and the institutions in the state community and technical college system.

S.B. 107 brings into view Bevin's endgame, which AAUP members at Louisville have perceived all too clearly since the beginning. In abolishing the board of trustees and placing a sword of Damocles over all governing boards, Bevin established a significant foothold in the conservative, corporate takeover of higher education. He has empowered the governor not only to determine the level of state appropriations for higher education and to cap tuition increases but also to control the overall budget, administrative hiring, and fundamental orientation of all colleges and universities. Inasmuch as governing boards set personnel policy, the executive office gets access to tenure and promotion criteria, or indeed a mechanism through which to abolish tenure altogether. And the attorney general has even raised the worry that the governor's assertion of

“absolute authority” could, if left unchecked, extend to the governance of academic departments. It is this question that is pending before the Kentucky Supreme Court.

From the perspective of academic freedom, tenure, and governance, the indicators are ominous. By circumventing the board, Bevin silenced the voice of students, staff, and faculty in university governance. And although the powers he is trying to seize would not allow him to remove the three campus-constituency representatives from the board, the appointed members can easily swamp constituency votes in all contested matters. The trustees have retained power over personnel policy, and while tenured faculty may be dismissed only for cause, there is some vagueness in what counts as “cause.” Changes to tenure itself may well be in the offing, either through legislation or by board action.

National Ramifications

The Louisville case has serious implications beyond Kentucky. Those implications begin with the otherwise odd fact that the board of trustees is at the center of this drama. To some degree that fact may be adventitious: the board happened to be the pressure point that Bevin could most easily manipulate. But more broadly, the board is both a symbolic and an ideological site for conservative control to be asserted.

When Joe Lieberman and Lynne Cheney wanted to push a conservative vision of higher education and its place in society, they did not, of course, simply submit their proposals to the marketplace of ideas. Instead, they founded the American Council of Trustees and Alumni (ACTA), a group dedicated to exposing a supposed tyranny of liberal professors over the modern American university. In the name of students, they demanded that colleges require courses in subjects like US history, which have in many places been folded into broader general education curricula. Claiming to be defending students and democracy, ACTA attacks faculty, administrations, and the accreditation agencies that, it says, are too lenient in their approach to institutions that supposedly push a liberal ideology.

It may be puzzling why ACTA thought *trustees* were problematically disempowered by the supposed leftward tilt and declining standards of the American university. After all, trustees govern the institution.

There’s the rub. Largely composed of political appointees, the board of a public college or university is supposed to represent the broader interests of the community. Yet precisely because their appointments are typically the result of political rather than academic considerations, trustees may be tempted to impose a particular political vision on higher education. They may be selected to do the bidding of an ascendant political party or faction. Because higher education serves the public good, and because academic freedom is the guarantor of that good, colleges and universities must be independent of this political influence. Accreditation agencies, faculty governance bodies, and to some extent administrations serve as bulwarks against the imposition of narrow political agendas on institutions of higher education.

It is this structural and habitual defense of academic freedom that seems to stick in the craw of conservative activists. Consequently, at public universities in Iowa and Wisconsin, conservative

politicians have sought to impose their will on higher education through the actions of overweening boards of trustees and legislative committees, which sweep aside widespread, vocal opposition from campus constituencies in order to pursue a neoliberal vision of higher education. And to be fair, if we imagine universities as corporations—which in certain respects they are—it may be hard to see why the employees ought to be so independent of the corporate board. This is not how corporations tend to work.

Even if corporate-model trustees succeed in imposing their will on faculty and students, however, there is another stumbling block: accreditation. Inasmuch as accreditors have rules against political meddling, they also constrain corporate-style governing boards. Thus the corporate model of higher education is (or should be) hemmed in from two sides: from accreditors and from principles of academic governance.

This structural position of trustees—constrained from within by a semiautonomous institution dedicated to the broad liberal arts and academic freedom and from without by accreditation agencies—slows down and limits the corporate takeover of higher education. It is this dual limitation on the power of trustees that frustrates conservative groups like ACTA. But this limitation is in part cultural and norm-driven rather than strictly rule-driven. The old culture of mutual benign neglect lulled faculty and accreditors into assuming that trustees would not seek to seize control of decisions that ought to remain with the faculty. Yet as we are discovering at all levels of government these days, previously accepted norms of behavior are no longer seeming quite so regulative. For the University of Louisville, the question is whether SACS will, and whether faculty can, respond to the new aggressiveness coming from the governor, and perhaps a corporate-model board, with effective actions to maintain norms of academic governance and academic freedom. Ironically, then, by making a public spectacle of supposed “dysfunction” on the board of trustees, Governor Bevin has made the board *more* rather than less powerful. He has made the whole university and the broader community hang on every action by the board of trustees.

While Bevin’s actions clearly violated accreditation standards, it falls to the members of the SACS Commission on Colleges to decide whether and how harshly to sanction the university. That decision may depend on whether they believe Bevin is trying to weaken the cultural norms hemming in trustees or whether they believe he will be willing to go back to the old culture as soon as this crisis is resolved.

The near-term implication is that Bevin is playing chicken with SACS, and Louisville is stuck on the road in between them, as its accreditation depends on changes that are beyond the university’s power to make. Bevin’s track record so far gives little reason to hope that he will swerve first; and this leaves SACS with a choice. If it refuses to swerve, Louisville could suffer serious or even catastrophic harm. But if SACS swerves—perhaps in the hope that Bevin will revert to the old culture of benign neglect—then we can expect this kind of aggressive corporate takeover to spread.

As a case study of academic governance, the situation at Louisville demonstrates the degree to which a public university can go from astonishing strength to the edge of a precipice in a very short time, largely because of external forces beyond its control. The case also portends the

future of at least one front in the ongoing corporate takeover of public higher education. At stake—both in the Kentucky Supreme Court and in the SACS Commission on Colleges—is whether traditional principles of academic governance have a future in public higher education.