A Moral Paradox in University Governance: 
Good Faith and Trust

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Abstract

Since the mid 1980s, university boards of governors have adapted themselves to the increased importance of the ‘economic mandate’ of the university in relation to the university’s ‘academic mission’. This is reflected in the board’s approval of a growing number of research partnerships with business and privatized programmes and the distain for this practise among many in the university community. In large measure, governments have promoted the economic mandate by reducing funding to universities, while using them to advance national competitiveness and economic development. The success of a board is determined by government, business, and others by how well the university performs against economic measures and targets. However, boards are also bound by their fiduciary duty to protect the academic mission. Governors thereby face a paradox. They can simultaneously be deemed a success and a failure, if successful achievement of the economic mandate leads to significant harm to, or failure of, the academic mission. In this paper, I ask: What is the moral obligation of the board of governors to the university community in dealing with this dangerous paradox? Why should the university community be optimistic that the governors will be motivated and competent to deal with it? I advance a normative principles-based argument that links the ‘good faith’ principle of the governors’ fiduciary duty to the importance of establishing a relationship of ‘trust’ with the university community to address the potential incongruity between the university’s economic mandate and ‘academic mission’.

Introduction

In countries such as the United Kingdom, Canada, Australia, New Zealand and the United States, a university’s governance structure is usually constituted by two bodies, each responsible for a different aspect of the university. The board of governors (otherwise called a university council or board of regents or trustees) focuses primarily on the economic mandate of the university. That is, its role is to ensure that the university has the human, financial and physical resources to carry out its mission, strategies and plans (CUC 2014). The board’s counterpart in the governance structure is the senate (or academic board). This body is responsible for the academic mission, by which is meant all aspects of teaching, learning and research. While the two bodies are independent, they are not autonomous. Rather, they operate in tandem, each dealing with its own primary area of responsibility before coming together at the final stage of decision making. Despite their functional complementarity, the board of governors is the senior of the two. It not only has the ultimate authority for approving strategic plans and making
resource decisions, but it also has the final say over major academic matters (e.g., see UCL Council 2019a, Sec. 6, Art. 2). Granted, the board cannot act unilaterally. On all issues of academic concern, the board must listen to the senate and cannot make decisions without a full and serious consultation with it (e.g., see UCL Council 2019b, Art. 2). But, the board of governors still has the ultimate authority.

Since the mid 1980s, university boards of governors have been compelled to adapt to the rising importance of the economic mandate of the university in relation to the university’s academic mission. As the Committee of University Chairs (CUC) (2014, Sec. 3.5) states:

The governing body must receive assurance that the institution is meeting the conditions of funding as set by regulatory and funding bodies and other major institutional funders…. These include the need to: use public funds for proper purposes and achieve good value for money; have a sound system of risk management, financial control and governance; ensure the use of regular, reliable, timely and adequate information to monitor performance and track the use of public funds; and safeguard institutional sustainability.

In large measure, this economic thrust is a consequence of the proclivity of governments to use universities to promote national competitiveness, economic development, and job skills development and employment readiness (Slaughter & Leslie 1997). Because in many countries this has also combined with reductions in direct government funding, it has made universities increasingly reliant upon alternative revenue sources (Carson 1999; Slaughter & Leslie 1997). This is reflected in boards of governors’ approval of a growing number of partnerships with businesses, commercial activities undertaken, and taught programmes privatized.

Indeed, a further significant step into the economic domain has come about in England because of recent legislation (United Kingdom Parliament 2017) that aims to create a marketplace for universities in which competition is encouraged. The legislation facilitates the entry of new degree-granting institutions into this marketplace. The government’s purpose is to increase learning opportunities for students and to elevate competition among institutions for student fees and other resources. The government seems comfortable that there will be winners and losers. Indeed, a recent White paper says: ‘we must accept that…some providers…[may] need or choose to close some or all of their courses, or to exit the market completely.’ And, it says, the possibility of exit is ‘a natural part of a healthy, competitive, well-functioning market…[and] the Government will not, as a matter of policy, seek to prevent this from happening’ (Department for Business Innovation and Skills 2016, p. 10).

Many in academe today deplore the extent to which the modern university has become privatized and commercialized. They fear that research and academic programmes are being skewed in favour of what is popular and remunerative, and that resources will be drained from academic pursuits that are inherently valuable and applied to what is more instrumental and economically attractive. Overall, they worry that the traditional academic mission is being pushed out by the economic mandate.

This has important implications for university governors whose primary focus is the economic mandate, against which they are judged by government, the business community and others.
However, boards are not only bound by their *fiduciary duty* to advance the *economic mandate*, but are also required to protect the *academic mission*. Because of this, governors face a paradox, in that they can simultaneously be deemed a success and a failure, if successful achievement of the economic mandate has led to significant harm to, or failure of, the academic mission. Alternatively, the economic mandate could fail if a board held firmly to the academic mission to an extent that prevented the university from gaining access to the revenues and resources available from the private sector and commercial activities. Once again, the board would experience both success and failure at the same time. Since there is no foreseeable end to the political and economic conditions that have led to the paradox, what is the board to do?

Due to the seriousness of this situation, and the fact that it has been growing since the 1980s, it is unfortunate that philosophers of education have not been more engaged with the ethics of university governance and the role of the board of governors. To be sure, philosophers and prominent educators have had much to say in the past about the nature of universities *per se*, and what it means to be educated (Bok 2003; Conant 1950; Hutchins 1936; Kerr 1964; MacIntyre 2009; Newman 1947; Oakeshott 1962; Pelikan 1992; Peters 1981; Readings 1996). And, in these turbulent times, a virtual publishing industry has been created by academic authors lamenting the demise of universities, with titles such as *Illiberal Education: The Politics of Race and Sex on Campus* (D’Souza 1992), *The Imperiled Academy* (Dickman 1993), *Campus Wars: Multiculturalism and the Politics of Difference* (Arthur & Shapiro 1995), *Petrified Campus: The Crisis in Canada’s Universities* (Bercuson, Bothwell & Granatstein 1997), and *University in Ruins* (Readings 1996). However, philosophers have not yet specifically addressed the ethics of governance, and consequently, this paper is exploratory and hopefully will stimulate interest and discussion.

The two questions I want to address are: What is the basis of the moral obligation of the board of governors of a university to the university community to achieve the economic mandate while protecting the academic mission? Why should the university community be optimistic that the board of governors is motivated and competent to deal with this paradoxical situation? The argument I make is that the fiduciary duty of governors morally requires each governor to be motivated and competent to act in *good faith*. And, if an institutional environment of collaboration and consensus is to be achieved, the university community must have *trust* in the board. This is an argument ‘in principle’, so it relies upon both governors actually discharging their fiduciary duty and the university community coming to believe governors are trustworthy. So, in what follows, first, the nature of a board’s fiduciary duty is fleshed out and its key component, *good faith*, is explained. Second, the concepts of *trust* and *trustworthiness* are analysed. Third, I provide an account of the relationship between trust and *risk*, and explain why the board is inherently more competent to make strategic decisions than others. Finally, I conclude by tying the notions of good faith and competence to the trustworthiness of the board in leading the university community in the state of paradox.
The Fiduciary Duty of Governors

The Committee of University Chairs makes clear that: ‘The governing body is unambiguously and collectively accountable for institutional activities, taking all final decisions on matters of fundamental concern within its remit’ (2014, Sec. 1, p. 9). And, the board should ‘demonstrate leadership and stewardship in relation to their own institutions, and in doing so help to protect the institutional reputation and provide a level of assurance to key stakeholders, partners including the student community, and society more widely’ (CUC 2014, Preface). In addition, it is well understood in governance circles that governors must act in the interests of the university as a whole (see UCL Council 2019c, Art. 1.2; see also UCL Council 2019d). Further, the board is obliged to ensure that the president, along with other senior executives, administers the university in accordance with its economic mandate and academic mission.1 Finally, the board needs to ensure institutional sustainability and be assured that there are ‘effective systems of control and risk management’ (CUC 2014, p. 15).

The fiduciary duty2 applies collectively to the board, and individually to each governor. It is composed of two specific duties that are referred to in governance circles as the duty of loyalty and duty of care. Loyalty requires that each governor act in good faith with the best interests of the university in mind, rather than the interests of others (including those who nominated the governor), and avoid conflicts of interest, protect confidential information, and make available to the board all information known by the governor that is relevant to the board’s decision-making issues. Care sets out the standard of requisite performance. It demands that each governor exercise the care, diligence and skill that a reasonable person would in terms of decision making and action in similar circumstances. This is not a standard of excellence, nor does it require that the right decisions be made – it only refers to basic competence (see Hansell 2003, p. 106).3 The fiduciary duties of loyalty and care create obligations in varying ways and degrees to the university community’s different constituencies: students, academic staff, alumni, sponsors, government, and others.

Moral Duty and Good Faith

Although established in law, the fiduciary duty also reflects a moral duty. In a general sense, the duty’s moral credentials derive from the moral nature of academe: autonomy, academic freedom, welfare of students, and the university’s implied commitment to social justice and other forms of benefit and harm. But there is a more direct connection to morality that comes from each governor’s act of promising in taking on the obligation to perform the fiduciary duty.

By accepting the fiduciary duty, governors commit themselves to the moral principle of good faith. This finds expression in the duty of loyalty, which requires governors to act in the best interests of the institution as a whole. And the moral implication of the governors’ duty of care is that, by acting with diligence and skill, they will not harm others through uninformed or ill-considered decisions and actions. Further, the relationships among the board members, and between themselves and the president and senior management team, are taken to require ‘mutual respect, trust and honesty’ (CUC 2014, Preface). Finally, the ethical conduct of university governors should be considered in the context of leadership in public life in Britain. Known as the Nolan Principles, they are: selflessness, integrity, objectivity, accountability, openness,
honesty and leadership (Committee on Standards in Public Life 1995).\textsuperscript{4} Taken as a whole, then, governance is firmly grounded in moral principles and standards of integrity.

The principle of \textit{good faith} is especially important because it ties together the duties of loyalty and care. Good faith thus fills in the gaps between what is contractually required of governors by the university’s charter, statutes and regulations, and the value judgments that governors must make in the fulfilment of their role. That is, the governors’ contractual obligations cannot possibly anticipate all conceivable alternative courses of action, nor the changing circumstances in which their decisions must be made. So, the incompleteness of their contract with the university means that it cannot function as a prescription for all decisions. Boards must act in good faith as they work through the complexities of university issues.

University boards of governors do not always act in accordance with their fiduciary duty – to which we have borne witness in recent scandals in the United Kingdom over university student admission policies. Surely, though, across all of the universities in the United Kingdom, Canada, Australia, New Zealand and the United States, there are many instances of well motivated and competent governance. However, my argument is not based on an empirical assessment, but is a statement about the principles that ought to apply to a board acting in accordance with its duty. I contend that there is a strong \textit{normative} case to be made that boards of governors should act competently to guide their university through these uncertain times in higher education. At the core of this case is the motivation of the board to act in good faith, and, regarding their duty of care, to reach a level of competence that is beyond the minimal standard of what could be expected of a reasonable person in similar circumstances.

Still, it is not enough that the board be well motivated and competent. There are two sides to the relationship, and thus something is required of the university community as well. Its members need to \textit{trust} the board. To work successfully through the challenges facing the university, an environment of collaboration and consensus is required. For this to occur, not only must the board of governors discharge its fiduciary duty, but also the university community must have a positive attitude toward the governors. The community must believe that the board is trustworthy and want to work with governors for the good of the university as a whole.

What, then, is trust? And, what does it mean for the members of the university community to give their trust, and for the board of governors to be perceived as trustworthy?

\section*{Trust, Trustors and Trustworthiness}

\subsection*{Meaning of Trust}

Trust is commonly expressed as a three-sided relationship: A trusts B to do X. But not every usage of trust conforms to this. \textit{Trust} is so variously used in ordinary language that it almost defies conceptual analysis. For instance, trust can be only two-sided, as when one lover, A, says to the other, B, ‘I trust you’, there is no specific object of trust, or X. Indeed, trust can be uni-directional, as in a state of emotional dependency between A and B, when A is neither capable of conceiving of the dependency on B, nor of directing trust toward any particular X, such as when
a young child is said to trust its mother. In other cases, trust can be used completely outside of the paradigm, such as when trust is used as a substitute for another word. For example, in saying ‘I trust you enjoyed the play’, trust really means ‘I hope’ (see Jones 1996, p. 5). In analysing the concept of trust, it might be said that uses falling outside of the paradigm above are derivative, profligate, non-standard or simply wrong, but it seems pointless to search for universal meaning when there is a specific use of trust that is appropriate to university governance and that closely follows the paradigm above.

The use I want to make of the concept of trust is context dependent, so as it applies to governance it will be taken to mean an interpersonal relationship having three elements: (1) a trustor (university community) who gives trust; (2) the trusted (board of governors) who is determined to be trustworthy; and (3) the domain of trust, namely the policy, strategic and tactical decisions, and actions around the activities, tasks, projects and roles that constitute university governance, in relation to which trust is given.

University Community as Trustor

In a governance context, the trustor is the university community, which itself is comprised of different constituencies: students, academic staff, alumni, business partners, government, and others. This is worthy of note because the interest of one constituency is not always the same as another. Still, in the governance relationship there are three characteristics applicable to the university community as a whole that are especially relevant. They are a trustor’s attitude, belief, and dependence and vulnerability to risk.

Attitude

Trust is ‘an affective attitude’ (Jones 1996, p. 11), a ‘distinctive state of mind’ (Holton 1994, p. 63), and a ‘disposition to feel about the reliability of another person in a certain way’ (Pettit 1995, p. 203). Jones extends this by identifying two features of the attitude. First, she says that trust is an attitude of ‘optimism’ that includes an expectation of being able to count on the trusted person (1996, p. 11). This seems right, because in the forward-looking relationship of A trusts B to do X, it is reasonable to suppose that A should have a positive expectation, i.e., attitude of optimism, if B is to be counted upon. Of course, a proponent of rational decision making might counter that optimism can easily be replaced by prediction. But that obviates the need for any reference to trust as a concept in the affective domain. Another way of looking at the need for optimism in assuming trust to be in the affective domain is to ask about the opposite, namely A being pessimistic about B doing X. If trust implies some form of affective positive expectation, i.e., optimism, then pessimism seems counterintuitive, even contradictory. Yet, a relationship of trust can accommodate at least some amount of pessimism, such as when I say, ‘I trust my lawyer to represent me, but I am pessimistic about the outcome of the trial’. Optimism and pessimism, in other words, can exist together in the overall relationship (McGeer 2008, p. 241). Too much pessimism over time, though, will eventually erode the enabling condition of trust (Govier 1997, p. 6). This is especially relevant to university governance, where the board of governors needs to manage the difficult divide between the economic mandate and academic mission. Depending upon which constituency within the university community is favourably impacted, and which unfavourably, by a particular decision or action, both optimism and
pessimism could be present. A trusting relationship between the board and community (or communities) can accommodate this, but the weight of an overabundance of pessimism across the community over time can cause trust to fade.

Jones’ (1996, p. 11) second modification of the affective attitude of trust, which she shares with Baier (1986, pp. 234–235), is that A has an expectation that B will express ‘goodwill’ toward A. The trusted person is actually effected by the trust that A shows in him or her. However, B showing goodwill toward A is not required as a matter of logic. In the affective domain of trust, conceptually it is A’s optimism toward B that is crucial, not an affective reciprocation. For B may have no feeling at all toward A, as when a lawyer unemotionally represents a client to the best of his or her ability. Indeed, B may have some feeling toward A, but it can be the opposite of goodwill, as when a lawyer feels moral disdain toward a client that he or she believes to be guilty of a heinous crime, yet who is entitled to a competent defence.

Still, the goodwill that Jones (1996) talks about is desireable in a trusting relationship because it serves to bind the trustor and trusted together. Indeed, in a governance relationship something similar to what Jones describes is actually required by duty. That is, a close cousin of goodwill is known in governance as good faith. And, the board of governors of a university is morally required by its fiduciary duty to act in good faith with respect to the university community. This is part of the case for why I think the university community has good grounds for trusting the governors, i.e., because the governors are motivated by good faith to act in the community’s best interests. Of course, motivation is only part of the case for trusting governors. They also must be competent. More about that to come.

Belief

Embedded in trust are some, even if modest, epistemic grounds for believing that those trusted are both competent and motivated (Baier 1986; Jones 1996) to act on our behalf, i.e., to address our needs or interests. Foley (2005) and Faulkner (2007) think that trust does not require belief, although it can lead to it. However, to accept trust without belief equates trust with faith or hope, which makes reference to trust unnecessary. Of course, the grounds for belief can vary. Trust can be based on a rational assessment, such as when we hire a professional (e.g., lawyer or financial advisor) to act for us. Or, it can have a significant emotional component (Becker 1996), such as trusting someone we love (e.g., a parent or spouse). However, belief cannot be completely cognitive or emotive. If rational assessment is pushed so far as to virtually to remove any doubt of failure to perform, then trust evaporates into certainty, whereupon it lacks a purpose. At the other extreme, without any rational component built into how someone feels about another, trust is no more than blind faith. Still, sometimes our dependence shifts emphasis between the rational and emotional (e.g., when a personal relationship develops between a client and a professional who has been hired), or from the emotional to rational (e.g., when the personal closeness of a young child to a teacher is replaced by respect for competence). But somewhere along the continuum, with highly rational at one end and highly emotional at the other, resides trust as understood by the paradigm structure.

In sum, why trustors believe what they do about those in whom they place their trust runs the gamut from a carefully considered rational process of evaluation to an emotional connection based on an almost inexplicable feeling. This may play a part in the explanation of why some
members of the university community trust some governors. But at some point, the relationship needs to shift toward rationally held beliefs, because it is the role of the board to make decisions and implement plans. Clearly, this requires good judgments based on careful evidence-based consideration of alternatives.

**Dependence and vulnerability to risk**

Within the paradigm, when we place our trust in someone, we are dependent upon that person to do something for us, and we are vulnerable to the risk that they will fail to deliver. For instance, we depend upon others to do what we do not want to do (e.g., a housekeeper to do our cleaning), that is not feasible for us to do (e.g., a lawyer to act for us in court), or that we cannot do for ourselves (e.g., a surgeon to perform an operation on our child). The extent of our vulnerability to the risk of non-performance depends upon the importance of the matter regarding which trust is given. (More will be said about risk later.)

Simpson (2012) sees reliance (a synonym for dependence) as part of the relational aspect of social life. However, not all philosophers agree about dependence. For instance, Baier (1986, p. 235) thinks reliance (dependence) is distinct from trust because we can rely on technology or machinery, or on the predictability of a person’s decisions or actions, without claiming this to be a matter of trust. But, this only shows that dependence/reliance is not a sufficient condition of trust. It does not defeat the claim that it is a necessary condition of a trusting relationship.

What leads Baier (1986) and others (see also Holton 1994; O’Neil 2012) away from the notion of mere dependency is something less calculable, namely an emotional sense of ‘betrayal’ or at least of ‘being let down’. The weakness with this view is that betrayal is a feeling that some people might have in a particular circumstance, but not everyone. For example, we may trust our lawyer or surgeon, but even if the results of their efforts do not go our way, we need not feel betrayed or let down. We trusted them to do their best, and they did.

Separating the results of performance from betrayal or being let down is an important point in the discussion of governance. It is possible, of course, to see how some members of the university community might feel betrayed or let down by certain governors on occasion. For example, a particular constituency within the university community might feel this way about a board member who the constituency thought would represent its interests on a contentious motion at a board meeting but who did not. While the risk of betrayal is certainly present in some situations of trust, it is not a necessary feature of it. Those same community members could instead of feel disappointed or annoyed rather than betrayed.

This gives rise to a very important point in the context of governance. The constituency in question has no legitimate claim to the governor’s loyalty regarding its own interests. Indeed, the fiduciary duty of governors is specifically contrary to this. Each governor’s duty is to the university as a whole, not to any particular constituency within it.
Board of Governors as Trustworthy

*Trustworthiness* is an attribution that trusting people (i.e., the university community) assign to those they trust (i.e., the board of governors) in relation to the actions and decisions in the domain of trust. What warrants this attribution is the trustors’ belief that the people they trust are both motivated and competent in the relevant activities, tasks, roles, etc. to act in the trustors’ interests.

**Motivation**

Sometimes the motivation of a trusted person is taken to be driven more by self-interest than a concern about the dependency of those who trust them. While it would be naïve to think that trustworthy people have no interests of their own and that they are motivated to serve only *our* interests, it is reasonable to expect that professionals, managers, governors and others will act in their own self-interest to some extent. However, this is not to say that self-interest is their only, or even main, motivator. If it were, we would not give our trust. It is the nature of a trusting relationship that *priority* be given to the interests of the trusting party. When professionals provide a service, for example, we can expect that they have their own interests, but at the same time believe them to be putting our interests at the forefront. As Hardin (1996, p. 32) says, ‘Learning to trust will depend on the success of trusting.’ In governance, it is the board’s fiduciary duty of loyalty to be motivated to act in *good faith* with the best interests of the university in mind. If their own self-interest comes into play in a particular situation, they must declare a conflict of interest, whereupon the board chair determines the appropriate procedures to be followed.

**Competence**

Trustors may hope or wish for those they trust to have extraordinary knowledge or ability, but this is not essential to the concept of trust. Parents, physicians and teachers are fallible. They do not always exercise good strategic judgment; they make mistakes; and they sometimes do not review alternative courses of action with as much care and diligence as they should. But trust can survive some amount of weakness and failings within the range of competent decisions and actions – just not too much. After all, trust is not blind faith. Trust requires an expectation that the trusted parties have sufficient knowledge and skill to do their job competently.

In the domain of governance, the board’s fiduciary duty of care requires knowledge and skill that a *reasonable person* would exercise in similar circumstances. Importantly, though, this is a floor – a minimum level of competency. In governance, we should demand more. Our normative expectation should be that governors ought to strive to develop their competence to the highest possible level. I now want to show that it is their ability to manage risk that is central to this.

**Governors, Trust and Risk**

Governors have an institutional role that places them at the apex of two authoritative decision-making streams: the university administration stream led by the president, and the academic
stream represented by the senate. The governors do not have, and cannot be expected to have, the full expertise contained within either stream. Rather, their expertise is strategic. Their job is to bring their strategic knowledge and ability to the approval the university’s overall strategy, and also to assess the plans and proposals coming from the two decision-making streams to determine whether, and how well, they fit with the overall strategy. What makes acting in good faith so difficult for governors is that the proposals coming to the board from the two streams can sometimes contain risks that make them potentially harmful to each other. Herein lies a board’s key strategic priority (CUC 2014, p. 15) and crucially important sphere of competency – management of risk. In other words, in a relationship of trust the dependency of the university community on the board is importantly connected not only to the board’s ability to assess potentially beneficial opportunities from proposals, but also the risks they contain. In establishing the board’s competency related to risk management, three building blocks of risk are useful to explore.

First, institutions, including universities, are prepared to take on, or accept, different levels of risk in order to pursue their strategic objectives. Their appetite for risk reflects their disposition to take on larger or smaller amounts of risk, or different types of risk. Hospitals and nuclear power stations are focused on safety, security and certainty, so their risk appetite is very low and specific to their purpose. However, investment banks and computer software developers have much higher appetites for risk, and for new types of risk based on innovative products and services. Their institutional purpose is to pursue the commercial rewards that can be generated from taking calculated higher and new risks. Their ability to align risk and reward is what underpins their success or failure.

Universities are relatively low-risk institutions. Their risk appetite is affected by the safe and secure institutional environment needed to facilitate teaching, learning and research. Ironically, as governments endeavour to set up a competitive marketplace for universities, they create volatility that leads to higher risk as competitors jockey for position – some winning and others losing. Also, by forcing universities into a more fulsome economic mandate in the commercial sector, government introduces them to new types of risk. In the resultant paradox (i.e., between the economic mandate and academic mission), it is important for each university to be acutely aware of its own risk appetite, and to re-evaluate it continuously as the higher education policy environment changes.

Second, two important factors affect an institution’s appetite for risk. To begin with, risk tolerance is the sensitivity of the institution to increasing amounts of risk. In order for a university to compete effectively in the marketplace, it must examine each newly proposed academic or commercial venture, not just in terms of that proposal/venture’s inherent risk, but also the extent to which it adds to the portfolio of other risks that the university has previously accepted. In light of this, the university has to ask both whether it can tolerate this risk and whether it can tolerate the entire portfolio of risk with the new risk added. At what point does the added risk from commercial ventures push the university beyond its academic purpose and basic mission? Is there a point at which the university loses credibility for its academic mission?

The answer depends in part on another factor involved in risk appetite, namely risk capacity. The pertinent question is: if things go wrong, what resources does the institution possess that will enable it to sustain itself until the situation improves or mitigating plans can be deployed? For
example, if the university invests in new scientific research facilities that use financial resources without generating a compensating return, does the university have the capacity to absorb the additional cost? Or, if the university enters into a public–private partnership that fails and results in financial losses, will the university’s cash reserves or other liquid assets be sufficient to cover this? A final example: if the university enters into multiple business ventures, is the base of conventional academic activity sufficiently robust to maintain an acceptable balance between the academic mission and the economic mandate? In sum, an institution can tolerate new risks only to the extent that it has the capacity to recover when things go wrong, and to absorb the overall amount of risk in its portfolio of risks.

The paradox, which pits the economic mandate against the academic mission, should cause the university sector to re-evaluate its risk appetite in relation to its tolerance and capacity. In this process, it should hardly be surprising that many constituencies within the academic community find this deeply troubling because they have little experience of, or expertise in, risk management. This is especially the case with the evaluation of economic as opposed to academic risks. Since it is very unlikely that the paradox will be dissolved, the management of both opportunity and risk are to be part of institutional life in the foreseeable future. Who within the university is well positioned to oversee the management of risk? I think it is the board of governors.

Even a highly motivated and competent board can make mistakes with respect to risk. But a board of governors has some inherent advantages in relation to functioning competently. The first is focus. It is the main job of a board to focus on the university as a whole and on matters of institutional strategy, which includes strategic risk management. This is mainly what the board is accountable for doing. No other member of the university community has this university-wide focus. The accountabilities of other community members lie within their own domain.

Second are the operational structure and related processes of the board. The board of governors has a standing committee structure that enables it to assign to each of several specialized committees the task of deeply examining certain issues for which the board as a whole is ultimately responsible (e.g., audit, estates management, finance, health and safety, investments, remuneration and human resources, etc.). As well, the board can establish limited term ad hoc committees to advise it on specific matters. The board functions by using this structure, along with operational processes (i.e., regularly scheduled meetings, standard agendas, presentations on specialized topics, processes of consultation with the university community, advice from external expert advisors, etc.), to discharge its fiduciary and other duties with competence. Other university constituencies may have similar committee structures and meeting processes to discharge their own mandates (e.g., academic departments), but they are not aligned with the strategic issues facing the university overall, and they do not have the breadth or depth of the board’s structure.

Third, the governors have access to more resources than other members of the community. The board can access internal resources by calling upon members of the administration or academic council, or, indeed, any individual or group within the university community. And, the board has access to both the university’s auditors and legal counsel, and to any consultants (e.g., management, technology, marketing, communications, etc.) that it might need in order to address opportunities or risks.
Fourth, each governor is obligated by fiduciary duty to act without conflict of interest. Governors are duty-bound to act in the best interests of the university as a whole, not in their own interests or those of any particular constituency within the university, including the constituency that nominated them for appointment to the board. All other members of the university community have an inherent conflict of interest by virtue of their allegiance to their own constituency. However, if a member of the university community is appointed or elected to the board, his or her fiduciary duty requires an elevation of perspective and the imperative to make judgments without preference or bias.

In sum, it is the board’s responsibility to ensure that the university has in place, and is following, appropriate risk management strategies. The special competence of a board, which is the foundation of its trustworthiness, is the board’s unique position within the university to understand the institution’s risk appetite through an assessment of its risk tolerance and capacity.

**Conclusion**

The two questions with which the paper began asked, firstly, what is the basis of the board of governors’ moral duty, and, secondly, why should the university community believe that the board would be motivated and competent to deal with the incongruity between the economic mandate and academic mission? The answer to both questions is found in the good faith that is a core part of the board’s fiduciary duty, along with the motivation and competence that is necessary for acting in good faith and likewise essential to being regarded by the university community as trustworthy. With respect to competency, there is something special about what, in principle, the board has to offer. The growing economic mandate presents what could be beneficial opportunities for the university to enhance its academic mission. However, these opportunities carry risk. It is my contention that risk management competency is (in principle) a unique strength of the board. That is, it is the board’s ability to understand the university’s risk appetite, assess its risk tolerance and capacity, and establish risk management policies and processes, that should contribute significantly to the case for the university community trusting the board.

Onora O’Neill (2002) is surely correct in stating that the culture of excessive accountability that pervades higher education today creates an environment that is corrosive to trust. However, even in this environment, boards of governors are legally and morally obligated to act in accordance with their fiduciary duty. Not only must boards stand up to pressures to act badly, but when they do, they moderate the deleterious effects of a negative environment. Further, the trustworthiness of the board depends crucially upon whether the board is actually doing what it is legally and morally committed to do. What has been presented here is an argument in principle. It is my contention that a board of governors motivated by good faith and acting competently warrants the trust of the university community.

University governance is not much researched by philosophers. They have had a lot to say about the concept of a university, but not much about the conceptual and moral problems specific to governance. This paper has taken an exploratory step, hopefully raising as many questions as answers and providing stimulation for others to engage with the topic.
More specifically, the governors’ role is to hire, supervise, and, if necessary, fire the president (also known as provost, vice-chancellor, principal or rector) (UCL 2019a, Charter and Statutes Art 3(1)(c) Annex; UCL 2019e, Statement of Primary Responsibilities, Art. 10; UCL 2019b). The board does not manage the university. This is the role of the president and senior administrators (UCL 2019c, Art. 1.5). But the president reports to the board.

Since most UK universities are charities, see the United Kingdom’s Charities Act 2011.

This is known in corporate governance as the ‘Business Judgment Rule’.

Adherence to the principles is referenced in UCL Council 2019c, Art. 2.5.

For an authoritative approach to enterprise risk management, see COSO 2018.
References


Hutchins, R M (1936) *The higher learning in America*, Yale University Press, New Haven, CT.


