

# **HIGHER EDUCATION AND AMERICAN COMPETITIVENESS<sup>1</sup>**

**Lloyd A. Jacobs, M.D. and Peter A. Gold, Esquire<sup>2</sup>**

## **The Context and a Call to Action**

The U.S. Council on Competitiveness, in partnership with Gallup, Inc. recently published a disturbing analysis of American productivity. Its central thrust is carried by a graphic on its cover displaying the percent growth rate for USA productivity during the last five decades. The trend is distinctly downward. American productivity measured as real GDP per capita has been decreasing for fifty years. This conclusion is contrary to the current rallying cry among many experts that the “The U.S. is recovering” from the great recession.

The Council report goes on to point convincingly to three sectors of our economy which disproportionately contribute to this decline. They are: health care, education, and housing. It is sobering to me to think that my own career has been as a participant in two of the three identified sectors. It is our intention however, to focus on the higher education sector in this writing.

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<sup>1</sup> We have attempted to communicate our conclusions regarding certain core characteristics of higher education fully aware that for each opinion stated there exists a reasonable opposite opinion. Still, we submit these paragraphs as food for thought.

<sup>2</sup> Dr. Jacobs is President Emeritus, University of Toledo and a Fellow at the US Council on Competitiveness. Peter A. Gold, Esq. is Principal of TheGoldGroup, LLC, former Associate Provost, Rutgers University and a former equity partner at one of America’s largest law and government relations firms. Please see “About the Authors” at the end of this paper.

The council's report demonstrates "evidence that the quality of higher education in America peaked in the late 1980's and early 1990's and has not improved since." Furthermore, large cost increases have occurred during this same time period. These facts which seem to validate our subjective feeling after a decade in higher education. The report goes on to dispel the prevailing myth that the deterioration in higher education results from lack of public support. And, while it is correct that there has been cost shifting away from supporting higher education in many states, the net revenue per student has increased substantially.

The report states that the Human Resource profile of the higher education establishment has changed and that this phenomenon accounts for much of the cost increase. Highly paid professional staff have increased and the number of staff per student has increased. Some legitimate causes of this shift of profile may include increased costs of accreditation and compliance, and increased costs of physical plant maintenance. The Council report however sees this human resources profile as an area much in need of adjustment.

### **An Aura of Meaninglessness Created by the University, its Internal Institutions, its Stakeholders and Constituents**

While we grant the validity of the report's conclusions in this regard, we believe the problem is deeper. A distractedness and an air of protectionism currently grips the very institutions which have been responsible for the democratization of higher education: namely the non-flagship moderate sized public university ("NFMSP"). There exists among the faculty and the staff

immediately in contact with students a sense of deadness, an aura of meaninglessness—at best a distinct lack of enthusiasm! Furthermore, many faculty members at NFMSp's believe themselves to be the victims of a bait and switch: they chose consciously a contemplative “life of the mind” but now find themselves in a raucous competitive business atmosphere. Faculty salaries at NFMSps have remained flat for two decades. Sabbaticals are rarer and research funding has declined dramatically. But there is more than that.

There exists a sense among the mid-sized publics that our society is failing. Prosperity does not come to the deserving; health is not improving and colleagues in the teaching world are increasingly less qualified or motivated by a business or other orientation. We believe that the faculty in higher education is in a funk. Students tend to be surly and unprepared. Others tend to have an attitude of “entitlement” without the necessity of earning it. Administrators tell the faculty what to teach and how to teach. Government officials disparage their commitment. The core business of our universities has lost its sense of purpose. Thus, we continue to drop in world rankings on almost every respected measure.

The stores of knowledge for which faculty members worked are rendered trivial by Wikipedia. Despite professed commitment to teaching and service, promotion depends almost totally on research, research which has survived a grueling process to gain publication. Relatively high paying jobs in industry await.

To be sure, not all the distractedness exhibited by university faculty members originates in the university. These good folk participate in the life of their communities and in the life of the Western world and global society. Students arrive demanding, a good number eager for alcohol other drugs and sex and with a sense of entitlement and are minimally interested in learning. To a significant degree their malaise and priorities represents the malaise of our society.

Faculty members are overwhelmingly “progressive.” This has been an element which has served not only to stunt the discourse on campuses but has also engendered disappointment: diversity is not increasing, health is not improving, and knowledge is not becoming wisdom.

### **Loss of Direction and Misplaced Commitment to the “Wrong” Goals**

The malaise of our NFMSP institutions and the lack of agility to respond and adapt to current circumstances created by the processes and practices which constitute today’s university is, in our opinions, the main cause of a loss of productivity in higher education.

Forgive the dramatics and oversimplification but the core business of the NFMSP’s is to build our future: the future of societies and the future of individuals. The Higher Education world has been distracted from this core understanding.

For the most part and at the risk of overstatement to make the point, the balance has swung from pursuing this mission to excelling at maintenance

of the status quo of malaise and protection of each entity, silo, and individual who comprise the ongoing university family.

### **Restoring the Competitiveness of America through Higher Education**

It is our belief that the most appropriate place to begin a restoration of competitiveness to the U.S.A. is to focus on the core contributions of the Higher Education establishment. The following paragraphs in this paper are intended to get some hard conversation started and add to the momentum to around them, not to reach ultimate conclusions. Can our sense of purpose be revived? Can our spirits in higher education be rejuvenated? Can the institutional and societal barriers that exist for doing so be changed or dismantled? Simply, can NFMSP's return to their core missions: education which shapes the future, creating a work force for good paying jobs and creating an environment which fosters teaching the importance of and how to think in an unbiased and critical fashion?

Our purpose is to summarize our thoughts as they evolved during our years in leadership of higher education institutions.<sup>3</sup> An abstract of our thoughts include three related notions. First, the Higher Education establishment in the United States has come to be enthralled with to a particular political doctrine, namely that represented by the liberal tradition.

Certainly we are not referring to the democratizing of access to higher education, but to the radical and unstructured democratization of the

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<sup>3</sup> Please see the "About the Authors" section at the end of this note. Statements in the first person are those of Dr. Jacobs.

governance of higher education. Second, the higher education community, acting within that tradition, has arrived at a point of dysfunction which inhibits the accomplishment of its fundamental mission and renders it ultimately unsustainable. Third, we do not believe that Higher Education can fix itself. Its restoration to its former societal value will have to be in response to an outside force or forces: government, the business world, funders, or the societal strength now residing in non-for-profit foundations. It cannot be a bootstrap operation.

We are among those who believe Higher Education to be in crisis. We believe also, however, that it provides great value, and could be made sustainable and efficacious by some measures which may be readily inferred from a description of the problem. The decade of our sojourns there consists of some of our most rewarding years of life. We are deeply committed to education generally and to Higher Education more specifically. We hope to be seen in subsequent paragraphs as loving critics.

We are not alone as a loving critic. Patrick T. Harker, President of the Federal Reserve Bank Philadelphia then President of the University of Delaware wrote:

“...but the approach [to curriculum] at most universities, including UD, is informal at best, caught up in the wheeling and dealing of faculty tenure and preferences.”

We believe in the quasi-scientific fact that all things left unchecked tend to merge into all; self-confidence into hubris, pleasure into selfishness, power

seeks absolute power, and apropos our train of thought extreme and unstructured democracy merges into anarchy and chaos.

It is our belief that higher education has, by promoting a certain village green democracy and eschewing authority in any form has destroyed the social order which made it great initially. It has lost the checks and balances which require adherence to the core mission of excellence in education and the creation of our future in a disciplined fashion.

There used to be a toy, shaped like a treasure chest with a small toggle switch on its front. Upon switching the toggle to the “on” position the lid of the chest would open slowly and with an uncanny movement a hand and arm would emerge. The hand moved ghost-like to the front of the chest, switched off the toggle and slowly returned to the chest which closed behind it. The only thing the toy did was to turn itself off. I’ve often thought of that toy during the recent and widespread discussions among biologists about “apoptosis” or “programed cell death.” The notion is that the cell, or by extension an organism, has programmed in its genetic code a natural end to its existence; it dies as scheduled without any evident external precipitant.

So it is with unstructured, unregulated, undisciplined democracy. It is by its very nature a self-limiting phenomenon. As democracy spreads and strengthens there comes a time, with rare exceptions, when each individual voter votes for her or his or her own individual welfare, without regard for the common good. There is an inevitable loss of collective commitment, without

which democracy cannot function. We believe that is especially so when the voters feel threatened and insecure and out of control.

There is an inevitable loss of recognition of the importance of developing vehicles to reach success and adherence to them. In a way “democracy” is a process ---it is not an end. It is a process to identify and reach social and societal individual and collective goals. Too many of our universities are failing because democracy and constituent governance and the development of institutional vehicles and structures to promote individual and self-promoting “silos” have displaced the core mission of education: jobs preparedness, teaching critical thinking and its importance, and improving society as a general proposition.

The situation becomes even more dire when unstructured democracy is coupled with the lack of will to hold individuals accountable for their performance commitments to the university’s societal mission and success and to development of fair and effective procedures to assist and assure mission adherence.

### **The Problem Restated**

At this point in time we believe many or most NFMSP institutions of higher education have reached an inability to evolve and grow.<sup>4</sup> “Siloed” factions have develop under the impetus of self-interest or at least special interest, and hold the whole hostage with the ensuing gridlock. If ever a small

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<sup>4</sup> Indeed, it is ironic that institutions whose articulated prime purpose is to help others grow and evolve cannot, standing alone, do so themselves.

faction feels sufficiently disempowered, the democracy risks rebellion, or in the case of the higher education establishment, it risks the notorious, dreaded no confidence vote.

Russell Kirk in the forward to “Authority and the Liberal Tradition,” by Robert Heineman<sup>5</sup> describes the phenomenon as follows:

“...governments yield to one special interest after another  
...insignificant associations find themselves able to change almost  
overnight the whole course of public policy. Where has authority  
gone?”

Alexander Hamilton explicated this view in the Federalist Papers and advocated a much-diminished role for states and a greatly strengthened central government, believing as he did that the phenomenon described applied to states as well as to individuals. He believed some hierarchy of power was necessary to social order. University presidents however, are burdened with great responsibilities, but are virtually without power and therefore often at the whims of the organization. The village green democracy is the model most prevalent among university faculties and is, we believe, a mostly unsustainable social structure and interferes with the NFMS schools taking their historic role of making the United States a truly competitive nation.

Alexis de Tocqueville, that most astute of visitors to the United States, recorded his observations in his “Democracy in America” with great precision. He too seems to predict that unstructured democracy as it is currently

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<sup>5</sup> Heinman, Robert, “Authority and the Liberal Tradition,” Transaction Publishers, New Brunswick, 1984.

practiced in the American academy, invites institutional gridlock and ultimately, institutional instability. Tocqueville states:

“Thus we have a democracy without anything to lessen its vices...”

And in another place:

“...in the hands of a populace carrying out its own impulses, which is very dangerous.”

And again:

“... no class exists which can undertake to keep society in order.”

### **The Erroneous “Academic Freedom” Defense to Unstructured Democracy and Lack of Individual Accountability**

As we have posited, unstructured democracy and ineffective individual accountability to obtain core social objectives threaten higher education in America----and thus our society and role in the globe. In large measure, this threat arises from the historical tendency to conflate Academic Freedom and the development of unregulated democracy within higher education establishment in the late twentieth and early twenty-first centuries.

Almost every proper consideration of Academic Freedom begins with the justly famous work of Hofstadter and Metzger and their influential “The Development of Academic Freedom in the United States.”<sup>6</sup> While Hofstadter and Metzger do not directly address the mingling of democratization and the development of Academic Freedom, three lines of argument support the notion

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<sup>6</sup> Hofstadter and Metzger, “The Development of Academic Freedom in the United States,” New York, 1955.

and arise immediately from the text of that great work. First there is the temporal synchronicity of these two.

A side-by-side comparison of Hofstadter and Metzger with the monograph of John C. Scott entitled “The Mission of the University: Medieval to Postmodern Transformations” reveals this synchronicity with great force.

Second, the structures of the two notions are symmetrical. Democracy in its extreme form stresses individuals and their needs and desires. The two pillars of Academic Freedom likewise stress the individual and his or her “right” to speak without boundaries in the classroom and to pursue research as it presents itself to the curiosity of the individual. In either case, the individual is supreme, not the collective community. This observation seems to us to be connected to the current debate about whether public education is a private or a public good.

Finally, the agenda of the American Association of University Professors has for decades defended these two notions as if they were connected. This comingling of ideas persists in most universities today.

### **The Politically Expedient Decline in State Funding of Higher Education and the Decline in America’s Competitiveness**

The November 2016 Election Season confirmed that part of our national and local political debate and rhetoric are the issues of the cost and value of higher education and the proper levels of funding and budgeting of higher education particularly as other needs take priority such as the defense and

homeland security budgets, the cost of medical care for boomers, the cost of housing of the incarcerated, etc.

Against this background, several governors have sought to balance their state budgets, in part at least, by freezing or reducing funding to public higher education institutions.<sup>7</sup> This seems by many to be shortsighted.

The model of the research university as it has developed in America has made a great contribution to human welfare. In the contemporary world universities contribute a trained workforce, the creation of knowledge, the health of the populace and community cohesion. America is currently in great need of these contributions from universities. The changes in the nature of work make it imperative to the survival of the middle class in America that workforce education and training concentrate on the high end of the middle-class spectrum of skills, which represents, we believe, the minimum for a life of prosperity. The inventory of as yet unapplied knowledge held by any society represents one of its most important assets. This storehouse is replenished, in the main, by research from universities. Health care breakthroughs in the twenty-first century have come and will continue to come, in large part, from the nation's universities. Communities with a major college or university tend to have less vulnerability to recession, tend to be more prosperous, to have advantage in the recruitment of talent and be more healthy and cohesive. American research universities are, therefore, critical to our future.

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<sup>7</sup> "To Balance Budgets, Governor Seeks Higher Education Cuts," The National Memo, April 2, 2015. We do recognize that several states have, in 2017, budgets restored some level of budget cuts in previous years.

Many governors and state legislators for their part believe universities to be inefficient and that faculty members may possess a “welfare mentality.” They are joined in these beliefs by many corporate executives and government officials at the state and federal level. Furthermore, there is growing doubt about the value of higher education in any case. Universities, their administrators, boards, and faculty believe fervently that public universities are currently underfunded, and passionately resist the suggestions of governors and others for further decremented budgets.<sup>8</sup>

It is indeed rational to observe that State Governors and legislatures may see the sub-performance contributions of universities in maintaining State and America’s competitiveness and simply conclude, using a sophisticated or crude cost benefit analysis, that dollars and resources will go to efforts where there is a higher probability of success to creating competitiveness.

In fact, for more than a decade, university revenue has been squeezed by tuition freezes, soft enrollment, reductions in research funding and decreased state subsidies. This squeeze has produced nearly random mostly negative consequences.<sup>9</sup>

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<sup>8</sup> We posit that even the states which have in most recent budgets restored some of the cuts to higher education made in previous years have done so without putting in place measures to assure changes which will produce a return on that investment and a return of the university as a major contributor to US competitiveness.

<sup>9</sup> While not the subject of this article, perhaps a partial way to break the vicious cycle is to create alternative revenue streams through greater equity investments to defray tuition and other direct costs. For instance, we believe that the time has come to examine more closely the use of “Shared Income Agreements” and “Social Impact “Bonds” to reduce student debt and fund student higher education. This aspect of the university’s business model should be remodeled without hesitation.

**The Path to Change: Universities Must Demonstrate That They Can  
Timely Produce Positive Societal Results: They Are Experts In Making  
Their Students more Competitive and Contribute to America's  
Competitiveness**

As a general proposition what is lacking in US higher education is a disciplined process for the identification of the core business of universities, and who constitutes its most important customer base. What is lacking is a committed effort to restructure the unstructured democracy and to hold individuals and institutions responsible for attaining societal objectives---like becoming more competitive and adding to the Nation's and state's economic and quality of life bottom-lines and doing so in a timely fashion.

Perhaps then----and we think only then--- a stronger case can be advanced for enhancing funding, investment and greater resource commitment.

In fairness, we note that most University Presidents don't know how to develop such a strategy, having risen through the classroom and laboratory to administrative posts for which they are poorly prepared. Most boards of trustees cannot give the time necessary for the creation and surveillance of such a strategy. So nothing happens to the real problems while amenities and customer attractiveness are verbalized and marketed.

The Higher Education enterprise will not be changed from inside its own enclave. No amount of strategic planning or envisioning of the future will break

the existing paradigms of higher education. The driving force for change must come from outside the enterprise.<sup>10</sup>

### **More Specific Ways to Change America's Universities**

The above general observations contribute to dialogue and the efforts to increase universities' role in competitiveness. However, observations which are also coupled with specific examples and suggestions do even more. Some specifics include:

#### **University Research: More Closely Aligned with Contributing to the Economic and Life-Quality Bottom-Lines**

In September of 2014 The American Academy of Arts and Sciences released a report entitled "Restoring the Foundation." The report is lucid and compelling. However, we disagree with the Report in a single regard.

The report, "Restoring the Foundation" leans heavily upon, indeed could be characterized as a defense of Vannevar Bush's "Science: The Endless Frontier." That excellent and historic document has informed our society for nearly seven decades and has helped the United States to attain pre-eminent status in the world, which status may be slipping now. Certain aspects of that document have become articles of faith among university faculty, and have had, I believe a largely salutatory effect on our health and well-being. The statement of faith related to "curiosity driven research" has had, however, an

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<sup>10</sup> The current dialogue between governors, legislators and university officials critically lacks a third party; namely, the expert in institutional re-design. In the business world, this might be the equivalent of the "turn around" expert.

inadvertent consequence which needs discussion, but has not been discussed. It is our hope to initiate that discussion.

There were and are three elements of Bush's notions regarding basic or curiosity driven research. First he believes that it is essential to the long-range health of a society and economy based on continuous innovation, as is the economy of the United States. Second, it should be largely funded by the federal government, and third it should be conducted largely in colleges and universities. This is fine as far as it goes and has produced decades of innovation based prosperity in the United States. However, "Science: The Endless Frontier" intended to leave, we assume, to subsequent contributors important questions: how should the quality of basic science be measured? Should every institution strive to be a "research university?" Should every individual faculty member conduct "curiosity driven" research? Are there other ways to increase the innovation yield of basic research? How is curiosity driven research to be distinguished from a mere hobby? How can an institution focus on distinguishing themes if investigators are free to follow their own curiosity? These and other questions have been largely ignored during the intervening seven decades.

In 2013 the Academy of Arts and Sciences published "ARISE II" with the purpose to advance research in science and engineering. We have previously mentioned "Restoring the Foundation" published in 2014. Both of these documents strongly and appropriately defend Bush's enthusiasm for Basic

Research, but both avoid the hard question of where, when, by whom, and how much basic research we can afford.

Much has changed in the last seven decades since Vannevar Bush's work to which we previously referred. Science has become increasingly complex. The idea of the lone scientist laboring in isolation is an anachronism; science is now pursued in teams and capital outlays may be in the millions; for example, the CERN project or the decoding of the human genome. As state subsidies to public universities have decreased, tuition has increased so that more student and family dollars are funneled into research by universities eager to maintain research rankings.

Corporate R&D expenditures have lessened dramatically. Federal funding of the National Science Foundation and the National Institutes of Health have softened. In summary, the societal support of basic research has lessened; we may have to recognize that we must conduct it with greater care.

Of greater complexity and concern is the fact that curiosity driven research has become conflated with the rights of university faculty members under the concept of shared governance. The rights of the tenured faculty of most universities to control the curriculum, to control membership in the faculty, and to develop one's own curiosity as an academic pursuit, while hotly debated in some quarters, is almost universally supported by faculty members.

However, this is the concept that we assert needs reexamination. Curiosity driven research is expensive; even moderately sized research universities spend millions of taxpayer and tuition dollars on it. Even granting

its salutatory effect on society, we must count the cost and make conscious decisions about how much of this public good we can afford, whether one is a Keynesian or not.

Research, particularly that funded by Universities from taxpayer and tuition dollars, is frequently defended by declaring that it improves teaching. Indeed, the statement that the best teachers are 'research active' faculty is frequently heard. We believe the evidence speaks otherwise. Researchers teach less and here as elsewhere practice makes perfect. Furthermore, many smaller institutions do little research but excel at teaching. Ultimately, we believe, teaching and research require distinct skill sets.

Vannevar Bush wrote seventy years ago: "Scientific progress on a broad front, results from the free play of free intellects, working on subjects of their own choice, in the manner dictated by their curiosity for the exploration of the unknown." No matter how well this doctrine has served us it is time to re-examine this article of faith. Taxpayer dollars are scarce, tuition dollars are decreasing and the cost of internally funded, curiosity driven research is increasing. It is time for re-assessment, not to discard it but to continue to reap its benefits. Universities need more central quality control of university funded research. Universities need the ability to concentrate on themes in their research, which will require some curtailment of curiosity. Universities universally are experiencing cost constraints; research is expensive. Universities which direct fungible taxpayer dollars or tuition into internally funded research should re-assess this activity for its societal benefit.

## **Current Tenure Granting Practices Impede Higher Education from Contributing Even More to America's Competitiveness**

The idea and practice of “tenure” is believed by many to be an egregious abuse of the limited resources of higher education today. The central idea is that academic freedom is ensured by tenure. Tenure in employment is a system which makes it virtually impossible to discharge those who have attained it. For practical purposes tenure assures employment for life. Many believe tenure to be an undeserved perquisite of the professoriate which is contributing to the rise of the cost of higher education. A dozen or more books have been published in the most recent decade, all critical of higher education, its processes and its outcomes. Nearly all of these writings decry tenure as abusive and wasteful.

The broad context of the criticism of higher education includes allegations of unconscionable increases in tuition, fees and textbooks, as well as overbuilding of physical infrastructure and failure to align the curriculum with societal needs. All of these complex issues are seen by many as related to tenure.

Tenure is seen by many as contrary to modern human resource principles. Tenure is seen as removing appropriate incentives for productivity just at a time of life when most of us experience some lessening of vigor and willingness to commit our time. Corporate America has bought into the notion that a ‘leadership in business’ workforce should be subjected to a Darwinian fight for advancement and even survival. Long hours and intensity of work life

erode family and spiritual ties, but are seen as evidence of excellence. The fight for survival in corporate America is intense and enervating.

Perhaps the best example of an advocate of a draconian corporate Darwinism is Jack Welch, former CEO of General Electric and current management guru and advisor. His approach to excellence included rigorous culling of team members; indeed he is said to have recommended replacement of the least productive 10% of the leadership group annually. Many corporate leaders and some governmental officials subscribe to this notion in theory at least, and believe that any workforce cannot be properly managed for excellence without the ultimate authority to cull the herd by termination of employment as deemed necessary. Clearly guarantees of continued employment lessen the force of these precepts.

In the fall of 2015, congressional hearings were held to investigate the alleged mismanagement of several federal agencies; for example, the Department of Veterans Affairs, the Internal Revenue Service, and the Department of Homeland Security. A continuously evident theme in the questions posed by legislators is who and how many employees have been fired. There is a strong presupposition that excellence cannot be achieved without the ability to winnow poor performers from the workforce. This attitude was also evident in the political debate which occurred during the presidential election of 2016. Several candidates pledged support of more rigorous employment policies for public universities with greater latitude for termination of poor performers.

The employment and leadership philosophies noted above clash with underlying notions supporting tenure. Indeed, several political candidates or incumbents have made that alleged connection and have pledged to curtail the granting of tenure by universities.

Tenure is expensive. The pledge of tenure to a faculty member is thought to have a net present value of several million dollars. The fiscal stringencies with which we have been living since 2008 have hastened decisions to reduce each university's tenure obligations. A corollary effect of the fiscal crisis of 2008 has been a great increase in risk avoidance by American decision makers, including university presidents and boards. The slow emergence from the recession which began at that time as well as the "jobless recovery" has increased the reluctance of responsible officials to endorse that which they perceive to be the risk of pledging tenure. The impact of these societal trends is a widespread belief that tenure is unnecessary and abusive.

The fundamental arguments asserted by those who support tenure are that: 1) tenure is essential to Academic freedom, and 2) Academic freedom of faculty members is essential to the health of the university at large. In this conceptualization, tenure is seen as a means to an end; tenure supports academic freedom, academic freedom supports the university; the health of the university is seen as an unquestioned good. For many, the belief in academic freedom is what philosophers would call "basic;" evident upon its face and

needing no further evidentiary support. Lawrence White<sup>11</sup> has commented on the small number of disputes about academic freedom reaching the court system, and that the concept is referred to fewer than ten times in the history of the United States Supreme Court. This argues that the value of academic freedom is largely undisputed and constitutes a presupposition to most discussions of tenure and other faculty rights and perquisites which occur now in the second decade of the twenty-first century.

It was not always so. When my own *alma mater*, the Johns Hopkins University was founded in 1876, academic freedom and employment tenure were not connected to one another; indeed neither concept was actively being debated. The notion of academic freedom developed slowly during the nineteenth and twentieth centuries and was still a publically disputed issue as late as 1950. It has only since then become an article of faith.

The recent utterances of politicians and corporate leaders present a somewhat different view. Among those folk the phrase “academic freedom” rarely occurs and is never put forward as an argument supporting employment tenure. During the years 2008 to 2014 I personally interviewed every candidate for tenure at The University of Toledo before sending the dossier forward to the trustees. My sample, therefore, consisted of more than 100 tenure candidates. I asked every interviewee “Why do you want tenure?” I received a wide variety of

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<sup>11</sup>White, Lawrence, “Fifty Years of Academic Freedom Jurisprudence,” *The Journal of College and University Law*, Volume 36, Number 3, Notre Dame Law School, 2010.

responses but in fewer than five interviews did the candidate speak of academic freedom or anything like academic freedom.

If therefore legislators and governors, corporate executives and tenure candidates themselves do not associate tenure with academic freedom, it may be timely to reexamine our long held and heretofore useful belief in this association. This is in fact the purpose of this chapter; or if re-examination is too large a task or its undertaking requires more historical expertise than we possess, the mere raising of the question seems to us to be imperative at this point in history.

The American Association of University Professors (AAUP) is unequivocal. Their General Declaration of 1915 spoke plainly of the belief that tenure is the most effective means for preserving and protecting academic freedom. Similar emphasis is found in a record of the AAUP's Conference on Academic Freedom and Tenure which states: "Academic tenure is essential to safeguard the academic freedom of faculty members." The link between the two notions was well established nearly a century ago. Does the linkage still exist? Is it still relevant and does it have utility? Does linking these two concepts have inadvertent negative consequences? Do the side effects outweigh the value of the linkage?

It is not necessary to opine about the value of the idea of academic freedom, nor is it necessary to the purpose of this chapter to judge its contributions to society. At issue here is only its linkage to employment tenure, not its intrinsic value. However, even if the argument is tenuous that tenure supports academic freedom and if academic freedom is of sufficiently great

value, the value of employment tenure may be so enhanced as to render it immune to current criticism.

It seems appropriate at this juncture to state our belief that disciplined academic freedom is of great value to any democratic society, indeed, essential to democracy. Academic freedom has an intrinsic value and deserves its current status as a self-evident good and unquestioned presupposition. We do not believe however that the linkage between academic freedom and employment tenure is inextricable. We believe our veneration of that linkage to be an anachronism. If one were to grant, *arguendo*, that employment tenure does support academic freedom I believe the price is too high, the unintended negative consequences are too great to support its continuation.

That tenure is “essential” to academic freedom is arguable. There have arisen many safeguards of speech freedom in our society since the fifties. These include multiple court cases, many precedents in the proceedings of universities and the everyday tolerance of controversial speech in current world. Perhaps the greatest game changer in this regard is the rise of the internet and the social media which it has come to support. Controversial writings are so ubiquitous as to render policing impossible. The relative or complete anonymity of much of this communication traffic has democratized worldwide communication in a way that has promoted speech of every variety including the speech of outliers. The internet and social media have become weapons of war in the twenty-first century. Political campaigns rely heavily on them. They have created a sense of community among diverse groups and have

changed the world. The internet and social media have totally eclipsed the issues of academic freedom. Employment tenure is no longer an essential pillar of academic freedom, that freedom is pervasive in our entire society currently.

The “side effects” of the current practice in most universities surrounding academic tenure are considerable and often damaging. First among them is the long period of pre-tenure probation. Many of my interviewees spoke of a stultifying effect, even sometimes of a sort of hazing. By the time their six years of indentureship has been served, creativity is stifled, the joy of discovery has been exhausted, and the excitement of community with students has been snuffed out. The slackening of effort after the achievement of tenure is less often due to sloth than to burnout.

The practice of an “up and out” rule forces disruption at a vulnerable time in one’s career. Childbearing or rearing, mortgages, religious or spiritual group connections are all vulnerable to the great Darwinian tenure race.

The question of sloth or the infirmity of aging in the ranks of the tenured is real. Virtually every one of my interviewees said they had seen the phenomenon in various forms. Post tenure review and corrective actions have shown little efficacy at most universities.

Employment tenure is a huge price for an institution to pay in support of academic freedom. The connection is tenuous and the unintended consequences are significant. In the end, now in the current day, tenure is about job security and job security is about risk and courage. To have created job security as the holy grail of incentives in the higher education ranks flies in

the very face of a courageous quest for truth and improving what it is to be a human being. It promotes an “I’ve got mine” pattern of thought and behavior.<sup>13</sup>

**Shared Governance without Mission Accountability is a  
Central Impediment to Universities’ Contributing More to  
America’s Competitiveness**

In early autumn of 2006 I was asked by the Faculty Senate of The University of Toledo to discuss with them my views on the subject of “Shared Governance.” I appeared at the appointed hour with the requisite PowerPoint presentation, the theme of which avoided the question they were asking. I spoke at length about “shared responsibility.” I now regret that. I should have stated directly, “I do not believe in Shared Governance.” I shall now spend the rest of this writing rationalizing, explicating and otherwise defending that statement, but I wish I had started with it then.

Universities arose, according to Charles Homer Haskins almost spontaneously in the twelfth and early thirteenth centuries. The centers where this occurred were initially at Paris and Bologna, earlier Salerno in different context, and later at Oxford. Their spontaneity makes it more appropriate to speak of Universities emerging rather than being founded or purposefully envisioned. In this circumstance it was entirely natural that their governance was haphazard and informal and reflective of an ultragrass-roots democracy,

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<sup>13</sup> Elements of the institution of tenure can be preserved as desirable and necessary. For instance, there can be even greater use of long term contracts that set out specific duties, term of employment, performance standards, compensation and measures imposed both on the teacher, researcher, and on the school.

and that their demeanor was fractious. Demonstrations were from the very beginning a part of their ethos.

Haskins states that students “united for mutual protection and assistance.” Haskins goes on to describe the students joining together to fix the price of housing and organizing boycotts against professors. Thus, universities have a long history which persists to this day of being places where students at least are given great freedom to object and rebel. Somewhat subsequently, the professors developed similar habits and prerogatives, defended largely by a belief in “the right to teach truth as he sees it, which we have come to call academic freedom.”

This trend of thought has persisted in the academic world to the present. Inevitably evolution has occurred, of course, but has tended to focus in my opinion on the wrong aspects of these notions, such as job security and the freedom to teach not the truth but whatever subject matter interests the faculty member whether relevant to the course at hand or not.

Meanwhile, another trend was developing across Europe, reacting in part at least, to a rising nationalism. This was particularly prominent in Germany but the societal trend was widespread. The net effect over several centuries of the rise of nationalism was an increased emphasis on service to the state and a general emphasis on fiduciary responsibility. By the time of the American Civil War these emphases were well developed and acted as precursors to the thinking that produced the Morrill Act. This landmark legislation was responsible to a significant degree for the creation of a middle class in America

and, more importantly to our theme, an emphasis on social responsibility for universities.

From that time until the present, a century and a half can be characterized as the era of the rise of the business corporation which superimposed upon the universities and governments a new way of relating within institutions. Corporations demonstrated not only an emphasis on profit or margin, but also an emphasis on monetizing value, arms-length transactions and relationships, and the production of a return for investors.

These trends also persist until the present; indeed, they continue to develop.<sup>15</sup> The grass-roots democracy characteristic of the early university has evolved into a set of beliefs which have been subsumed under the rubric of “Shared Governance.” The species of governance stressing fiduciary responsibility has been termed “Corporate Governance.”

These two trends, described by this greatly over-simplified analysis are inevitably destined for conflict. To best see that conflict as constructive it is well to think of a spectrum with corporate governance at one end and shared governance at the other. Neither of these is found in pure form in real life, they always occur as a mixture.

The practical schema found in most universities is that power is distributed to three loci: the Board of Trustees, the administration, and the faculty. The Board often has a legally designated fiduciary responsibility. The power of the administration is derivative from the Board, but arguably also

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<sup>15</sup> They are the pillars of capitalism.

from the faculty. The faculty derives its power largely from the traditions described, its organization into a labor union or a senate or both and its unique ability to shift quickly between the two other players.<sup>16</sup>

Why then do I not “believe in” “Shared Governance?” First, most of the core business of a university is owned or controlled by one corner of the triangle. The set of beliefs that evolved from Paris and Bologna include the notion that faculty should and do control the curriculum as well as membership in the faculty, and control the most sought after incentives for faculty, namely promotion and tenure.

Second, the historical context and prevailing ethos of the “Shared Governance” triangle has created damaging mismatches in cycle times and rapidity of decisions. Faculty bodies are notoriously deliberative, while Boards and most administrators seek to move quickly.

Third, corollary issues which have come to be supported by “Shared Governance” are largely anachronistic. The seven year “up or out” rule is inhuman and damaging to the institution. Life-time job security as one incentive invites slackening and does little for academic freedom. Promotion proposals in most Universities are developed by faculty and are largely rubber stamped by administrators and Boards. Other corollary prerogatives are equally damaging: freedom to opine on any subject in the classroom or to

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<sup>16</sup> In many states sets of complex law and regulations codify or set out the framework for this “shared governance.”

pursue “curiosity driven research” are contrary to the demands of modern society.

Fourth, and most importantly, the distribution of power to three loci causes instability and exemplifies all the evils of unstructured democracy. Although triangles are celebrated for their rigidity and stability in architecture, stability is not characteristic of groups of three when a coalition is essential to governance action. It is all too easy, facile and quick for any one corner of the triangle to destroy an existing coalition in favor of another; this ease of coalition switching gives any corner holder willing to shift, institutional power which is unwarranted.

In most universities, where the Board of Trustees, the administration and the faculty organization(s) share power they exist in an uneasy peace and the faculty behaves as the wild card. While it would seem likely that the Board and the administration would share many interests, for example, fiduciary responsibility, the power of the faculty organization to shift the coalition of power quickly, often with the dreaded “vote of no confidence” produces grave instability. Unrelated to this phenomenon is the limited term of Trustees at most public institutions. The limited and decreasing length of service by most University Presidents is however a nearly direct result of this phenomenon.

Despite the fact that the “research university” is perhaps America’s greatest contribution to the world, the unrest in America’s universities is real. The causes are multifactorial, but a clearly identifiable cause in many

universities is the nearly diametrically opposed interests of the faculty and those with fiduciary responsibility.

Let us give two contemporary examples of the conflicting views.

Sweetbrier College, a small private, selective college preliminarily made what must have been a painful decision to cease operations. This decision was announced by the administration and attributed to “financial challenges.” Faculty members, however, voted to attempt alignment with the colleges’ Board of Directors, presumably to build a coalition to oppose this decision.

The Governor of the State of Wisconsin proposed major and significant diminution of state funding to the University of Wisconsin system. In addition, he proposed to narrow the scope of the formal and informal missions of the institution to conform more closely to his view of what is needed in Wisconsin. The faculty, directly and through the American Association of University Professors, disagreed with his proposals. Accordingly, the Chronicle of Higher Education (3/12/15) reported the AAUP’s view that:

“The proposal could profoundly undermine tenure, due process, and *shared governance* (italics provided) in the University system, principles that the AAUP has long seen as essential to ensuring higher education’s contribution to the common good.”

Our purpose is not to take a stance on either the Sweetbrier or the Wisconsin discussions which time has rendered largely moot, but to illustrate the contemporaneity of the centuries old differences of viewpoint. We wish, however, to be clear, direct, but also courteous: we do not believe “Shared Governance” is a model that has made universities, nor American society better places.

## Conclusion

Notwithstanding the reputation for and the history of isolationism within “The University,” these institutions are in fact very much embedded in their communities. It is a mistake to see the distractedness of universities as indigenous there; they constitute a bellwether, a canary for the entire culture in which they exist. Universities, particularly NFMSP’s ---the non-flagship public universities--- exist in reciprocity with their communities and are a reflection of them. They reflect, in their malaise, the malaise of Western society in general and the senescence of American democracy specifically.

Whatever isolationism may have existed in former times, today’s university is renewed annually by an influx of new students who clearly bring with them the strengths and weaknesses of modern society. To be flooded, for example, by a generation and tide of “kids” who no longer believe in the American Dream is enervating. Students bring with them current communication formats, styles and value systems and the absence thereof.

Fortunately, the reciprocity between universities and their communities also offers great opportunity. Universities can furnish a starting point for broader societal change. Universities can provide societal leadership within their communities and beyond. Significant and culturally disruptive change will be necessary.<sup>17</sup> This will not be possible of accomplishment from within the

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<sup>17</sup> Much has been written on the topic of the need for “disruptiveness” in the American university. We agree-- but within reason. If changes are made to the university business model to reduce unstructured democracy, restore accountability, streamline governance to accomplish core mission and set performance benchmarks there will, we believe, be measurable and immediate positive results.

university. An external authority will be required to recommend to responsible public officials a series of steps toward a new governance model and set of cultural norms.

If the United States hopes to restore its productivity and competitiveness, its best and most reasonable starting point is to carefully consider the pillars of the university culture. Village green democracy, lifetime employment and veto power for special interest groups all constitute practices which should be examined for change. And if universities change, societal culture will change, and perhaps productivity and U.S. as a leader in world competitiveness will be restored.

#### **About the Authors:**

**Lloyd A. Jacobs, MD** is President Emeritus at The University of Toledo where he served as the 16<sup>th</sup> President of the University from 2006 to 2014. He was president of the Medical College of Ohio from 2004 until 2006 at which time that institution was merged into The University of Toledo. Dr. Jacobs was largely responsible for the success of that merger. As President of the combined University, he established a vigorous process of growth and transformation to create a new vision, a new identity and a new level of educational quality and excellence at the University. Since becoming President Emeritus, he has embarked on a career of actively writing and speaking on medical ethics.

In 2014, Dr. Jacobs accepted an invitation to serve as a Distinguished Fellow with the Council on Competitiveness, a global economic development nonprofit organization based out of Washington, D.C., and he also serves on the Executive Committee of the APLU's Commission on Innovation, Competitiveness, and Economic Prosperity (CICEP).

Prior to coming to Toledo, he was Chief Operating Officer of the University of Michigan Hospitals and Health Centers and Senior Associate Dean for Clinical Affairs at the University of Michigan Medical School. He also held a faculty appointment as professor of surgery and maintained an active vascular surgical practice. He completed surgery residency training at Johns Hopkins Hospital, University of California at San Diego Hospital, and Wayne State University Hospitals in Detroit. He also served four years on active duty with the U.S. Marine Corps.

He is the author of two books, several book chapters and more than 50 articles in peer-reviewed medical and scientific publications. Dr. Jacobs is a member of numerous professional surgical societies and is a past president of the Academy of Surgery of Detroit.

**Peter A. Gold, Esquire** is the principal of TheGoldGroup, LLC [www.thegoldgrp.com] which consults to higher education and others at their intersection with government and business. Centers of excellence, institutes and other business- government-higher education collaborative initiatives are at the core of his capabilities.

Representative projects for clients located in Arizona, Pennsylvania, New Jersey, Ohio and Geneva, Switzerland include creating a road map for a new aerospace collaboratory; designing and implementing a vehicular supply chain institute; designing a structure for communications among shale energy stakeholders and their communities; identifying activities and partners in a new health science campus; designing a model to identify a rigor for international intellectual property research; identifying assets to monetize to create additional revenue streams; planning and convening conferences, working groups and summits on various topics throughout the US and the world; designing and implementing university collaborations through articulation agreements and other means; and identifying research and development businesses to target to obtain sponsored research opportunities for a university's college of engineering and a university business incubator.

Gold is a member of the Executive Committee of the Board of the Global Interdependence Center, with offices at the Philadelphia Federal Reserve Bank. Gold has chaired international conferences in Toledo, OH, Phoenix, AZ and Philadelphia, PA on topics diverse as higher education, energy, and manufacturing. Intel, McDonalds Corp, PECO, Exelon Corp, Ford Motor Company, the Federal Reserve Banks of Philadelphia and Dallas and similar financial institutions of Mexico and Canada have been partners and participants.

Gold earned his bachelor's degree at Cornell University and graduated *magna cum laude* from Temple University Law School. Eight years later, he became a partner and then member of the Board of Directors of one of America's top 100 law and government relations firms. At the end of 2005, Gold became associate provost of economic initiatives, senior associate dean of the School of Business and CE rations at Rutgers University-Camden. He also has taught at the Wharton School of the University of Pennsylvania and is a former board member of an international high tech material reduction and classification company.

Gold's public service has included serving as a board member of the N.J. Economic Development Authority; serving five N.J. governors in several capacities including as a member of the Task Force on Child Abuse and Neglect; contributing to numerous government studies, reports, transition teams and other activities for governors and their administrations; testifying before various government committees and legislative bodies.

