

A Prologue in the Form of a Puzzle

The coronavirus pandemic has exposed deeply rooted structural defects within the American polity. To cite but a few, consider the paucity of affordable childcare for working parents, the impossibility of separating law enforcement from its racist past, the inequities of a health-care system whose benefits are available to some but denied to others, the disgraceful situation of seniors warehoused in facilities that abuse their claim to care, and the disposability of our most “essential” workers. None of these causes for collective outrage are new, but all are now harder to hide.

Were we to extend this list to other institutional spheres, might we ask whether the pandemic has also disclosed hitherto veiled truths about higher education in the United States and, specifically, how its colleges and universities are ruled? To help answer this question, consider a 2021 report issued by the American Association of University Professors (AAUP). In *Special Report: COVID-19 and Academic Governance*, the AAUP details egregious violations of what it calls “shared governance” at eight institutions of higher education. These include the termination of tenured as well as nontenured appointments, the suspension of faculty handbooks, the elimination of entire academic programs, the abolition of established bodies of governance, the invocation of force-majeure clauses to nullify collective bargaining agreements, and more.

College and university officials, the report notes, presented these actions as unfortunate but unavoidable responses to the financial fallout occasioned by COVID-19. The AAUP hints at a more cynical explanation when it quotes an interim dean at the University of Colorado at Boulder: “Never waste a good pandemic.” Following this lead, the AAUP argues that many if not most of these top-down transgressions against shared governance were “prompted largely by opportunistic exploitations of catastrophic events.” The pandemic, in other words, is not the original cause of these violations. Rather, COVID-19 merely “served as an accelerant, turning the gradual erosion of shared governance on some campuses into a landslide.”¹

The AAUP’s report explains this attrition by pointing to the academy’s “corporatization,” which involves the treatment of colleges and universities by governing boards “as if” they “were businesses whose CEOs suddenly decided to stop making widgets or shut down the steelworks.” The fruits of this misrepresentation are exemplified but hardly exhausted by “the expansion of areas of university administration, from the financial office to the office of the general counsel to the offices of risk management, in which the faculty have no involvement” as well as “the casualization of the faculty workforce entailed in the decades-long transition from a majority tenured to a majority nontenured faculty.”² The academy, on this account, is run by those who confuse it with a for-profit business and who rule over a labor force defined by its insecure employment and hence its marginal capacity to counter the misguided designs of those who no longer know, if ever they did, what higher education is truly about.

From these findings the report draws an italicized conclusion: “*The COVID-19 pandemic has presented the most serious challenges to academic governance in the last fifty years.*” Peering into the future, its authors express their fear that rule by “unilateral” fiat may soon become a “permanent” element of institutional governance and so “acquire an unfortunate veneer of legitimacy.” Whether this end can be averted is uncertain at best: “It remains to be seen whether such norms, once shattered, can be pieced back together or whether we are now in the domain of Humpty Dumpty, where what is broken cannot be mended and words can have any meaning that anyone wishes to attribute to them.”³

To arrest this slide into academic authoritarianism, the AAUP offers a plea in the form of a platitude: “Governing boards, administrations, and faculties must make a conscious, concerted, and sustained effort to ensure that all parties are conversant with, and cultivate respect for, the norms

of shared governance.”⁴ Given the report’s account of the forces that now enfeeble faculty participation in institutional rule, this admonition is unconvincing if not incredible. Here the AAUP urges the very trustees and senior managers who have abetted the academy’s insidious “corporatization” and, more recently, demonstrated their penchant for ruling by high-handed edict to concede the error of their misguided ways and affirm unswerving allegiance to norms they have undermined for decades.

How are we to make sense of the disjuncture between the AAUP’s bleak account of the academy’s current plight and this Pollyannaish prescription for its recovery? On my reading, the AAUP’s incoherence stems from its failure to call into question the academy’s essential constitution of rule. No matter how vociferously critics bemoan the “corporatization” of America’s colleges and universities, the fact remains that they are almost always organized in the legal form that is a corporation.⁵ More precisely, the American academy is fashioned as a historically specific type of corporation; and it is this type that authorizes and enables the governing boards and administrators censured by the AAUP to do what they will. Until this way of structuring the power of rule within the academy is criticized, contested, and ultimately repudiated, the AAUP’s impasse will be ours as well.

This book attempts to do what the AAUP does not and thereby suggest a way to forestall a fall into Humpty Dumpty’s dystopia. My aim is to challenge and, if I am successful, to modify the familiar ways we now frame debates about how the academy is and should be governed. This is easier said than done because, as the gulf between the AAUP’s ominous analysis of our present situation and its anodyne remedy intimates, the academy’s current constitution of rule is so often taken, uncritically if not unwittingly, as an obdurate given that demands accommodation rather than reconstitution as a very different kind of corporate body.

The principal purpose of part I, therefore, is to accomplish a task that John Dewey once ascribed to all critical inquiry: “to break through the crust of conventionalized and routine consciousness.”⁶ Today, that crust renders it difficult for us to see the American academy for what it is and hence to imagine alternatives to what we do not properly understand. This part’s first chapter, accordingly, opens and closes with two recent incidents that reveal much about how rule is organized and exercised within US colleges and universities. Extrapolating from these tales, I invite readers to entertain the possibility that these enterprises are best characterized not as sanctuaries violated by the venal agents of “corporatization” but as corporations organized in autocratic form.

We cannot stop there, though, because much about our contemporary understanding of the corporation is itself defective. Today, when we employ the term *corporation*, we most often think of the for-profit behemoths that first emerged around the turn of the twentieth century and that now dominate the capitalist political economy of the twenty-first. On this account, and chiefly because economists of neoliberal disposition have secured an effective monopoly over our conception of what corporations are, we identify them as economic entities fashioned by means of contractual exchanges, located within the free market, and owned by their shareholders.⁷ This representation, I maintain in part I's second chapter, is insidious, ideological, and incoherent. For reasons that neoliberal economists cannot afford to concede, corporations cannot be fashioned by means of contract alone, are owned by no one, and are essentially political in nature. To hold otherwise is to mystify the corporation and thereby bolster its contributions to local, national, and global projects of domination and exploitation.

In the third and final chapter of part I, closing my effort to fulfill Dewey's exhortation, I offer a historical overview of the European and more particularly the Anglo-American corporation. This inquiry reveals that the power of rule within the corporation has assumed two quite different forms, which I call the "autocratic" and the "republican." The autocratic character of the US academy, therefore, is not inherent within the corporate form per se but, instead, is a contingent feature that emerges out of struggles about which of these two forms will prevail. Accordingly, I suggest that we ask not how to decorporatize the academy, as the AAUP does, but rather whether American colleges and universities should now be reincorporated in republican form.

In part II, I put the corporate types elaborated in chapter 3 to work via an inquiry into the constitution of rule within America's earliest colleges. Specifically, in chapter 4, I examine contests over how and by whom William & Mary should be governed; and, in chapter 5, I do the same for Harvard. I focus on these two colleges not because they indicate the shape of collegiate constitutions to come, but because they do not. In each, one finds institutionalized traces of autocratic as well as republican corporate forms; and it is this disparity that opens up and indeed invites controversies that will diminish once the former comes to prevail over the latter.

Part II closes with a reading of the 1819 US Supreme Court case *Trustees of Dartmouth College v. Woodward*, which, on my account, signals the effective end of colonial and post-Revolutionary controversies about the academy's corporate constitution. Chief Justice Marshall's opinion in *Dartmouth* is

this book's hinge in the sense that it marks the moment when republican understandings of the corporation lost much of their power to persuade as they were displaced by those that will eventually culminate in today's neo-liberal variant (or mutant, if you prefer). To accomplish this end, Marshall joins a justification of autocratic rule to a capitalist conception of property, thereby dispossessing all but trustees of any claim to govern disposition of the academy's assets; and that is the conception of the academic corporation that is presupposed by the sign that appears at the beginning of chapter 9.

The triumph marked by *Dartmouth* did not, however, foreclose all future conflict about the corporate constitution of the American academy. To illustrate, in the first chapter of part III, I elaborate arguments advanced by the now mostly forgotten contributors to what one dubbed the "professors' literature of protest."⁸ Writing during the two decades before and after the turn of the twentieth century and chiefly in response to the encroachments of industrial tycoons on newly minted research universities, this diverse group offered a critique that is often strikingly prescient in its anticipation of the "corporatized" academy (and sometimes quite funny as well). Like their colonial and post-Revolutionary predecessors, however, they asked not whether the academy should discard its corporate form, but rather how that corporation might be rendered something other than an autocratic anomaly within a nation committed to the ideal of republican self-governance.

These aspirations were quashed, I show in part III's second chapter, when the AAUP accepted as a *fait accompli* the academy's formation as an autocratic corporation but sought to secure some measure of power within these confines by affirming the prerogatives of professional expertise held exclusively by faculty members. However unwittingly, the consequence was to intensify the academy's standing as an antidemocratic order that joins unaccountable rule to the exploitation inherent within a capitalist economy. This unhappy result is the banal but harsh truth disclosed by the widget makers' authoritarian response to the coronavirus pandemic, and it is this same truth that reveals the hollowness of the AAUP's appeal for all constituencies within the academy, ruler as well as ruled, to recommit to the principles of shared governance.

In the two chapters that comprise part IV, I argue that today we are witnessing the academy's thoroughgoing incorporation within a political economy whose survival requires relentless maximization of capital accumulation and hence commodification of practices that once stood, at least

in part, outside the marketplace. The results are twofold: First, we witness an erosion of the never absolute but considerable powers that, historically, have defined the unique institutional form that is the incorporated college or university. Second, this attrition undoes the capacity of the academy to accomplish purposes that distinguish the practice of education from what one wag has labeled “eduployment”⁹ as well as the fruits of scholarship from what we now call “cognitive capital.” In chapter 9, I explain how this vanishing act is playing out at Montana State, Princeton, and, in its most revealing form, at Purdue Global University. In chapter 10, using Michigan State as my primary example, I show how the contemporary university is now enmeshed in and ultimately subordinate to the networks of financialized power that define a neoliberal political economy.

In each of these cases, I argue, we are witnessing the cunning of history at work: as governing board members and their managerial minions preside over the academy’s neoliberalization, they simultaneously sow the seeds of their own disempowerment. Ironically (but also rather deliciously), the academy’s anachronistic boards are actively engaged in confirming my characterization of them as obsolescent relics whose autocratic pretensions are just that. True, in the short run, they remain capable of doing considerable harm as they press colleges and universities to become engines of capital accumulation. That very work, though, engenders a loss of institutional autonomy that cannot help but compromise the capacity of trustees to govern the realms they claim to rule.

In the epilogue, I suggest that the task before us is not to repudiate the academy’s “corporatization” but to *reaffirm* its identity as a corporation capable of pursuing purposes and sustaining practices that are not reducible to those of a capitalist political economy. To do so, I argue against the academy’s autocratic constitution and in favor of its incorporation on the model of a republican commonwealth. Rather than present a detailed characterization of Commonwealth University, which is beyond my ken, I offer two principles of institutional design that define this academy. First, the members of this corporation must retain the authority to select those who are to rule, and those who govern must in turn remain accountable to these same members. Second, the assets of Commonwealth University must be corporately owned and so subject to expropriation in the service of capital accumulation by no one. Stitched together, these principles recover certain elements of the corporate form that have been suppressed but also radicalize those that are peculiarly well suited to nurture the collective good that is free inquiry.

That, in a nutshell, is the gist of the argument I advance here. I suspect that more than a few readers will be inclined to endorse this argument's representation of the American academy as an autocracy that, today, is becoming little more than a handmaiden of capital accumulation. I am less confident that these same readers will find agreeable my call to reconstruct the academy in the form of a remodeled corporation.

It is not without reason that many, especially on the political left, now recoil at the very mention of the term *corporation*. That knee-jerk reaction, however, is predicated on a reductionist view of the corporation, one that equates this entity with the for-profit variant that prevails within contemporary capitalist political economies.¹⁰ That type is indeed inseparable from reproduction of the forms of expropriation and exploitation that Bernie Sanders condemns when he wags his forefinger at the "1 percent"; and the antidemocratic inequalities of wealth and power Sanders rightly castigates have a history that is bound up in turn with the projects of settler colonialism and slavery. To those who consider this history inseparable from that of the corporation that afforded these projects institutionalized form, my argument will appear counterintuitive at best.

That argument will appear still more problematic when we recall that many nonprofit corporations in the United States are also bathed in blood, and that includes its colleges and universities. Organized in the form of autocratic corporations, America's institutions of higher education are implicated in producing and perpetuating the forms of systemic violence that have haunted this nation since Harvard was founded in 1636. For this understanding, we owe a considerable debt to those who in recent years have begun to uncover higher education's complicity in this deplorable history. To cite but two examples, consider Craig Wilder's *Ebony and Ivy: Race, Slavery, and the Troubled History of America's Universities*, which demonstrates that many of our earliest colleges were built on the backs of slave labor. So, too, consider the work of Tristan Ahtone and Robert Lee, who show how the universities enabled by the Morrill Act of 1862 presupposed the massive dislocation and dispossession of Indigenous peoples.¹¹

Nevertheless, I persist. As a contingent creature of history, the corporation is a fraught artifact whose several manifestations fashion the accumulation and exercise of power, internally as well as externally, in diverse ways. To hold that this institutional form is inherently or necessarily bound up with the cause of domination is to lose sight of its ambiguous promise. Constituted one way, the corporation was and remains implicated in certain of America's worst crimes at home and abroad. Constituted in a different way, the

corporation offers an exemplar of republican self-governance that harbors the potential to ground a critique of its autocratic alter ego and, equally important, to counter privatized appropriation of the academy's assets in the service of neoliberal capitalism. The corporate form, in short, deserves something other than the visceral rejection it so often elicits today, and higher education deserves something better than the kind of incorporation that now malforms its conduct. If these claims appear implausible or even incredible, the most I can do is to request a generous suspension of disbelief, at least for the moment.

To close this prologue, let me say this: Although this is a conceit I no doubt share with other critics of contemporary higher education in the United States, I am convinced that the issue I explore in this book is especially urgent at this particular moment in American history. As the United States slides into authoritarianism, as antidemocratic forces gain in muscle and vitriol, the sector of our political economy called "higher education" may contest or it may expedite this fate. What colleges and universities cannot do is remain aloof from this struggle over America's future, for they represent a key battleground on which this conflict is now being and will continue to be fought.

The role played by colleges and universities will turn not just on what students and scholars do in the classroom, the library, and the lab, but also on who rules the academy. How colleges and universities in the United States are governed is therefore hardly an academic question. This book, accordingly, seeks to clarify the constitution of rule within US colleges and universities, to inquire into that constitution's implications for the capacity of colleges and universities to cultivate the free inquiry that is their purpose, and, finally, to ask whether some other constitutional form might better nurture an end that is indispensable to any democracy worthy of the name.

In 1913, a scholar whose name we do not know insisted that it is not merely self-contradictory but dangerous to believe that "a country committed to democracy in its entire governmental system could be very successful politically so long as the institutions of first importance to its intellectual life should be the very antithesis of democratic."¹² In response, another asked how the academy might be reconstituted as a "democracy of scholars serving the larger democracy of which it is a part."¹³ At bottom, this book is an attempt to elaborate the concern that animated the first of these two students of higher education and to answer the question posed by the second.