

Rethinking the Corporate University: An Engagement with Kaufman-Osborn's *The Autocratic Academy*

FROM AUTOCRATIC TO REPUBLICAN: RETHINKING THE CORPORATE UNIVERSITY

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On July 18, 2023, the faculty at my institution received an email co-signed by the President and the Chair of the Board of Trustees informing us that elements of the *Faculty Manual* contradicted the college's charter and therefore needed revision.

The email called on the faculty secretary to meet with the Vice President for Academic Affairs (also referred to as the Dean of Faculty) to determine which parts of the *Faculty Manual* were out of line and to suggest revisions. The email stated: "As a reminder, the *Faculty Manual*, as a whole, is not a document ratified by the Board of Trustees. Furthermore, any provisions in the *Faculty Manual* that contradict or are inconsistent with Trinity's charter and/or statutes are inherently problematic" (Berger-Sweeney and Bisaccia 2023).

This email arrived in our inboxes a few weeks after both the Faculty Ombud and the Academic Freedom Committee issued reports documenting administrative maladministration. The Ombud report detailed how—in the context of investigating a faculty grievance—members of the Dean's office refused to be interviewed as part of the investigation. The report concluded that this "refusal to participate...constitutes a failure to abide by the Ombud investigatory procedure described in the *Faculty Manual*" (Ewegen 2022). The Academic Freedom Committee (2023b) report identified several counts of "maladministration" that constituted a violation of academic freedom (for context, see Quinn 2023; Silvey and Bray 2023). Both reports were the product of processes defined in the *Faculty Manual*.

So why did administrators and trustees—clearly miffed at being criticized by faculty members—invoke a return to the college charter? Timothy V. Kaufman-Osborn's (2023) masterful new book, *The Autocratic Academy: Revisioning Rule within America's Universities*, provides critical analysis for unpacking this instance. Although this is only one shared-governance skirmish at a small college in a small state, the example—and Kaufman-Osborn's analysis—are helpful for diagnosing this perilous moment in higher education.

Kaufman-Osborn (2023) argues that the notion that universities are being "corporatized"—as in corporate interests consuming academic institutions—is misleading. Rather, within American legal and American history there are two traditions of incorporation. He terms the most prevalent version as the "authoritarian property corporation," exemplified in the lay college board. Consisting primarily of non-faculty members, these boards can claim

legitimacy neither from expertise in higher education nor from being democratically elected representatives of the campus community. Rather, their position is derived from being appointed by a self-reproducing board, which retains sole discretion over how the property that constitutes the corporation/university is distributed.

The second type of corporation that Kaufman-Osborn (2023) identifies is the "republican membership corporation," or legally created bodies composed of member citizens in which the corporate entity is constituted for the purpose of executing specific tasks that cannot be executed by an individual. Membership corporations include, for example, municipalities, utility districts, and worker-owned cooperatives. Whereas property corporations are organized along the lines of one-share/one-vote, membership corporations are one-member/one-vote.

As Kaufman-Osborn's (2023) analysis predicts, Trinity College was set up as a property corporation. The college charter, adopted in 1823, is titled Trinity's "Charter (Certificate of Incorporation) of the Corporation" (Board of Trustees 2023, 121). The first provision declares that 20 named white men "and their successors be, and the same hereby are, constituted a body politics and corporate forever, by the name of 'The Trustees of Trinity College.'" This self-reproducing board then is granted the right to "give, grant, bargain, sell, convey, or otherwise dispose" of the real estate and property of the College, as follows:

Trustees and their successors shall forever hereafter have full power and authority to direct and manage the Funds for the benefit of the College, and also to prescribe and direct the course of study, and the discipline to be observed in the said College; and also to select and appoint a President of the said College, and such Professor or Professors, Tutor or Tutors, to assist the President in the Government and Education of the Students. (Board of Trustees 2023, 119)

Moreover, to avoid any confusion, the charter clarifies that this lay board is distinct from the faculty: "No Professor...shall be eligible to serve as a Trustee" (Board of Trustees 2023, 119).

In other words, the Trinity College Board is unaccountable, self-reproducing, and composed of outsiders other than current college citizens. Nevertheless, it claims full authority to govern the institution, which is understood as a collection of property. Faculty members, therefore, are not constituted as a collective body with democratic oversight and governance over aspects of the institution (such as described in the *Faculty Manual*) but rather as employees of this "sort-of" trust that owns property and for which we work.

The creation of the Trinity College *Faculty Manual*, in contrast, was an effort to democratize the institution. Similar to most faculty manuals, Trinity's was the product of considerable organizing and agitating during the mid-twentieth century. The first edition of our manual, published in 1966, included shared-governance principles drawn directly from the American Association of University

Professors (AAUP) (Academic Freedom Committee 2023a). The manual is based on the premise that faculty members and trustees should be equal partners and co-managers of the institution, based on our differing areas of expertise. Kaufman-Osborn (2023) criticizes the AAUP's notion of "shared governance" as merely carving out a small pocket of autonomy within an otherwise authoritarian corporate entity. This analysis appears all too poignant when, amid a crisis of campus governance, the President and Chair of the Board turned to the 1823 charter to justify the primacy of their authority—noting, seemingly without irony, that doing so was necessary since "much has changed in theory and practice" since the *Faculty Manual* was written in the "1960s and 1970s" (Berger-Sweeney and Bisaccia 2023).

The strength of Kaufman-Osborn's (2023) book is its ability to demonstrate that the authoritarian corporate structure is only one way to legally incorporate an academic institution. It is neither a historical necessity nor an inevitable future. The first section of the book begins with contemporary examples of attacks on shared governance, from administrative rollbacks of shared governance during the COVID-19 pandemic to the top-down remaking of the University of Tulsa. After presenting a general argument that

the institution consistent with their stated desires. In other words, by defining the corporation as a "charitable trust whose purpose is to manage bequests on behalf of the dead....Marshall disenfranchises and dispossesses the living who, on a different conception, might stand as 'citizens' entitled to govern the corporation of which they are members but not owners" (Kaufman-Osborn 2023, 128).

The third section of the book examines how this reconfigured authoritarian property corporation fared in the decades since. Chapter 7 examines the protest literature written by faculty members during the early twentieth century who criticized the emerging autocratic university. Subsequent chapters document how the AAUP's conception of "shared governance" capitulated to the existence of an authoritarian board.

The fourth section examines how increasingly authoritarian boards are no longer able to govern because universities are so fully incorporated into the market economy. Today, Boards of Trustees enjoy almost complete corporate control—but at a time when such control has neither the legitimacy nor the capacity to govern and guide an institution. The book concludes with a call to rethink and remake the university along the lines of a republican membership corporation. As Kaufman-Osborn describes it, the Commonwealth

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universities exist as autocratic organizations, chapters 2 and 3 delve into the history of the corporation. Kaufman-Osborn (2023) argues that the neoliberal, Milton Friedman-esque understanding of the corporation—that is, as a private business with no political accountability and no obligations outside of the pursuit of shareholder value—is only one, relatively recent understanding. Returning to the early jurisprudence concerning the creation of colonial charters, joint-stock companies, municipalities, and other incorporated entities, Kaufman-Osborn then demonstrates that the corporations originated as member-based political bodies, constructed in law by sovereign powers and designed to execute tasks that could not be accomplished by individuals.

The second section of the book examines how universities transformed from membership to property corporations. Kaufman-Osborn demonstrates how the model of Cambridge and Oxford—colleges that were organized as self-governing communities of faculty members—was reproduced in the American colonies, particularly at Harvard University and the College of William & Mary. Furthermore, he describes how, over time, the Board of Visitors—that is, lay boards recognized in name as outsiders—maneuvered to gain greater control. This included the ability to fire faculty members, which makes sense only if they are "at will" employees rather than citizen members of a scholarly community. The most revelatory chapter of the book, describing the US Supreme Court decision in *Trustees of Dartmouth College v. Woodward* (1819), examines how the contemporary notion of a corporation as a board overseeing a pool of property—rather than a constituted political community—came into being. Chief Justice John Marshall ruled that Dartmouth College was not an organization chartered to benefit the citizens of newly independent New Hampshire but rather a trust of funds collected by past donors. Those donors contributed their money for a specific purpose; therefore, the Board is legally required to govern

University topples Humpty-Dumpty from the wall once and for all and instead reimposes a form of collective self-governance. Such a university would be less like a for-profit corporation, which sells educational products, and more like a workers' cooperative.

In this moment of institutional turmoil at my college, Kaufman-Osborn's book leads me to consider whether faculty commitments to shared governance are enough. What would our institution look like if it was organized as a membership corporation rather than as an authoritarian property corporation? What would it take to get us there?

Contributors to this symposium have been in collective conversation about the question, "Who rules the university?," as part of a Western Political Science Association working group of the same name, which convened online during the COVID-19 pandemic. I think I can speak for all of us when I say that Kaufman-Osborn's book provided a new understanding of the university. While reading the book, I kept asking myself: How could I, a scholar of the university, have spent so much time thinking about, writing about, and generally engaging with the university—and the neoliberal university in particular—and never focus on how my college is incorporated? This is a compelling book and one that is more necessary now than ever before. The current trajectory of the university is no longer sustainable. Kaufman-Osborn's (2023) book offers a compelling opportunity to delve deeper into the past to think through what an alternative future might look like.

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CONFLICTS OF INTEREST


The authors declare no ethical issues or conflicts of interest in this research. ■


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