
PERFORMING DEMOCRACY

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ABSTRACT

American universities are frequently portrayed as stewards of democracy—sites where dissent is protected, truth is pursued, and diversity is championed. Yet these institutions often betray these ideals, especially under the pressures of donor influence, reputational risk, and political retrenchment. This Essay interrogates the internal contradictions of the university by centering one of its most guarded rituals: faculty hiring. Building on my 2021 essay, The Soft-Shoe and Shuffle of Law School Hiring Committee Practices, I argue that hiring serves as both a performance of inclusion and a mechanism for preserving institutional whiteness, elite networks, and gatekeeping norms.

I extend this critique into what I term the “governance triangle”: the dynamic between internal stakeholders (faculty, students, staff), external actors (trustees, donors, state regulators), and reputational markets (rankings, media, and political optics). Today, this triangle is dangerously out of balance, with reputational risk dominating all other considerations. Institutional decisions are driven by legal risk, donor appeasement, and brand protection.

In the Trump 2.0 landscape—amid anti-DEI legislation, donor intimidation, and attacks on academic freedom—universities have become complicit in authoritarian drift. This Essay calls for a radical restructuring of governance that re-centers academic mission and shared power. The road back to democratic practice begins with who we hire, how we govern, and the values those decisions encode.

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INTRODUCTION

The university is often described as a democratic ideal: a site where truth is pursued and dissent is protected.¹ Yet in recent years, that ideal has eroded.² Universities, we are told, must remain neutral—above the political fray, committed only to excellence, free inquiry, and “viewpoint diversity.”³

But neutrality is not innocence.⁴ Claims of neutrality often function as defenses of whiteness, elite comfort, and institutional preservation.⁵ What

¹ See *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion) (highlighting democratic and truth-seeking function of universities); *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967) (characterizing academic freedom as “special concern of the First Amendment” because of importance to democracy and warning academic orthodoxy imposed by state threatens democratic vitality); see also ROBERT M. POST, *DEMOCRACY, EXPERTISE, AND ACADEMIC FREEDOM* 68-86 (2012) (explaining university’s role in producing and contesting expert knowledge essential to democratic self-governance).

² See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2175-76 (2023) (holding Harvard and University of North Carolina’s (“UNC”) race-conscious admissions programs cannot be reconciled with Equal Protection Clause); Complaint ¶ 12, *Fac., Alumni & Students Opposed to Racial Preferences v. Nw. Univ. (FASORP)*, No. 1:24-CV-05558 (N.D. Ill. July 2, 2024) (claiming anti-white, anti-male bias in faculty hiring and in law review publishing); see also *infra* Sections I.B, II.A (discussing anti-DEI backlash, donor pressure, litigation threats, and reputational crises reshaping university governance). See generally Jonathan Feingold & Joshua Weishart, *Discriminatory Censorship Laws*, 99 TUL. L. REV. 585 (2025) (explaining how anti-critical race theory (“CRT”) legislation operates as viewpoint-based state censorship targeting race-conscious scholarship).

³ See Ryan Quinn, *The Battle for ‘Viewpoint Diversity,’* INSIDE HIGHER ED (Sep. 2, 2025), <https://www.insidehighered.com/news/faculty-issues/curriculum/2025/09/02/battle-viewpoint-diversity> [<https://perma.cc/7WYF-6VK2>] (highlighting conservative push to change universities under name of “viewpoint diversity”).

⁴ See PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 119-21 (1991) (critiquing “neutrality” and “objectivity” as rhetorical devices masking power and legitimate inequality); *On Institutional Neutrality*, BULL. AM. ASS’N U. PROFESSORS (Am. Ass’n of Univ. Professors, Washington, D.C.), Summer 2025, at 42, 43-46 (explaining institutional “neutrality” often invoked “to avoid institutional accountability and silence dissent”).

⁵ See Renee Nicole Allen, *Legal Academia’s White Gaze*, 109 MINN. L. REV. 1827, 1833-40 (2025) (arguing legal academia’s norms of objectivity and neutrality reproduce racial hierarchy while protecting dominant institutional perspectives); Angela Onwuachi-Willig & Anthony V. Alfieri, *(Re)framing Race in Civil Rights Lawyering*, 130 YALE L.J. 2052, 2085-96 (2021) (reviewing HENRY LOUIS GATES, JR., *STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW* (2019)) (arguing ostensibly race-neutral approaches within legal institutions obscure structural inequality and reinforce existing institutional arrangements); MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 13-16 (2019) (arguing formally neutral hiring criteria disadvantage women of color by privileging credentials requiring class and gender support); Richard Delgado, *Commentary, The Imperial Scholar: Reflections on a Review of Civil Rights Literature*, 132 U. PA. L. REV. 561, 572 (1984) (arguing dominant remedial frameworks ignore past injustice, minimize disruption, and preserve elite admissions standards).

appears as democratic restraint is strategic retreat: a decision to protect the institution's brand, endowment, and donor base.⁶

This Essay turns inward—toward the university's own structures of governance. Drawing on my prior work, I argue that faculty hiring reveals this dynamic. Hiring is presented as deliberative and meritocratic. In practice, it often reproduces exclusionary norms and performances that protect the institution from meaningful change.⁷

To explain these dynamics, I introduce the “governance triangle”—a framework describing how institutional power is structured across three domains: internal actors, external actors, and markets. In corporate governance, internal actors—management and controlling investors—direct operations; external actors—regulators—exercise oversight; and markets—capital markets, minority shareholders, and reputational markets—translate perception into value. Stability depends on alignment among these forces rather than the dominance of any one.⁸ Universities operate within an analogous structure.

In *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices* (“*Soft-Shoe and Shuffle*”), Professor Najarian Peters and I argued that hiring committees engage in “racial performance”: a choreographed display of commitment to diversity that rarely produces structural change.⁹ Since 2021, the terrain has shifted. Following the racial justice uprisings of 2020, universities made public commitments to anti-racism and institutional reform.¹⁰ By 2023, many of those commitments had receded. We are now in an era of “DEI retrenchment”: a widespread rollback of diversity, equity, and inclusion (“DEI”) initiatives in higher education.¹¹

⁶ See CHRISTOPHER NEWFIELD, UNMAKING THE PUBLIC UNIVERSITY: THE FORTY-YEAR ASSAULT ON THE MIDDLE CLASS 159-72 (2008) (explaining financial pressures reshape public universities' priorities and constrain academic commitments).

⁷ See Carliss N. Chatman & Najarian R. Peters, *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices*, 69 UCLA L. REV. DISCOURSE 2, 6-12 (2021) (noting faculty hiring committees mediate institutional identity and reproduce professional norms); Renee Nicole Allen, *Our Collective Work, Our Collective Strength*, 73 RUTGERS U. L. REV. 881, 886-87 (2021) (describing hiring practices framed as merit-based reproduce exclusion of candidates of color).

⁸ See sources cited *infra* note 61 (introducing framework).

⁹ Chatman & Peters, *supra* note 7, at 15-17 (critiquing hiring as performance of inclusion protecting elite norms).

¹⁰ See sources cited *infra* note 21 (detailing several university statements amid Black Lives Matter protests of 2020).

¹¹ See, e.g., Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025) (directing agencies to terminate federal DEI offices, positions, equity plans, and related initiatives); Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (eliminating DEI infrastructure in federal agencies and directing agencies to combat “illegal” DEI preferences); Carliss Chatman, *DEI Rollbacks Create Legal, Governance Risks Under Section 1981*, BLOOMBERG L. (May 22, 2025, at 04:30 ET), <https://news.bloomberglaw.com/us-law-week/dei-rollbacks-create-legal-governance-risks-under-section-1981> (outlining increased corporate exposure to legal risk under 42 U.S.C. § 1981 as consequence of DEI retrenchment).

This retreat is governed. As universities confronted political backlash against DEI, they internalized the logic of corporate crisis management, learning to preempt controversy rather than confront it. Institutions manage risk by depoliticizing or eliminating programs that might provoke external actors—donors, trustees, or legislators.¹² Governance becomes a performance of stability: every decision filtered through the lenses of reputational risk, legal exposure, and brand optics.

Universities mirror corporations.¹³ Decision-making is concentrated in communications offices, legal counsel, and external consultants, while faculty governance is sidelined.¹⁴ Institutions respond to threats with strategic messaging and quiet retrenchment. This shift is most visible in faculty hiring, where universities weigh the reputational risk of each candidate as carefully as their scholarly merit.¹⁵ At a moment when faculty of color face heightened scrutiny and online harassment, law schools in particular cling to familiar

¹² See, e.g., Memorandum from J. Scott Angle, Provost & Senior Vice President for Acad. Affs., Amy Meyers Hass, Vice President & Gen. Couns.; Melissa Curry, Vice President for Hum. Res., to Univ. of Fla. Cmty. (Mar. 1, 2024) [hereinafter Univ. of Fla. Memorandum], <https://administrativememo.ufl.edu/2024/03/compliance-with-bog-regulation-9-016-on-prohibited-expenditures> [<https://perma.cc/VDT2-4U2W>] (announcing closure of Office of Chief Diversity Officer and elimination of DEI positions in response to Florida law); *UNC System Shares Guidance Regarding DEI*, UNC-CHAPEL HILL (July 15, 2024), <https://www.unc.edu/posts/2024/07/15/unc-system-shares-guidance-regarding-dei> [<https://perma.cc/5AY3-S7CW>] (explaining dissolution of DEI offices across UNC system and reaffirming commitment to “institutional neutrality”).

¹³ Steven Davidoff Solomon & David Berger, *A Blueprint for University Governance*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 3, 2024), <https://corpgov.law.harvard.edu/2024/01/03/a-blueprint-for-university-governance> [<https://perma.cc/YN55-PCEC>] (“The governance model for corporations should not just be replicated whole-sale onto university boards. . . . Nonetheless, the importance and basics of strong corporate governance principles apply in both situations.”). See generally Carliss N. Chatman & Sergio Alberto Gramitto Ricci, *Values Primacy & Total Governance Through Activism*, B.C. L. REV. (forthcoming 2026) (describing corporate structures of control and reputational discipline).

¹⁴ See BENJAMIN GINSBERG, *THE FALL OF THE FACULTY: THE RISE OF THE ALL-ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS* 1-25 (2011) (arguing administrators and professional staff increasingly control university priorities while faculty are shunted to sidelines); LARRY G. GERBER, *THE RISE AND DECLINE OF FACULTY GOVERNANCE: PROFESSIONALIZATION AND THE MODERN AMERICAN UNIVERSITY* 122-25, 140-42 (2014) (describing business-management models and market-driven restructuring as weakening faculty control over academic decision-making).

¹⁵ See Chatman & Peters, *supra* note 7, at 4-12 (describing hiring as governed in part by coded claims of cultural fit); KerryAnn O’Meara, Lindsey L. Templeton, Damani K. White-Lewis, Dawn Culpepper & Julia Anderson, *The Safest Bet: Identifying and Assessing Risk in Faculty Selection*, 60 AM. EDUC. RSCH. J. 330, 358 (2023) (finding relationship “between assessments of some risks and a candidate’s perceived social identities” and concern among faculty members with “prestige and reputation of scholarly work”); Angela Onwuachi-Willig, *Complimentary and Complementary Discrimination in Faculty Hiring*, 87 WASH. U. L. REV. 763, 791-93 (2010) (describing faculties’ treatment of minority candidates as risky hires subject to heightened qualification thresholds).

hierarchies—privileging elite networks and ideological safety over intellectual diversity or structural change.

Universities are not simply failing to defend democracy—they are reshaping governance itself in ways that reproduce authoritarian logics under the guise of neutrality.¹⁶ The imbalance in the governance triangle transforms democratic ideals into risk-management protocols. To reclaim the university as a space for genuine democratic practice, we must restore balance to that triangle—re-centering internal stakeholders, constraining external capture, and resisting the dominance of reputational markets that equate dissent with danger.

I. REVISITING *SOFT-SHOE AND SHUFFLE*: HIRING AS PERFORMANCE, PROTECTION, AND POWER

This Part revisits *Soft-Shoe and Shuffle* to situate faculty hiring within a broader system of governance in which reputation, rather than academic mission, shapes institutional decision-making. It traces how diversity rhetoric, once used to signal progress, has evolved into a strategy of risk management shaped by reputational pressures and political constraint. By examining recent developments—from state bans on DEI initiatives to high-profile leadership resignations—this Part shows how reputational governance now reshapes the conditions under which faculty hiring occurs.

The analysis begins in the faculty conference room, where deliberation often doubles as performance. What once appeared as collegial debate now reveals the deeper mechanics of reputational governance—how universities protect themselves through the language of merit, neutrality, and fit.

A. *Faculty Hiring as Diversity Theater*

Faculty hiring, particularly in legal academia, is presented as a deliberative and meritocratic process.¹⁷ The ritual itself is often invoked as proof that the university values fairness, excellence, and inclusion.¹⁸ Yet in practice, it functions less as a gateway for transformation than as a system of reproduction.¹⁹

¹⁶ See WILLIAMS, *supra* note 4, at 119-21; Paul Brest, Opinion, *How the Compact Curtails Academic Freedom*, INSIDE HIGHER ED (Oct. 23, 2025), <https://www.insidehighered.com/opinion/views/2025/10/23/how-compact-curtailed-academic-freedom-opinion> [<https://perma.cc/4DY5-WKPV>] (arguing Trump Administration's mandated institutional neutrality as violating universities' First Amendment rights and academic freedom); see also Michael Banerjee, *Using Citizens United*, 106 B.U. L. REV. 1239, 1242-46 (2026) (arguing universities hold First Amendment rights as corporate entities).

¹⁷ See DEO, *supra* note 5, at 13-18 (describing law faculty hiring process as formalistic and dependent on elite university and law review credentials).

¹⁸ See Chatman & Peters, *supra* note 7, at 7-8 (arguing faculty hiring operates as performative process through which institutions signal symbolic commitments independent of actual outcomes).

¹⁹ *Id.* at 7-9 (describing hiring deliberations as performative exercises masking structural exclusion); see also Richard H. Chused, *Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 538-39 (1988) (finding minority

In *Soft-Shoe and Shuffle*, Professor Peters and I argued that law school hiring committees engage in “diversity theater”: a performance that gestures toward inclusion without redistributing power.²⁰ Candidates of color are often courted for optics, evaluated through shifting and unspoken standards, and excluded through coded language about “fit.” These practices, cloaked in collegiality and confidentiality, protect institutional comfort by ensuring that only those who mirror existing norms advance.

During the 2020-21 hiring cycles, universities issued public statements committing to anti-racism and equity in response to the uprisings following George Floyd’s murder.²¹ Yet the structures we described remained intact. Committees continued to valorize traditional markers of pedigree—Supreme Court clerkships, elite law review publications, and advanced degrees from a narrow circle of institutions.²²

faculty often function as tokens within overwhelmingly white faculties); Allen, *supra* note 5, at 1844-78 (analyzing how ostensibly neutral evaluative norms in legal academia reflect and reinforce dominant institutional values).

²⁰ Chatman & Peters, *supra* note 7, at 7-9; see also Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORN. L. REV. 1258, 1262-78 (2000) (exploring how faculty of color must perform identity to navigate dominant institutional norms, often under heightened scrutiny).

²¹ See, e.g., Rutgers L. Sch. Fac., *Anti-Racist Principles & Action*, RUTGERS L. SCH. (June 23, 2020), <https://law.rutgers.edu/about-us/diversity-and-inclusion/anti-racist-principles-action> [<https://perma.cc/FS4Y-2G6F>] (committing to diverse faculty hiring, pay equity, and structural change in response to racial injustice); B.U. Sch. of L. Fac., *A Statement of Solidarity and Action by the Boston University School of Law Faculty*, B.U. SCH. L.: RECORD (Sep. 25, 2020), <https://www.bu.edu/law/record/articles/2020/bu-law-faculty-issue-statement-in-support-of-black-lives> [<https://perma.cc/M8GN-9DHT>] (click “Read the Statement”) (acknowledging structural racism and committing to antiracist teaching and institutional reflection); Garry W. Jenkins, *A Message from the Dean: George Floyd and the Fight for Justice*, MINN. L. (June 1, 2020), <https://law.umn.edu/news/2020-06-01-message-dean-george-floyd-and-fight-justice-0> [<https://perma.cc/UB3W-C6D5>] (committing to community engagement, expanded clinics, and racial justice research); Erwin Chemerinsky, *Message from Dean Chemerinsky: Our Community at a Very Difficult Time*, U.C. BERKELEY L. (May 31, 2020), <https://www.law.berkeley.edu/article/community-5-31-20> [<https://perma.cc/GRM5-PCER>] (calling for institutional condemnation of racism and greater racial equality in legal education); *2020 Commitments to Racial Equity*, WASHU: EQUITY, DIVERSITY & INCLUSION, <https://equity.wustl.edu/benchmarking/2020-commitments-to-racial-equity> [<https://perma.cc/M5RK-8MUB>] (last visited May 26, 2026) (detailing structural equity plan including cluster hiring, wage reform, and faculty diversity goals).

²² See Allen, *supra* note 5, at 1844, 1868-70 (arguing traditional metrics like elite clerkships and law review placements reflect and reinforce institutional whiteness); Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813, 818, 822-24 (2020) (demonstrating small number of elite institutions supply large majority of law faculty hires); Eric J. Segall & Adam Feldman, *The Elite Teaching the Elite: Who Gets Hired by the Top 10 Law Schools and Why It Matters*, 68 J. LEGAL EDUC. 614, 616-18 (2019) (showing top-tier law schools disproportionately hire from elite credential pools); Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN’S L. REV. 171, 183-86, 192 (2013) (examining how hiring norms in law faculties reflect socioeconomic advantage and replicative hiring practices).

Since 2021, the conditions surrounding hiring have changed. As the political climate turned hostile to DEI, universities became increasingly risk averse. States such as Florida²³ and Texas²⁴ banned diversity statements and trainings, while politically connected alumni and legislators began monitoring appointments for ideological deviation.²⁵ Hiring committees now operate under explicit constraint: searches are canceled, language is sanitized, and race-conscious deliberation is reframed as legal exposure.²⁶

The result is regression disguised as caution. The same gatekeeping mechanisms that once maintained exclusion through inertia now do so through fear. Every appointment decision is filtered through an assessment of potential controversy, transforming “fit” into a proxy for risk tolerance. Safe candidates—those with elite credentials and ideologically neutral portfolios—are favored over scholars whose work interrogates race, power, or inequality.²⁷

²³ S.B. 266, ch. 82, § 3, 2023 Fla. Laws 1015, 1032 (codified at FLA. STAT. § 1001.741 (2025)) (prohibiting diversity statements).

²⁴ S.B. 17, ch. 922, § 1, 2023 Tex. Gen. Laws 2936, 2936-38 (codified at TEX. EDUC. CODE ANN. § 51.3525 (West 2025)) (banning DEI offices and mandatory trainings in Texas public universities).

²⁵ See Joseph W. Yockey, *Resolving Regulatory Threats to Tenure*, 57 U. RICH. L. REV. 579, 606-10 (2023) (highlighting instances of legislative interest in tenure reform from Iowa, Texas, Louisiana, and North Carolina which “stand apart as examples of anti-tenure sentiment and action with straightforward political undertones”); Jack Stripling & Andy Thomason, *Her ‘1619 Project’ Is a Political Lightning Rod. It May Have Cost Her Tenure*, CHRON. HIGHER EDUC. (May 19, 2021), <https://www.chronicle.com/article/chapel-hill-celebrated-a-prominent-journalist-then-it-denied-her-tenure> (reporting on UNC-Chapel Hill Board of Trustees’ failure to grant tenure to Nikole Hannah-Jones despite faculty approval amid political pressure).

²⁶ See, e.g., DAVID ROZADO, SHIRI SPITZ SIDDIQI, ERIN SHAW & DYLAN SELTERMAN, HETERODOX ACAD., CHANGING DEI REQUIREMENTS IN FACULTY HIRING: A COMPARATIVE ANALYSIS BETWEEN 2024 AND 2025 HIRING CYCLES 7-10 (2026), https://content.heterodoxacademy.org/uploads/DEI-Faculty-Hiring_Research-Report_FINAL.pdf [<https://perma.cc/HW4P-BWU3>] (observing 50% decline in faculty job advertisements requiring DEI statements from 2024 to 2025, in part due to increasing federal and state legal pressure); Ryan Quinn, *U of Washington Faculty Search Weighed Race Inappropriately*, INSIDE HIGHER ED (Nov. 3, 2023), <https://www.insidehighered.com/news/faculty/diversity-equity/2023/11/03/u-washington-faculty-search-weighed-race-inappropriately> [<https://perma.cc/5XRB-Q7AM>] (cancelling search for psychology professor after “faculty members tried to hide the extent to which race was considered”).

²⁷ See Allen, *supra* note 5, at 1849 (“[L]aw schools continue to rely on racist projects—like preferences for hyper-credentialed candidates, use of student evaluations in the promotion process, optional faculty attendance at racial equity trainings—in the recruitment and retention process.”); Carbado & Gulati, *supra* note 20, at 1262-78 (explaining vague criteria such as collegiality, trust, and institutional fit advantage candidates perceived as nonthreatening and aligned with existing workplace norms).

In this context, hiring decisions reveal more about an institution's appetite for dissent than about its commitment to excellence.²⁸ Faculty hiring is a manifestation of how the governance triangle tilts toward reputation: internal deliberations and external pressures converge to produce outcomes that preserve stability at the expense of transformation.

B. *When Risk Management Replaces Inclusion*

The patterns visible in faculty hiring reflect a broader backlash against racial equity across American institutions.²⁹ The current wave of DEI retrenchment represents a systemic redefinition of risk—one that equates the pursuit of justice with liability.

This ideological shift began during the first Trump Administration and has matured into a durable political and legal project. In 2020, Executive Order 13950 barred federal contractors and grantees from conducting workplace trainings that addressed systemic racism or “divisive concepts.”³⁰ Though rescinded by the Biden Administration,³¹ the order established a template for state and institutional action.³² Universities canceled programs, law firms suspended internal initiatives, and administrators learned a new reflex: avoid controversy by avoiding race. When President Trump was reelected in 2024, he reinstated his anti-DEI policies from the first term, and in many ways went further.³³

That reflex has since become governance policy. Organizations such as the Faculty, Alumni, and Students Opposed to Racial Preferences (“FASORP”) have weaponized anti-discrimination law to challenge university and law review practices under the guise of defending meritocracy. In *FASORP v. Northwestern University*, the group alleged discrimination against white, heterosexual, cisgender men in faculty hiring and student journal-selection processes, portraying equity efforts as unlawful favoritism and reverse discrimination.³⁴ The litigation, amplified by political allies and sympathetic media, transformed ordinary administrative decisions into reputational flashpoints.

The chilling effect has been magnified by similar pressures in the private sector. By 2023, major law firms faced threats of investigation from state attorneys general for maintaining diversity fellowships or recruitment

²⁸ Cf. Deborah N. Archer & Yuvraj Joshi, *Infrastructure Equality*, 120 NW. U. L. REV. 135, 139-40, 142-43 (2025) (arguing systemic inequality is sustained through infrastructural choices that appear neutral but entrench racial hierarchy).

²⁹ See Feingold & Weishart, *supra* note 2, at 590-600 (describing state-level anti-CRT and anti-DEI legislation as coordinated efforts to suppress race-conscious discourse).

³⁰ Exec. Order No. 13950, 3 C.F.R. 433 (2021).

³¹ Exec. Order No. 13985, 3 C.F.R. 409 (2022).

³² Feingold & Weishart, *supra* note 2, at 600-16 (documenting proliferation of state-level “divisive concepts” legislation modeled on federal order).

³³ See *infra* Section II.A (describing issuance of Executive Orders 14151 and 14173).

³⁴ Complaint, *supra* note 2, ¶¶ 12, 79.

pipelines.³⁵ Many retreated, abandoning programs that had modestly diversified elite practice.³⁶ The risk traveled through the pipeline: Hiring a scholar of color or supporting student work on race and inequality now carried potential political costs.

The risk of being labeled “too political” now outweighs the risk of perpetuating exclusion. Universities have adopted the logic of compliance, maintaining the appearance of diversity while hollowing out its substance.³⁷ The

³⁵ See Andrew Goudswaard, *Law Firms Target DEI Backlash as Their Own Diversity Programs Draw Fire*, REUTERS (Sep. 13, 2023, at 18:12 ET), <https://www.reuters.com/legal/legalindustry/law-firms-target-dei-backlash-their-own-diversity-programs-draw-fire-2023-09-13/> (“Republican state attorneys general and Republican U.S. Senator Tom Cotton each sent letters to large U.S. law firms in recent months warning against racial preferences in hiring decisions.”).

³⁶ See Tatyana Monnay, *Trump Dismantles Big Law DEI Efforts, Despite Probe’s End*, BLOOMBERG L. (Feb. 11, 2026, at 10:45 ET), <https://news.bloomberglaw.com/business-and-practice/trumps-dismantling-of-big-law-dei-succeeded-despite-probes-end/> (describing dismantling of diversity programs following political and legal pressure); Sam Levine, *US Law Firms Quietly Scrub DEI References from Websites to Appease Trump*, GUARDIAN (Feb. 10, 2026, at 17:17 ET), <https://www.theguardian.com/us-news/2025/apr/11/law-firms-dei> [<https://perma.cc/D8N2-WU29>] (reporting major U.S. law firms removed DEI language from websites and scaled back diversity initiatives amid political pressure); David Thomas, *Skadden Law Firm Fellowship Revamps Application to Omit ‘Racial Justice,’ ‘Equity,’* REUTERS (June 13, 2025, at 13:44 ET), <https://www.reuters.com/legal/government/skadden-law-firm-fellowship-revamps-application-omit-racial-justice-equity-2025-06-13/> (noting removal of racial justice language amid political pressure).

³⁷ Several universities have renamed DEI offices or eliminated them altogether. See, e.g., Katherine Mangan, *After DEI Ban, UT-Austin Eliminates a Division and Lays Off Its Former Diversity Staff*, CHRON. HIGHER EDUC. (Apr. 2, 2024), <https://www.chronicle.com/article/after-dei-ban-ut-austin-eliminates-a-division-and-fires-its-former-diversity-staff/> (reporting closure of University of Texas at Austin’s DEI division and layoffs of at least sixty staff to comply with Texas S.B. 17); Jessica Blake, *Kentucky and Nebraska Dissolve Their DEI Offices*, INSIDE HIGHER ED (Aug. 22, 2024), <https://www.insidehighered.com/news/quick-takes/2024/08/22/kentucky-and-nebraska-dissolve-their-dei-offices> [<https://perma.cc/8XCQ-T6PF>] (detailing both University of Kentucky’s and University of Nebraska at Lincoln’s closure of central DEI offices in advance of or in reaction to legislative threats); Rudi Keller, *University of Missouri Bows to Republican Pressure and Eliminates Campus DEI Division*, MO. INDEP. (July 30, 2024, at 10:00 ET), <https://missouriindependent.com/2024/07/30/university-of-missouri-bows-to-republican-pressure-and-eliminates-campus-dei-division/> (quoting University of Missouri System president admission eliminating DEI division intended to preempt state budget threats); *Alabama Universities Shutter DEI Offices, Open New Programs, to Comply With New State Law*, ASSOCIATED PRESS (July 23, 2024, at 18:52 ET), <https://apnews.com/article/diversity-equity-inclusion-alabama-legislature-cb45a7667125543d5450134ff0ee4728> [<https://perma.cc/3A3H-2ZCJ>] (reporting system-wide DEI office closures at Alabama public universities in anticipation of October 2024 ban); Jaweed Kaleem, *As Trump Attacks DEI, UC Bans ‘Diversity Statements’ in Faculty Hiring*, L.A. TIMES (Mar. 20, 2025, at 10:23 PT), <https://www.latimes.com/california/story/2025-03-19/uc-eliminates-diversity-statement-requirement-faculty-hiring> (reporting U.C. system’s ban on mandatory DEI statements following federal scrutiny and internal acknowledgment of appeasement motives); Laura Spitalniak, *University of Michigan Scraps Multimillion Dollar DEI Investment*, HIGHER ED DIVE (Mar. 28, 2025), <https://www.highereddive.com/news/univ>

rituals of inclusion—search statements, commemorative events, committee reports—persist as gestures detached from power.

The ouster of Harvard President Claudine Gay in 2024 crystallized this moment.³⁸ Her resignation, following coordinated attacks from donors and politicians, demonstrated how reputational governance disciplines not only individuals but entire institutions.³⁹ Similar pressures forced out leaders at the University of Pennsylvania and other campuses, underscoring how identity and equity commitments have become liabilities in the politics of higher education.⁴⁰ Together they marked a collective surrender to external control.

In this environment, universities no longer merely accommodate external demands—they anticipate them.⁴¹ Faculty hiring, once a protected arena of academic self-governance, has become a proxy battlefield where the university signals its compliance with political authority. What began as diversity theater has matured into reputational choreography: a defensive dance performed to reassure those who hold the purse strings and shape the rankings.

ersity-of-michigan-scraps-multimillion-dollar-dei-investment/ 743897 [https://perma.cc/63T2-ERFR] (describing Michigan's abrupt shutdown of all DEI offices and programs in response to President Trump's executive orders); Katarina Sostaric, *Regents Direct Iowa's Public Universities to Cut DEI Programs Not Needed for Compliance*, IOWA PUB. RADIO (Nov. 16, 2023, at 16:34 CT), https://www.iowapublicradio.org/education/2023-11-16/regents-direct-iowas-public-universities-to-cut-dei-programs-not-needed-for-compliance [https://perma.cc/H8SL-LWMZ] (explaining Iowa's Board of Regents order to reduce all non-mandated DEI programs and remove diversity statements).

³⁸ Emma H. Haidar & Cam E. Kettles, *Harvard President Claudine Gay Resigns, Shortest Tenure in University History*, HARV. CRIMSON (Jan. 3, 2024), https://www.thecrimson.com/article/2024/1/3/clauidine-gay-resign-harvard [https://perma.cc/ZX37-ARRS] (detailing mounting political and donor pressure, amid broader backlash to university diversity and speech policies, leading Harvard to accept Gay's resignation).

³⁹ See *id.*

⁴⁰ See Marc Levy, *Liz Magill, U. Penn's President, and Board Chair Resign After Antisemitism Testimony Draws Backlash*, ASSOCIATED PRESS (Dec. 9, 2023, at 19:55 ET), https://apnews.com/article/new-york-governor-antisemitism-colleges-israel-gaza-ae1294d644b3305cc51e8d9bb7252766 [https://perma.cc/6HJH-6YET]; Kate McGee, *Texas A&M President Katherine Banks Resigns Amid Fallout From Failed Hiring of Journalism Professor*, TEX. TRIB. (July 21, 2023, at 20:27 CT), https://www.texastribune.org/2023/07/21/tamu-president-resign-journalism [https://perma.cc/H6LL-5MZJ] (describing how President M. Katherine Banks resigned after intense political and public backlash over contested faculty hire tied to diversity politics).

⁴¹ See Kwan Woo Kim & Laura T. Hamilton, *Anti-DEI Legislation and Anticipatory Compliance in Faculty Hiring at Public Colleges and Universities 2-4, 7-11* (Oct. 21, 2025) (unpublished manuscript), https://osf.io/preprints/socarxiv/yfbcn_v1 (finding anti-DEI bills' introduction followed by statistically significant increases in white male faculty hires and declines in underrepresented minority hires even before bill enactment, consistent with "anticipatory compliance"); Meera E. Deo, *Resisting Overcompliance*, 94 UMKC L. REV. 715, 716-20, 725-28 (2026) (arguing institutions often exceed legal requirements in response to ambiguous or politically charged directives and articulating framework for "resisting overcompliance").

II. THE GOVERNANCE TRIANGLE AND THE CORPORATE UNIVERSITY

This Part expands the analysis from faculty hiring to institutional governance writ large. It introduces the governance triangle—a framework for understanding how universities allocate power among internal stakeholders, external actors, and reputational markets. The triangle has tilted toward reputation, transforming universities into brand-managed enterprises that privilege legal compliance and donor appeasement over academic freedom.

A. *Reputational Dominance and External Controls*

The intensification of reputational governance in higher education reflects the convergence of political pressure, financial leverage, and administrative response.

In January 2025, President Trump issued Executive Orders 14151 and 14173, dismantling the remaining DEI infrastructure in federal agencies and contracting. These directives—titled “Ending Radical and Wasteful Government DEI Programs and Preferencing” and “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”—required agencies to eliminate diversity offices, identify employees affiliated with equity work, and revoke affirmative action provisions in federal contracting.⁴² Project 2025 extended this approach by proposing structural changes to higher education governance, reinforcing the role of state power in shaping institutional priorities.⁴³ It called for privatizing student loans, defunding the Department of Education, and reshaping university curricula to privilege “Western civilization.”⁴⁴

These federal developments have been most aggressively implemented at the state level. In Florida, Governor DeSantis positioned higher education as a proving ground for his anti-“woke” agenda.⁴⁵ The “Stop WOKE Act” (2022) and S.B. 266 (2023) curtailed discussions of race and gender and prohibited public universities from funding DEI initiatives.⁴⁶ In response, the University of

⁴² Exec. Order No. 14151, 90 Fed. Reg. 8339 (Jan. 20, 2025); Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

⁴³ See Lindsey M. Burke, *Department of Education*, in MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 319, 319, 322-27, 352-55 (Paul Dans & Steven Groves eds., 2023), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [<https://perma.cc/CE9X-A5B3>].

⁴⁴ *Id.*

⁴⁵ Joseph Contreras, *DeSantis Ramps Up ‘War on Woke’ with New Attacks on Florida Higher Education*, GUARDIAN (Feb. 6, 2023, at 13:21 ET), <https://www.theguardian.com/us-news/2023/feb/05/ron-desantis-war-on-woke-florida-higher-education-new-college> (describing DeSantis’s efforts to remake Florida’s university system to eliminate “woke” curricula and policies as part of broader cultural agenda).

⁴⁶ H.B. 7, ch. 72, § 2, 2022 Fla. Laws 534, 536-39 (codified as amended at FLA. STAT. § 1000.05 (2025)) (restricting classroom discussion of race and gender and prohibiting DEI funding); S.B. 266, ch. 82, § 3, 2023 Fla. Laws 1015, 1032 (codified at FLA. STAT. § 1001.741 (2025)) (further limiting diversity programs and higher-education funding); see also John R.

Florida eliminated all DEI-related positions, citing legal compliance.⁴⁷ Texas followed suit with S.B. 17 (2023), which outlawed DEI offices and training programs across public institutions.⁴⁸ Universities, including the University of Texas and Texas A&M University, swiftly dissolved diversity offices and reassigned staff, illustrating how legal mandates become opportunities for ideological realignment.⁴⁹

The Trump Administration soon moved from policy to conditional bargaining. In October 2025, the White House circulated a proposed *Compact for Academic Excellence in Higher Education* (the “Compact”) to nine major universities.⁵⁰ The Compact offered continued access to federal research funding in exchange for sweeping reforms in admissions, hiring, and governance—including elimination of diversity statements, caps on international enrollment, and privileging of viewpoint balance.⁵¹ Some institutions, including Massachusetts Institute of Technology, Brown University, and University of Arizona, rejected the offer outright, citing threats to institutional autonomy.⁵²

Although the Compact has not yet been finalized, the Administration has already shown that such conditional bargaining could produce institutional concessions. The costs of resistance are real. Harvard’s refusal to accept the Administration’s demands in April 2025 was followed by the suspension of \$2.2

Vile, *Stop W.O.K.E. Act (Florida)* (2022), FREE SPEECH CTR. (Apr. 14, 2025), <https://firstamendment.mtsu.edu/article/stop-w-o-k-e-act-florida> [<https://perma.cc/QUY8-4XM9>] (outlining prohibitions of Stop WOKE Act).

⁴⁷ See Univ. of Fla. Memorandum, *supra* note 12.

⁴⁸ S.B. 17, ch. 922, § 1, 2023 Tex. Gen. Laws 2936 (codified at TEX. EDUC. CODE ANN. § 51.3525 (West 2025)) (banning diversity, equity, and inclusion offices in Texas public universities).

⁴⁹ See Morgan Young, *The War on DEI: An In-Depth Look at the Texas DEI Law’s Impact on College Campuses as Lawmakers Move to Expand the Legislation*, WFAA (Feb. 27, 2025, at 22:35 CT), <https://www.wfaa.com/article/news/education/texas-dei-universities-diversity-equity-inclusion/287-342739c0-4c34-4a2b-9988-f5644054a0b9> (“[A]ll seven public university systems in Texas dismantled any existing DEI programs before S.B. 17 actually went into effect.”).

⁵⁰ Proposal from U.S. Dep’t of Educ. to Various Univs., Compact for Academic Excellence in Higher Education (Oct. 1, 2025) [hereinafter Higher Education Compact], <https://www.washingtonexaminer.com/wp-content/uploads/2025/10/Compact-for-Academic-Excellence-in-Higher-Education-10.1.pdf> [<https://perma.cc/PQ3G-DJ9Y>] (circulating proposed federal compact tying funding to “viewpoint balance” and DEI elimination); see Michael C. Bender, *Trump Administration Asks Colleges to Sign ‘Compact’ to Get Funding Preference*, N.Y. TIMES (Oct. 3, 2025), <https://www.nytimes.com/2025/10/02/us/politics/trump-college-funding.html> (describing universities’ responses to “compact” sent by Trump Administration).

⁵¹ Higher Education Compact, *supra* note 50, at 1-6.

⁵² Shannon Conner & Carolina Cuellar, *From Silence to Rejection: How 9 Universities Are Responding to Trump’s Higher-Ed Compact*, ARIZ. LUMINARIA (Oct. 20, 2025), <https://azluminaria.org/2025/10/20/from-silence-to-rejection-how-9-universities-are-responding-to-trumps-higher-ed-compact> [<https://perma.cc/VTM9-U5M8>].

billion in federal grants, leading to Harvard posting a \$113 million shortfall in 2025.⁵³ Acquiescing under threat of continued funding loss, Columbia University entered a settlement in July 2025 that restored access to those funds while requiring more than \$200 million in payments and enhanced oversight.⁵⁴ In the governance triangle, external actors have weaponized funding to discipline internal decision-making, while reputational markets reinforce compliance by rewarding silence and punishing dissent.

The coercive force of reputational governance is also visible in recent state-level crises. At the University of Florida, the state's Board of Governors rejected the appointment of a finalist to serve as president—despite unanimous approval by the university's Board of Trustees—after backlash over his past ties to DEI initiatives.⁵⁵

Meanwhile, at Texas A&M, a viral video of a student confronting a professor about gender-identity content in a children's literature class ignited a political response.⁵⁶ The professor was fired, and the dean and department chair were removed following calls from state lawmakers. Administrators justified themselves as preventing "actions that damage the reputation of our institutions,"⁵⁷ a phrase that captures the logic of reputational governance.

This was not Texas A&M's first incident. The 2023 Texas A&M controversy involving Dr. Kathleen McElroy—whose offer to lead the journalism program

⁵³ Michael Casey, *Trump Administration Freezes \$2.2 Billion in Grants to Harvard Over Campus Activism*, ASSOCIATED PRESS (Apr. 15, 2025, at 09:57 ET), <https://apnews.com/article/harvard-trump-administration-federal-cuts-antisemitism-0a1fb70a2c1055bda7c4c5a5c476e18d> [<https://perma.cc/BYK3-M8S9>]; HARVARD UNIV., FINANCIAL REPORT: FISCAL YEAR 2025, at 3 (2025), <https://finance.harvard.edu/sites/g/files/omnuum12671/files/2025-10/fy25-financial-report.pdf> [<https://perma.cc/D3LR-AQ5P>] (attributing losses to heightened federal scrutiny, including terminated research grants and potential limits on international scholarly exchange).

⁵⁴ Rebekah Barber, *Universities Capitulate to Trump Administration's Demands—but at What Cost?*, NON-PROFIT Q. (Aug. 11, 2025), <https://nonprofitquarterly.org/universities-capitulate-to-trump-administrations-demands> [<https://perma.cc/6FC4-R5J9>].

⁵⁵ Maria Avlonitis, *The Top Choice for UF President Was Rejected. What's Next?*, INDEP. FLA. ALLIGATOR (June 5, 2025, at 06:15 ET), <https://www.alligator.org/article/2025/06/top-choice-for-uf-president-was-rejected-whats-next> [<https://perma.cc/D75A-9RXN>] (reporting rejection of Santa J. Ono by Florida Board of Governors); Lori Rozsa, *University of Florida Presidential Pick Rejected After Criticism of Past DEI Support*, WASH. POST (June 3, 2025), <https://www.washingtonpost.com/nation/2025/06/03/santa-ono-university-of-florida-president-rejected-dei> (reporting backlash over Ono's prior DEI work).

⁵⁶ Jessica Priest, *Video of Clash over Gender-Identity Content in Texas A&M Children's Lit Class Leads to Firing, Removals*, TEX. TRIB. (Sep. 9, 2025, at 20:35 CT), <https://www.texastribune.org/2025/09/08/texas-am-video-professor-student-gender-identity-content> [<https://perma.cc/7A4A-QU2P>].

⁵⁷ Image posted by Texas A&M System (@tamusystem), X, *A statement from The Texas A&M University System Board of Regents* (Sep. 9, 2025, at 19:47 ET), <https://x.com/tamusystem/status/1965562800631415216> [<https://perma.cc/6JHC-6GJH>].

was rescinded after conservative backlash—illustrates this logic in miniature.⁵⁸ McElroy's scholarship on race in media was recast as political risk, and her rejection became a public relations exercise in neutrality.⁵⁹ The episode revealed a university governing itself by anticipation, not conviction.

Reputational markets function as enforcement mechanisms within the governance triangle. External outrage—whether from political leaders, donors, or media networks—triggers internal governance responses aimed at appeasing those actors. Rather than defending academic autonomy, universities act as intermediaries between public fury and institutional image, punishing their own to safeguard brand and funding.

This architecture of control extends beyond public universities. The resignation of Harvard President Claudine Gay following a coordinated donor and media campaign and the contemporaneous departures of University of Pennsylvania President Elizabeth Magill and several DEI leaders nationwide show how elite universities now respond to reputational crises with capitulation rather than defense. Diversity and dissent alike are treated as liabilities to be managed, not values to be defended.

These episodes reveal a consistent pattern: external and reputational forces dominate, internal stakeholders recede, and governance collapses into reputation management. Universities no longer act as buffers between politics and scholarship; they act as conduits of external control. Governance by reputation has become governance by fear.

B. Corporate Governance Logic in Universities

The modern university resembles a corporation.⁶⁰ Both operate through a governance triangle organized around three centers of power. For corporations, these centers are management (internal stakeholders), regulators (external actors), and markets (public valuation and reputation).⁶¹ The governance

⁵⁸ Kate McGee, *Texas A&M Recruited a UT Professor to Revive Its Journalism Program, Then Backtracked After "DEI Hysteria,"* TEX. TRIB. (July 11, 2023, at 11:51 CT), <https://www.texastribune.org/2023/07/11/texas-a-m-kathleen-mcelroy-journalism> [https://perma.cc/G7SU-963N].

⁵⁹ *Id.* (describing McElroy's hiring as having "stirred up a hornet's nest" over her work on race and diversity).

⁶⁰ See sources cited *supra* note 13 (analogizing university boards to corporate governance structures).

⁶¹ The concepts of "governance triangle" and "democratic design" will be developed more fully in future work. The framework builds on ADOLF A. BERLE, JR. & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* 119-25 (1932) (introducing separation of ownership and control as central problem of corporate governance); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 252-57 (1999) (conceptualizing corporation as mediating hierarchy balancing interests of multiple stakeholders); Edward B. Rock, *For Whom Is the Corporation Managed in 2020?: The Debate over Corporate Purpose*, 76 BUS. LAW. 363, 367-74 (2021) (tracing modern evolution of corporate-purpose theory and its implications for stakeholder governance); LUCIAN BEBCHUK & JESSE FRIED, *PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF*

triangle departs from the traditional shareholder-stakeholder framework by giving consideration to where power lies.⁶² Management includes directors, officers, and controlling shareholders. Markets consist of external actors who exert influence through reputation—minority shareholders, contractors, and the broader public. Regulators supply and enforce the legal framework; management sets the corporate agenda and controls operations; and markets translate reputation into value. When these forces remain in equilibrium, no single actor dominates. This framework shifts the analysis of governance from formal authority to functional influence.

In university governance, internal stakeholders—faculty, students, and staff—function as investors. External actors—trustees, donors, and state officials—play a regulatory role.⁶³ Reputational markets—rankings, media, social-media discourse, and political optics—evaluate and discipline institutional behavior.⁶⁴ That balance has collapsed. The modern university has allowed reputational markets to eclipse both law and internal voice. Trustees and donors now wield disproportionate influence. Legislators and political appointees amplify this dynamic through threats to accreditation and funding. Faculty governance has been reduced to ritual consultation.⁶⁵ The result is a

EXECUTIVE COMPENSATION 1-9 (2004) (describing governance equilibrium can collapse when managerial incentives distort institutional purpose); and Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 308-10 (1976) (analyzing agency costs arising from managerial discretion).

⁶² See Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sep. 13, 1970, at 34, <https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html> (articulating shareholder wealth maximization); Mark J. Roe, *Political Preconditions to Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539, 542-48 (2000) (emphasizing corporate governance outcomes shaped by broader distribution of political and institutional power rather than formal allocations of authority); Oliver Hart & Luigi Zingales, *The New Corporate Governance*, 1 U. CHI. BUS. L. REV. 195, 196-97 (2022) (describing shareholder value maximization as dominant paradigm and proposing alternative framework responsive to social preferences and externalities).

⁶³ See *supra* Section II.A (discussing external political and financial controls over university governance).

⁶⁴ See Michael Sauder & Wendy Nelson Espeland, *The Discipline of Rankings: Tight Coupling and Organizational Change*, 74 AM. SOCIO. REV. 63, 69-74 (2009) (explaining how external rankings reshape internal institutional behavior and induce conformity to evaluative metrics); Levy, *supra* note 40 (reporting criticism leading to resignation of University of Pennsylvania leadership); Roy Shapira, *A Reputational Theory of Corporate Law*, 26 STAN. L. & POL'Y REV. 1, 3-5, 10-14 (2015) (arguing legal processes influence behavior indirectly through reputational sanctions mediated by information intermediaries and public perception).

⁶⁵ Compare Am. Ass'n of Univ. Professors, Am. Council on Educ. & Ass'n of Governing Bds. of Univs. & Colls., *Statement on Government of Colleges and Universities*, in POLICY DOCUMENTS AND REPORTS 119, 119 (Gregory F. Scholtz ed., 12th ed. 2025) (explaining shared governance ideal), with sources cited *supra* note 14 (documenting decline of faculty governance authority).

system in which reputation governs: Universities act not from principle but from anticipation of how each decision will appear to their most powerful audiences.

This imbalance mirrors the corporate pathology of managerial capture—the tendency to prioritize self-protection over enterprise value.⁶⁶ In universities, reputational capture performs the same function. Communications and legal offices have supplanted senates and assemblies.⁶⁷ Decisions are vetted not for coherence with academic mission but for their capacity to avoid controversy. The university, like the corporation, has become a manager of volatility rather than a steward of purpose.

This drift toward corporate governance rewards procedural compliance and punishes moral clarity. Faculty and students who challenge dominant narratives are often disciplined. Student protest is monitored, academic freedom reframed as “civility,” and institutional dissent recoded as brand damage. Universities substitute optics for transformation. Statements replace policies, inclusion replaces redistribution, and gestures of democracy mask practices of control.

III. RESTORING BALANCE: DESIGNING FOR DEMOCRATIC RESISTANCE

To recover democratic potential, universities must restore equilibrium among their governing forces—constraining external dominance, re-centering internal stakeholders, and resisting reputational capture. Universities cannot outsource courage to communications offices or moral judgment to counsel. They must reclaim governance as a collective act of intellectual and ethical agency. Universities require what corporate governance scholars describe as friction: design features that slow decision-making, require evidence, and preserve deliberation.⁶⁸

Reclaiming the university’s public purpose requires restoring balance across each vertex of the governance triangle: strengthening internal voice, constraining external influence through transparency, and slowing reputational markets through time. Each intervention corresponds to a site of institutional failure identified above.

⁶⁶ See BERLE & MEANS, *supra* note 61, at 119-25 (describing separation of ownership and control and managerial insulation from shareholder accountability); BEBCHUK & FRIED, *supra* note 61, at 23-29 (explaining how governance distortions allow self-protective managerial behavior).

⁶⁷ See GINSBERG, *supra* note 15, at 15-16 (“At most schools . . . faculty senates and assemblies have little power. They resemble the old Supreme Soviet more than the U.S. Congress or British Parliament.”); see also Yaron Nili & Cathy Hwang, *Shadow Governance*, 108 CALIF. L. REV. 1097, 1121-28 (2020) (analyzing how informal power networks and reputational considerations govern decision-making in modern corporations).

⁶⁸ Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2024-30 (1996) (explaining procedural requirements and deliberative structures shape institutional behavior beyond substantive outcomes); Edward B. Rock, *Saints and Sinners: How Does Delaware Corporate Law Work?*, 44 UCLA L. REV. 1009, 1013-18 (1997) (describing corporate law’s reliance on informal and formal constraints—including reputational and procedural checks—to discipline and slow managerial decision-making).

First, the internal vertex must be strengthened through restored faculty voice. Faculty councils should have determinative—not advisory—authority over hiring, curriculum, and disciplinary matters. Hiring criteria and evaluation rubrics should be publicly articulated and subject to deliberation by representative bodies. Diversity and equity expertise must be embedded in every stage of selection and review, ensuring that “fit” and “merit” cannot operate as coded substitutes for exclusion. Elected faculty committees should oversee appointments, budgeting, and institutional statements, and should possess an explicit mechanism to revisit or veto administrative decisions justified solely as “risk management.”

Second, the external vertex must be constrained through transparency.⁶⁹ External actors—donors, trustees, and state officials—exercise influence that is often opaque yet decisive. Universities should commit to periodic, public disclosure of donor correspondence, legislative demands, and other external attempts to shape personnel or curriculum. Administrative performance reviews should include metrics tied to equity and inclusion progress, and those results should be available to the community. Annual reports should track faculty diversity, retention, and promotion outcomes alongside financial indicators, making governance accountability as visible as fiscal health.

Third, the reputational vertex must be slowed through time. Reputational markets operate at the speed of outrage, collapsing deliberation into reaction. Universities should adopt mandatory cooling-off periods between reputational incidents and disciplinary action. Any action justified by reference to “brand” or “reputation” should trigger an automatic review by an independent faculty panel charged with assessing whether the alleged harm is material or merely speculative.

Finally, restoring balance requires extending accountability beyond the institution through community advisory boards composed of students, alumni, and local partners. Endowment investments and corporate partnerships should be audited for racial and environmental impact, with findings published and linked to administrative evaluation. By redirecting accountability downward and outward—to those the university educates and affects—governance becomes democratic in both structure and spirit.

A university capable of resisting authoritarian drift must build time, transparency, and collective courage into its design. Only then can it return to its purpose—not the performance of neutrality, but the practice of truth.

⁶⁹ See JAMES G. MARTIN CTR. FOR ACAD. RENEWAL, BLUEPRINT FOR REFORM: UNIVERSITY GOVERNANCE 1-2 (2024), <https://jamesgmartin.center/wp-content/uploads/2023/06/Blueprint-for-Reform-University-Governance.pdf> [<https://perma.cc/4QWQ-NRHK>] (arguing university governance suffers from insufficient transparency and recommending public disclosure of board activities, communications, and decision-making processes to ensure accountability); Louis D. Brandeis, *What Publicity Can Do*, HARPER'S WKLY., Dec. 20, 1913, at 10, 10 (“Sunlight is said to be the best of disinfectants . . .”).

CONCLUSION

The legitimacy of the American university rests not on its rituals or rankings, but on its capacity to live the values it professes. A university that claims to defend democracy must first practice it—through the ways it hires, governs, and responds to challenge. Today, however, many universities have traded moral clarity for risk management. Decisions that once reflected scholarly judgment and shared governance now pass through filters of brand protection and donor appeasement. The imbalance of the governance triangle—where reputation overshadows both mission and accountability—has turned institutions of learning into administrators of comfort rather than stewards of truth.

Reclaiming the democratic university requires courage. It means restoring equilibrium among internal stakeholders, external actors, and reputational markets; strengthening faculty governance and academic freedom; and refusing to mistake neutrality for virtue. True democracy in higher education is not procedural—it is participatory. It depends on the willingness of those within the university to speak when silence is safer, to act when retreat feels prudent, and to remember that dissent is a sign of health, not harm.

If universities are to serve democracy rather than merely perform it, they must reimagine governance as a shared ethical project. That work begins in the spaces we control—hiring committees, classrooms, meetings, and boardrooms—and extends outward to the public we are meant to serve. To balance the triangle is to reclaim the promise of higher education itself: a community devoted not to reputation, but to reason; not to preservation, but to progress; and not to the performance of democracy, but to its practice.