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Divisions in the university commons yield dividends: A partial review of Peter MacKinnon's University

Commons Divided

By Root Gorelick



In *University Commons Divided*, Peter MacKinnon, the long-serving president of the University of Saskatchewan, has written an interesting introduction to some of the recent contentious cases in governance of Canadian universities. He provides readers with nice introductory chapter-length descriptions of four cases: Jennifer Berdahl's blogging about the ousting of University of British Columbia (UBC) President Arvind Gupta after only a year in office; my blogging about Carleton University's Board of Governors, including changes to the Board's code of conduct; restorative justice following misogynistic Facebook posts by male dental students at Dalhousie University; and efforts by Trinity Western University to have graduates of their new law school recognized by law societies of various provinces, despite the university requiring students to sign a Christian oath that they will only engage in sex as part of a formal marriage between one woman and one man. MacKinnon provides enough details that interested readers can explore these four topics in much greater detail.

MacKinnon has two other chapters in which he briefly covers a panoply of subjects, including contentious university speakers; contentious faculty teachers, such as those who use provocative language, discuss provocative topics, or refuse to use preferred gender pronouns; Indigenization of postsecondary education; and divestment of university pension and endowment funds from *cause célèbre*, such as fossil fuel extraction and Israeli apartheid. These snippets are so briefly discussed and superficially synthesized that readers probably are not sure where to start in order to

[learn more.](#)

Universities, including Canadian universities, have odd governance structures, which MacKinnon does a nice job of highlighting. Unlike corporate institutions, most universities have an academic senate in which employees conduct some management duties. For example, university senates set the calendar for the academic year and decide what courses will be taught. This is very different from the corporate world in which management tells employees when to work and what to work on. Such a structure constitutes employees making hiring decisions, which is very unusual and very non-corporate. Therefore, MacKinnon is entirely justified in discussing the unique role of university governance structures, especially for insuring fulsome debate.

I am a neophyte on the subject of university commons and university governance, especially when compared with someone like MacKinnon, who has spent much of his life as a university administrator. Therefore, instead of thoroughly reviewing his entire book, I will focus on parts that I know best, namely the parts on blogging about the Carleton University Board of Governors.

Regarding Carleton's Board of Governors, MacKinnon's basic argument is that it is disruptive to university boards if a board member blogs about open sessions. But MacKinnon then says it is perfectly fine and not disruptive if an outside observer posts the same thing. MacKinnon provides no explanation for this distinction. What if a board member drafted the blog, but then an observer posted it? How does MacKinnon's distinction apply to Jennifer Berdahl's case at UBC, in which she, as someone who was not a board member, was found by MacKinnon to be disruptive of and disrespectful to the UBC Board by her blogging?

Professor Berdahl is a distinguished professor with expertise on gender and racial inequities who blogged that the UBC president was forced to resign by the Board of Governors because, among other things, he was “the first brown man to be the university president”. Berdahl’s blogging and subsequent protests eventually led to the resignation of the chair of the UBC Board of Governors, which MacKinnon claims was disruptive. But isn’t it the job of university faculty members to disrupt intellectual paradigms? Jennifer Berdahl was not disruptive in any traditional sense, but was an academic expressing an opinion about something she knows quite a bit about. Yet MacKinnon found Berdahl’s attempts at informing the wider university community via blog posts to be sufficiently disruptive as to require formal measures.

At UBC, Carleton, and Dalhousie, MacKinnon believes that boards of governors were the victims because their boards were not allowed to defend themselves. MacKinnon claims that these university boards were required to remain silent and defenceless, while everyone else had the freedom to excoriate those boards of governors. While a nice straw argument, this claimed asymmetry is illusory. See for example the *Question and Answer* document, in which Carleton’s board of governors publicly maligned me by name. One question and answer from the board’s public Q&A document reads:

What are the concerns regarding Prof. Gorelick’s blog postings?

The blog posts have been problematic. Inaccurate and false statements have been made about members, meetings, discussions and decisions of the Board are neither appropriate nor legal, according to advice obtained by the Board. The conduct is inconsistent with the fiduciary duty owed by a Board member, which requires all member’s to act

honestly, in good faith, loyally and the best interests of Carleton University.^[1]

Thus, the Board of Governors publicly called me a liar, accused me of doing something illegal, and accused me of breaching fiduciary duty, all without any evidence or even arguments for why this might be true (probably because it isn't true). In most situations, that would be deemed defamatory, especially by those with legal training, but is seemingly not considered defamatory when voiced by those in power.

For another example, as a member of Carleton's Board of Governors Executive Committee and Chair of its Governance Committee, Michael Wernick publicly and unapologetically called several Carleton students "Brownshirts and Maoists", including women of colour.^[2] Yet Wernick was promoted to Vice-Chair of Carleton's Board of Governors, while also being promoted to clerk of the privy council of Canada. Equally egregiously, the Chair of the Carleton Board of Governors repeatedly refused to listen to student board members at open sessions of the board.^[3]

Contrary to what MacKinnon claims, not only can university boards mount vigorous defences against adverse publicity, it is clear – at least in Carleton's case – that university boards can and will vigorously wield offensive tools against dissenting members. MacKinnon was correct that, "civility facilitates and promotes freedom of expression, and that the university expects civil discourse in the commons", albeit with the implication that executives of Carleton's board of governors stepped far beyond that line. But why did MacKinnon not mention these transgressions by executive members of the Carleton Board of Governors in this book?

Initially, the lack of citations included in the chapter on Carleton's Board of Governors seemed surprising, especially from an academic scholar. There is a wealth of material publicly available on the internet, but MacKinnon ignored virtually all of it, including those examples listed in the previous paragraph. MacKinnon's preface cryptically explains his bias: "Michael Wernick provided advice and information at critical junctures." In other words, one of the most partisan principals in the Carleton Board of Governors case was MacKinnon's primary source!

MacKinnon also ignores the larger contemporary context regarding codes of conduct, specifically those revolving around sexual conduct. Prior to 1991, sexual consent largely was encapsulated by the phrase "no means no". That shifted in subsequent decades, morphing into the more modern and more positive "yes means yes" paradigm. What would the code of conduct for Carleton's Board of Governors look like if its many prohibitions were replaced by positive and affirmative guidance? Would "yes means yes" have precluded the absurdity of the Carleton Board of Governors compelling all of its members to sign a ridiculously named "Consent to Act as a Governor" form?

MacKinnon claims that university boards of governors need to be insulated from transparency so they are not puppets of legislatures. But, if that were the case, then what happened in Manitoba in 2016 and 2017, where the province completely controlled the University of Manitoba's Board of Governors. Despite having what looked like a prototypical governance structure, the University of Manitoba's collective bargaining with the University of Manitoba Faculty Association was hijacked by the provincial government. Transparency might have helped at University of Manitoba, but none of this came to light until the faculty association asked the

Manitoba Labour Board to intervene. And none of this is mentioned in MacKinnon's book.

MacKinnon writes:

We can now appreciate the distinction between differences in the commons and a commons that is divided. Our agora, our market place of ideas, celebrates differences because they are what make discussion and debate possible. Our differences lead us to the conditions that make them possible and even productive, and so that they are welcome in our commons. A divided commons is in sharp contrast. It features position and exclusion, and may presage expulsion and closure. It carries with it the message that debate is over, or at least unnecessary. Division is the antithesis of the commons.

However, MacKinnon never really tells us how to distinguish differences from divisions, other than simply using his gestalt. What is productive or welcome to a university president is not necessarily productive or welcome to students, staff, or faculty members. The most likely reason that MacKinnon is silent about this dichotomy between *difference* and *division* is that it is a false dichotomy. MacKinnon insists that, "Division is the antithesis of the commons." But this implies that his view of the commons must be entirely homogenous, expunging all differences.

If MacKinnon's distinction between difference and division is genuine (which I don't believe), then his distinction implies that Carleton's Board of Governors is divided. Differences on Carleton's Board led to a multi-year fight that led to draconian new changes to its Board of Governors' Code of Conduct, only to have those changes rescinded two-and-a-half years later. This fight presaged my expulsion from the board.

In the very next paragraph, MacKinnon says:

It is important that we bring a non-judgmental attitude of mind into the commons, not because we are to refrain from making judgments but because of the care with which they must be made. We insist upon evidence, not assumption; reason, not pronouncement; and conclusions supported by both. Our search for the truth is arduous and complex, and it is never ending. It is not for us to post a sign at the entrance to the commons proclaiming its closure because truth is revealed. It must always be open.

I could not agree more. But if “it is not for us to post a sign at the entrance to the commons proclaiming its closure because truth is revealed”, then why did Carleton post multiple police checkpoints at its Board of Governors’ open sessions, even precluding journalists from attending open sessions as observers? Why did its board move from a room with three-dozen seats for outside observers to a room that holds a maximum of about a half-dozen observers? Even then, why does the Carleton administration and board only allow entrance of observers who have obtained prior written permission of the board chair via the university secretary? Why meet in a boardroom surrounded by floor-to-ceiling glass on two of the four sides, with gorgeous views of the river, but completely draw the blinds whenever the board meets in open session? Why did the board thrice revise its code of conduct in *closed* sessions, on 24 August 2015, 29 November 2015, and 9 January 2018? Why does MacKinnon implicitly exclude university governance from the university commons, at least at Carleton University, thereby needlessly dividing university communities?

MacKinnon claims that issues with board of governors’ codes of conduct should be resolved by faculty senates, albeit without MacKinnon providing

any reason. All I can think of is that university senates typically deal with academic matters and that maybe MacKinnon thinks that academic freedom is an academic matter. Maybe. But I don't know of any faculty senates in Canada that have taken on the role of defining the scope of academic freedom, especially in service, a role not explicitly recommended by the 1966 Duff-Berdahl report. Pawning off open and transparent governance onto university senates seems like a needless rationalization to keep university boards of governors closed and opaque. Both university senates and boards need to be open and transparent.

MacKinnon argues that academic freedom applies to teaching and research, but not service. He then, seemingly as a non sequitur, argues persuasively for the importance of universities honouring the Truth and Reconciliation Commission's (TRC) *Calls to Action*. It is difficult reconciling those two positions insofar as, for many Indigenous academics, there is little or no distinction between research and service. Much academic research by and for Indigenous peoples is a form of activism, a form of service. How does MacKinnon parse UBC's Greg Younging's extensive research efforts for the TRC? Was that research or service or both? This is an especially important question because the TRC report was not peer-reviewed, even though it was of extraordinary importance and very carefully compiled, analyzed, and synthesized inputs from many sources. The ambiguity between research and service also applies to many other activist academic disciplines, such as queer studies, women's studies, African-American studies, human rights, and maybe even law. If universities are trying to be more integrative – trying to blend teaching, research, and service – then MacKinnon would seem to be on the wrong track when he attempts to parse those three activities into artificial silos?

MacKinnon narrowly circumscribed the limits of academic freedom as follows:

When a professor of history is doing history, whether in the classroom, coffee room, home study, or as a guest speaker for a service club, she has academic freedom.... When she turns her attention to university governance and administration, a claim that she does so with academic freedom is less compelling... Gorelick has academic freedom when and whenever he is doing biology.

MacKinnon's limiting of my academic freedom to biology is either overly restrictive and/or a sign that he has not done his homework. A cursory glance at my online CV or list of cross-appointments shows that, at a minimum, I should also have academic freedom in several other areas of academic study. Did a decade on Carleton's senate provide no expertise on university governance? Did previous employment with federal and state governments not imbue some expertise in governance? If university boards of governors are supposed to be collegial – meaning that that all members have equal power or shared authority – how can the executive of any university board of governors summarily dismiss expertise of all their internal members? MacKinnon states that faculty members waive their academic freedom rights when they sit on boards of governors. He thinks that boards of governors have unfettered rights to draft whatever code of conduct they want, regardless of whether that contravenes a collective agreement that the board's executive had themselves earlier ratified. Unfettered rights of university boards to draft their own rules would even mean that women could be excluded. Sorry, but that is too superficial, hypocritical, and doctrinal a view of university governance.

The Carleton University Academic Staff Association fought hard to insure

that membership on the board of governors counts as service; that academic freedom applies to such service; and that any members of the board may publicly express disagreement/comment with regards to a decision of the board.”

Discovery and acquisition of new knowledge are not efficient enterprises. Therefore, MacKinnon’s quest for efficiency in universities is misplaced. In order for any human institution to be long-lived, it doesn’t need to be optimal, just good enough. Universities have and will continue to stagger along, seemingly almost at random, which is the nature of discovery, with inefficiencies, differences, and divisions. In fact, the willingness of universities to tolerate inefficiencies, differences, and divisions is probably one of their best, most cherished most endearing, most enduring, and defining qualities. Good university governance is no different from good science. Here’s to keeping the university commons divided!

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^[1] Carleton University Board of Governors (2015) Q&A on Duties of Board of Governors Members. First posted: 14 December 2015. <https://carleton.ca/secretariat/boardofgovernors/wp-content/uploads/Board-Q-and-A.pdf>.

^[2] Kennedy M (2016) Top bureaucrat’s past comments on ‘brownshirts’ spur protest *Ottawa Citizen*, 26 January 2016, page A6. <http://ottawacitizen.com/news/national/top-bureaucrats-past-comments-on-brownshirts-spur-protest>.

^[3] Laucius J (2016) Carleton board of governors passes sexual violence prevention policy” *Ottawa Citizen* 2 December 2016, page A3. <http://ottawacitizen.com/news/local-news/carleton-board-of-governors-passes-sexual-violence-prevention-policy>.



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