

THE ETHICAL RESPONSIBILITY OF TRUSTEES  
FOR THE INTERPRETATION OF MISSION IN  
INDEPENDENT COLLEGES AND UNIVERSITIES

by

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## ABSTRACT

The primary ethical responsibility of trustees of independent colleges and universities is the interpretation of institutional mission. Mission is essentially moral, and the interpretation of it is a process of ethical reflection. A constructive, normative argument for trustee responsibility is presented. The thesis has importance for all trustee governed nonprofit organizations.

Trusteeship is a legal responsibility. Trustees' fiduciary responsibility, duty of loyalty, and duty of care are defined in terms that have broadly moral connotations. The legal doctrine of *cy prèès* is a model for trustee contextual interpretation of mission.

Trusteeship is a moral responsibility. Trust is essential in the creation and continuity of moral community and civil society. Moral communities, like voluntary associations, are communities of trust. In these organizations, trustees guarantee the intergenerational continuity of beneficent mission.

Mission is moral and is rooted in moral community. Mission is essentially charitable, focused on moral goals to be achieved for a set of beneficiaries. Trustees also focus on the good for beneficiaries. Mission and the good for beneficiaries are contextual rather than universal. They change as context and circumstances change, necessitating the interpretation of mission. Philanthropy is essential to the achievement of mission, for financial resources make mission concrete.

A five part ethical model of trusteeship is presented. The extension of trust and

the acceptance of it by trustees is the motivating moment in their responsibility. When trustees are entrusted, they respond with fidelity, loyalty, and steadfast care for the mission and operations of a college. Trustee responsibility exists only in the context of continuing moral communities. Trustees' ethical interpretation of mission relies on a fundamental beneficent principle that focuses on the good of the other. In interpreting mission, the *good* is that which is contextually *fitting* for beneficiaries. The ethical interpretation of mission by trustees transforms mission.

A focus on the trustee responsibility for the interpretation of mission is an organizing principle for other trustee responsibilities. It also has implications for the practice of shared governance. A re-balance of the relative responsibilities of trustees, administrative staff, and faculty is proposed.

## INTRODUCTION

Trustees are the lead actors in the founding stories of most independent American colleges and universities.<sup>1</sup> When colleges recite their history, the narrative follows a typical pattern. They root the college's establishment in the voluntary action of a group of founders who bring together a conception of beneficent purpose--the original mission--with the capital resources necessary to establish the new institution. The founding trustees give identity to the new college, defining its initial beneficent and charitable goals, professing a mission to serve a specified set of beneficiaries in a particular geographic and social location. The mission is often framed within a particular moral tradition and community. Ambitiously grounded on lofty ideals, the new institution aspires to pursue its beneficent purposes in perpetuity.

The founding trustees invent the new college, creating an institution *de novo*. They secure the gifts of capital and operating resources that are necessary to give concrete legal and institutional form to the conception of beneficent mission. This mission is given

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For the sake of clarity in writing, whenever trustees are referred to without qualification, the reference is to trusteeship in independent colleges and universities. For the same reason, rather than repeatedly using the phrase *independent colleges and universities*, I will generally use *colleges* alone.

concrete institutional form through the infusion of resources and the creation of formal institutional structures. The conception of moral mission precedes the provision of resources. For example, Methodist clerics conceived of the University of Southern California well before three local businessmen donated the land and resources that enabled the church to break ground for the new university. However, their act of philanthropy was essential in converting the mere idea of mission into a new and persisting institutional form.

The founding of independent colleges typically rests on this coupling of moral imagination--the definition of beneficent mission--and acts of philanthropy. Voluntary initiative and charitable purposes are joined with capital resources to create a new institution to serve a community of beneficiaries.

With the passing of the founders' generation, the stewardship of the college passes to successor trustees who are entrusted with the responsibility for guiding the institution. Social, cultural, economic, and institutional circumstances change. The college adapts in order to ensure its survival and exploit new opportunities in the changed environment. Trustees endeavor to secure the college's continuity and to ensure that the original mission is faithfully served as times and circumstances change. Founding trustees couple a conception of mission with the resources necessary to achieve it. Similarly, their successors also bear fiduciary responsibility for prudent administration of institutional resources and, importantly, for interpreting the institution's mission to ensure that they faithfully serve the fundamental purposes in light of new conditions. In this sense, trusteeship provides an organizational mechanism to ensure intergenerational continuity of

beneficent intention, adapting the mission in light of change, whether the change is internal or external to the institution. As fiduciaries of both mission and resources, successor trustees are legally and morally accountable to preserve faithfully the institution's founding purposes, yet this fiduciary responsibility requires that they also be the transformers of the mission in light of the demands and opportunities of a new day. In the words of James Russell Lowell's abolitionist hymn, "New occasions teach new duties" (Worshipbook 540).

This dissertation presents a normative argument that the trustees' primary ethical responsibility is the interpretation of an institution's charitable and beneficent mission. My thesis is that trustees bear the moral responsibility for the interpretation of mission, and I propose an ethic of contextual interpretation as most appropriate to the execution of trustees' ethical responsibility for interpreting mission. The argument brings a new perspective to the nature of trustee duties and to the balance of responsibilities among trustees, faculty and administration in the higher education tradition of shared governance.

The fiduciary responsibility of trustees is both legal and moral in character. State law governs trustees' legal fiduciary duty to preserve an institution with loyalty and care, in the interests of the designated beneficiaries. Yet trustee responsibility is foremost a moral accountability. David H. Smith's important work on trustees, Entrusted: The Moral Responsibilities of Trustees, rightly describes trusteeship as, "A special kind of moral responsibility distinguished from some other fiduciary duties by the fact that it is triadic. In its simplest form, it comprises an entruster, a trustee, and a beneficiary" (5). Entrusted by their predecessors to secure the institutional mission on behalf of the beneficiaries,

trustees have moral obligations that precede and extend beyond the purely legal accountability of their role.

Colleges typically frame their founding mission as a moral declaration of charitable, benevolent intention. They emerge from the moral aims of the founders and are, by their nature, legally constituted as nonprofit organizations. Such organizations are *sui generis* based on charitable, beneficent purposes, which the colleges publically enunciate in the founding mission statements of institutions and the subsequent revisions of those statements.

Because these declarations of institutional mission are affirmations of moral purpose, the interpretation and adaptation of these moral ends to new times must be, by definition, a process of moral reflection. The interpretation of mission--of fundamental institutional purposes--is a process of ethical reflection that precedes other institutional considerations. The discussion of academic strategy, the establishment of academic priorities, the allocation of resources, and the identification of faculty and executive leadership, only make sense in light of the overall institutional mission. Some understand the process of deliberating on the renewal of mission as an adjunct to the process of considering academic strategy (Keller 153-4). Yet to subsume consideration of mission under the discussion of academic strategy makes mission a matter secondary to other institutional considerations of resource allocation and educational policy. The renewal of the conception of mission, including both beneficent purposes and the intended beneficiaries, is a necessary precursor to and a determinant of other key institutional decisions.

A contextual ethic that discerns what is most fitting to the particular circumstances of a college is especially well suited to trustees' moral responsibility for interpreting mission. In the broadest sense, all ethical discernment is a matter of interpreting and applying a received moral understanding to new circumstances. In the interpretation of mission, account must be taken of the enormous variety of independent colleges, each operating within a local context, moral tradition, and history. There can be no single good or right mission for this panoply of institutions. An appropriate mission for a large independent university like Northwestern University will necessarily differ from the appropriate mission for a small rural institution with a distinctive historical identity, like the Tuskegee Institute. Further, the appropriate mission at one point of history will differ from the fitting mission in a different era. The appropriate mission for the University of Southern California in the heart of a vast urban, international city in the 1990s will not be the same as the mission at the university's founding in 1880 when there were 11,000 citizens in the small town of Los Angeles. An appropriate mission is best determined by discerning what is most fitting to the particular time, place, and circumstances of an institution within a particular moral community and tradition.

Ethical interpretation transforms meaning, and in so doing, transforms institutions. When the mission of a college is reinterpreted in light of changed conditions, the fundamental moral mission of the institution is transformed. Transformation of the institution should follow in turn as the new understanding of mission is worked out in the university's structure and strategy.

My proposition about trustees' moral accountability for interpreting mission has

implications for the balance of responsibility and authority in the higher education tradition of shared governance. From my perspective on trustees' primary responsibility for the interpretation of mission, I will address other contending governance conceptions that propose that presidents or faculty have priority over trustees in the renewal of institutional vision.

The focus here is on trustees' moral obligations in what are known as private or independent colleges and universities. Consideration of public higher education and proprietary institutions is excluded. An estimated 40,000 trustees serve on the boards of the almost 1,700 independent colleges and universities in America that serve 2.9 million students. The number of trustee governed private institutions exceeds slightly the number of public institutions, though many more students attend public colleges and universities (Ingram, Effective Trusteeship 1; US 209-10, 283).

The distinction between private and public higher education trusteeship warrants emphasis. Although the functional tasks related to institutional strategy, policy, and administration may make public and private collegiate trusteeship seem indistinguishable, they derive from two distinct moral traditions in Western society. Some authors elide the distinction between private and public trusteeship holding that, "The roles and functions

of the trustee are essentially the same in public and private institutions” (Fisher and Koch 235). On the contrary, private and public trusteeship derive from substantially different traditions of moral legitimacy.

Private institutions are manifestations of the tradition of independent, voluntary association and voluntary initiative undertaken for the common good. Of most importance for a consideration of the responsibility for institutional mission, the purposes and goals of private institutions are defined by the founding trustees and interpreted by their successors. Independent sector trustees stand in a continuing lineage of trust, and the fundamental triadic character of the trust relationship focuses trustees on the interests of the beneficiaries. Legally, private university trustees own the institution on behalf of the interests of the designated beneficiaries. Private university and college assets are privately held in trust for the accomplishment of the mission in the interest of the beneficiaries. The institution’s primary resource base, whether tuition, endowment income, or gifts, is private. To be sure, private institution trustees are legally accountable to the state under the nonprofit codes, but morally they are accountable within the context of the trust relationship. Because private institutions are part of the tradition of independent moral initiative, their trustees enjoy a degree of independent authority that gives greater latitude to their actions (Rauh, 117).

Public institutions, by contrast, derive from the responsibility of the sovereign state to advance the interests and the welfare of its citizens. Public universities and colleges are created by public, legislative initiative. This public action also defines the mission of the institution. Although public trustees may also be understood as interpreters of the public

mandate, the legislature retains the ultimate authority to redefine or interpret the mission in the legislature's own understanding of public needs and public interests as circumstances change. Public sector trustees are either directly elected or appointed by elected representatives of the people. They serve the people of the state and are accountable to them through their elected representatives. Although the laws that create a public institution may designate a set of beneficiaries, the citizens of the state are always implicitly the beneficiaries. Public university trustees do not own the institution; it is part of the public domain. Its resource base, though partially private, is primarily public through the state's power of taxation and the process of public budgetary appropriation.

Another distinction between independent and public higher education trusteeship is the different mechanisms for continuity of purpose in each. Private trusteeship may be thought of as a functional mechanism to provide for the intergenerational continuity of beneficent intention in the face of the deaths of the founders and other predecessor trustees. This trustee function is not necessary in the public sector. The state does not die. The legislative body that created a public institution and established its mission persists, bearing moral responsibility for assessing and addressing the needs of its citizens anew in new times. Although public institution trustees may be called upon to interpret the mission of the institution, responsibility for this interpretation ultimately rests with the state.

These distinctions in moral tradition, mission formulation, mission interpretation, trustee election, ownership, beneficiaries, resource base, and moral accountability lead to my focus on private sector higher education trusteeship rather than public. This does not

mean that public trustees have any lesser sense of moral responsibility for their institutions. However, the moral traditions that create private and public institutions are very different, and the nature of the moral responsibility of private and public trustees for the renewal of mission is distinctly different.

A further distinction can be made between independent institutions and those owned by a particular religious denomination or order that retains the ultimate authority for the institution's mission. The college may be held in trust for the denomination, and the trustees of such religiously directed colleges may be appointed by and accountable to denominational governance bodies or ecclesiastical authorities. Although these colleges are within the tradition of voluntary moral initiative, the line of accountability differs because the denomination retains rights of ownership, mission definition, resource utilization, or trustee appointment. In these instances, a denomination's governance structure stands in a superior position of accountability analogous to that of the trustees of independent institutions.

The case presented here is not empirically or descriptively grounded, rather I present a constructive, normative argument about the nature of trusteeship based in three strands of literature. First, a substantial body of literature on trusteeship and higher education governance deals with the relative responsibilities of trustees, faculty, and administration. This literature generally relegates trustees to a role in renewing institutional vision that is secondary to presidents or faculty. This is understandable, since faculty or presidents have written much of the literature. They have strongly vested interests in the ordering of prerogatives within shared governance. While acknowledging

the critical role that faculty and presidents play in the traditional constellation of shared governance, my goal is a reordering or re-balancing of roles in relation to an understanding of trustees' moral responsibility for institutional mission.

Second, a good deal of the literature on trusteeship itself understands fiduciary responsibility as fundamentally legal and financial in character, or the literature gives priority to other trustee responsibilities. Some authorities hold that the duty of the board is to hire and fire the president, and otherwise get out of the way. Some colloquially assert that the priority for resource generation, i.e., fund raising, makes it the trustees' duty to *give, get, or get off*. In counterpoint, I propose a different approach to trustees' responsibilities that views them from the perspective of the primacy of moral accountability for mission.

Third, a diverse body of ethical literature is brought to bear, a literature that has otherwise not been applied in the discussion of trustee responsibility. This is a critical perspective, since trusteeship is a moral responsibility and not purely a legal duty or organizational management task. Further, my reliance on philosophical and theological works rests on an assumption that norms shape behavior. The way people act reflects what they think and believe. Trustees conform their behavior to their ideas about trustee responsibility. I rely, therefore, on works that can form a conception of trusteeship as foremost an ethical responsibility. The work of Niklas Luhmann and Bernard Barber address the role of trust in creating society and morality. John Locke, Robert Bellah, and Francis Fukuyama all speak to trust's importance in creating moral community. With particular regard to the conception of trusteeship as a moral role, my argument is

particularly indebted to David H. Smith's work on the ethical responsibilities of trustees. The idea of trustee governed institutions and trustee responsibility as a kind of stewardship for mission has important roots in the Reformed theological tradition. Two modern ethicists who derive from this tradition, H. Richard Niebuhr and James Gustafson, provide ethical conceptions of responsibility and interpretation that have value in the construction of an ethic specific to trusteeship. In particular, they understand moral reflection as contextual discernment of *the fitting*. Their exploration of ethics as a kind of interpretation is especially well suited for trustees' responsibility for the renewal of institutional mission.

The extraordinary variety of institutional histories, traditions, and environmental conditions found in independent higher education make it imperative that any ethic addressing the interpretation of moral mission be one that seeks that which is morally fitting to any institution's particular circumstances. Trustee responsibility is specific to the institution, mission, and beneficiaries that they serve. Consideration of trustee responsibility must, therefore, result in an ethical understanding that is fundamentally contextual in character. In the same sense that moral values are embedded in traditions, moral missions are deeply embedded in the specific nature of individual institutions, and the interpretation of mission is always institution specific.

Consequently, I do not present an understanding of mission that is universal or prescriptive. Although independent higher education is part of a long and rich tradition whose high purposes have been explored by the likes of James Cardinal Newman and John Maynard Hutchins, and although individual colleges and universities are readily identifiable

as members of the same species of social institution, there has never been agreement on an ideal, universal model of academic life. On the contrary, individual institutional histories, values, and governance traditions have been most highly valued. It is also for this reason that this dissertation seeks an ethical understanding of trustee responsibility that focuses on, “the ‘oral’, the ‘particular’, the ‘local’, and the ‘timely’” (Toulmin, “Recovery” 338).

This dissertation conceives of higher education trusteeship as primarily a moral responsibility. The sequence of the argument, therefore, begins with a perspective on the moral nature of trusteeship in relation to institutional mission and concludes with an exploration of the contending visions of trustee responsibilities in shared academic governance. The order of the argument is intentional. This is a normative thesis about the nature of a particular ethical responsibility, trusteeship, which ultimately has implications for institutional governance. It is not another treatise on higher education governance in which the moral responsibilities of the various participants are incidental to structural or functional considerations.

The argument begins by distinguishing the legal from the broader moral nature of trusteeship. In Chapter one, the legal duties of trustees are first spelled out and contrasted with the prior and broader moral obligations of the trust relationship. The legal doctrine of *cy prè*s, a formal judicial process, is examined as one model for the revision of institutional mission.

Chapter two continues this argument with an extensive examination of the moral nature of trusteeship rooted in the moral obligations of the trust relationship and the primal role of trust in constituting society and moral relationships. Trust is proposed as an

essential element in the creation of moral community, in general, and the board of trustees is affirmed as what David H. Smith calls a moral, “community of interpretation” (*Entrusted* 19-20). Trustees are understood as guarantors of intergenerational continuity of beneficent purpose. Trustees’ fiduciary responsibility makes them paradoxically responsible for the preservation of an institution’s mission and its transformation.

In Chapter three, the essential moral nature of mission is spelled out, and the mission of higher education is also argued to be essentially moral, an expression of moral community. I explore the way in which mission is always context dependent and, therefore, subject to change. Scholars who address the trustee responsibility for transforming mission are examined. Mission is seen as a central organizing principle, the touchstone by which all other institutional considerations are tested. Contrary positions on the problematic character of higher education mission statements--that they are ambiguous in both purpose and in their organizational consequences--are explored. Similarly, the recent case for a “purposeless” college, George Allan’s Rethinking College Education, is examined. Finally, the inextricable connection between philanthropy and mission is briefly treated.

Chapter four presents a novel, five-point framework for understanding the elements in trustees’ ethical responsibility for interpreting mission. The ethical responsibility of trustees is rooted in trust and a response to it, and grounded in moral community. Ethical discernment is presented as a process of contextual interpretation that ultimately results in conceptual transformation.

The impact of the thesis on two key aspects of higher education governance is the

subject of Chapter five. The responsibility for the interpretation is a lens through which all other trustee duties are put in focus. Further, the claim to priority for trustees in the interpretation of mission is contrasted with other claims to priority, either for presidents as the heroic, visionaries of renewed mission, or faculty as the custodians of academic values and institutional purposes. The higher education tradition of shared governance is the background to this exploration.

Based on the case for trustee responsibility for the interpretation of mission, the thesis concludes with a call for a new balance in the shared governance triad in relation to the transformation of institutional purpose. Avenues of scholarship on the nature and practice of trusteeship are suggested.

My argument has importance for the governance of American higher education. Independent, trustee governed institutions comprise the majority of public and private higher education institutions in the country. The conception presented here of the primacy of trustee ethical responsibility for the interpretation of mission is intended to clarify for trustees the nature of their role and responsibilities. The argument provides trustees with a framework for ordering their responsibilities and provides a framework for thinking about moral discernment in relation to institutional mission. The model of discernment proposed in Chapter four is a transformational ethic. In this same spirit, my argument proposes a transformation of the conception of trusteeship.

This dissertation has its roots in my abiding interest in the governance of nonprofit organizations, and particularly independent colleges and universities. It derives from my continuing personal reflections on how to be a good trustee. I have served as a trustee

and officer of three independent organizations over the last dozen years, including a church body, a primary and middle school, and a theological seminary. For fourteen years I was Executive Assistant to the President and Executive Secretary of the Board of Trustees of the University of Southern California, a role that led me to reflect daily and concretely on the work and responsibilities of trustees in higher education governance. As a consequence, my thesis grows not merely out of the literature but also out of reflection on the practice of trusteeship.

I hope that this work will help trustees, presidents, and faculty to think anew about their relative and shared responsibilities for the well-being of colleges and the several classes of beneficiaries that they serve. Although directed to trustees of

independent universities and colleges, the conception of trustee moral responsibility that is presented here may also lead to a renewed understanding of public sector trusteeship.

My basic thesis can also apply to any trustee governed nonprofit organization, since all are grounded in conceptions of a beneficent, charitable mission that is undertaken for the good of a set of beneficiaries. An understanding of the essentially moral character of trusteeship has broad implications for the host of organizations created to pursue charitable purposes.

Commenting on the relationship between moral discourse and social structures, Alasdair MacIntyre contends, “that we have not yet fully understood the claims of any moral philosophy until we have spelled out what its social embodiment would be ” (23). In this spirit, my dissertation is about the social organization of beneficence.

## CHAPTER 1

### TRUSTEESHIP AS A LEGAL RESPONSIBILITY

The law gives formal definition and structure to the trust relationship, yet a moral trust obligation precedes the law. This duty is more extensive and complex than the purely legal requirements to which trustees are subject. Trustees have well-defined legal responsibilities, but conceiving of trusteeship as initially and essentially moral in character illuminates the nature of trustee responsibility.

Why should the trustees of colleges be accorded a position of privileged authority?

The simple and formal answer is that the law gives them the authority and specifies their legal accountability for the well-being and continuity of the institution that is entrusted to them. Yet trustees' responsibilities and authority are not exhausted by the legal definition of the role. This chapter examines trustees' legal responsibilities as a prelude to Chapter two, which delineates the prior, broader ethical responsibilities of trusteeship which are rooted in the role's moral nature.

#### **The trust relationship**

Trusteeship can be conceived of as legal or moral in character. Under either conception, the basic form of trustee relationship encompasses three parties: a trustor, a trustee, and a beneficiary. David H. Smith in his important recent treatise, Entrusted: The

Moral Responsibilities of Trusteeship, spells out the essential typology of trusteeship and the fundamentally moral character of trustee responsibility:

Trusteeship is a special kind of moral responsibility, distinguished from some other fiduciary duties by the fact that it is triadic. In its simplest form, it comprises an entruster, a trustee, and a beneficiary. The entruster sets up the arrangement by formulating a purpose and transferring power to the trustee, who then acts on behalf of the entruster for the benefit of the beneficiary. Thus, trusteeship is not a simple two-party fiduciary relationship between two individuals: professional and client, man and woman. In its tripartite formulation, it more closely resembles the relationship between parents whose love for each other leads to a bond with their children, or a religious ethic in which duties to other persons are dependent on a prior relationship with God. The trustee's actions for the beneficiary, like those of a spouse or a disciple, are always constrained in some way by a prior relationship or person--by the will of the founder or by the purpose for which the organization was created (5).

Smith makes it clear that the essence of the trustee relationship is a moral duty of the trustee to act on behalf of the beneficiary in accordance with the purposes established by the entruster. Trusteeship is characterized by two relationships of moral obligation within the framework of a beneficent, i.e., moral, purpose. The trustee has responsibility, first, toward the entruster, to carry out faithfully the entruster's intended purposes in relation to the beneficiary. The trustee has a separate but related moral duty to the beneficiary, to consider first the interests of the beneficiary. These relationships may be codified in statutes and spelled out in case law, but legal definition is not necessary in order for a trustor-trustee-beneficiary relationship to be established. The personal, nonlegal relationship between trustor and trustee, and the inception of trustees' moral obligations, logically precede the legal formalization of the relationship through legal documents or the creation of institutional structures. As Smith concludes, the obligations of a trustee are

always understood with reference to the will or purposes of the trustor, whose intentions are morally beneficent in character and are directed toward the interests of the beneficiary, which may be an individual, a group, or an organization.

Although various forms of trusts are triadic in structure and in their functional relationships, charitable trusts are distinguished by their purposes and the beneficiaries who are designated. They have a “definite charitable purpose” and the beneficiaries are “the public” (Webster’s). However, the specific charitable purposes and beneficiaries may vary widely. Colleges may have several classes of beneficiaries, including students, faculty, and the society at large.

The American Bar Association’s Guidebook for Directors of Nonprofit Corporations links obligations to charitable purposes and beneficiaries in describing the organizational responsibilities of nonprofit directors:

Any person serving or asked to serve as a director must ask: For what purpose is the corporation maintained? What is the constituency which it is serving? It has been said that all organizations exist to maximize something for somebody; the nonprofit corporation is no exception. Defining the something and the somebody is a duty of every nonprofit board and every director. (Overton 10)

A fundamental purpose or mission, and a focus on the beneficiaries are two core trustee moral responsibilities. Overton places the continuing responsibility for determination of institutional ends in the hands of nonprofit directors.

The linguistic and legal definitions of *trustee* confirm the dual moral and legal character of the role. The dictionary holds that a trustee is, “one to whom something is entrusted,” and “a person whether real or juristic to whom property is legally committed in

trust: one holding legal title to property that he must administer for the benefit of a beneficiary or for a purpose recognized as legally charitable or as lawful by statute” (Webster’s, trustee). The legal definition has the same form. Black’s Law Dictionary defines a trustee as, in part, “One who holds legal title to property ‘in trust’ for the benefit of another person (beneficiary) and who must carry out specific duties with regard to the property. The Trustee owes a fiduciary duty to the beneficiary” (Black’s, trustee).

The remainder of this chapter examines trustees’ legal obligations as distinct from their broader moral responsibilities. This review of trustees’ legal duties illuminates trustee moral responsibility as far as the legal and moral languages intersect. As will be seen, the legal language related to trusteeship is surprisingly moral in character and definition. I have not infused the discussion with moral verbiage to make a point, rather the legal standards and principles that are pertinent to trustee responsibility are imbued with moral connotations that reflect their roots in relationships of trust.

### **The history of charitable trusts and nonprofit organizations**

The legal role and responsibilities of trustees in American society are spelled out in state statutes and the accumulated interpretations of case law. A full treatment of trustees’ legal responsibilities is beyond the scope of this dissertation, and the variability of judicial opinions from state to state makes a brief definitive treatment of them impossible. Further, a full history of trusteeship and the development of trustee

accountability are beyond the present purpose. Nevertheless, there are key legal principles and definitions that illuminate trustee moral responsibilities.

David Johnston finds the analog of modern trust law in the Roman legal concept of the *fideicommissum*, which clearly stems from a different legal tradition than Anglo-American trust law but is functionally equivalent. The Roman *fideicommissum* and the English legal trust derive from different legal and cultural traditions. There is no developmental or historical link between the two, but they evolved similarly with respect to the prevailing legal system and are functionally parallel. Johnston observes that, “They have a common fiduciary nature: property is entrusted to one person for the benefit of another” (1). He also finds that the Roman *fideicommissum* existed as a social form and obligation prior to its legal codification under Augustus. The *fideicommissum* “is a relic of the times in which there was no legal sanction: an object was entrusted (*commissum*) to the good faith (*fides*) of the recipient, for the benefit of another person” (9). Augustinian codes formalized a relationship that developed in prior custom and practice.

The development of the legal concept of the trust in modern Europe and particularly in England, can be traced to the Western Christian church in the Middle Ages. Donations and bequests were subject to canon law in which, “the charitable bequest of chattels and the gift of land for the use of religious bodies in perpetuity involved the obligation of executors or trustees to effectuate the desires of donors in the interest of beneficiaries” (Berman, Law 236). The English legal doctrine of the charitable trust developed from the prior concept of the *use* that was prevalent throughout

pre-Reformation Europe. In a use, “Land and other property were given to certain persons ‘for the use’ of individual churches, monasteries, or other ecclesiastical bodies.” (Berman, Law 239). The use and the concept of the trust that evolved from it had the same functional form. Each encompasses a relationship among “a donor, a donee, and a beneficiary” (Berman, Law 239).

Charitable trusts and nonprofit corporations are not legally equivalent, strictly speaking. Trust law and corporation law emerge from different traditions and are legally distinct. Thomas Silk notes that the difference rests on the emergence of the trust from case law and the development of the conception of a nonprofit corporation through statutory definition. However, the discussion of charitable trusts and nonprofit organizations often merges, especially in the treatment of trustee governance and discussions of those nonprofit corporations that are organized for charitable purposes and exempt from taxation under section 501(c)(3) of the Internal Revenue Service code (in contrast to other categories of non-charitable nonprofit organizations, e.g., cooperatives, clubs, unions, or mutual assistance organizations). In charitable organizations, whether organized as trusts or as charitable nonprofit corporations, the legal concept of trusteeship infuses the role and responsibilities of nonprofit corporate directorship. Under both legal constructs, trustees or directors are entrusted with the care of the beneficiaries and the organization (Silk 78). The American Bar Association’s Guidebook for Directors of Nonprofit Corporations acknowledges that the treatment of the duties of trustees and nonprofit directors are legally indistinguishable in the law of some states. Legal distinctions are obscured. The definitions of “trustee,” “director,” and “fiduciary” are

used synonymously (Overton 6).

Bernard Barber believes that this linguistic ambiguity is not accidental. The language conveys an understanding that the trustees of nonprofit corporations have special fiduciary responsibilities to use corporate assets for the common good (45). Strictly speaking, a nonprofit director is held to a less exacting fiduciary standard (Stuart 142). However, the prevalent colloquial (if legally improper) use of the term “trustee” conveys the quality of duty that a nonprofit governing board has. It points specifically to the underlying trust relationship that the nonprofit corporate legal structure embodies.

A strong relationship exists between the older legal tradition of charitable trusts and the relatively modern emergence of nonprofit corporations. This is evident from the language defining the purposes of each. The admissible purposes for which charitable trusts might be created were first legally codified in the 1601 Elizabethan Statute of Charitable Uses. The statute spells out a series of purposes that resonate throughout the subsequent history of British and American charitable institutions. The Statute allowed trusts to be created and funds to be set aside,

some for relief of aged, impotent, and poor people, some for maintenance of and maimed soldiers and mariners, schools of learning, free schools, and scholars in universities, some for repair of bridges, ports, havens, causeways, churches, seabanks and highways, some for education and preferment of orphans, some for or towards relief, stock or maintenance for houses of correction, some for marriages for poor maids, some for supportation, aid and help of young tradesmen, handicraftsmen and persons decayed, and others for relief or redemption of prisoners or captives, and for aid or ease of any poor inhabitants concerning payments of fifteens, setting out of soldiers and other taxes. (qtd. in Hopkins 56-57)

The legally allowable grounds for which modern nonprofit corporations may be established thoroughly parallel those spelled out in the Elizabethan Statute. They are

generalized as purposes that are,

religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international amateur sports competition, or the prevention of cruelty to children or animals. [The nonprofit corporation] must be organized exclusively for one or more of those purposes; that is, its governing document must limit its activities to proper goals. And it must be operated exclusively for one or more of those purposes. Thus, it may not engage in activities that serve other purposes, except to an insubstantial degree. (Silk 73-74)

The ambiguous use of “trustee” in regard both to more traditional charitable trusts and to more modern nonprofit corporations is a result of the overlapping definitions of the duties of trustees and directors. It is a consequence of the duplication in the legal tradition in the definitions of the benevolent purposes of the two types of charitable legal structures.

Clarification of these legal ambiguities is not necessary for the case presented here. The term *trustee* is used in regard to both benevolent legal structures. The organizational purposes and the moral responsibilities of trustees in charitable trusts and nonprofit corporations are parallel, even if they are not legally identical.

### **Trustee legal duties and their moral connotations**

The specifically legal obligations of trustees illuminate broader moral duties.

Trustees have legal *fiduciary responsibility* for an organization, which includes an express obligation to consider everything in terms of the interests of the beneficiaries. Trustees are also understood legally to have a *duty of loyalty*, a *duty of care*, and a *duty of obedience*.

Although these are legal duties, they are framed in language that has a very distinctly moral cast.

Two writers, who comment on the legal obligations of trusteeship, employ language that is broadly moral in connotation, language in which trusteeship is presented as fundamentally an order of beneficence. One commentator on trustees' legal duties believes that all of them are subsumed in "a singular and enveloping duty to carry out the charitable purposes of the trust." The key duties of loyalty and care are included under this single overarching responsibility (Fremont-Smith 76). In other words, she believes that pursuing the organizational mission on behalf of the beneficiaries logically includes the subsidiary duties of trusteeship. Stated even more simply by another scholar, the encompassing duty is "to act for the good of others" (Axelrod 120).

In legal terms, trustee responsibility is summarized in the concept of trustees' *fiduciary duty*, that is, "A duty to act for someone else's benefit, while subordinating one's personal interests to that of the other person." This is "the highest standard of duty implied by law" (Black's). Organizational assets have a singular purpose, "the benefit of those for whose benefit it was acquired" (Berman, Law 238-9). The legal duty of trusteeship requires a relentless focus on the interests of the other, the beneficiaries. The dictionary defines this fiduciary relation in part as,

the relation existing when one person justifiably reposes confidence, faith, and reliance in another whose aid, advice, or protection is sought in some matter: the relation existing when good conscience requires one to act at all times for the sole benefit and interests of another with loyalty to those interests. (Webster's)

In the specific context of higher education, a trustee, "holds something valuable in trust-- the classrooms, the libraries, the laboratories, the dormitories, the complex interrelationship of students and faculty, the institution itself--for high purposes and

benefits, not for himself, but for others” (Heilbron 3).

Under the umbrella of their legal fiduciary responsibility, trustees have a *duty of loyalty*, which is expressed both positively and negatively in terms of the interests of the beneficiaries and the trustees. Positively stated, “The duty of loyalty means that a trustee acting on behalf of a college must keep the institution’s interests paramount to *all* others” (Lascell and Hallenbeck 350-51). Loyalty is owed, above all, to the interests of the beneficiary or institution for which the trustee is accountable. Stated negatively in terms of the potential for conflicts of interest, “The basic legal principle to be observed here is a negative one: the director shall not use a corporate position for individual personal advantage” (Overton 28). Trustees must exclude their own interests from any consideration. In sum, “The duty of loyalty requires directors and trustees to put aside their personal interests in favor of the interests of the entity they serve” (Stuart, 139-140). Trustees’ *duty of loyalty* requires that they avoid conflicts between their own interests and those of the institution and its beneficiaries. The law’s focus is very much on trustees’ business dealings. Trustees are subject to legal sanctions for any actions that may be self-dealing financial transactions, i.e., those in which the *duty of loyalty* is transgressed through financial dealings in which a trustee’s financial interests, rather than those of the institution or beneficiaries, are served by a particular financial transaction (Bowen 21).

Trustees’ fiduciary duty also encompasses a legal *duty of care*. This duty is framed as a prescriptive, affirmative obligation, and it is coupled with an exclusion of proscribed behavior. Both the prescription and proscription refer to the interests of the beneficiaries or institution. The *duty of care* is described in The Handbook of College and University

Trusteeship as requiring, “That a trustee be well-enough informed to set policy for the institution and to make honest, good faith business decisions about the conduct of its affairs” (Lascell and Hallenbeck 350). Attending board meetings, participating in decision making with “independent judgment,” and taking care to be well informed are all constituent elements of the *duty of care* (Overton 21-23). As with the *duty of loyalty*, so it is in regard to the *duty of care*. The financial affairs of an institution are of most concern to the law and the courts. As guardians of an institution’s financial resources, trustees are to exercise their good judgement in overseeing its financial affairs. One legal distinction between charitable trusts and nonprofit organizations is that trustees of the former are held to a more stringent rule of judgement that assesses whether, in their financial dealings for the institution, they have exercised, “the skill and care that a man of ordinary prudence would exercise in dealing with his own property” (Balda 130). This so called *prudent person* rule differs from the *business judgement* rule, a less exacting standard that is applied to nonprofit trustees (or directors). Under the business judgement standard, trustees’ decisions are assessed by whether the trustees have acted in a manner that an ordinary person might in pursuing business dealings.

Alice Stuart grounds the conception of the *duty of care* in self-interested human economic behavior. She observes that:

The law imposes standards that are intended to compensate for the absence of inherent self-interest. The director or trustee lacks a personal stake in the economic success or failure of the entity served. Accordingly, the law attempts to address this lack of incentive by requiring the trustee to treat the assets of the entity with the same or greater degree of care than the trustee or director would use in the management of his own affairs.  
(Stuart, 139-140)

Trustees have responsibility for conservation of institutional resources, and the law takes account of the nature of self-interested human economic behavior by providing a mechanism to ensure that trustee responsibility for institutional financial affairs is carried out in the interest of the beneficiaries.

The *duty of loyalty* and the *duty of care* are legal standards by which the particular actions of trustees are evaluated. However, the specific requirements of each duty are not spelled out in detail. No clear line distinguishes acceptable legal performance from transgression. The duties are general standards of conduct and judgement, requiring circumstantial interpretation and discernment. In this sense, the law requires a kind of discerning moral judgement.

Nowhere is this clearer than in the overriding moral requirement that the legal *duty of care* embodies. Harold J. Berman finds a powerful underlying moral principle in the specifically legal duty. He writes that, "Under the law of trusts, for example, a trustee owes to the beneficiary of the trust a duty of care higher than that which he would apply

to himself. He must love his neighbor, the beneficiary of the trust, *more* than himself” (Berman, Faith and Order 316). For Berman, the legal duty of trustees is grounded in a broader moral obligation.

Some legal authorities also articulate a third legal trustee *duty of obedience* that requires trustees to obey assiduously the declared intentions of the entruster in carrying out the organization’s mission on behalf of the designated beneficiaries (Balda 130; Bowen 21). Like the *duty of loyalty* and the *duty of care*, the *duty of obedience* is an amplification of the overarching fiduciary responsibility of the trustees. In the trustee triad, the *duty of loyalty* is a fiduciary obligation toward the beneficiary. The *duty of obedience* is an obligation owed to the other point of the triad, the founder or entruster, who may be deceased or otherwise separated from the life of the institution.

Trustees are fiduciaries not only of an institution’s resources but--most importantly for the argument of this thesis--for the mission of an institution as well. Trustees are to be faithful to the goals of the entrusters, carrying out the purposes of an organization. While noting that the other legal trustee duties and liabilities pertain principally to the financial affairs of an institution, Alice Stuart also observes that, “a director cannot properly fulfill his responsibilities to the organization he serves without considering whether the organization is working to fulfill the purposes for which it was formed and acting in compliance with applicable law” (144). Trustees could be in legal peril when they ignore the purposes for which an institution was created. As with the *duty of loyalty* and the *duty of care*, the application of the standard of obedience and the identification of transgressions of the *duty of obedience* require discerning judgement rather than

observance of clear legal lines of demarcation. In the same manner that the *duty of loyalty* and the *duty of care* are expressive of broader moral responsibilities, so the *duty of obedience* is also characterized by a wider moral obligation, in this case fidelity.

Trustees are to be faithful and trustworthy in pursuing institutional purposes. The broader moral nature of trustee responsibility, including the obligations of fidelity, will be explored in the next chapter. It is important to note here that trustee responsibilities under the law, expressed as broad legal standards, are heavily imbued with moral language.

How are trustees held legally accountable for their observance of these duties? Although their obligations are expressed in terms of duties to the beneficiary, the institution, and the entruster, trustees are legally accountable to the state. Their governing responsibilities are for institutions that are organized under the laws of a state and for purposes that promote the public interest. Trustees are, therefore, held accountable for their legal duties by the attorney general acting on behalf of the state. David H. Smith's conception of trusteeship as a moral responsibility is that it essentially involves three parties, the person extending the trust, the trustee, and the person or institution for whom the relationship is established. Moral trusteeship is "triadic." As a legal responsibility, however, trusteeship is *quadratic*. It involves not three parties but four. The state, through its legal officers, is a fourth party ensuring that trustees' legal responsibilities are faithfully carried out, enforcing the law on trustee duties through the courts.

The attorney general's oversight responsibility over trustees emerged historically in order to ensure that there be a third-party watchdog safeguarding the interests of trust beneficiaries who were often persons of lesser social standing and power (Overton 12). In

the process of legal development, “the attorney general spoke for the beneficiaries of a charitable trust or corporation and, in effect, became the voice of the somebody for whom a charitable corporation was organized” (Overton 13). Compliance with the terms of charitable trusts was understood as falling within the realm of the public interest, subject to the authority of the courts.

Although private universities and colleges are voluntary in their initiation and independent in governance, Richard T. Ingram believes that they “have a clear obligation to act in the public interest,” because they are corporately licensed under state law and granted federal tax exemptions (Effective Trusteeship 2-3). He further defines collegiate trusteeship as “a civic responsibility” with a duty to oversee institutions that “are properly expected to operate as a public good and to serve the public interest” (Effective Trusteeship 17). Just as trustees legal duties have a broader moral basis, so too, the legal accountability of trustees to the public interest is described in terms of a broadly moral obligation.

Trustees’ indeterminate legal duties and accountability require that they exercise discerning judgement in making decisions affecting the institutions that they hold in trust. In this sense, trustees have a pervasive *duty of discernment* in addition to their other legal duties. The *duty of discernment* is implicit in their fiduciary responsibility. How are the interests of beneficiaries, the institution, or the public to be construed in the context of a particular set of circumstances or needs, and in observance of the duties of loyalty, care, and obedience? The need for trustees to be interpreters is implicit in their several legal duties. These broad legal standards are the context for every decision that a board of

trustees faces.

Trustees must discern whether and how the defined institutional purposes--as framed by the founders or as subsequently amended by successor trustees--are advanced by their decisions. The normal course of institutional business requires that trustees exercise their judgement and make decisions meeting by meeting. Major changes in an institution's internal and external environment present an even greater challenge to trustees who must discern how institutional purposes and beneficiaries' needs are met in light of these changes. The need for trustees to be interpreters extends to the revision of an institution's fundamental moral purposes.

### **Institutional change and the legal doctrine of *cy près***

Legally, an institution's basic mission may be redefined by the courts under the doctrine of *cy près* which provides for the judicial redefinition of institutional purposes that are determined to be illegal, impossible, or even impractical to be pursued. The term *cy près* derives from the Norman-French *cy près* and means *as near as*. Under the doctrine of *cy près*, the court will determine a new use for a charitable bequest that is as near as possible to the original intention of the donor (Berman, Law and Revolution 236).

Trustees may petition the court to alter the purpose of a trust when time and circumstances have defeated the original intent of the person who established it. The passing of time and the particularities of a bequestor's specific designation may render obsolete that person's original purpose. In such cases, the courts "will perpetuate the social benefits deriving from his gift by a new application of his property to contemporary

objects” (Sheridan and Delany 2-3).

L.A. Sheridan and V.T.H. Delany cite the American Law Institute’s formal definition of *cy prèes* in their treatise on the doctrine:

If property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor. (4)

Harold Berman identifies the roots of the doctrine in the medieval ecclesiastical courts that had jurisdiction over wills and bequests. Berman notes some of the circumstances that gave need for judicial intervention:

Where the wishes of the testator could not be fulfilled because of physical impossibility (for example, if the legatee was no longer alive), or because of illegality (for example, if the legatee was a heretic, or the device was illegal under the secular law), the ecclesiastical court would carry out the testator’s intention “as near as may be possible” . . . Another legatee, similar to the one named, would be found. Some equivalent of the land, or some rights in it, would be given to the legatee. (Law and Revolution 236)

The conditions requiring a *cy prèes* review have been condensed to three. A review is warranted when the purposes of a charitable gift or bequest have been rendered illegal, impossible, or impractical. The court must interpret the donor’s intentions, and construct a new purpose or define a new set of beneficiaries that are as near as possible to the original.

Stephen Toulmin has pointed out the importance of the *cy prèes* reviews as a legal analog to this dissertation’s thesis about the interpretation of mission as a moral responsibility of trustees (Letter). All *cy prèes* reviews are by their nature about

institutional purposes and their interpretation. As a judicial process, the review is strictly legal in character, yet it requires discernment both of donor intent and the interests of beneficiaries. The usefulness of this analogy of *cy prè*s review to trustee ethical discernment can be further seen in Sheridan and Delany's proposal for measures for the legal application of *cy prè*s, namely that a new purpose must be fitting in, "proximity, usefulness, and practicability." These tests must be set in relation to the particular circumstances of the charity in question (Sheridan and Delany 42).

Not all changes of institutional mission require judicial intervention under the doctrine of *cy prè*s. *Cy prè*s reviews are relatively rare. They are only necessary when trustees lack the discretionary authority to discern new institutional goals. Sheridan and Delany remark that, "The bestowal of a discretion upon trustees is in the nature of a personal *cy-prè*s power . . . provided it is properly exercised, it will often prevent the necessity of an application to the court." They advocate that charitable purposes be defined in a manner "that will ensure flexibility coupled with certainty" (134). They recognize explicitly that there is a realm of trustee authority and interpretative discretion that extends beyond the strictly legal canons of the *cy-prè*s doctrine. A construction of institutional purposes and trustee authority that permits independent trustee discretion in interpreting beneficent purposes is preferable to the narrow definitions of authority and purpose that result in the need for *cy-prè*s reviews (134-5).

The doctrine *cy-prè*s presents, therefore, a legal model and process for redirecting institutional mission. However, its strictly legal application and the relative infrequency of its being invoked make it clear that a much broader area exists in which boards of trustees

have moral authority and discretion to exercise their discerning judgement to determine whether changing times and conditions warrant reinterpretation of institutional mission.

As this chapter has discussed, trustees are legally accountable, yet their legal duties are broadly defined and point to a wider moral conception of their role and responsibilities. The next chapter turns to this broader moral conception of trusteeship.

## CHAPTER 2

### TRUSTEESHIP AS A MORAL RESPONSIBILITY

Although trusteeship is a specific legal responsibility, it is, above all, a moral responsibility that is only secondarily given legal and institutional form. Trustee moral responsibility is grounded in the essential connection between trust and the construction of moral community. In order to demonstrate that trusteeship is a moral responsibility, and not solely a legal one, this chapter initially explores the role of trust in relation to moral obligation. It then turns to the role of trust in creating civil society and moral community. These examinations are background to an exposition of three authors' views of trusteeship as a moral responsibility. The broader argument about trust is tied to the conception of moral community for which trustees are responsible. These communities include voluntary associations, of which independent higher education is a particular manifestation. Finally, the section examines how trustees are responsible for the continuity of beneficent purposes in these moral communities.

#### **The role of trust in creating society and moral community**

Relationships of trust precede the law; trust cannot be legislated or mandated by the courts. On the contrary, it is trust that determines the nature of fiduciary obligations, which the law then formulates in statutes and standards. As Johnston says of Roman trusts, "The ground of the obligation was *fides* rather than form . . ." (287). By one

scholar's account, the existence of law itself depends on trust (Luhmann 35).

Human social interaction is replete with relationships of trust that do not rely on legal sanction for their initiation or continuation. A host of contracts and legal obligations have their genesis in the mutual trust of the parties to the agreements. To cite a simple example of a relationship grounded profoundly in trust, the decision of two people to marry precedes the legal formalization of marriage in ceremony and in the legal recording of the marriage contract. Similarly, the decision to name an individual as the legal guardian or trustee of one's children is grounded in a prior relationship of trust. Trust is first accorded to the guardian, a trusted relative or friend, and the delegation of responsibility is then made legally concrete in a trust or will. The creation of an independent college follows the same pattern, proceeding from an act of moral imagination that creates a community of moral purpose. The new community is then given legal and institutional form.

Even the conception of a trustee as a fiduciary conforms to this pattern of relationship preceding legal form. The dictionary implicitly recognizes the priority of a trusting relationship over legal structure by giving as the first definition of *fiduciary* a more general denotation related to confidence and trust. It is only the second definition that is related to specific legal responsibilities (Webster's).

Further, a relationship can entail fiduciary obligations without the relationship being legally sanctioned. Daily life is full of instances in which we trust others to act faithfully in matters that have been entrusted to them, whether in our interest or the interests of others. We ask another person to do something on our behalf, and that

person's assent completes a moral exchange in which trust is extended and a duty is accepted. All of these trusting transactions entail moral, rather than legal, fiduciary obligations.

Trust engenders moral obligation, and trustee moral responsibility is rooted in the moral character of the trust relationship. The Dictionary of Ethics says of trust that, "In the broad sense, [it] is the expectation that the other will act in accord with his or her public presentation of self; in its narrow sense, it is the expectation that the other will act morally" (Childress and MacQuarrie 632). These expectations are born of the serial social interactions between and among individuals and groups. Trust builds trust. These interactions affirm the trustworthiness of others to behave reliably and in expected ways. In this sense, trust is prerequisite for all ethical interaction.

Trusting expectations are at the core of our sense of the reliability of the natural, social, and moral orders as Bernard Barber recognizes in his treatise, The Logic and Limits of Trust. We rely on others in society to function in ways that are both reliably competent and morally faithful in carrying out duties to others (9). Every person owes fiduciary duties to others, since "fiduciary responsibility is essential for the relatively orderly functioning of society" (16). Barber defines fiduciary obligation in general moral terms as, "the expectation that some others in our social relationships have moral obligations and responsibility to demonstrate a special concern for other's interests above their own" (14). In the sense in which Barber uses the term, all moral actors in a society bear fiduciary obligations to others and not just trustees to whom fiduciary responsibility is legally ascribed. Indeed, society is constructed, in part, by mutual fiduciary

responsibilities.

The essential connections among trust, moral obligation, and the creation of society are also established in the theory of trust propounded by German sociologist Niklas Luhmann. In his notable analysis of the function of trust in society, Trust and Power, Luhmann like Barber holds that trust is one of the critical elements in the genesis of society and morality. Luhmann presents a functional social theory of trust at a very high level of abstraction in order to make statements about trust that are universally true for both human sociology and psychology (6). Luhmann's entire conception rests on an understanding that trust, along with other key elements in the creation of society, functions to reduce the uncertainties inherent in social complexity (5). For Luhmann, trust does not do away with complexity in society, rather it reduces complexity in any social system (Poggi x). Human freedom results in innumerable unpredictable actions by persons and is the cause of social complexity. Luhmann holds that trust functions to enable persons "to comprehend and reduce this complexity" (30).

Trust makes society itself possible. It is "a basic fact of social life," for Luhmann, who understands it as "a natural feature of the world, part and parcel of the bounds within which we live our daily lives" (4). The existence of trust as a complexity reducing mechanism permits the development of yet more complex social structures and functions, for, "Where there is trust there are increased possibilities for experience and action, there is an increase in the complexity of the social system and also in the number of possibilities which can be reconciled with its structure, because trust constitutes a more effective form of complexity reduction" (8). Luhmann sums up his position: "Trust is not the sole

foundation of the world; but a highly complex but nevertheless structured conception of the world could not be established without a fairly complex society, which in turn could not be established without trust” (94). Without trust, society at any level of complexity is impossible.

Luhmann also conceives of trust as essential in the creation of morality in society. Within his theoretical framework, trust is necessary for the functioning of society, and that includes trust as, “the correct and appropriate starting point for the derivation of rules for proper conduct,” (4). Though trust is a necessary condition for morality in society, trust is not morality itself. One cannot deduce “clear-cut ethical instruction” on the basis of trust alone (93). There cannot be a universal moral obligation to trust, since the contextual circumstances of any particular situation may warrant distrust rather than trust (86). Nevertheless, trust is essential as far as our functioning in society depends on others to be morally reliable and trustworthy (39).

Trust as a necessary condition for the existence of society can be distinguished from moral trust. Moral trust can be understood as, “a consideration of the interests of others, beyond one’s own present interests” (Brenkert 310). This qualification that moral trust includes beneficence is essential, since it can be readily recognized that a community of trust can exist even among the members of a criminal gang. The moral valence of trust is, thus, context dependent. It is not enough that a relationship is forged of trust; it must also have moral content and moral ends. George Brenkert’s assessment of moral trust in relation to business ethics makes this point: “If trust is employed concerning morally worthy projects, then such trust is valuable. On the other hand, when it is formed around

morally unworthy projects trust may lack moral value” (301).

A full treatment of the literature of trust--and the relationship of trust and morality--is beyond the case presented here. However, it is important to note that communities with moral missions, like colleges, are grounded in moral relationships of trust and not solely in the facts of legal incorporation. Trust is not morality itself. Trust can exist even among those pursuing immoral purposes. However, trust is essential to moral community in which there is a recognized “commonality of values or aims.”

The moral community of trust is constructed on the basis of these shared values (298).

Moral communities are communities of trust. Interpreting James Luther Adams extensive treatment of the moral (and theological) character of voluntary associations, Douglas Sturm describes voluntary moral communities in terms of covenantal obligations. These associations are created by trust and the exchange of freely given commitments. They are “sustained more by mutual trust and affection than by legality.” Law is not the safeguard of the fulfillment of responsibilities in the moral community; the transgression of covenantal obligations is a violation of trust, not law. “Covenantal associations,” as Sturm refers to them, rely on the faithful fulfillment of, “promises that each member of the association will do all that is possible to enhance the life of the entire community ”(194). Importantly for my argument, Sturm holds that the mutual promises for the common good extend to, “the improvement of agreements, honoring the long-range intention of originating promises,” i.e. to the renewal of mission (194).

The proposition that voluntary moral associations, and moral society itself, are grounded in relationships of trust, can also be found in John Locke’s social contract

proposal in “An Essay Concerning the True Original, Extent and End of Civil Government” in which he holds that the contracts of both society and government depend fundamentally on trust. Although the focus of his argument is neither on trust nor morality *per se*, Locke posits that trust for the other is the basis of the contract of society (63). The contract of government depends even more clearly on trust. Government has trusteeship responsibilities; it is explicitly “entrusted” with specific ends (82). The powers of the legislative exist only as far as they are given to it freely by the people in trust; the people’s trust limits the powers of the legislative (84). The legislature is accorded, “a fiduciary power to act for certain ends,” and when these purposes are violated, the trust may be withdrawn just as it was freely given (87). Good government is like trusteeship. Locke asserts that a beneficent responsibility for the interests of citizens and the protection of their property interests is the purpose for which government is entrusted with authority. This trust may be either “express or tacit” (101), and government has, “no other end but the peace, safety, and the public good of the people” (76). In Locke’s expression of the conception of the social contract, voluntarily given trust is the basis of society and government that is entrusted with beneficent purposes.

The role of trust in voluntary associations is analogous to its role in Locke’s schema. Voluntary associations are moral communities created by voluntary mutual consent, communities of trust organized for socially beneficent purposes that serve a public good.

A contemporary version of Locke’s schema is found at the conclusion of Robert Bellah’s The Good Society. His value laden sociological analysis is a commentary on the role of social institutions in American life. He presents a communitarian vision, a

definition of a good society set against a critique of the pervasive individualism of American society that he attributes to another--and in this case, detrimental--facet of Lockean influence on the formation of American ideas. Although Bellah presents an explicit critique of Lockean individualism (85-90), he concludes with a coda on the role of trust and responsibility in creating institutions in the good society that echoes Locke. In so doing, Bellah reveals a conception of trust that parallels the role that trust plays in social institutions in Locke's social contract philosophy (283-6)

Bellah regards trust as essential to the creation of the good society. He closes his critical commentary by noting that trust and responsibility are intertwined in the creation of the institutions on which a good society rests, declaring, "When enough of us have sufficient trust to act responsibly, there is a chance to achieve, at least in part, a good society" (286). Bellah derives his understanding of trust and responsibility explicitly from Erik Erikson and H. Richard Niebuhr. He links Erikson's assertion that an individual must overcome basic mistrust with basic trust in order to participate in society, to Niebuhr's ethic that includes interpretation of circumstances and social interactions in relation to accountable action:

In our relation to the world, trust is always in conflict with mistrust. Because of previous experiences a degree of mistrust is usually realistic; yet if we are dominated by mistrust we cannot attend or interpret adequately, we cannot act accountably, and we will rupture, not strengthen the solidarity of the community or communities we live in. (284)

Bellah draws from Erikson the fundamental importance of basic trust in creating personal identity and establishing the trusting conditions that enable commitment to social institutions. He relies more heavily on Niebuhr's ethic that is oriented to acting

responsibly in society, understanding such ethical action to rest on trust.

Bellah refers to Niebuhr's conception of "the moral life as the responsible life" (284). Trust is essential in expanding the scope of responsible social action, and Bellah notes that, "Since we can only attend to those we trust, we cannot interpret accurately, we cannot be accountable to, we cannot grow in solidarity with those we have put outside the circle of our trust" (284). He echoes Niebuhr's understanding that trust expands the realm of possible social engagement, declaring that, "Any limitations on our trust puts limitations on our ability to live responsibly in the Niebuhrian sense. The range of our actions, our accountability and our social solidarity are constrained" (284). Bellah's expansive vision of trust in creating social commitment extends ultimately to the level of religious faith that makes possible radically greater involvement in social institutions, even to the level of "the universal community" (285).

Francis Fukuyama also envisions trust as the essential factor in the creation of moral community, society, and social institutions. In Trust: The Social Virtues and the Creation of Prosperity, he presents a cross-cultural economic analysis that contrasts “high trust” and “low trust” societies. “High trust” societies engender a level of social, organizational and institutional life that makes them more economically productive, adaptable, and therefore, more competitive than “low trust” societies. Fukuyama states his thesis succinctly:

As this book will show, one of the most important lessons we can learn from an examination of economic life is that a nation’s well-being, as well as its ability to compete, is conditioned by a single, pervasive cultural characteristic: the level of trust inherent in the society. (7)

Fukuyama compares the economic life of societies and concludes that the economic vitality and viability of a society depend on trust. However, he also presents a conception of society and associational life rooted in shared moral norms that bolsters my contention that trust and moral community are intimately related.

For Fukuyama, shared moral community is the creator of a high level of social trust, a necessary condition for an economically successful society. Though his primary interest is in trust as a necessary condition in fostering a society’s economic productivity, he extends his case to trust’s relation to moral community and voluntary associations that are based on trust. He observes that social trust enables a society to create voluntary moral associations that can adapt readily to new situations.

The level of social trust and the moral fabric of a society are related. In Fukuyama’s comparative economic analysis of societies, social trust is the source of a

society's ability to generate greater economic capacity. This social trust is rooted in moral community, in shared moral values (270). For Fukuyama, successful societies are "formed not on the basis of explicit rules and regulations but out of a set of ethical habits and reciprocal moral obligations internalized by each of the community's members" (9). Fukuyama defines trust as "the expectation that arises within a community of regular, honest, and cooperative behavior, based on commonly shared norms, on the part of other members of that community" (26). Tying trust to the economic concept of capital, Fukuyama posits the existence of "social capital," a society's capacity "that arises from the prevalence of trust in a society or in certain parts of it." In contrast to other conceptions of capital, social capital "is usually created and transmitted through cultural mechanisms like religion, tradition, or historical habit" (26). The accumulation of social capital "requires habituation to the moral norms of a community and, in its context, the acquisition of virtues like loyalty, honesty, and dependability" (26-7). Society is expressive of a culture of "*inherited ethical habit*" (34).

These habits, obligations, and virtues are the foundation of moral communities that are essentially communities of trust. Fukuyama asserts that:

Ethical systems create moral communities because their shared languages of good and evil give their members a common moral life. To some extent any moral community, regardless of the specific ethical rules involved, will create a degree of trust among its members. Certain ethical codes tend to promote a wider radius of trust than others by emphasizing the imperatives of honesty, charity, and benevolence toward the community at large. (36)

Fukuyama finds that high trust societies are distinguished by their ability to foster the “art of association” (293). This capacity of a society to foster morally purposeful associations in which self-interest is subordinated to larger missions turns out to be, for Fukuyama, a signal indicator of trust in a society, a capacity necessary for flourishing economic activity. For him, the “art of association” is “an important economic virtue” (309).

One distinguishing trait of this social capacity for association is flexibility, the ability to adapt readily to new situations and new circumstances (318). For Fukuyama, the adaptability that is characteristic of voluntary associational relationships is essential to an economically successful society (318). High trust societies that readily promote associations are also able to adjust quickly to changes in circumstances and conditions.

Fukuyama finds the ability to create voluntary associations to be particularly characteristic of American society, which Fukuyama counts among the most successful, high trust societies. He attributes the “American penchant for association” (288), to the pivotal role of sectarian Protestantism in shaping American society, a role that has paradoxically fostered both individualism and the strongly shared moral norms that create communities of trust (288-294).

Fukuyama does not explicitly connect his thesis to independent higher education as one manifestation of associational life; his primary goal is a comparative economic analysis of societies. Nevertheless, he understands that moral communities of shared

norms and purposes--a category that, of course, includes colleges--are communities built on trusting relationships.

Barber, Luhmann, Locke, Bellah, and Fukuyama, though writing from different theoretical perspectives and with different purposes, all argue that there is an essential connection between trust and moral obligation, and between trust and the creation of moral communities. The nature of that connection differs with each writer, of course, but each holds that trust is an essential condition for society, morality, and moral community. Further, it should be observed that none of these writers consider legal sanctions necessary either for the creation of trusting relationships or trusting moral communities.

Further simple confirmation of the moral nature of trust is found in the richly moral denotations and connotations of the language of trust and the concepts related to it: fidelity, loyalty, faith, faithfulness, trustworthiness, confidence, reliability. The same is true of the antonyms of trust that are also heavily laden with moral import: infidelity, deceit, betrayal, treachery, treason, perfidy, disloyalty, faithlessness, disloyalty, distrust, and mistrust. Even the legal language related to trusteeship is broadly moral in character. It is difficult, if not impossible, to think or communicate about trust and trusteeship except in language that is moral.

### **The ethical character of trusteeship**

With this general discussion on moral trust and moral community as background, I turn to an examination of the specifically ethical character of trusteeship. The most thorough recent exposition of trusteeship as a moral responsibility is found in David H.

Smith's work, Entrusted: The Moral Responsibilities of Trusteeship, and in his other articles on the same theme. My thesis owes a great deal to Smith's conceptual framework, while giving much greater attention to the particular trustee responsibility for the interpretation of mission and placing it first among trustees' moral duties. As was noted, Smith considers trusteeship, "a special kind of moral responsibility" that is "triadic," involving three parties, "an entruster, a trustee, and a beneficiary" (5). A trustee has responsibilities toward both the entruster and the beneficiary. Because of the special nature of the relationships among the entruster, trustees, and the beneficiaries, trustee governance in nonprofit organizations is different from governance in other kinds of institutions and organizations.

Smith therefore proposes three *moral* obligations of trusteeship. Trustees' work, he says, "should be guided by three principles: the fiduciary principle, the common good principle, and the obligation to act as a community of interpretation" (Smith, "When Principles Conflict" 14).

Smith's formulation of the *fiduciary principle* encompasses the legal duty of loyalty and trustees' fiduciary responsibilities. As a moral principle, however, he extends it beyond the law to the "special relationship to person or purpose" that is at the core of the trusteeship triad ("When Principles Conflict" 14). The principle embraces the trustees' relationship to the entruster or founder and his or her intentions, on the one hand, and the obligations to the beneficiary within the entruster's intended purposes, on the other. Smith succinctly notes the relationships among entruster, beneficiary and purpose: "The trustee's actions for the beneficiary are always constrained in some way by a prior

relationship or person – by the will of the founder or by the organization’s purpose” (“When Principles Conflict” 14). In delineating both moral relationships and purposes, the *fiduciary principle*, in a sense, defines an institution’s identity.

Smith also posits the *common good principle* as a contextual moral guide for assessing the moral validity of the purposes which trustees are called to serve faithfully. He describes it as, “the idea that trustee action is constrained by general social morality” (“When Principles Conflict” 14). Trustees’ decisions and actions are guided and limited by the community’s moral milieu and standards. Trustees must be attentive to society’s standards and to any changes in community values. Smith holds that the *common good principle* requires that trustees be interpreters of changing standards and, if necessary, alter their decisions and actions. Compliance with the principle requires “a certain degree of change and adaptation” to ensure that institutional ends and actions are appropriate to changing community standards (“When Principles Conflict” 14). Trustees do not act in a vacuum; their independence is not unfettered. In making decisions about an institution and on behalf of beneficiaries, trustees are limited by their need to work within the framework of the broader community’s moral fabric and values. Smith states that, “As long as trustees attend to the ebb and flow of commonly held values within their community, we can say they are acting in conformity with the common good principle” (“When Principles Conflict” 14). They do this when they engage publicly in moral justification of institutional purposes and decisions, “appealing to considerations and values that the larger community finds plausible” (“When Principles Conflict” 14). Moral rather than legal reasoning is the content of any public discussion of a board’s actions and

purposes.

A key consideration for Smith is that, “Trustee discretion is constrained by reasonable moral perceptions about what people need within the society” (Entrusted 15). In raising this question of the needs of people in the broader society, Smith implicitly extends the set of institutional beneficiaries radically beyond those designated by the entruster and the stated purposes of the organization. In a sense, the common good may be regarded as the good of a more broadly defined set of beneficiaries. Thus, Smith’s *common good principle* not only sets a frame of moral reference for board decision making, it also implicitly broadens the set of beneficiaries for whom the trustees of any particular organization are to be concerned, extending their responsibility to encompass the general good of society.

Smith believes that trusteeship is inherently susceptible to a critique that it is paternalistic. Trustees are morally and legally obligated to make decisions about the best interests of beneficiaries. This beneficent oversight of others’ interests can be regarded as paternalistic. Smith views the *common good principle*, which calls for trustees’ measuring their decisions and actions against external standards, as a necessary corrective to the dangers of paternalism and an answer to the critique of trusteeship as a paternalistic relationship. Trustees’ actions should be subject to discussion and debate, and measured against external values and standards.

Smith suggests three questions that trustees may ask in determining whether institutional purposes are, in fact, consonant with community moral standards. The questions are: the moral worthiness of the institutional purpose, the means that the

institution uses to achieve its ends, and in a utilitarian turn, whether the institution is capable of achieving its designated purposes (“When Principles Conflict” 15). He does not prescribe what prevailing community standards should be or how *their* validity may be assessed by trustees. Community standards will vary as the community and time vary. As community values change, institutional purposes may also change. Thus, institutional mission is contextual, and its moral validity is assessed with reference to the values of the larger community.

Smith observes that the *common good principle* and the *fiduciary principle* may conflict. In order to resolve conflicts that arise in the application of the two, trustees are obligated to be a *community of interpretation*. When the original institutional mission established by the founders or entruster is in conflict with a contemporary moral understanding of community standards, the institution’s place in society, and social needs, then trustees must be interpreters in order to reconcile the two principles. Interpretation brings “the interests and concerns of the founders in line with contemporary values and new understandings of the common good” (Entrusted 16). Under the obligation to function as a *community of interpretation*, Smith understands that, “The boardroom should be the place where past and future, particularity and the common good, are reconciled” (Entrusted 20). Interpretation may also enable a board to unravel difficulties created by an entruster who establishes a mission or expectations that are inherently flawed or conflicted from their inception (Entrusted 16).

Smith extends this duty to operate as a *community of interpretation* to the fundamental mission of the institution. In this regard, he holds that, “The board’s major

role is reflective: Its major moral responsibility is to establish the identity or vocation of the organization” (Entrusted 20). In Smith’s words, trustees are “the custodians of mission” (Entrusted 20). In this role, they publicly articulate the institutional vocation in a mission statement, “which at its best relates founding purpose and community need” (Entrusted 17). The mission statement is the product of the board functioning as a *community of interpretation*, and the statement rightly changes with changing times, as trustees reinterpret institutional identity in the social and moral context. Smith believes that mission should change with time, for

An organization’s charter is a document written in a particular time and place with specific problems in mind. As time passes, the specific situation visualized by the founder will no longer be exactly pertinent. The configuration of human needs and society will have changed. At that point the organization either should cease to exist or should transform its purpose into one that is both congruent with the values and vision in place at the founding and serves a legitimate social purpose. The process of reasoning involved is one of interpretation. (“When Principles Conflict” 15)

Trustees are interpreters first, of the fundamental principles and purposes on which an institution is founded.

This dissertation affirms Smith’s contentions that a board of trustees is a *community of interpretation* and that an institution’s mission, as interpreted by the board, should change over time. Smith, in focusing on interpretation, has identified the core moral responsibility of trustees. It is the trustee responsibility *sine qua non* that encompasses all other trustee moral responsibilities. It is my intention to build on Smith’s understanding of trustees as a *community of interpretation*, expanding on the relation of this responsibility to other trustee duties, proposing a model for the ethical interpretation

in which trustees are involved, and examining this responsibility for moral interpretation in the context of independent higher education.

In addition to David H. Smith, two other scholars of the nonprofit sector have made recent illuminating contributions to the conception of trusteeship as a moral responsibility. Craig Dykstra has written briefly about trusteeship as a calling, using terms that are reminiscent of a theological conception of vocation. However, he avoids explicitly theological categories. He suggests that trustees are called, “to hold something valuable in trust for the sake of some other good than one’s own self-interest” (3). The commitment of resources for the benefit of a set of beneficiaries is the call. With their assent to safeguard the resources of an institution for the good of the beneficiaries, trustees respond to the call. Importantly, this response is not limited to a single act of assent. The vocation is renewed continually throughout the regular and continuing service of the trustee. Dykstra holds, therefore, that the moral character of trusteeship is not discovered in the rightness or wrongness of individual board decisions; it is the nature of the role itself. The morality of trusteeship is a matter of, “Moral character, practices, and traditions . . . [that] make moral acts and choices possible” (3). He conceives of trusteeship in terms of character and virtues. Dykstra relies on the moral philosophy of Alasdair MacIntyre, presenting trusteeship as a moral tradition. The moral institutions that trustees serve are the locus in which the tradition is carried forward. Trusteeship as a moral calling is inseparable from the institutional life of organizations that are “bearers or moral traditions and practices” (4). Dykstra holds that institutions are essential in the transmission through time of an understanding of what is morally good. He states that,

“Moral practices are either sustained in and by institutions, or they die” (4). Since trustees are accountable for institutions of moral purpose, they are engaged in “the activity of creating and re-creating the fundamental moral practices that form and shape the character of individuals, of communities, and of society as a whole.” (4). Extending Dykstra’s argument, trustees’ decisions and actions are morally transformational. Their moral responsibility includes the re-creation of the institutions which they serve.

Thomas Jeavons presents another concept of trusteeship as a moral responsibility that, like Dykstra’s, has biblical and theological roots, namely in the image of the trustee as faithful steward. Jeavons relies on Douglas John Hall’s reinterpretation of the biblical teaching on stewardship. The conception of stewardship has been diminished by its association solely with responsibility for resource development and administration. Stewardship has, on the contrary, “broader and deeper relevance to the organization of human life, especially to concerns about the right relationship between moral and material matters” (Trustees 71). Stewardship is not only about financial management. It is also a perspective that connects financial matters to the fundamental purposes of an organization. Jeavons’ summary definition of stewardship links financial management and moral values:

a wise steward is a person who sees to it that things are kept in right order in terms of ultimate values, who makes certain that the things that truly matter most are cared for first; who ensures that a household or establishment is in fact managed to properly reflect the values of its master.  
(Trustees 73)

In Jeavons’ conception, stewardship, and thus trusteeship, is “inescapably moral.” It gives attention to ultimate values as the principles by which and through which trustees’ specific responsibilities for organizational management, fiscal affairs, fund raising, and policy are

placed in the proper perspective (Trustees 75).

To conceive of trustees as stewards raises the question of whom precisely the master is whom the steward or the trustee serves. In the biblical teaching, it is God. Jeavons, however, gives a non-theological answer. Trustees serve the public interest. It is noteworthy that he does not suggest that it be either the entruster's purposes or the designated beneficiaries that are served, as is the case with David H. Smith. Jeavons also explicitly rejects the idea that the master is the organization. It is "the public good and the welfare of others" that holds the primary claim on trustees (Trustees 73).

This claim of the common good on the loyalty of trustees is rooted in the public commission and privileges given to independent institutions. In Jeavons' eyes,

There exists in this context . . . an *implicit social contract* undergirding the presence and function of private nonprofit, especially philanthropic, organizations in our society. These organizations are given a special standing, and even certain legal advantages over other private organizations, on the basis of the promise that they will serve the public good. The public expects these organizations to be motivated by and adhere to such a commitment in their performance. (Ethics 186)

In exchange for their ethical "trustworthiness," "their their moral standing and integrity," nonprofit organizations are accorded tax advantages and legal license to operate. Indeed, Jeavons holds that, "trustworthiness goes to the core of the reason for the existence of these organizations and their ability to satisfy public expectations." The public extends rights to the organizations and trusts that they will serve the public good in fulfilling their commitments under this social compact. For Jeavons, this "trust is the essential lifeblood of the nonprofit sector" (Ethics 186).

The earlier part of this chapter discussed the way in which trust is essential to the

formation of society and particularly the creation of morality and moral community. The chapter then turned to a discussion of the specifically moral character of trusteeship as understood by David H. Smith, Craig Dykstra, and Thomas Jeavons. Connecting these two strands, the remainder of the chapter returns to the idea of trust and moral community, examining how trustees constitute a particular voluntary association with a moral mission, on the one hand, and on the other have continuing responsibility for safeguarding the intergenerational transmission of the mission for which an institution was created.

### **Voluntary associations as moral communities**

When a founding board of trustees gathers voluntarily to pursue a moral mission on behalf of a set of beneficiaries, the trustees literally create a new moral community based on trust. The act of moral invention that establishes the group's moral goals animates the new community. The new community of trust is inseparable from the moral purpose for which it is created. As Brenkert points out, the construction of mutual trust relies on shared values (298). Neither law nor regulation, rules nor external mandate, create the community, rather it is the association in trust of a group of individuals motivated by a shared moral purpose that constitutes the new community. The voluntary association has its genesis in the trust extended by individuals, yet the moral responsibility for an institution and its mission becomes a shared, group responsibility. The shared moral goals and responsibility are the associational glue.

Trustees are morally responsible individually and collectively, yet formal legal

authority resides only in the group and in the corporate structure. In this legal sense, only the community of trustees has authority to act; individual trustees are legally powerless. It is only as the board convenes in a meeting, whether face-to-face or electronically, that legal authority is exercised. As Morton Rauh summarizes, “This authority belongs to the trustee not as an individual but only as a member of a group, the board” (6). The process of legal incorporation creates the formal structure that holds authority collectively, but as noted previously, it is grounded in a prior moral association and moral mission.

The idea of a moral voluntary association that is created in trust, institutionalized, and collectively governed evolved in Western society. It developed first in Europe and then took deep root in the United States. The idea of a moral voluntary association figures importantly in my argument. Although a treatment of the history and theory of moral voluntary associations is outside the scope of this dissertation, a brief examination is appropriate, since colleges have their genesis as voluntary associations. The moral tradition of independent higher education--and the tradition of trustee governance--can be better understood in light of the history and theory of voluntary association.

Social ethicist and theologian James Luther Adams wrote extensively on the history, theory, and moral tradition of voluntary associations in the sense that I use the term. See especially his Voluntary Associations: Socio-cultural Analyses and Theological Interpretation, collected essays by him in The Prophethood of All Believers edited by George K. Beach, and the commentary on his ideas by James D. Hunt in Associations: A Study of Groups in Free Societies, edited by D.B. Robertson.

Adams argues that all human beings are born into two involuntary associations, the

state and the family (Indispensable, 257). Before the Protestant Reformation in Europe, the pervasive unity of the Roman Catholic church and its identity with the state meant that all individuals were also born involuntarily into the church. The Reformation brought a demand, particularly from the left-wing Protestant sects, for a voluntary church, separate from any state and from the established Roman church. Participation was no longer to be a matter of birth. Rather, it became a matter of faith and volition, of voluntary commitment (Voluntary 176). The model for these new independent churches was the congregational autonomy and polity of the primitive church (Voluntary 231). The patterns of lay governance in the church are for Adams and Hunt the paradigm for the principle of governance within voluntary associations, though neither spells out how the principle functions in practice within these associations.

The rise of independent churches and the eventual rise of their secularized counterpart, the voluntary association, created a new social space between the two involuntary associations, the family and the church/state (Voluntary 176-77). Adams acknowledges the presence of other “middle structures” in earlier European history, e.g., guilds, universities, monasteries, and even heresies (Voluntary 229). Nevertheless, he holds the independent Protestant congregation that is voluntarily gathered, independently financed, and autonomously governed to be the prototype for the modern voluntary association. Adams succinctly observes that, “All these forms of association . . . are in large part the outgrowth of left wing Protestantism; indeed, they may be characterized as the secularization of the Free church doctrine of the church” (Adams, “Our Responsibility” 159). James D. Hunt, commenting on Adams, also holds the modern voluntary association to be an extension of the voluntary principle in religion and of the idea of lay governance:

Adams’ associational conception of religion owes more to Calvin and the Left Wing of the Reformation. Calvin considered the polity of the church to be a central issue, and in subsequent history the Calvinists have shown a genius for establishing associations, as Troeltsch has pointed out. Through Calvinism came also a revival of the doctrine of the covenant. The Left Wing, in the name of the freedom of the Spirit, asserted a new conception of autonomous Christian personality supported by “inner light,” the rejection of coercion in belief and in the shaping of public policy, the principle of the consent of the governed, and a pluralistic conception of the churches and society. Such principles of radical laicism, as derived from the Radical Reformation through English Nonconformity, provide the basis for the development of voluntary associations. The congregational form of church government and its separation from the state are the prototype of the voluntary association concerned with public policy. (370)

Adams and Hunt provide a critical theoretical and historical perspective that ties Western

religious history to the emergence of voluntary associations that pursue moral missions. Importantly, Adams understands these associations, like the free church, to be rooted in covenants of trust and moral commitments. He states that their “vitality depends upon bondings and compacts engendered and nourished by mutual confidence in the midst of a diversity of interests, perspectives, and ideals” (Voluntary, 219). Trust and moral purpose are thus the essential characteristics in the creation of voluntary associations, including colleges as one type of such associations.

Clark Kerr and Marian L. Gade, though not relying on Adams’ theoretical framework, also make the connection between Reformation principles and the emergence of independent trusteeship. They review the history of trustee governance in their notable study on collegiate trusteeship, The Guardians: Boards of Trustees of American Colleges and Universities, What They Do and How Well They Do It. They locate the historical roots of independent collegiate trusteeship in the Calvinist arm of the Reformation. They hold that this form of institutional academic governance has its genesis specifically in Reformation Geneva. They assert that, “The Academy that John Calvin founded in Geneva in 1559 was the first of the Reformation colleges and embodied this theory of lay (nonacademic) control” (18). Kerr and Gade recognize that the fundamental instruments of power in Reformation Geneva were firmly held by Calvin and the church. However, they observe that Calvinist theology and social theory also led to the emergence of the principles and mechanisms of lay governance of institutions that have their mission in the

pursuit of the community's interest in educating its citizens (18). Like Adams and Hunt, Kerr and Gade make the link between institutional mission and trustee governance.

In determining institutional mission, trustees create institutional identity. The makeup and nature of a board--of the aggregated and blended values of the collection of individual trustees in association--create the moral character of an institution. Peter Dobkin Hall, in his important study, Inventing the Nonprofit Sector, and other Essays on Philanthropy, Voluntarism, and Nonprofit Organizations, notes the extraordinary degree to which nonprofit organizations permeate pluralist American society. Highly differentiated, this panoply of organizations carries "different institutional orientations" (206). Importantly, he also observes that it is precisely within the boards of these organizations that institutional identity is created and sustained. He observes that, "In a pluralist society, boards of trustees are inevitably an arena for the playing out of different visions, expectations, and values" (206). The values and purposes of boards of trustees are, therefore, among the creators of the plural character of American institutional life. The values held by the board differentiate one organization from the next. With respect to independent higher education, the plural values of boards operating in distinct local contexts and within individual moral traditions have led to an extraordinary degree of institutional variation within the broader moral tradition of independent higher education.

### **The lineage of trust**

The values of a board are major determinants of institutional identity. This is true at the initial creation of an association, and it continues to be the case as a board's moral

responsibility for an institution continues over time. Having examined trustees' involvement in the creation of institutional mission, how then are trustees responsible for institutional continuity?

Trust is the key factor in the formation of voluntary associations, and trust is the essential element in the continuing ethical responsibility of trustees over time. David H. Smith writes about the original entruster, "formulating a purpose and transferring power to the trustee, who then acts on behalf of the entruster for the benefit of the beneficiary" ("When Principles Conflict" 14). However, Smith does not elucidate precisely how authority and responsibility are transferred to the successor trustees. The nature of this transfer is critical, for on it rests the legitimacy claims of trustees as the moral successors of founders or trustee predecessors.

In the transfer of moral responsibility, trust must be extended, it must be accepted by the trustee, and the trust must be carried out in the continuing oversight and decisions of the trustee on the behalf of the beneficiary. In the most elemental terms, trustees are entrusted (hence the title of Smith's pivotal book, Entrusted: The Moral Responsibilities of Trusteeship). Because of the facts of human infirmity or mortality, the founders of an organization must eventually transfer responsibility to other individuals who will faithfully carry out the mission of the organization. In order to ensure the continuity of mission, these successor trustees must similarly select and entrust yet others to share responsibility with them in the present and beyond their retirement or demise.

Thus there is a lineage of trust, a continuity of trust from original entruster to

successor trustee and from successor trustee to further successors. The continuing legitimacy claim of trustees rests on this lineage of succession in trust. One analog is the principle of apostolic succession in the church embodied in the act of ordination, in which ecclesiastical responsibility and authority are transferred to new priests, ministers, or lay elders. Academic investitures, governmental inaugurations, and oath takings of all sorts function similarly to transfer authority and responsibility in a line of succession.

Trust is extended by the entruster. However, the trust must be accepted. It is not enough that an entruster selects another person to have the responsibility of trusteeship. That individual must freely accept the responsibility, promising to carry out the intentions and purposes of the organization. Trusteeship cannot be compelled. It requires selection or election by existing trustees, on the one side, and free acceptance of responsibility by a new trustee on the other. As noted, oath taking can be a formal ceremonial recognition of the acceptance of responsibility. The promise of fidelity is symbolized in the ceremony, but the moment of public promise can also be the actual transfer of authority and responsibility in the lineage of trust.

One example of such a ceremony is the investiture of new trustees of San Francisco Theological Seminary. Following election--the decision by the existing trustees to extend responsibility to a new trustee who will share authority and responsibility for the seminary--new trustees must accept election. They signify their acceptance by repeating an oath that is prescribed in the bylaws of the seminary. They then inscribe their name in a register of trustees begun with the institution's founders and continued from trustee to trustee through 125 years. With these acts, the seminary's new trustees assume both the

moral and legal duties of trusteeship.

The transfer of trust within the institution's governing board is also accepted by the state as the mechanism for ensuring institutional continuity. In that sense, trust is also extended to new trustees by the state. In the independent extension of trust, with the concomitant transfer of moral authority and responsibility, the transfer of legal responsibility also transpires. New trustees accept new legal responsibilities and are immediately fully legally accountable for the governance of the organization. In the extension and acceptance of trust, they become subject to the legal duties of loyalty, care, and obedience.

Independent, trustee governed institutions can theoretically continue in perpetuity. All such institutions must solve the problem of intergenerational continuity. In one sense, the extension of trust to successor trustees is a voluntary act, but on the other hand entrusting successors with the moral mission is a necessity if the founders are to guarantee that their original intentions in creating an independent institution continue to be observed in their absence, whether during or after their lifetime. Each succeeding generation of trustees is faced with the same problem of human mortality.

Trusteeship exists to ensure the intergenerational continuity of moral responsibility and authority for an independent institution. In the most general terms, the trustee relationship functions to solve the fundamental human and social limitations of death and distance. Trusteeship's existence includes the presumption of death, absence, and potential discontinuity. Trusteeship is not the only social mechanism devised to deal with these problems. There are multiple social structures and functions that ensure

intergenerational continuity, including kinship, law, government, orders of succession, corporations, endowments, trusts and nonprofit institutions, etc. Trusteeship is one such mechanism of social continuity, and to be sure, one that is focused on moral purposes and beneficiaries. The lineage of trustee succession ensures that the fundamental moral purposes for which an institution is created are faithfully pursued in new generations. It is not simply continuity of institutional structures that is achieved; trusteeship secures the continuity of moral mission.

Niklas Luhmann's theoretical framework confirms this understanding. He also regards trust as but one of many mechanisms for reducing complexity in social interactions, one that deals with uncertainty and the future. Luhmann observes that there are other mechanisms for reducing complexity, e.g., law, organization, and language, that operate in conjunction with trust. Trust, however, is the mechanism that helps deal with uncertainty and the future, substituting "an internally guaranteed security" when the certainty of knowledge fails (93-94). For Luhmann, "trust is required for the reduction of a future characterized by more or less indeterminate complexity" (15). However, Luhmann does not deal with the indeterminacy in institutional futures introduced by the problem of death. While recognizing that a theory of time is implicit in a theory of trust (22), his time framework does not extend beyond the lifetime of the one who trusts. For Luhmann, the evaluation of whether the extension of trust was valid relies on a "retrospective reckoning" by the one who trusts (25). It is impossible, of course, for a deceased trustor to engage in any "retrospective reckoning" to ascertain whether the extension of trust to trustees was warranted. In this regard, Luhmann's theory of trust,

while illuminating for this discussion of trusteeship, requires modification to deal with the issue of the succession of trust beyond the death of the trustor.

In fact, in the specific case of trusteeship, the need to extend trust occurs explicitly because of the need to create a kind of certainty with respect to a future in which the one who trusts is absent, either because of death or distance. This is true not only at the point of the initial transition from the founders to the first generation of successor trustees. It is also true at any point in the lineage of trustee succession. The continuity of trustee governance is always related to time or distance and trustees' moral reliability. In Luhmann's vernacular, the expectation that trustees will faithfully carry out the purposes of an institution on behalf of a set of beneficiaries creates a secure and assured understanding on the part of a trustor in the face of the complexities and uncertainties created by death. This is true whether the trustor is the original founder or others farther along in the lineage of succession. Ultimately, however, the trustor has no opportunity for validation of whether the trust was warranted. It remains to the law and trustees' understanding of their moral responsibilities, as proposed here, to secure the degree of certainty that an institutional mission will be faithfully served.

The line of trustee succession provides for a degree of security in institutional governance in the face of an uncertain future, but trusteeship also has to deal with one characteristic of the future that is certain, namely, that internal and external institutional circumstances will change. Sheridan and Delaney observe that, "the very fact that a charitable trust need never come to an end raises an entirely new problem for the trustee charged with its administration, the problem of obsolescence" (2). The theoretically

perpetual character of charitable institutions when coupled with the discontinuities of human life and society, means that a time will eventually come in which an independent charitable institution's original mission is hindered, hampered, or even thwarted by changing circumstances. New internal and external conditions can threaten the ability of the institution to continue to serve its historic mission. Conversely, changing times and conditions may present new opportunities for an institution to pursue its mission more expansively and more effectively.

In the face of changing conditions, a board of trustees must be, adapting David H. Smith's term, a community of moral interpretation, transforming an institution's mission in a way that is at once faithful to founding purposes but also modified to serve a new day. Paradoxically, trustees' continuing moral responsibility to pursue with fidelity the institution's mission requires that they also be the stewards of transformation. In the line of trustee succession, they are fiduciaries of the institution's historical beneficent purposes. They are also, "the overseers of change" (Ingram, Trusteeship, 2). They serve both conservation and transformation. As noted above, the founding trustees of an independent college literally invent the institution by defining its moral purposes. By interpreting that mission in light of changed conditions, their successors reinvent the institution. Craig Dykstra comments expansively on this ethically transforming character of trusteeship:

Here is where morality and trusteeship most fundamentally connect. Trusteeship is the activity of "creating and re-creating the institutions that make life possible." And through this, trusteeship is thus also the activity of creating and re-creating the fundamental moral practices that form and shape the character of individuals, of communities, and of society as a whole.(4)

As the interpreters of moral mission, trustees are engaged in a process of ethical reflection that transforms the very rationale for the existence of the institutions of which they are stewards.

Trustees may rely on other individuals or groups in fulfilling their continuing moral responsibility as stewards, interpreters, and transformers of institutional mission, but the involvement and responsibility of other parties derive from the prior responsibility of trustees. These parties may be either inside or outside the institution. In the tradition of shared governance in higher education, an institution's faculty and its administrative leadership are intimately involved in the interpretation of institutional mission. Indeed, faculty, presidents, and other administrative staff are often profoundly morally committed to the mission of independent higher education in general and the historical purposes of their particular institution. Presidents and faculty share in institutional stewardship. Nevertheless, their moral responsibility derives from their being called to their respective roles by the trustees who are ultimately those standing in the lineage of trust.

Just as trust is elemental in creating moral association and in its continuity, trust is also critical in the nature of a board's continuing reflection on moral mission. The character of a board as a community of trust makes possible its continuing ability to function as the locus of moral reflection on institutional purposes. Stephen Toulmin notes this relationship and the particular kind of moral reflection that is fostered by voluntary association. Although he writes about trusting associations in general, the link between trust and the nature of ethical reflection holds well for boards of trustees, too. Toulmin observes that an association based on trust is inherently more flexible, adaptable, and

equitable. It avoids “the ethics of rules and strangers” (“Tyranny” 37), an impersonal and anonymous ethic based purely on rules and principles. Toulmin argues that “a morality based entirely on general rules and principles is tyrannical and disproportioned” (“Tyranny” 38). He traces the evolution of impersonal ethics and the “vogue for rules and principles” (“Tyranny” 33) that developed through a long process of social and philosophical change. Lost in this development has been a sense of the complexity of moral issues and the need for humane, case-by-case flexibility in dealing with difficult ethical questions. In the public arena, the demand for moral uniformity has led “to a submerging of the discretionary by the rigorous, the equitable by the equal” (“Tyranny” 34). Consequently, Toulmin criticizes the ethics of rules and principles. It may be based on fairness and impartiality, “but it will also be – essentially – an ethics for relations between strangers” (“Tyranny” 35).

Toulmin counterposes a more flexible ethic rooted in social trust. Such trust is found in voluntary associations that permit the development of “a fuller loyalty and commitment” (“Tyranny” 37). Trust forges the associational bond. Toulmin hopes for a recovery of an ethics of equity that recognizes “reasonableness or responsiveness (*epieikeia*) in applying general rules to individual cases” (“Tyranny” 34), and he vests hope in trusting associations, “For it is only in that context, I suspect, that the ethics of discretion and intimacy can regain the ground it has lost to the ethics of rules and strangers” (“Tyranny” 37). Trust makes possible contextual ethical flexibility.

Extending this reckoning to boards of trustees, it is precisely because they are communities of associational trust that they are inherently able to interpret institutional

moral purposes with a degree of flexibility and adaptability. Further, the flexibility of a board in interpreting institutional purposes is proportional to the degree of trust among the members of the board. The greater the trust, the greater the ability of the board to adapt the institution's mission to changing circumstances.

Chapter one presented trusteeship as a legal obligation. This chapter has argued that trusteeship is, foremost, a moral obligation. Based on this conception of trusteeship as fundamentally moral in character, I turn now to examine the character of moral mission for which trustees are responsible.

## **CHAPTER THREE**

### **MORAL MISSION**

Mission is moral. In independent higher education, statements of mission are declarations of the moral purposes for which colleges exist. A mission statement enunciates the benevolent, charitable intentions of an institution and defines the beneficiaries whom the college serves. The statement is a profession of moral motives and goals. This chapter explores the moral nature of mission. Insofar as my overall argument rests on an understanding that mission is a statement of moral purpose and that, therefore, the interpretation of mission is a process of ethical reflection, this chapter presents an essential building block in the argument.

The chapter begins with a definition of mission and its moral nature. It then examines the way in which mission is rooted in moral community and is always related to the particular context of an institution. As that context changes, mission changes. Mission and its interpretation in light of contextual changes are a paramount concern in the deliberations of trustees. This task is the “highest calling of trustee leadership” (Carver and Carver 11). Mission is a central moral organizing principle for higher education, an idea that is examined in more detail. Some scholars contend, to the contrary, that mission has little if anything to do with the way colleges should organize their priorities, or that mission statements are inimical to the achievement of the real purposes of colleges. Three of these contentions are also examined. Finally, the chapter concludes with a discussion of the way in which beneficent mission is made concrete in the

life of a college through philanthropic benefactions.

### **The moral nature of beneficiary-centered mission**

The idea of mission has its etymological roots in religious concepts. Linguistically, it is derived from Latin, the past participle of the verb *mittere*, to send or to throw.

Religiously, a mission is “a ministry . . . commissioned by a church or some other religious organization for the purpose of propagating its faith or carrying on humanitarian work.” It is an “assignment to or work in a field of missionary enterprise.” For an individual, a mission can be understood as a calling, a lifelong religious vocation. In this sense, mission may be a duty of faith itself. Collectively and secularly, a mission can be “a body of persons appointed to go somewhere to perform a service or carry on an activity.”

Mission can also refer to the specific task to be carried out by a group, and when it is related to a continuing collective enterprise, it is “the chief function or responsibility of an organization or institution” (Webster’s).

In the Christian tradition, Jesus’ last exhortation to his disciples is, according to Matthew’s gospel:

All authority in heaven and on earth are given to me. Go therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you; and lo, I am with you always, to the close of the age. (RSV, Matthew 28:18-20)

This declaration from the religious tradition contains key functional elements that can be related to a more secularized understanding of moral mission. Jesus’ charge lays out the form for a more general conception of moral mission: an enduring responsibility to act for

the benefit of others based on the authority of those who sanction the mission originally. Authority is claimed. A group is commissioned with a responsibility and sent out to accomplish a set of tasks. In Jesus' charge, this responsibility endures literally until the end of time; it is an encompassing, lifelong vocation. In more secular terms, most charitable institutions have responsibility for their missions in perpetuity. In Matthew's account, the disciples are given a duty to carry out specific tasks for the benefit of others: making more disciples, baptizing, teaching obedience to his commandments. Secularly, mission entails a set of specific goals that are focused on a set of beneficiaries.

At its core, moral mission is charitable. Inherent in the concept is the existence of the persons to whom the charity is directed, the beneficiaries. Charity's focus is not on the one who extends the charity or that person's or institution's benefit. Rather the interests and needs of the beneficiary are the center of concern. Charitable institutions exist for the benefit of others. Independent colleges exist within the moral tradition and legal framework of voluntary nonprofit organizations. They are, without exception, organized for charitable purposes. They all exist, therefore, to serve a class or classes of beneficiaries.

A college's moral mission includes *sui generis* a designation of a beneficiary or beneficiaries whose interests are the paramount consideration for trustees. As was noted, David H. Smith's identification of the triadic form of the trustee relationship includes as one of its three parties the beneficiary (Entrusted 5). He links the creation of a trustee relationship with the idea of mission focused on a holding that, "We have an identifiable form of trusteeship whenever a cause or mission defines a group's identity so that a duty

to beneficiaries is created and constrained by the organization's sense of purpose or the cause it exists to serve" ("When Principles Conflict" 14). Further, the concept of *fiduciary relation* is defined as "the relation existing when good conscience requires one to act at all times for the sole benefit and interests of another with loyalty to those interests" (Webster's). These definitions point to trustees' enduring, singular focus on the beneficiaries' interests.

Thus, the concepts of moral mission and trustee moral responsibility both ultimately have a focus on the beneficiaries. On the one hand, mission describes moral action on behalf of a set of beneficiaries. On the other, the idea of trusteeship inherently includes responsibility for beneficiaries. What appears as linguistic serendipity is not an accident. Trustee responsibility and moral mission are conceptually linked. They are key elements in the tradition of voluntary nonprofit associations that includes independent higher education. In this tradition, trust-based institutions exercise moral responsibility for a set of beneficiaries. Trustees are entrusted with the care of beneficiaries; an institution's mission articulates precisely who the beneficiaries are and what the moral goals are.

### **The history of mission-centered, trustee governed colleges**

For higher education, the historical antecedents of this understanding of mission oriented and independent, trustee governed institutions serving a set of beneficiaries are found in European universities and academies, specifically in the institutions of the Calvinist Reformation. It is in America, however, that the tradition of mission based, trustee governed institutions blossomed and continues to flourish. The early history of

higher education in Europe is devoid of any notion of trustee governance, but the boards that were created in the sixteenth century to govern the academies of the Calvinist Reformation were the direct precursors of the boards that governed the first American colleges. It is also the Calvinist tradition that animated the sense of purposeful service to society, i.e., of mission, in these colleges. The fundamental model that was spawned in Calvinist academies and universities persists as the dominant form for contemporary independent higher education.

A new model of lay governing bodies emerged from the Calvinist arm of the Reformation. Exemplified in the Reformed Calvinist universities in Geneva, Leyden, Edinburgh, and Dublin, this new model was translated to America where it became the dominant pattern for college and university governance. The English concepts of trusts and trusteeship became associated with these lay governing bodies (Cowley, 31-32). John Calvin was committed to the ideal of an educated clergy, and in Reformation Geneva this led to the creation of a new Academy with the purposeful mission of training leadership for the church. Both civil and ecclesiastical authorities had a hand in the governance of the Geneva Academy.

The Geneva model was adopted in the Calvinist universities of the Dutch Reformation. The University of Leyden set the pattern. Created by the citizenry, it was governed by an independent board of curators who ran the university. The Leyden model was followed by the Dutch universities at Fancher, Groningen, and Utrecht (Cowley, 34). Similarly, the Calvinist University of Edinburgh was established on the Geneva model,

though in Edinburgh the civil authorities lacked the power held by those in Geneva. In Edinburgh, responsibility for the university was delegated to a committee of the town council that functioned as an external lay board of visitors. The University of Aberdeen was governed in this same manner (Cowley, 36-37). In Dublin, the university was chartered by Queen Elizabeth I and established with a dual board structure. It adopted the Calvinist model of an external board of visitors consisting of non-academics, but Dublin also had an internal Board of Fellows comprising the head of the university and the faculty who exercised internal authority.

Colonial American colleges replicated the governance structure of European Calvinist institutions. Although three of the nine institutions founded during the American colonial period adopted dual board structures on the Dublin model, the remaining colleges followed the single board model, which became the prevailing governance pattern for American colleges (Cowley, 37).

Founded in 1636 by the civil authorities, “The General Court of the Massachusetts Bay Colony,” Harvard operated for five years under a committee of the court, following the Leyden model. In 1642, this committee became the Harvard Board of Overseers. When the college was formally chartered in 1650, a second board was created, “The President and Fellows of Harvard College,” and the college thereafter operated along the dual board lines initially set down at the Calvinist University of Dublin (Cowley, 37-39).

As American higher education evolved, Harvard’s dual board model did not prevail. By contrast to Harvard, Yale was independently founded in 1701 on the initiative of a group of ten ministers who secured the sanction of the Connecticut legislature. The

founding mission was determined independently, and the ministers constituted an autonomous board of non-academics who controlled the college and stood as a line of defense against any deviation from the fundamental institutional mission as it was originally defined by the founders.

The pattern established at Yale became the dominant model for private American higher education. Colleges were founded by independent voluntary action, most often of clerics and local citizens, and sustained in their mission by autonomous boards of trustees. This pattern is evident in the founding and governing of Princeton University by followers of William Tennant and in the founding of the University of Pennsylvania by a group of Philadelphia citizens (Cowley 41-46).

It is well worth noting that the independence of an institution is essentially the independence of its board of trustees to determine institutional purposes and to exercise governing authority. This autonomy of mission in American colleges and the independent authority of their boards of trustees were sealed by the 1819 decision of the United States Supreme Court affirming the independence of Dartmouth College. The decision established the critical legal precedent that colleges could be independent and self-governing, free of interference by the state.

The New Hampshire legislature attempted in 1816 to assert its authority over the Dartmouth College that was originally incorporated under a royal charter. The college's trustees resisted the state's incursion against their autonomy, and the court, in an opinion by Chief Justice John Marshall, upheld the trustees. The court ruled that Dartmouth's trustees exercised their independent authority on the basis of a contract with the sovereign

that could not be unilaterally abrogated by the New Hampshire legislature (Kerr and Gade 22). In the words of the Carnegie Foundation, “The *privilege* of the sovereign to delegate functions was transformed into the *right* of trustees to carry on their work without legislative interference” (10). The prevailing paradigm for the independent authority of college and university governing boards was set.

Affirming the independence of institutions to establish their missions under the authority of trustees, the Dartmouth decision was a crucial watershed in American higher education governance. The court’s decision simultaneously laid down the essential distinction between public and private higher education (Kerr and Gade 22). The legal assurance of independence for private colleges also ensured that the principle of institutional independence would be applied to public institutions as well (Carnegie Foundation 9).

The historical tradition of independent, mission oriented institutions flourished. A handful of colonial period institutions became hundreds during the nineteenth century, as denominationally related schools were planted throughout the American landscape. Independent colleges now number more than 3,000, and Richard Ingram calculates that of 50,000 college and university trustees in America, 40,000 are serving in independent higher education (Ingram, Effective Trusteeship 1).

Although a significant number of the faith-based institutions founded in the seventeenth and eighteenth centuries have become wholly secular, the essential model of institutional independence and trustee governance laid down in the Calvinist Reformation and transported to America persists to this day. Independent colleges are still

fundamentally oriented to mission--to the achievement of moral ends for a set of beneficiaries--and the autonomy of their mission is still vouchsafed by independent boards of trustees.

### **Mission as universal or contextual**

Mission is context dependent. Within the tradition of independent higher education, the particularity of mission is a function of the individual circumstances in which a college is brought into being. Any particular college is a context dependent moral community that functions within the broader moral tradition of higher education.

Mission may be understood generically as a statement of moral purpose with a focus on a set of beneficiaries, but there is certainly no universal agreement on what these moral purposes are or should be. Nor is there agreement on who the beneficiaries of any specific institution should be. Since all independent colleges serve moral ends for a set of beneficiaries, the fundamental schema for mission can be regarded universal, but the mission and beneficiaries for any particular institution result from the distinctive moral invention of that institution's founders that has then been sustained and modified, possibly over generations.

This emphasis on the local particularity of mission does not deny the tremendous similarities among colleges. They share a common heritage; all exist within the broad moral tradition of higher education. Countless scholars and institutional leaders have proposed global conceptions of the mission of higher education. A full review of this literature is well beyond the scope of my dissertation, but a brief examination of some

notable examples demonstrates that there is no universal agreement on higher education's beneficiaries or mission. In accordance with the basic model of mission that I have proposed, these global conceptions typically couple a statement of moral purpose and a set of beneficiaries. However, the conceptions of the beneficiaries of mission have diverged. Great voices have argued, variously, that higher education's beneficiaries are students, faculty, or more broadly, the common good. To raise the global question of the moral mission of higher education is to raise the global question of its beneficiaries, and there have been very distinctly different answers.

These universal conceptions of the purpose of higher education are statements that present different ideas about who the beneficiaries of higher education are. All are valid visions. In proposing global philosophies of education, however, they lack the contextual particularity and specificity that is essential in defining institutional identity.

One stream asserts that institutional mission is pursued on behalf of students. They are the primary beneficiaries. In The Idea of a University, John Henry Newman articulates an explicitly Roman Catholic conception of the unity of knowledge and the mission of the university. Within this understanding, he identifies the student as the focus of mission.

In contrast to his lofty conceptions of the universal meaning of knowledge and the university, Newman articulates a pragmatic purpose for the university: "If then a practical end must be assigned to a University course, I say it is that of training good members of society. Its art is the art of social life, and its end is fitness for the world" (134). The individual learner is the focus. Universities do not aim to produce genius, though that happens sometimes. Nor does a university aim to produce practical professionals, though

that is also sometimes accomplished. A university has goals that are at once more modest but global. He holds that,

A University training is the great ordinary means to a great but ordinary end; it aims at raising the intellectual tone of society, at cultivating the public mind, at purifying the national taste, at supplying true principles to popular enthusiasm and fixed aims to popular aspiration, at giving enlargement and sobriety to the ideas of the age, at facilitating the exercise of political power, and refining the intercourse of private life. It is the education which gives a man a clear conscious view of his own opinions and judgments, a truth in developing them, an eloquence in expressing them, and a force in urging them. It teaches him to see things as they are, to go right to the point, to disentangle a skein of thought, to detect what is sophistical, and to discard what is irrelevant. It prepares him to fill any post with credit, and to master any subject with facility. It shows him how to accommodate himself to others, how to throw himself into their state of mind, how to bring before them his own, how to influence them, how to come to an understanding with them, how to bear with them. He is at home in any society, he has common ground with every class; he knows when to speak and when to be silent; he is able to converse, he is able to listen; he can ask a question pertinently, and gain a lesson seasonably, when he has nothing to impart himself; he is ever ready, yet never in the way; he is a pleasant companion, and a comrade you can depend upon; he knows when to be serious and when to trifle, and he has a sure tact which enables him to repose of a mind which lives in itself, while it lives in the world, and which has resources for its happiness at home when it cannot go abroad. He has a gift which serves him in public, and supports him in retirement, without which good fortune is but vulgar, and with which failure and disappointment have a charm. The art which tends to make a man all this, is in the object which it pursues as useful as the art of wealth or the art of health, though it is less susceptible of method, and less tangible, less certain, less complete in its result. (134-135)

In short, a university education, the pursuit of liberal knowledge, creates a kind of virtuous Aristotelian gentleman. For Newman, university training ennobles the individual.

Where Newman and one stream of global conceptions of higher education focus the mission of the university on the learner, another stream holds that it is the community of scholars, the faculty, who are the essential beneficiaries of mission. Scholarship and the

nurture of the scholarly community are fundamental reason that higher education institutions exist. Emblematic of this stream of thought is Thorstein Veblen who holds the primary beneficiary of institutional mission to be the scholar-teacher. His The Higher Learning in America: A Memorandum on the Conduct of Universities by Business Men is a faculty-centered conception of the university. Writing in the progressive era and as a socialist, Veblen castigates the incursion of business principles into the life of the university. For him, scholarship is the primary purpose of the university; teaching is secondary. Indeed, teaching serves the teacher, not the learner. Everything in the university focuses on the work of the faculty. They are the primary beneficiaries. He articulates a vision of scholars pursuing pure knowledge, eschewing Newman's vision of the practical and ennobling benefits of university education for the learner:

The conservation and advancement of the higher learning involve two lines of work, distinct but closely bound together: (a) scientific and scholarly inquiry, and (b) the instruction of students. The former of these is primary and indispensable. It is this work of intellectual enterprise that gives its character to the university and marks it off from the lower schools. The work of teaching properly belongs in the university only because and in so far as it incites and facilitates the university man's work of inquiry--and the extent to which such teaching furthers the work of inquiry is scarcely to be appreciated without a somewhat extended experience. By and large, there are but few and inconsequential exceptions to the rule that teaching, as a concomitant of investigation, is distinctly advantageous to the investigator; particularly in so far as his work is of the nature of theoretical inquiry. The instruction necessarily involved in university work, therefore, is only such as can readily be combined with the work of inquiry, at the same time that it goes directly to further the higher learning in that it trains the incoming generation of scholars and scientists for the further pursuit of knowledge. Training for other purposes is necessarily of a different kind and is best done elsewhere; and it does not become university work by calling it so and imposing its burden on the men and equipment whose only concern should be the higher learning. (12)

Veblen's universal conception of academic mission is faculty centered.

A third and contrasting global conception of the mission of higher education and its primary beneficiaries is that it serves the common good or the public interest. The identity of the beneficiary is generalized and globalized to encompass the entire society. Robert Maynard Hutchins is among those who articulate a lofty, idealized vision of education's ability to elevate society. In The Higher Learning in America, he defines higher education's mission as service to the national interest:

But how can we hope to improve the state of the nation? Only through education. A strange circularity thus afflicts us. The state of the nation depends on the state of education; but the state of education depends on the state of the nation. How can we break this vicious circle and make at last the contribution to the national life that since the earliest times has been expected of us? We can do so only if some institutions can be strong enough and clear enough to stand firm and show our people what the higher learning is. As education it is the single-minded pursuit of the intellectual virtues. As scholarship it is the single-minded devotion to the advancement of knowledge. Only if the colleges and universities can devote themselves to these objects can we look hopefully to the future of the higher learning in America. (32)

Higher education's mission is a pure intellectual pursuit that will enlighten and save the nation. The purity of his vision, in contrast to Newman's, excludes even professional training in the service of society (2).

The idea that higher education serves society can be viewed in the most universal terms. Independent colleges are legally organized as public benefit corporations and, therefore, the rationale for their existence is serve the public interest. Their obligation to do so lies in the transaction by which government sanctions the existence of nonprofit

corporations. The state's permission for the existence of this institutional form carries a concomitant obligation that the organization to serve the public interest. In terms of this transaction, "for exemption from taxes and freedom from excessive government regulation, the organization is expected to serve the public benefit and its board is expected to function as guardian or steward to safeguard the public interest" (120).

A variant of this proposition defines the relation of private institutions to the public interest by ascribing them to government's initiative in creating colleges and universities, holding that they

Have been organized to disseminate and to advance socially beneficial knowledge, skills, and attitudes; and . . . civil government has created them for the good of the general community. They have not been founded for the sole or even the primary benefit of professors, administrators, students, trustees, or all of them taken together, but, instead, for the benefit of society at large. (Cowley, 223)

In spite of Cowley's otherwise perceptive account of the history of university governance, he disregards the role of voluntary initiative in instituting the mission of independent colleges, citing instead--and wrongly I believe--the initiative of government in creating higher education institutions. To be sure, government does found *public* institutions, and does determine their mission, but a conception of higher education as a servant of the public interest does not depend on the action of the government in creating colleges.

One need not endorse this appeal to government sanction to justify serving the public as general beneficiary. The essential nature of private trusts and nonprofit corporations requires service to beneficiaries. The set of beneficiaries can be, and often is, generalized to encompass broad populations and the public commons. The essential

nature of the trust relationship and its orientation to a set of beneficiaries, rather than government concession, can be the source of commitment to the public benefit. A global conception of higher education's mission as serving the public interest requires the generalization of the class of beneficiaries.

A definition of colleges as serving the public interest or the common good requires further identification of which public and what good. Within a conception of the common good as the beneficiary of higher education, an institution's individual characteristics can shape the particular understanding of the public interest for any given college. The college may serve the good of a more specific segment of society by virtue of the training it offers, e.g., commerce, agriculture, etc. (Nason 1980, 27-28). Generalization of the idea of the beneficiary to encompass the whole of society raises the question of what part of society and where. The mission of a liberal arts college of 1,000 students in a small town may lay global claim to service to society and the public good, but it cannot serve all persons in all places. In the end, it will make clear through other words and deeds that it serves some more limited portion of society.

These global conceptions of the mission of higher education and its beneficiaries--that it serves students, faculty, or the public interest--are but three threads of a single moral tradition. From this brief review, it is evident that there is no unanimity regarding the purposes of higher education, nor is there universal agreement about the beneficiaries whom colleges serve. Leading lights in the field differ markedly in their opinions. When the exploration is brought to the level of the individual colleges, even greater variability within the broad moral tradition is found. The global conceptions are embodied in myriad

ways that are dictated by local contexts and local moral traditions.

Moral mission and definitions of beneficiaries grow out of communities of moral purpose. Independent higher education, as a whole, can be understood as an extended moral community, a subset of the broader moral tradition of voluntary nonprofit corporations that serve charitable and beneficent purposes. For higher education, the community is dispersed rather than gathered, but it has the same tradition, general moral motivations and goals, and service to sets of beneficiaries, even if there is not agreement on the particular goals or beneficiaries.

Individual colleges are moral communities defined by local conceptions of mission that embody global understandings in light of a local context and moral tradition. The boards of trustees of independent colleges are also moral communities rooted in trust. The founders of a college constitute a community whose moral imagination defines the moral goals and beneficiaries of a new institution, its mission. The trustees who follow them constitute successive moral communities precisely because they are entrusted with that mission and renewed in the lineage of moral trust. In gathering to establish a new institution focused on a moral mission, a college's founders essentially create two new moral communities, the board of trustees and the college itself.

Thus far in this chapter a general definition of moral mission has been proposed that encompasses both a conception of moral goals and an identified set of beneficiaries, noting that trustees' duties and mission both ultimately focus on beneficiaries. Different conceptions of mission make it clear that the moral tradition of higher education is highly varied. However, whether viewed universally or locally, moral mission is an expression of

moral community. Moral mission is defined and constrained by the moral understanding and traditions of the community from which it emerges.

### **Moral community and the good of beneficiaries**

The various conceptions of collegiate mission and beneficiaries are also limited by the broader social, legal, and political context. The idea and ends of a college, and the morally acceptable goals and beneficiaries that are served by it, are constrained by the moral and social communities in which universities are embedded. This point was made elegantly in a 1998 letter to me from Stephen Toulmin who wrote,

The Trust by which a University or College is established is created within a broader situation, whose parameters . . . involve certain general understandings of what constitutes a University or a College, and so of the standards to be honored in (say) the hiring or firing of faculty members. Likewise, it is limited by general understandings of the institution's responsibility to the country, or to other broader loyalties as the given case may be. Trustees can therefore insist on the specific values embodied in the Trust, only so long as they do not carry insistence beyond the limits so imposed. As one of the Trustees of Corleone University, I might wish to see attitudes of *omertà* and a skill at shaking down uncooperative storekeepers instilled in our students; but over those points, I can hardly expect the Courts to back up my judgement as a Trustee. It may be a pity to see mere Politics overturning moral insights into the demands of a Trust; but at the end of the day, Trusts are created and executed within a *polis*, and cannot impose absolute demands on their own exercise. (Toulmin, Letter)

Although they are entrusted with mission, trustees are not wholly at liberty to assert arbitrary interpretations of mission that ignore the moral values of the *polis* any more than they are at liberty to disregard the moral traditions of higher education generally or the particular moral history and traditions of the individual institution that they serve.

Toulmin's witticism about a college teaching thuggery makes this point sharply. The mission of a college must be subject to ethical analysis to test the validity of the institution's goals and whether it does, indeed, serve beneficiaries. Both the original mission of a college and its continuing interpretation are, thus, as a matter of moral reflection.

Trust need not necessarily be moral, and Toulmin makes the point well that a conception of institutional mission may well be immoral. There can be trust among thieves. There is a "dark side of trust" (Husted 245). This case is also made by George Brenkert whose argument about the ends served by trust can be translated to pertain to the moral ends served by an independent collegiate institution, i.e., to its mission.

Brenkert writes that

trust is not an unconditional value. Its value in particular instances depends upon the context within which it is exercised. If trust is employed concerning morally worthy projects, then such trust is valuable. On the other hand, when it is formed around morally unworthy projects trust may lack moral value. (301)

A conception of mission may be deemed illegitimate if it serves "morally unworthy" ends. That which is true of trust generally holds for institutions and communities grounded in trust. Whether or not the original or newly interpreted mission of an institution is moral, requires discernment of whether its goals are morally fitting and

In terms of this chapter's consideration of the nature of mission, I would argue summarily that institutional mission must serve moral ends; that these ends must be subject to moral discernment by trustees; and importantly, that an essential touchstone for any moral mission is the identification of and service to beneficiaries. A good mission is not

good in light of an abstract conception of higher education's purpose. Rather a good mission is one that is fitting for the particular set of beneficiaries in the specific contextual circumstances of an individual college. To assert that the common good, the general social morality, the traditions of higher education, or the moral traditions of a particular college are the measure of the validity of mission begs the question of what measures of *the good* or *the right* are fitting for the moral mission of a college and its beneficiaries.

The idea of moral mission inherently includes a charitable orientation to a set of beneficiaries, but a college may serve other interests. Trustees have an overriding obligation to serve the interests of beneficiaries, but in the trustee triad they also serve the interests of the trustor. They are to be faithful to the will and intentions of the persons who founded the college. Under the law, the *duty of loyalty* governs trustees' obligations to beneficiaries, but under the *duty of obedience*, trustees also serve the interests of an institution's founders. Paradoxically, an essential element in the definition of the founders' interests is precisely the definition of the beneficiaries and their interests. The good for the trustor is delineated in terms of the good for the beneficiaries.

The charitable focus of mission on the beneficiaries also makes it clear why trustees' responsibilities are violated when they serve their own interests. Under the law, trustees are prohibited from self-dealing transactions. Self-interested behavior negates the essential charitable nature of mission that serves others. The responsibilities of trusteeship are reinforced when trustees focus first on the needs and interests of beneficiaries and serving them through an institution's mission. Trustees violate their fiduciary duties when they serve their own interests, benefitting financially through decisions that they make.

The moral equivalent of legal self-dealing is a focus by trustees on what is good for them rather than on what is good for the beneficiaries.

A fundamental orientation of the trust relationship to the good of the beneficiaries, though not providing an objective standard of the good, nonetheless establishes a right ordering of interests as the goodness or rightness of mission is discerned. Bryan Husted argues that the idea of trust alone does not provide an objective moral touchstone, that a simple appeal to the trust relationship does not yield a Kantian measure of the good, rather the trustor defines his or her own good (239). However, by explaining the good for the trustor in terms of the good for the beneficiary, the conflict between the trustor's and beneficiary's interests is mitigated if not eliminated.

While agreeing with David H. Smith that, "The trustee form of governance is defined by loyalty to the purpose for which the organization was created" ("When Principles Conflict" 14), this general understanding should be interpreted so that organizational purposes necessarily include a conception of the beneficiaries who are served. Trustee governance is then defined by a steadfast focus on the beneficiaries of the institutional mission.

Mission is always related to contextual circumstances. This may seem self-evident. However, in light of the many attempts to define the mission of higher education in universal terms, it is worth emphasizing that mission needs always to be understood in relation to a particular set of beneficiaries, moral tradition, history, intellectual tradition, external macro-environment, internal social dynamics, geographic circumstances, demography, community, political and legal jurisdictions, public policy, market forces, etc.

of an individual college.

As people and place differ, so will mission differ, and as missions differ between institutions, the identity of beneficiaries will vary. The beneficiaries and the good for them--thus the conception of mission--for any particular college are context dependent.

H. Richard Niebuhr holds that the first question for any reflection on ethical responsibility is, ““What is going on?””(Responsible Self 60). In reflecting ethically on the moral mission of a particular institution, the same question applies. To borrow Stephen Toulmin’s phrase about practical knowledge, what may be known about the context and circumstances of a college in terms of “the oral, the particular, the local, and the timely” (Cosmopolis 30)?

### **Changing mission**

The world in which universities and colleges carry out their missions inevitably changes, and therefore, moral mission inevitably changes with time and circumstances. The *umwelt* or *circumstancia* of a college are not static. Context is continuously changing. If mission is understood as particular, local, and timely rather than general, global, and timeless, then it is reasonable that mission should change as circumstances change. Colonial New England that saw the founding of America’s first universities is utterly different from late twentieth century New England. The majority of America’s independent colleges were founded in what was, in most respects, an altogether different world. Their missions were fit for their time and circumstances. As conditions have changed, institutions have necessarily changed to adapt to new times and opportunities.

That institutions and their meaning change is a deeply ingrained conception in Western intellectual and social development. The nature of social institutions is that they evolve. It is understood that even fundamental institutions like the law, which bears on the formation of nonprofit institutions and the responsibilities of trustees will change, include the presumption of change and the mechanisms for change (Berman, Faith and Order 306). Higher education, generally, and particular colleges will evolve over time.

The contention that institutions not only change but *ought* to change is a very common theme in the higher education literature. Some focus on changes in the social, economic, policy, or other *external* circumstances that impact colleges and argue for reconsidering institutional purposes in response to these changes, e.g., William Tierney's contention about the changing nature of faculty responsibility ("Road to Recovery" 7). Others focus on the change in circumstances, relationships, and conceptions of roles that are *internal* to an institution and argue on that basis for a change in basic institutional direction (Policy Perspectives, "A Calling to Account" 4). Whether the focus is on the external environment or internal relations, the assumption is that change is necessary and desirable facet in the life of colleges.

As the question of changing mission is addressed, the degree to which mission may or should change arises. An emphasis on fidelity to historical mission directs attention to founding purposes and historical institutional commitments. An emphasis on present needs and future opportunities orients attention from the past to the future. In considering changing mission, there is a persistent tension between past purposes, present circumstances, and future opportunities. John Tietjen emphasizes this tension, noting on

the one hand that, “Of all that is worth conserving nothing is more important than the school’s mission and commitment to fulfill its purpose” (68). On the other hand, he also posits the need for a forward-looking review of mission, observing that, “Instead of answering the question, ‘What am I?’, a good mission statement provides an answer to the question, ‘What do I want to become’”(71)? If institutional circumstances change and mission, therefore, inevitably changes, the question is precipitated of the degree to which the reconsideration of mission should lay weight on the historical mission of the institution or should emphasize the new opportunities and directions for the institution’s future.

Some focus on the need to conserve mission. Among the most sweeping historical changes in American higher education has been the secularization of colleges that were founded with explicitly religious missions by faith communities. George Marsden’s and Bradley J. Longfield’s The Secularization of the Academy is an account of and critical commentary on this great transformation. They argue pointedly for the continuing validity of a religious perspective in higher education for those institutions that still value their historic religious identity. It should not be expected that these institutions renounce their religious mission for the sake of being counted as having an academically valid identity (7). Marsden and Longfield make the case for the continuity of fundamental collegiate institutional identity and beneficent ends based on their understanding of the moral community from which the institution and its mission first emerged. They advocate faithful and persistent attention to the religious and moral commitments of the founding community.

Alternatively, the reconsideration of mission can focus on the future. From this

perspective, fidelity to an historic understanding of mission is not a pivotal issue.

Historical values and traditions have power, but they are subjugated to the consideration of the new course that can be set. The opportunities for transformation of institutional mission overcome other considerations. George Keller makes this point in his exceptional work, Academic Strategy: The Management Revolution in American Higher Education, arguing that, “To think strategically is to look intensely at contemporary history and your institution’s position in it and work out a planning process that actively confronts the historical movement, overcomes it, gets on top of it, or seizes the opportunities latent in it” (143). The possibilities for future mission trump historical mission.

Between a wholly historical perspective and a thoroughgoing focus on the institutional future, is a conception of changing mission crafted as a balance of conservation and transformation. This argues for a conception of institutional transformation that includes fidelity to mission. The obligations of fidelity require that the reinterpretation of mission not be so revolutionary that the fundamental identity of the institution evaporates. Peter Eckel, Barbara Hill, and Madeleine Green, in reporting on the American Council for Education’s project on institutional change, argue for transformation within the framework of continuity of mission. Transformation may include a fundamental change in institutional values, “the common set of beliefs and values that creates a shared interpretation and understanding of events and actions,” yet this transformation should be evolutionary and, in any event, not so radical as to divorce the institution from its historical mission, identity, and commitments (Eckel, Hill and Green 3).

Implicit in the various positions on the relative importance of conservation or

transformation of mission is the idea that mission can change so radically as to alter an institution's fundamental identity. Institutions can and do abandon their founding missions. In some cases, the change is intentional and public, a matter of institutional survival, or a change in mission may come through unheralded and even unnoticed evolutionary change.

An institution's mission may drift or creep until the actual mission of the college bears little resemblance to the articulated mission. A disparity may emerge between the declared mission of a college and what the institutional purposes that are actually served. In these cases, by focusing on deeds rather than words, collegiate mission might be read more clearly from programs and budgetary priorities than from the words in which an institution's moral commitments are declared and beneficiaries are identified. A new mission may emerge implicitly as new commitments or directions are undertaken. Mission may drift by inattention, but it is also possible that willful neglect and disregard will accompany changing programmatic and budgetary emphases. Mission may be

altered through something other than a self-aware and public discussion of institutional moral purposes and priorities.

To this point the character of moral mission has been explored. I have observed that mission is context dependent and will necessarily change. There is a necessary balance between fidelity to an institution's historic mission and adaptations of that mission to changing times. I turn now to the centrality of mission in shaping any college.

### **The centrality of mission and its critics**

Moral mission is the *raison d'être* of an institution with beneficent and charitable purposes. It establishes the fundamental understanding for the existence of the institution. Mission defines a college's moral goals and the beneficiaries for whom the institution exists. As a statement of an institution's fundamental values and commitments, it is the reference point for all other institutional considerations, the measure of validity for all other decisions. As the rationale for the existence of the college, mission is the touchstone when any other matters of institutional policy and program are considered. The processes of policy setting, academic strategic planning, and administrative and managerial organization translate moral mission into practice. As Peter Drucker notes, "mission defines strategy . . . and strategy defines structure" ("New Paradigms" 156). Without an understanding of a college, it is impossible to judge whether the setting of programmatic priorities, the allocation of resources, the revision of curriculum, or even the selection of faculty and institutional leadership are being rightly discerned. As a statement of first principles for a college's existence, mission ought, therefore, to have priority in the

deliberations of trustees, faculty, and institutional leaders. Giving priority to mission will not ensure that subsidiary decisions are correctly made. However, without giving first attention to mission, there is risk that secondary decisions will be inconsistent with or even inimical to basic institutional purposes. The college would serve interests other than those of the beneficiaries. Many authorities argue that selection of presidential leadership is trustees' first priority and that it is the responsibility of visionary presidential leadership to establish institutional purposes. On the contrary, a board of trustees cannot even know what kind of president to hire without a prior and thorough understanding of the institution's mission.

Mission is the starting point for all other institutional decisions, but some scholars believe that mission statements are hollow, irrelevant, or even dangerous for colleges. Some oppose them on the grounds of empirical and behavioral analysis, arguing that the actual processes of give and take among interested parties are better arbiters of institutional strategy. This critique observes the complexity of institutional decision making and concludes that the actual interactions among interested parties yield a better reading of institutional goals. Donald Kennedy, the former president of Stanford University, writes disdainfully of trustee interest in mission statements and strategic plans:

New members regularly ask for the Strategic Plan, or the Five-year or the Ten-year Plan, or at the very least the Mission Statement. The reaction of presidents to these requests varies. One colleague, who had a long and distinguished tenure at a noted institution, was a model of tact and patience in all matters save this one. When asked for his strategic plan, his response was to 'go away and fall asleep somewhere, immediately.' My own response was to inquire what the strategic plan for the future of the life sciences at Cambridge University was, circa 1857. (128)

Kennedy focuses instead on the distributed, internal interactions within the faculty, and on the interactions between the faculty and administration as a more expedient and responsive means of adapting academic programs to new opportunities (128).

Kennedy presents an assessment of how change takes place in a modern university. He then transforms this description into a normative ideal, making an *ought* of the *is* that he observes. However, in a university model that distributes academic direction setting, such as Kennedy observes and elevates to a normative process, mission becomes implicitly the summation of distributed goals that may from time to time be established in various localities throughout the university. Although Kennedy may eschew the articulation of a mission, the university can nevertheless be regarded having a set of purposes, a mission or missions that are the aggregate of the decentralized strategic decisions on current institutional purposes derived from faculty/administration interaction and negotiation. Even if one concedes Kennedy's observations about institutional behavior, one might ask, whose interests are being served in such a schema for redirecting institutional priorities. How does one ensure that the interests of beneficiaries are taken into account? One might also ask how an implicit mission, so derived, is tested against the founding and traditional mission of the institution. What ensures that new directions established as Kennedy proposes will be consistent with the institution's

historic identity and mission? How is the legal and moral obligation of fidelity to the continuity of institutional purpose observed?

Another critique of mission sees even greater social complexity in colleges and argues that any attempt whatever to establish institutional goals is doomed at best and pernicious at worst. Such a thoroughgoing rejection of mission as a determinant of college and university directions is presented by Michael D. Cohen and James G. March in their notable study of collegiate institutional behavior, Leadership and Ambiguity: The American College President. Based on their observations and analysis, Cohen and March conclude that universities are operationally fraught with ambiguities. They believe that colleges can best be described as “*organized anarchies*.” They are characterized, among other things by “*problematic goals*” which they explain by noting that

It is difficult to impute a set of goals to the organization that satisfies the standard consistency requirements of theories of choice. The organization appears to operate on a variety of inconsistent and ill-defined preferences. It can be described better as a loose collection of changing ideas than as a coherent structure. It discovers preferences through action more often than it acts on the basis of preferences. (2)

Cohen and March have a positive disdain for goals. They comment derisively,

Almost any educated person can deliver a lecture entitled “The Goals of the University.” Almost no one will listen to the lecture voluntarily. For the most part, such lectures and their companion essays are well-intentioned exercises in social rhetoric, with little operational content. (195)

It is not surprising, therefore, that they ultimately conclude that, “Efforts to generate normative statements of the goals of a university tend to produce goals that are either meaningless or dubious” (195). Indeed, Cohen and March regard them as not merely

fruitless. Such efforts are even positively harmful, further exacerbating ambiguity through the insistence that coherent goals can be adduced and articulated (196-7).

Cohen and March, like Kennedy, make the move from an *is* to an *ought*. They observe that establishing normative goals is problematic for a college, and they argue, therefore, that the attempt to establish a normative statement of institutional mission ought to be abandoned. The argument seems to be that because there is disparity between norms and institutional practice, therefore, the attempt to establish norms is meaningless and should be abandoned. Even if one were to concede their analysis of university organizational behavior, and even if one agreed with their observation about the difficulty of establishing concurrence on normative goals, the question is whether Cohen and March are warranted in their rejection of the prospect for normative goal setting altogether. Further, Cohen and March seem to leave the institution rudderless in a sea without norms, time referents, or historical commitments.

A different form of critique of the idea of moral mission as a statement of institutional purposes focuses on the processes and means of moral education rather than the end purposes of higher education. In this vein, George Allan argues that purposeful mission is not essential. In Rethinking College Education, Allan posits an alternative normative scheme, arguing for “an essentially purposeless college, one in which education has to do with learning the conditions for appropriate action independently of whatever purposes might motivate that action” (10). Allan is skeptical about the utility of a statement of moral mission. He sees colleges as mistaken when they believe that mission is central to their identity, decisions, and actions. He believes that, “It is at best a half-

truth and, therefore, when taken as a whole, pernicious” (7). He focuses instead on the process of learning, not its ends. He does not advocate doing away with a mission statement. He merely recognizes that,

it is not sufficient. A college, perhaps any social institution of significance, must find its meaning not only in what it serves but in what it is. There must be more to a college than even its most fundamental purposes. It must have purposes, but it must not allow itself to be defined by them. (114)

He even acknowledges that a college should have a mission statement, but any such declaration of purposes is secondary to the character of the college (183). Allan worries that a focus on end purposes rather than the moral character of the community will lead to an overriding concern with institutional survival (125).

As an alternative, Allan argues for conceiving of the moral identity of colleges in terms of their intrinsic character, not their ends. He holds that the essence of a college should lie in something other than its purposes, proposing “that its essence should be a matter of its and its society’s moral practices” (134). A college ought properly to be a special kind of moral community. It is, in the end, focused on students, a place where they

should find themselves interacting with others in a milieu marked by human actions that are, or should be, conditioned by moral practices, by the resources that help people decide to do whatever they do in an appropriate manner. A college is where students go in order to learn things. Among those things, indeed most important among them, is learning how to act properly. (134)

Allan wants to inculcate character in students, educating them to think and act rightly, and to make good decisions. A college's identity as an academic community may serve enunciated ends, but they are secondary to the creation of a moral community in which students learn how to think, decide, and act rightly. Allan ultimately believes that, "The essence of a college is to be the critic of purposes and thereby their refreshment. Its role is to be without essential purpose so that the purposes of other institutions can be saved from their self-destructive tendencies"(183).

Yet Allan's purposeless college is not without a mission. It does have purposes. First, Allan never completely abandons the idea of mission. He allows that colleges may have end purposes, but he sees them as disconnected from the essential character of a college as a special kind of moral community. In this sense, there is for Allan a more important educational mission embedded in the articulated missions of institutions. If one understands mission as a coupling of moral goals with a set of beneficiaries, then Allan is proposing another global model for the mission of higher education. There is an unmistakable set of beneficiaries, the students. Further, there is an explicitly moral goal, the creation of a particular kind of moral community in which students' character is shaped in a way that makes them right-thinking and right-acting individuals. It would be possible for a specific college to adopt the kind of purposelessness that Allan proposes, within a specific set of circumstances. In doing so, however, the college would implicitly

define its moral identity and confirm its dedication to a set of beneficiaries. It would, in essence, establish its mission.

My interest in this chapter has been in the moral character of mission. The chapter might well have begun with a recipe for mission: a delineation of the various elements that should be included in an institutional mission statement, a description of the questions that should be addressed in considering mission, or a prescription of the institutional process by which a mission is defined and interpreted. To the degree that the higher education and trustee literature address the question of mission, it typically includes prescriptions of what a mission statement ought to include and how to write one (see Jeavons, Bryson, and Drucker). These prescriptive lists or questions about mission focus on the who, what, when, where, why, and how of mission. Within the fundamental conception of moral mission that is presented in this chapter, the particular answers to these questions in light of the local circumstances and conditions of a college are the important details that shape the understanding of institution specific mission.

### **Moral mission and philanthropy**

There remains one important idea that is critical to the realization of moral mission in colleges, the conceptual link of moral mission to philanthropy. All independent higher education institutions rely on gifts for capital and operational needs. This is a matter of operational behavior, but it reflects a more profound essential

connection between private philanthropy and the formation of mission in these institutions.

Moral mission is essentially charitable, centered on the interests of beneficiaries. Independent colleges are by their nature charitable institutions within the tradition of voluntary associations and the legal tradition of nonprofit corporations. They are created when a charitable vision is coupled with the resources and actions necessary to bring the conception to reality. New and changing conceptions of mission are also brought into being as ideas are coupled with resources. In their initial realization and in their continuing existence, independent colleges are dependent on charitable gifts to achieve their institutional goals. Acts of philanthropy enable colleges to put into action the purposes enunciated in a statement of mission. Great benefactions can transform mission.

F. A. Hilenski writes about the conceptual link of charity and mission. From his perspective, charitable gifts are essential in the creation of an institution, in mediating the college to society and vice versa, and in transforming the institution. He recounts a conversation with John Jones regarding his history of Balliol College at Oxford. Having observed that Jones' history gives significant attention to the role of great benefactions in shaping the college, Hilenski

asked Professor Jones why, in a work of some two hundred and eighty pages in length, he had spent nearly the entire first half of his book, covering the first three hundred or so years of Balliol's history, describing little other than the business of 'securing the benefactions.' His answer was as straightforward as it was illuminating: 'Because that was what is contained in the college archives.' (Hilenski [Non-paginated text])

Hilenski's reflections on the transformation of Balliol through a series of great benefactions lead him to conclusions about the intimate connection between charity and

the formation of mission. He writes that,

while contributing to the social autonomy, economic self-sufficiency, and political independence of the academy, the *act* of contribution itself also signals the academy's subjugation to, insufficiency toward, and dependence upon the social, economic, and political forces that not only invented the university but also continue to disclose its relevance and meaning to the contemporary world. Through its *bidding*, the university *beckons* and *calls forth* these forces, and in so doing, *commands* and *charges* them in the name of virtue and learning, transforming their power into the gestalt of the university. (Hilenski [Non-paginated text])

From this perspective, charitable benefactions are critical not only in the initial realization of a new vision of mission at the point of an institution's founding, the link of charity and mission persists as benefactions play a continuing role in shaping the development of institutional mission.

Charitable gifts, especially large gifts, can play shape and even transform mission. In this regard, they can play as strong a role as the initiatives and ideas of those involved in institutional governance, whether trustees, faculty, or administration. Indeed, a collaboration between a willful donor and a minority within a college may alter the course of the institution, even in the face of majority internal opposition (Cowley 166). Robert Maynard Hutchins was very skeptical about great benefactions precisely because, "As every university president knows, the receipt of money . . . creates or is assumed to create an obligation--the larger the sum, the greater the obligation" ( xi-xii). Charitable benefactions can trouble institutional waters. Whether charitable gifts will alter an institution's mission for good or ill depends largely on the degree to which they advance the institution's capacity to serve its beneficiaries. Ultimately they bring this class of institutions into being. In the end, they are they are just as essential in bringing new

conceptions of institutional mission into reality as they are in making concrete the founders' initial conception of mission in the first place.

This chapter has spelled out the idea of moral mission. Because mission is moral, its interpretation must necessarily be a process of ethical reflection. The next chapter presents a model of ethical reflection that is appropriate to trustee responsibility for the interpretation of mission.

## **CHAPTER FOUR**

### **TRUSTEE ETHICAL RESPONSIBILITY**

I have proposed that independent higher education trusteeship is fundamentally a moral responsibility and that the interpretation of mission is trustees' first duty. The moral character of beneficiary-centered mission has been delineated. This chapter presents an ethical conception of trusteeship in light of the trustee responsibility for interpreting moral mission. The chapter continues the argument that because mission is essentially moral, the interpretation of it by trustees is a process of ethical reflection. Further, because mission is context dependent, the proposed ethic provides for the discernment of a mission that is contextually fitting for a particular college. I want to change the way that both trustees and non-trustees think about trustee responsibility. Their ideas will affect the way that they behave, either as board members or as members of the academic community.

My goal is not to prescribe a universal mission for independent higher education. Rather, I synthesize an ethical model for trustee responsibility for discernment of mission that enables trustees to conceive of their responsibility as moral, mission focused, beneficiary centered, and contextually dependent. This chapter presents an ethical model for trusteeship. It is a prelude to the next chapter in which this conception is applied illustratively to two issues in higher education governance. Approaching the question of trustee responsibility through a normative model moves the discussion of trustee duties beyond issues of institutional management and effective board organization, to the underlying principles of trustee responsibility.

The focus here is on an ethical approach to the question of institutional identity, the moral purpose and meaning of a college. The question of institutional moral mission precedes other ethical issues that arise in the life of a college and establishes the institutional moral identity within which these other ethical issues can be better understood. When higher education scholars treat ethical questions at all, it is typically in relation to specific issues of policy and practice that are internal to the institution or that arise in the interface between it and society. These may be questions of admission, hiring, due process, scholarly integrity, student social conduct, student academic infractions, affirmative action, bioethics, or other issues. All of these are legitimate areas for ethical inquiry. However, trustees' duties in relation to moral mission and the fundamental nature of the trustee role precede these subsidiary and operational issues, and establish the framework of institutional purpose that makes sense of other ethical quandaries.

Because moral mission is contextually dependent, a contextual ethic is presented. The aim is a trustee ethic that does not rely on a universal conception of goals for higher education. Trustees exercise their duty of discernment and reflect on moral mission in the particular circumstances that they serve. The ethical model that is appropriate for trustees must, therefore, be contextual, as well. Consequently, I rely on an exposition of

ethics as a form of contextual interpretation and on an understanding of the *good* as that which is *fitting*.

The remainder of this chapter presents the five key facets of an ethic of trustee responsibility for the interpretation of mission:

- 1) The extension of trust and the acceptance of it by trustees is the motivating moment in their responsibility. A relationship of trust is at the core of trustee responsibility.
- 2) When trustees are entrusted, they respond with fidelity and loyalty, giving steadfast care to the mission and operations of the college for which they are responsible and its beneficiaries.
- 3) Trustee responsibility exists only in the context of continuing moral communities, in the relations between and among individuals and their associations.
- 4) Trustees' ethical interpretation of mission relies on a fundamental beneficent principle that focuses on the good of the other, understanding the *good* as that which is contextually *fitting* for beneficiaries.
- 5) The ethical interpretation of mission by trustees transforms mission.

### **Being entrusted**

A trustee ethic begins with trust being extended and with the acceptance of that trust by the person entrusted. Trusteeship is a moral responsibility rooted in the nature of moral trust. The act of entrusting is the motivating force in trustee responsibility. The accepting response to that trust completes the moral exchange, eliciting the trustee's

sense of responsibility. This moral interaction, rather than legal obligation, animates the sense of moral duty that is trustee responsibility. Before that moment of reciprocity, there is no moral obligation. In the action of trust and response to it, a moral obligation is elicited and accepted. It is a kind of moral exchange but not a reciprocation of interests, since both parties are ultimately focused on the interests of others and not on their own self-interest. It could be argued that the interests of the one entrusting are being served, since the entruster gains a sense of assurance that his or her moral purposes on behalf of the beneficiary will continue to be achieved even in his or her absence. It might also be argued that the psycho-social interests and needs of those entrusted are being met, or they would not accept the burden of responsibility. However, in the form of ethical trusteeship, the interests being served are those of the beneficiaries and not the transactional interests of the entruster and the trustees.

When trustees are chosen, entrusted with responsibility, and accept that responsibility, they are imbued with the weight and gravity of duty. Those entrusted are burdened with the obligations of care for beneficiaries. They are profoundly impressed by the weight of institutional history, traditions, the host of trustee forebears, and indeed, by the continuity of institutional mission itself as it extends into the past and into the future. The more precious the thing entrusted to one's care, the greater the sense of responsibility. The greater the sense that a college and its mission carry enduring social value, the greater the trustee sense of awesome duty. Being entrusted inspires a sense of moral accountability for institutional mission and those who benefit from it. Those who are chosen, selected, or elected as trustees respond in trust, fidelity, loyalty, and care. In

the reciprocity of trust, a moral relationship to the beneficiaries is aroused. Trustees' sense of ethical responsibility for the college's distinctive mission is also a response to being entrusted. A relationship rooted in trust is the motive force in engendering a sense of moral accountability and stewardship. It is precisely because trustees are entrusted that a sense of moral responsibility for mission and beneficiaries is created.

The primal relationship of trust motivates an ethical response. Moral responsibility is rooted in relationship, animated in a dynamic of action and response.

H. Richard Niebuhr proposes that,

The idea or pattern of responsibility, then, may summarily and abstractly be defined as the idea of an agent's action as response to an action upon him in accordance with his interpretation of the latter action and with his expectation of response to his response; and all of this in a continuing community of agents. (65)

Relationships always exist in a fundamental tension of trust or distrust (118-19). The nature of one's basic response to trust in relationship and to the actions taken in relation to oneself shape the self and its moral identity (61). Moral action is response to an action on the self, but to be understood as moral action, properly, the response must not be mere reaction. Interpretation of the original action on the self is a necessary step. The moral actor reflects on and interprets the action and his or her response is conditioned by the interpretation of the particular circumstances in the relation and the situational conditions (61). In light of this interpretation, he or she responds. (It should be noted that Niebuhr's summary formulation of the nature of moral responsibility includes two other key facets encompassed in my conception of trustee ethical responsibility, namely the important role of interpretation and the durability of a continuing moral community). The dynamic of

trust and response is similar in James Gustafson's ethical model, and he describes it in terms that are directly applicable to the nature of trusteeship. For him the first question is "in whom or in what can we have confidence (Ethics 1 224)?" Gustafson, with acknowledgment to Niebuhr, holds that this first question is followed by a second, the response of "loyalty, or fidelity (Ethics 1 224)." The individual responds in gratitude (Ethics 1 130-1) and stewardship (Ethics 2 145). The act of trust elicits a moral commitment on the part of trustees to be faithful stewards. From this conception of trust and response flows the next question about what the nature of that committed response.

### **Fidelity, loyalty, and care as the response to being entrusted**

In accepting moral responsibility for the interpretation of mission, trustees respond with fidelity, loyalty, and care. This is the second element in a conception of trustee ethical responsibility. Trustees are inspired to respond in faithfulness. When trustees comprehend the profundity of their being entrusted, trust begets trust. Their moral self-understanding of their role and responsibilities is shaped in the pattern of response in relation to a college's founders, the lineage of predecessor trustees, and most particularly to the mission and the beneficiaries. In formal language, a fiduciary relationship is established, one in which "good conscience requires one to act at all times for the sole benefit and interests of another with loyalty to those interests" (Webster's). Trustees become loyal stewards, "called to exercise responsible care" for that which is entrusted to them ( Webster's "steward"). Trustees are called to serve the moral mission of an institution and its beneficiaries. Since most institutions exist before trustees are called to

service and persist long after they have retired or died, trustees are but temporary, transitory agents whose duty is to ensure faithfully the continuity of institutional mission while the institution is in their care.

Fidelity and loyalty denote a kind of persistence, but trustworthiness and faithfulness are something more than simply sticking it out. There is a connotation of constancy of character. Mere persistence in the office of trustee is not a sufficient test of fidelity. Continuity in service is necessary but not sufficient. Trustees bear the weight of responsibility until it is lifted by the end of their term of service, retirement, death, or resignation, but in addition to mere continuity in office, fidelity entails a quality of character, namely reliability. For H. Richard Niebuhr, "Responsibility lies in the agent who stays with his action, who accepts the consequences in the form of reactions and looks forward in a present deed to the continued interaction (64). The measure of fidelity and loyalty is that trustees can be counted on. In a word, trustees are trustworthy.

The response of trustees in fidelity and loyalty encompasses the duty of care. The concept of moral mission includes *sui generis* the idea of charitable service to a set of beneficiaries. As those entrusted with a college's mission, trustees will care assiduously for the beneficiaries whom the mission of the institution serves. Faithful care for the interests and the goods of beneficiaries is a matter of both benevolence and beneficence, of both willing and doing good on their behalf. It could be argued that beneficent action by trustees is indicative of a fundamental disposition of benevolence toward beneficiaries. On the other hand, differentiating benevolence and beneficence as characteristics of trustees' care points to the nature of trustees' volition, deliberations, and judgements, and not

merely to their actions. It is not just the actions of a board that matter but also making beneficiaries' interests the touchstone of their reflections and decision making.

Trustees' constancy, reliability, and benevolent care are distinguished by two qualities of character: attentiveness and prudence in judgement in carrying out their duty of care for the good of beneficiaries. First, attentiveness, with respect to trustees' responsibilities, means giving devoted consideration to the right things in the right manner. To care for mission and beneficiaries requires that trustees pay steadfast attention to them. Constancy is again an essential but not sufficient condition for trustee attention giving, which is not solely about attending meetings. Trustee attentiveness requires participating actively in the deliberations of the board. Attention-giving as a characteristic of trustee care also extends to the period between meetings. Boards theoretically only have the legal power to act as they gather collectively in formal plenary or committee session, but the duty of faithful care is continuous, extending to all times between meetings. Once a trustee is entrusted and accepts responsibility, there is never a moment, until the trustee retires, resigns, or dies, when the trustee is not a trustee. Caring attention is a constant responsibility and neither periodic nor episodic.

To give attention is to be informed. At a most fundamental level, adequate and accurate information is essential in trustee ethical decision making. It is possible, of course, to make decisions without information, but the better the information that trustees have, the less likely it is that their decisions will be made in ignorance, or based on incorrect perceptions or distorted understanding. Trustees' wise guidance of the affairs of a college depends on their being "fully and coherently informed about its functions

(Carnegie Foundation 73).” If anything, the importance of trustee knowledge in moral decision making is accentuated in an academic community whose traditions place high value on the pursuit of knowledge as indispensable in reasoned discourse and decision making. However, having adequate information is not just a matter of good institutional management. It is also an important issue in a normative understanding of trustee responsibility. An inquiring, information seeking posture is an essential element in trustees’ moral responsibility to give caring attention to mission and beneficiaries. This leads to important practical questions of board and institutional management about how trustees ensure that they are getting adequate information in order to carry out their responsibilities. The active pursuit of information from diverse sources is for some a hallmark of an effective board (Chait, Holland and Taylor 69). Martin Meyerson characterizes trustee information seeking as “oversight by inquiry (178).” What information is important for trustee decision making and on whom do they rely? How is it provided to them? In what depth? With what prior analysis? How do they ensure that

the information that they receive is the full story? These are key questions for trustees as they carry out their duty of care.

Daily attention to mission is a practice that deepens trustee understanding and care for a college while simultaneously being an exercise of the duty of care itself. Common sense suggests that the more time and thought that is focused on something, the more it will dominate one's consciousness and reflections. Simply stated, giving caring attention will lead to more of the same. Giving daily time and thought to the college is an act of care that enlivens attention, increases reflection, and deepens benevolence. When trustees give time and attention to the college for which they are responsible, they will filter their own daily environment for information and ideas that are pertinent to the institution, its mission, and the interests of its beneficiaries.

Benevolent trustee attentiveness, as a characteristic of trustees' response of fidelity and loyalty, is also active and not passive in its consideration of the ends of mission and the goods of beneficiaries. Faithful, active caring is a kind of energetic watchfulness and listening, an alert information seeking. Benevolence is more than a generalized willing of good for beneficiaries. It is an informed, empathetic reflection on circumstances and needs. In this regard, information is an essential element in the exercise of all trustee duties. Trustees' care will be diffuse, ambiguous, or misdirected if it is uninformed or ill informed about the circumstances and needs of the college.

Trustee caring attention is also empathetic. It is more than being dispassionately and distantly well informed. The very idea of care connotes a durable charitable concern for the other. Trustee care entails a quality of understanding for the circumstances of the

other. It entails projecting one's understanding into the life and needs of the beneficiaries. David H. Smith identifies this aspect of well-informed trustee care as "moral imagination, the ability sympathetically to identify with the needs of beneficiaries or the problems of management." Trustees' empathic understanding is enhanced by the practice of "a habit of listening (Entrusted 23)." Thus, the moral care of trustees is both well informed and compassionate.

Attentiveness as a characteristic of the duty of faithful care means giving consideration to moral mission and its interpretation. It means focusing time and deliberations on the right things, and not being occupied with considerations that do not advance the institution's core moral ends or the goods of its beneficiaries. The conception of moral mission encompasses both the defining charitable moral goals of the organization and the identity of a set of beneficiaries. Moral mission focuses on the good of the other. For trustees, focusing first on mission and the beneficiaries ensures that energy and attention will be correctly oriented and that trustees will not be distracted by secondary or peripheral issues.

Putting mission first puts in proper perspective the responsibility of trustees for generating and managing institutional resources. The responsibility of trustees to interpret mission carries the responsibility to actualize it. Mission is made concrete through the provision of resources, and it is trustees' duty to ensure that a college has the resources it needs to carry out mission. This directs trustees' care toward their key responsibilities in resource management and fund raising. However, mission is the touchstone and first consideration. It is a matter of priority. As David H. Smith has stated quite simply, "The

fiduciary duty is not to finances alone but also the objectives of the organization” (“Moral Responsibilities” 353). When the priority is given first to investments, budgets, fund raising, facilities, or questions of internal governance, policy, and management, trustees’ attention is diverted from the paramount importance of mission. Without perspective on mission, other considerations are rendered meaningless. A real danger exists that resource acquisition and management issues, rather than the conception and interpretation of mission, will shape institutional strategy. When the order of trustee responsibility is inverted, monetary considerations rather than moral mission become determinative in board deliberations. Similarly, trustees’ attention can be diverted from mission by a focus on academic issues if trustees become enmeshed in the minutiae of academic life and lose touch with the bigger picture (Chait and Taylor 123). Only when attention is given first to mission and its interpretation is the trustee responsibility for oversight of the academic program clarified and put in the proper perspective. For trustees, misdirected attention can be as great a shortcoming as inattention.

A second character of trustees’ response of faithful care is prudence in decision making. In deliberating and deciding, benevolence is translated into beneficent action. The idea of prudence carries the notion of a higher degree of care, circumspection, and deliberateness in the trustee decision making that shapes an institution’s future. Trustees’ decision making empowers and prompts administrative or faculty action to advance mission and the goods of the beneficiaries. Trustees’ prudential decision making is characterized by a particular acuteness in reaching judgements about moral mission and the goods of beneficiaries. Issues are delineated, moral issues are assessed, information is

gathered and weighed, the internal and external context is analyzed, and reason is brought to bear in reaching conclusions about right action to advance the institution's mission. Most important for prudential decision making, the encompassing context is correctly understood, namely, faithfulness to the historical and traditional mission of an institution with which the trustees have been entrusted. Every decision is measured by its relation to the advancement of mission as trustees interpret it. The deliberateness that characterizes careful decision making does not mean that prudence is devoid of affect. Motivated by the dialectic of trust and awed by the burden of care for beneficiaries, there is a profound affective dimension to trustee decision making. Their commitment to be faithful, constant, and reliable fiduciaries shapes the character of their decision making.

Trustees give caring attention and exercise prudence in decision making, but they can miss the mark in the exercise of their responsibilities. In as many ways as trustees can succeed in carrying out their responsibilities, they can also fail. For each element of their response of fidelity, loyalty, and care, there is the potential for error and transgression.

The most fundamental failure is in the initial moment of trust being extended and trustees' response. Simply, there may be no moral response to the extension of trust. The extension of trust alone is insufficient. A response is necessary. Trust may not be accepted or the weight of responsibility acknowledged. No trustee relationship is established. It fails for the lack of the necessary acceptance of moral responsibility which forges the triadic bond among entruster, trustee, and beneficiary. Alternatively, trustees may accept the role and title of trustee for the wrong reasons. These may have more to do with self-interest, social status, or imagined obligation than commitment to the college's

moral mission. Such trustees may accept office without comprehending or embracing the full moral burden of trusteeship. In this regard, it is possible for entrusters, whether the original founders of an institution or successor trustees, to misplace trust. They can pick the wrong people. In a sense, this is a failure both on the part of the entrusters and on the part of those entrusted.

Even when a trust relationship is properly created, things can go wrong. Those who accept the responsibility of trusteeship and are committed to the mission of the college can make mistakes. Just because individuals are morally committed and diligent in exercising their oversight and care does not mean that their decisions will be right. An understanding of the finitude of human judgement and the absolute uncertainty of the future means that even the most caring attention and decisions that are apparently prudent can sometimes lead to bad outcomes. People may choose the wrong ends. Individuals can err, and the board as a collective is no less susceptible to failure. There can be no guarantee that even the best trustees will not eventually, on occasion, violate their fundamental responsibilities, manage ineffectively, or decide incorrectly.

It is also possible for trustees to betray trust. Infidelity to the college's mission and disloyalty to the interests of beneficiaries are betrayals of trust that can take many forms. The most elemental is the substitution of self-interest for the interests of the beneficiaries whom the institution serves. This is a violation of the fundamental charitable character of mission with its focus on the good of beneficiaries. It is simultaneously infidelity and disloyalty to the basic purposes for which the institution exists. At its worst, this disloyalty results in financial self-dealing. Similarly, trustees, may be disloyal when

they substitute the interests of individuals, groups, corporations, or institutions who are not the institution's beneficiaries for those whose care is entrusted to them.

Abdication of trustee responsibility to others is another kind of infidelity. Trustees who are entrusted and called to respond in fidelity, loyalty, and care, transgress these fundamental duties when they yield responsibility and authority to presidents, administrators, and faculty. Others may work to usurp trustee responsibilities that appropriately belong to trustees, and many trustees are all too ready to yield to others the profound burdens of moral accountability. This perspective has important implications for the tradition of shared governance that will be explored later.

Trustees of independent institutions can also abdicate their responsibility to external entities. Independent higher education is part of a long and rich tradition of independent voluntary associations that are autonomously governed. When trustees accept moral and legal responsibility for an independent institution, they also become stewards and guardians of its autonomy. It follows that when they allow the prerogatives of independence to be transgressed or when they yield fundamental responsibilities to outside individuals, groups, or governmental entities, then trustees have violated the essence of their fiduciary relationship.

Even when the moral responsibilities that follow from being entrusted are accepted, trustees may fail in carrying out these responsibilities with specific relation to mission. All trustee failures in the exercise of moral responsibility for mission can be read as variations of failures of fidelity, loyalty, and care. They may fundamentally misunderstand the original mission of the institution and the intentions of its founders. In

interpreting mission, they may focus wholly on the past forms and structures, resisting necessary change that would be consonant with the original mission. Alternatively, they may focus wholly on the future and institutional transformation, ignoring founding purposes, disregarding the intentions of the institution's founders, and dismissing historical traditions. Focusing wholly on the present exigencies of campus trends and the force fields of shared governance, they may ignore both past and future, and lose sight of the pivotal importance of mission in the formation of campus life and their decision making. On the contrary, trustees are called to "a long-term perspective on the institution's purposes, social responsibilities, and vitality" (Taylor 7). Because of their responsibility for the continuity of mission, a solitary temporal focus, whether on the past, the present, or the future, distorts mission and violates the principle of constancy that is an element of trustees' fidelity.

Further, in executing their responsibility as interpreters of the mission and guardians of the continuity of moral mission, there is a persistent danger that trustees will disregard that heritage and substitute their own judgement about mission for that which has been entrusted to them. Conversely, trustees might err by rigidly and slavishly following a conception of mission that is literally consistent with the founders' original declaration of purpose but that may have diverged over time from the founders' intentions.

David H. Smith, noting the general character of this problem, observes that,

The challenge of interpretation is a standard problem in scriptural religions and law. As in those contexts, the need for interpretation can be denied in two ways – by a literal, strict adherence to the donor's or founder's specific statements, or by ignoring any particularity of the founding documents that is not rationally justifiable in the present. ("When Principles

Conflict” 15)

There is a delicate balance in interpretation. On the one hand, trustees have a moral obligation to interpret mission in light of present circumstances, fitting the historical mission of a college to changing circumstances in a way that is faithful to the founders’ intentions and to the institutional traditions. On the other hand, trustees are expected not to diverge so sharply from the past that present exigencies overwhelm the historical mission. The danger is infidelity to founding purposes and the historical mission. Fidelity in the interpretation of mission paradoxically requires both conservation and transformation.

Further, well-meaning trustees may transgress their duty of fidelity to the comprehensive mission of a college by focusing on a single element of that mission or an individual academic program to the exclusion of others. They may conceive of themselves as guardians of a particular program rather than as trustees of the whole institution. The survival of the program may take precedence over the broader conception of mission, the interests of the beneficiaries, and the overall health of the institution. Such a focus on a single program of an institution represents a kind of disloyalty to more broadly conceived moral ends. It elevates the survival of the program over the interests of those whom the institution serves. As J. L. Zwingle observes, when a trustee becomes an advocate for special interests, it is impossible for the trustee to fulfill his or her duties to the broader aims of the college’s mission (“Lay Governing Boards” 24). Special interest representation is antithetical to fiduciary duties.

In addition to trustees’ errors and shortcomings with regard to fidelity and loyalty,

there is also potential for trustee shortcomings related to their duty of care, whether in giving caring attention to mission and beneficiaries or in prudential decision making. The possibilities of trustee inattention or misplaced attention have already been mentioned. When trustees absent themselves from meetings, they violate the idea of giving caring attention. It is also possible for trustees to be present at meetings but effectively to be absent if they are always silent nonparticipants in board deliberations. Trustees also give less than their fullest care when they ignore the institution or give it scant attention between formal meetings of the board.

With regard to the standard of prudence in decision making, it is possible for trustees to make decisions badly. However benevolent their intentions may be, their actions may turn out to be less than beneficent if their decisions are poorly made. The idea of prudence suggests a high degree of meticulous, judicious attention and deliberateness in the decision making process. In every decision, the question is whether it advances the core moral ends of the college. Decisions may be made poorly when they are made without consideration of the overriding importance of the mission as the essential touchstone in shaping all decisions. Trustees will inevitably miss the mark when they ignore the overriding context for all of their decision making, namely the mission with which they have been entrusted. Further, since having adequate and appropriate information is essential in decision making, when trustees choose not to pursue information actively and empathetically, they are not exercising care. They fall short of any standard of prudence in their decisions when they make uninformed or ill-informed decisions. In this respect, trustees' being poorly informed can include accepting

information without questioning or receiving information without the application of due care in analysis. Finally, the idea of prudence conveys a certain deliberateness in reaching reasoned defensible decisions, and decisions made impulsively or in haste are likely to fail the standard of prudent care. Within the context of higher education's tradition of shared governance, trustee deliberateness in decision making necessarily includes processes of consultation with faculty and administrators who are trustees' allies and agents in the advancement of mission.

Trustees will make mistakes. They can make a decision wrongly, and they can also make the wrong decision. That all individuals and human institutions are subject to error means that trustees can and will make some bad decisions. Even when decisions are made prudently and with the most benevolent of intentions, that certainly does not guarantee that boards of trustees or the institutions that they govern are immune from making flawed judgements. The best intentions can, on occasion, lead to bad outcomes. David H. Smith recognizes that a board is always at risk of making mistaken decisions, but it is a risk that trustees must take. He observes that "when all the caveats are entered, there comes a time when failure to run a risk would amount to default on the trustees' fiduciary duty"

(Entrusted 59). The inherent riskiness of decision making will lead to some bad decisions.

The recognition that trustees can seriously err even while serving moral purposes leads to a tempering element in any trustee ethic, namely, that humility is a necessary facet of their response of fidelity, loyalty and care. The legitimacy of a board's judgements or the beneficence of its actions cannot be proven until the consequences of its board's decisions are assessed. The fact of an unknown and unknowable future alone should lead trustees

to be humble as they make decisions. The sense of awe that trustees feel in the face of being entrusted evokes a degree of humility in them. They understand that they are ultimately dependent on forces and persons outside themselves. In a secular context, trustees are dependent on all those who have carried the responsibility for an institution before them, from its founders to the trustees' immediate predecessors, and they are dependent on others who function as their allies and agents in accomplishing the mission that has been entrusted to them. In other words, trustees always carry out their responsibilities within the context of and in dependence on multiple moral communities.

Trustees ought also to be humble in the face of the magnitude of the forces both within and outside of the college that shape and constrain their decision making. They are subject to limitations imposed by physical, social, economic, and social circumstances, and their latitude in acting is circumscribed by a host of other factors, including the limitation on the resources required to accomplish the mission that has been entrusted to them. Not the least of the limitations that they face is the certain knowledge that they depend for the accomplishment of their responsibilities on others who are likewise subject to error.

Humility introduces a principle of flexibility into trustee decision making. They may may change their minds. Trustees who know that they are susceptible to errors, and who understand that they are dependent on others for information and for the accomplishment of their responsibilities, are more likely to acknowledge that openness and adaptability are virtues in exercising care, whether in the acquisition of information or in the process of prudential decision making. The willingness and readiness to recognize the possibility of error leads trustees to be open to the exploration of alternatives. Humility of

this sort enhances the potential for change.

I have dealt at length with the second element of a trustee ethic for the interpretation of mission--trustees' response in fidelity, loyalty, and care to being entrusted--since it places the traditionally understood duties of trustees within the framework of my broader understanding of moral trusteeship. The trustee response to being entrusted puts them into relationships of moral responsibility toward others, whether the founder, predecessors, or beneficiaries. In that sense, trustee moral responsibility is always relational, and that leads to the next point.

### **Moral communities of trust**

The third major characteristic of trustee ethical responsibility is that it is worked out within the context of moral community. It both emerges from and is shaped by moral community. In turn, trustees give form to the moral community that is a college. In trustees' renewed interpretation of mission, the college is reshaped and even transformed. Trustee responsibility is grounded in the essential connection between moral trust and the formation of moral community. Trust makes society itself possible and is essential in the creation of morality in society. Simply stated, moral communities are communities of trust. Particular institutions with moral missions are rooted in relationships of moral trust and not alone in the facts of legal incorporation.

When the founders of a college voluntarily gather in trust and invent the moral mission for a new institution, they create a new community of moral purpose. In a sense, they create two new moral communities, the board of trustees, itself, and the new college.

Further, the founding trustees may themselves have been motivated by a prior moral community. This was certainly the case with hundreds of American colleges that emerged from religious traditions. The founding of each new faith-based college was understood as an extension of the denominational mission. In each case, a moral community, whether a group of individual religionists, a local congregation, regional body, or the larger denomination, constituted the governing board and animated the new institution, giving it moral definition. In this concrete, historical sense, the particular responsibilities of trusteeship emerge from a specific moral community or communities and animate yet a new one, the college.

From the broadest perspective, all ethics are social ethics. Discourse about moral responsibility is worked out in terms of relationships among human beings. Consequently, trustee ethical responsibility for mission is always to be understood in the context of moral community. Society and social relationships are determinative for ethics. Ethics only make sense in the context of the groups and institutions in which individuals' lives are embedded. This idea involves a conception of human nature and history, namely that human beings are associational (Adams, Voluntary 179). For James Gustafson, moral life and the social order transpire within the natural order; human communities and institutions are elements of the natural order. H. Richard Niebuhr similarly places moral community at the heart of questions of ethical responsibility. He asks, "that we consider our life of response to action upon us with the question in mind, 'to whom or what am I responsible, and in what community of interaction am I myself'" (68)? Ethical reflection always transpires in the context of moral community.

Thinking of ethical responsibility as grounded in human relationships helps to explain a particular characteristic of trustees' moral responsibility, namely its continuity. The duty of fidelity only makes sense when continuity is added to relationships of moral trust. The simple ethical equation is that trust plus duration equals fidelity. The dialectic of action, interpretation, and response, i.e., the dynamic that engenders moral responsibility, takes place in relationships that are durable. The dynamic is ongoing and transpires within moral community that Niebuhr calls "a continuing community of agents" (65). Fidelity is the result when continuity or duration is coupled with the idea that one can be relied upon. Niebuhr makes this point noting that, "Responsibility lies in the agent who stays with his action, who accepts the consequences in the form of reactions and looks forward in a present deed to the continued interaction" (64). To restate the equation with respect to trusteeship, trust plus continuity in the context of moral community yields the idea of trustee fidelity. A consequence is a focus of trustee ethics on the character of a continuing ethical relationship in the context of moral community rather than on particular moral actions taken by a board.

Moral communities are, for James Gustafson, the context for ethical discernment, for, "Moral discernment always takes place within communities" (Theology 117). These are "communities of moral discourse," that enhance openness in thinking about ethical issues and create the possibility for "radical transformation." Such communities are informed, by "breadth of study," by "diversity of participants," and by openness to the "distinctive insights of others." Gustafson underscores "the importance of discernment as a communal activity based on shared considerations." He adds that, "To be effective, a

community of moral discourse has to break the bounds of limited class interests, ethnocentrism, and other restrictive features that drastically limit the points to be considered.” (“Afterword” 253). Reflection in the moral community does not end with thinking and reflection. It emanates in prophetic ethical engagement in questions of public social policy (“Response” 223). To envision a trustee governed institution in Gustafson’s terms is to see a board and a college as a locus of transformative ethical discernment.

He is concerned with forging a conception of the right ordering and interrelationship of all aspects of the creation (Ethics 2 45). Importantly, he includes the ordering of human society as part of the natural order. More particularly, associations and institutions are expressions of the social ordering of life (Ethics 1 221-222). We are called to sustain the orders of society through stewardship--one might say trusteeship--of associations and institutions. Human associations and social institutions, trustee governed institutions among them, are special realms of human experience. We learn through them; we are accountable for them; we shape society and events through them; and, “Insofar as institutions function beneficially for our interests and for the common good, the response of gratitude is appropriate” (Ethics 1 221). Our ethical reflections are rooted generally in our experience, and that experience is, if anything, social. In this sense, ethical meaning is known in communities (Ethics 1 129). Gustafson takes care to point out that these are particular communities in specific contexts. Therefore, the ethical reflection of moral communities is necessarily contextual.

Gustafson’s formulation permits very simple extension to independent colleges as a particular kind of moral community and to trustees as those who are responsible for them.

He enables us to place the trustee role and the institutions that trustees serve in a general conception of moral responsibility for the ordering of society and the achievement of beneficent ends.

James Luther Adams also helps us formulate an understanding of boards of trustees as voluntary associations that are the loci of moral reflection and action. They are the context for ethical discernment. Since independent colleges are subsets of this general category of independent organization, Adams' ideas bear on a conception of trustee moral responsibility. In Adams' case, the moral conception is rooted in the fundamental character of human nature as associational (Voluntary 179). It is impossible to think about moral meaning apart from the existence of human beings in society. For Adams, "Every personal problem is a social problem and every social problem is a personal problem" ("Our Responsibility" 153). Any discussion of moral virtue requires the existence of moral individuals in the context of institutional or associational life.

In light of this conception of the associational nature of human life and moral existence, voluntary associations are a primary means through which moral commitments are brought to social expression. It is nonsensical to talk about the self and identity, even the self in relation to creative and redemptive forces, apart from the relation of the self to others in institutional associations (Voluntary 174). In this sense, Adams affirms that all ethics are, *ipso facto*, social ethics. Moral significance rests in voluntary associations that serve moral ends. They reflect ethical commitments. Adams encapsulates his conception of the social character of ethics and the moral significance of voluntary associations when he reflects, "In this sense we may understand the New Testament word, 'By their fruits

shall you know them'; but to this word we should add the admonition, By their groups shall you know them (Adams, "Indispensable Discipline" 263).

The fruits of the moral community that is a board of trustees are read in the achievement of the beneficent mission that it initially creates, and that it subsequently faithfully sustains and transforms in response to contextual changes. Mission is determinative of the moral character of a collegiate community. Mission is the expression of moral commitments, and the pursuit of a moral good on behalf of a set of beneficiaries is the identifying hallmark of a board of trustees as a moral community. For trustees, the community's mission is embodied in the imperative for benevolence and beneficence, the ethical "obligation to seek to meet the interests and needs of others" (Gustafson, Ethics 2 115).

There are myriad moral communities in which moral identity is shaped and through which moral mission is pursued. This is certainly the case with the hundreds of independent colleges. There are multiple moral communities of agents that differ in moral identity and purpose. This differentiation of plural moral communities depends on the countless contextual conditions that shape different moral voluntary associations.

In sum, it is possible to form an understanding of a board of trustees of an independent college as a moral community of trust that is distinguished by its fidelity to a moral mission. One also comes to a conception of a board as the locus of ethical reflection on mission. A board is a durable community of agents that creates moral identity creating beneficent mission. It sustains and renews that mission for the sake of beneficiaries through a process of ethical interpretation. Because moral communities and

voluntary associations vary by time, place, and circumstance, the missions of independent colleges are necessarily contextually differentiated. It follows, then, that a board's ethical interpretation of mission must be contextual in nature.

### **Contextual discernment of the good of beneficiaries**

What, then, is the nature of trustee ethical interpretation? It relies on a fundamental principle of beneficence. It focuses, above all else, on what is good for the beneficiaries. Its grounding is in the basic nature of charity with its singular focus on the good of the other. The fourth element in a trustee ethic is, therefore, the idea of the *good* as the *fitting*, a principle of beneficence. The moral touchstone is the good of the other. The moral good of mission is beneficiary centered. In interpreting moral mission in light of changed internal and external circumstances, the measure of good is always that which is contextually fitting for an institution's beneficiaries.

An understanding of the good as the fitting permits the conception of a trustee ethic that is contextual in character and addresses the variability among institutions and their missions. Colleges vary substantially as their missions, beneficiaries, histories, traditions, and circumstances vary, and therefore, what is a good in the conception of the mission of one may not be a good for another. What is appropriate or fitting for one's beneficiaries' needs and context may not be appropriate or fitting for another. For this reason, the trustees of a particular college cannot simply import universal conceptions developed under different circumstances. To be sure, trustees' thinking may be shaped by ideal models or by the practices at other colleges, but when trustees approach the question

of what is right for the beneficiaries of the particular college for which the trustees have responsibility, it must be determined in light of local circumstances and needs.

This idea of the good as the fitting is developed in detail in the work of H. Richard Niebuhr and James Gustafson. Niebuhr describes this as “*cathekontic* ethics, the ethics of the fitting,” which he universalizes as a principle of moral responsibility (87-88). There is a richness of contextual consideration in moral discernment which involves “a perception of what is morally fitting in the place and time of action” (Gustafson, Theology 106).

Niebuhr’s ideas present an extremely powerful link between the beneficiary centered nature of institutional mission and the reality of extraordinary variation among colleges. For Niebuhr, good and evil do not exist as universal abstractions. They can only be understood as values in the context of particular relationships. Good is not good in the abstract. Rather, it is the concrete fitting good for a particular other in a relationship in particular circumstances. Good is only understood contextually in the moral relationship of one person to another. This core of Niebuhr’s thought, with its focus on the good of the other, implies a principle of beneficence in moral relationships. It also paves the way for an ethical conception that is applicable to trustees as they carry out their duties in widely differing situations.

The fitting good of the other is not assessed solely in the relationship of action, interpretation, and response with the other. We also stand in relation to and must be responsive to other forces and conditions that are independent of us. Our ethical

interactions take place within the context of society and in relationship to nature generally (79-89). Our relationships are also enmeshed in “time-fulness,” a present that includes both past and future as they are reflected on and interpreted in the present. (79). Relationships of moral responsibility are shaped not by timeless moral or spiritual universals. Rather, they are enmeshed in time and in “images and patterns of interpretation” (95-96). Niebuhr’s ethical reflection begins with a contextual question. For him, “Responsibility . . . proceeds in every moment of decision and choice to inquire: ‘What is going on’”(60)? For trustees to ask about what is good for beneficiaries means that they also have to ask about what is going on, about circumstances and conditions. Their ethical reflections are not abstract but concrete.

Trustee ethical reflection is a process of contextual discernment of the fitting, and James Gustafson also contributes to a general understanding of this process. He summarily asserts that, “Discernment of what one ought to do . . . no doubt involves a perception of what is morally fitting in the place and time of action” (Theology 106). Gustafson’s conception of ethical discernment is a subsidiary element embedded in his comprehensive, complex, and elegant ethics. In a summary formulation, he places his conception of discernment in relation to the natural and social order, for discernment of what is morally fitting takes place within a very rich texture of natural and social phenomena (Ethics 2 298). There is an essential interplay between the richness of contextual phenomena and the question of what is morally fitting in the context of those phenomena. Gustafson does not conceive of discernment prescriptively, nor does he hold that there is an immutable and inflexible set of universal moral principles that determine

moral decisions and actions. Moral discernment is richly contextual.

Stephen Toulmin does not formally propose a conception of the good as the fitting, nor does he propose a principle of beneficence that understands what is fitting as the good of the other. However, like Niebuhr and Gustafson, he concludes that context is determinative in moral reasoning. Toulmin provides a conception of the importance of context and contextual reasoning in ethical reflection that complements Niebuhr and Gustafson. Indeed, Toulmin, responding to my observation about the good as the fitting as a principle applicable to trustees' interpretation of mission, affirmed the connection between his thought and that of Gustafson on this point (Interview 1999). He suggests that an antecedent of this kind of contextual ethics can be found in the Aristotelian principle of *pros ton kairon*, which Toulmin translates, "as the occasion demands" (Interview 1998). The idea of the *good* as the *fitting* is related to the Greek idea of *epeikeia*, a measure of reasonableness, not rules, in ethical consideration (Conversation 2).

This idea emphasizes the importance of particularity in ethical reasoning rather than generality or universalization. Toulmin does not work from theological premises or philosophical universals. He emphasizes a fine appreciation of local conditions and circumstances as determinative in ethical discernment, and he acknowledges the importance of contextual flexibility in approaching moral quandaries. He emphasizes a kind of humane reasonableness in ethics. In so doing, he points toward the idea of the *fitting* as the *good*.

Toulmin echoes the idea of the good as the fitting by arguing for a kind of contextual reasoning in ethics. He affirms the practice of medieval and renaissance moral

thinkers who handled ethical quandaries flexibly, case by case, in accordance with Aristotle's method, for "The Good,' Aristotle said, 'has no *universal* Form, regardless of subject matter or situation sound moral judgment respects the detailed circumstances of specific kinds of cases'" ("Recovery" 339). However, Toulmin also observes that one element lacking in Aristotle's idea of flexible moral reasoning is that of historical flexibility, i.e., that time itself may alter circumstances in a manner that requires a different ethical determination (Interview 1998). Modern ideas of history and temporal change were naturally absent in Aristotle's thinking. This is an important addition to his conception. It is precisely this kind evolution in the life of institutions that leads to the idea that what is morally fitting one day may not on another because of the changes that have happened. This is the case with the moral mission of colleges, in which there is a need to reconsider and reinterpret moral mission as the institutional context and circumstances change over the course of time.

Toulmin also argues for a mode of ethical reasoning that is flexible. In so doing, he provides further confirmation of the idea of the good as the fitting and contributes a conception of ethics that has utility in trustees' approach to the interpretation of moral mission. In counterpoint to the present state of Western philosophy, he wants to recover a sense of practical moral reasoning that again emphasizes the oral, the local, the particular, and the timely ("Recovery" 338), for he believes that, "Rational judgments of *practical* adequacy are timely not timeless, concrete not abstract, particular not universal, local not general." ("Recovery" 341). An interesting parallel to Toulmin can be found in Clifford Geertz who similarly argues for the importance of contextual particularity in decision

making, offering the “natural,” “practical,” “thin,” “immethodical,” and “accessible” as principles of contextual, common sense wisdom (85-91). Both Toulmin and Geertz propose an approach to decision making that eschews formal logic and affirm practicality and reasonableness. Both focus on context as determinative in moral reasoning.

Toulmin argues for ethics that are based on a flexible, contextual principle, *pros ton kairon*, which he interprets, *as the occasion demands* (Conversation 1). He offers two pertinent images for this kind of adaptive, flexible reasonableness. First, he directs attention to Aristotle’s discussion of flexibility in the interpretation of law in The Nicomachean Ethics (Interview 1998). Aristotle argues for a principle of equitable interpretation, noting that law cannot be universally and rigidly applied. Circumstances matter. He likens this flexibility in interpretation to the use of malleable lead measuring rulers by the builders on the island of Lesbos who, in shaping moulding, used rulers that could be bent, adapting to the contours of the stone (Aristotle 133). Toulmin also likens flexibility in ethics to the reasoning used by a helmsman who adjusts the course of a ship to adapt to conditions of wind, sea, and current. When and by how many degrees of compass the course is adjusted depend wholly on the contextual circumstances (Interview 1998). Likewise, the trustees of colleges need to employ flexible rulers in measuring the changes that are taking place in the institution and society, and in building a new conception of institutional mission. They need to be ready to change course as the winds of change blow.

When trustees approach the question of the renewal of moral mission and how it is to be adapted to changed circumstances, they do so best by focusing on the concrete

needs of and fitting good for the beneficiaries. Trustees engage in a process of ethical discernment in light of a rich fabric of contextual considerations. Such a focus requires that trustees avoid appeals to fixed or universal models of mission.

Although ethical interpretation must be contextually appropriate in both principle and process, there are essential moral considerations that any board must weigh. To say that trustee interpretation of mission is contextual does not mean that the process of reflection is undertaken without consideration of moral standards or moral principles. A college is not reduced merely to a balance of contending needs and interests. Although each moral community and tradition may arrive at an understanding of what is fitting and acceptable differently, the validity of ethical reflection can be tested by reference to questions of goodness, justice, fairness, truth, utility, etc. Consistent with the essential charitable nature of mission-based organizations, trustees must consider the character of beneficence in the particular college with which they are entrusted. It is a fundamental trustee duty both to will good and to do good for a set of beneficiaries. Who are the beneficiaries and what is the good for them? Another elemental consideration for trustees is justice. In fidelity to a durable mission, trustees must address questions of both present and intergenerational justice. How do considerations of justice and fairness shape the understanding of mission in the present? And as present mission and beneficiaries are considered, how are the interests of future beneficiaries also justly secured? Trustees must justly balance present and future interests in light of the original trustor's intentions. From the perspective of the founders, the beneficiaries of the year 2000 or the year 2050 are equally weighted. Trustees must give each a due a measure of justice in the allocation of

institutional resources.

David H. Smith's proposal of a common good principle to ensure that mission meets community moral standards is also instructive. He proposes three tests: the moral worthiness of the institutional purpose, the means that are used to achieve these ends, and whether the institution is capable of meeting this purpose ("When Principles Conflict" 15). However, he leaves open the question the standard by which the worthiness of purpose is to be assessed and the measure of utility by which institutional capability is judged. Beneficence, justice, and the common good are but three considerations that trustees may weigh. The variety of standards, the weight that ought to be placed on them, and the process by which they are discerned are all dependent on the traditions and context of the college and board in which reflection on mission takes place.

Trustees' ethical reflection is best understood as a process of reasonable, interpretive discernment that weighs a host of objective, subjective, and moral factors. Even the process of moral discernment must be appropriate for the particular board of trustees and the moral tradition that it embodies. The process must be one that is fitting to their own history, moral tradition, and circumstances.

In one sense, all ethical reflection is a process of interpretation, the application of moral understanding to new situations, contexts, or questions. When a question is asked constitutes the good for a specific group or when a question is asked about what right or wrong action is in a particular moral quandary, then established, received, or held moral principles are interpreted and applied to the particulars of the situation. An understanding

of the appropriate good or the fitting course of action is discerned when established moral principles are interpreted anew in the context of novel circumstances. Ethical quandaries require a reflection on new knowledge or information in light of established moral principles.

Considering ethics as interpretation helps illuminate the ethical responsibility of trustees. A treatment of hermeneutical theory is beyond my present purpose, but hermeneutics in understanding texts or legal construction in jurisprudence are analogous to ethical reflection when it is understood as a process moral interpretation. Each includes the interpretation of a received text or concept and its novel application in light of new times or circumstances, rendering new meaning. The interpreter must, among other things, determine not merely the letter but the intentions of the writer or legislator. With the passage of time, there will be a history of interpretation of a text; a body of case law that has modified the application of a statute; or a line of development in moral understanding. The parallel between the ethical interpretation of mission as presented in this thesis and judicial *cy près* reviews has already been suggested. Each form of interpretation embodies the methods of a disciplinary tradition, whether literary criticism, jurisprudence, or moral discernment. Each seeks to render a new understanding that is pertinent to contemporary circumstances and reasonable to contemporary sensibilities.

By definition, to interpret is “to understand and appreciate in the light of individual belief, judgment, interest, or circumstance.” Interpretation is, in part, an “explanation of actions, events, or statements by pointing out or suggesting inner relationships or motives or by relating particulars to general principles” and “a particular adaptation or application

of a method or style or set of principles” (Websters). Insightful interpretation, like the best translation, is something more than a lineal rendering of concepts. Translation is “rather closer to what a critic does to illumine a poem than what an astronomer does to account for a star” (Geertz 10). Linguistically, translation works best when concepts’ equivalents are not mechanically rendered but are enriched by the understanding of the context of writer, translator, and reader. Similarly, in ethical interpretation, the derivation of new moral understanding is related to a rich comprehension of multiple contextual variables.

Thinking of ethics as a kind of interpretation focuses on the importance of the continuity of values within a community of moral discourse, the authority and responsibility of the interpreter, and the crucial role of context and knowledge in ethical thinking. Further, conceiving of ethics as interpretation leads to an understanding of the transformative character of ethical reflection.

Ethical interpretation takes place within a continuing community of moral discourse. Ethical interpretation is not socially or temporally isolated. An interpreter is embedded in multiple traditions and communities that have shaped his or her character and understanding, whether linguistic, social, political, cultural, religious, or moral. We cannot abstract ourselves from the various cultures, communities, customs, and histories that have shaped us any more than we can abstract ourselves from the physical realities of body and environment. In this sense, moral interpretation occurs within the context of a tradition of shared values, past interpretations, a moral linguistic lineage, and patterns of moral reasoning that constitute a persisting community of moral discourse.

Understanding ethics as a kind of interpretation also raises the question of the responsibility and authority of the interpreter. Trustees' moral responsibility to interpret mission derives from the voluntary association of the founders in a community of moral trust with a shared moral purpose, and from the fact that successor trustees hold responsibility for the continuity of moral purpose in a lineage of trust. The state recognizes the board as the ultimate legal authority in discerning the direction of a college. Trustees' authority as interpreters is, thus, voluntarily assumed, independently transmitted, and governmentally recognized.

The context dependent character of ethical interpretation places a premium on knowledge of particulars. Thus, the importance of trustees' being well informed has been emphasized. In interpretation generally, the nuances of meaning depend on the context of conversation, text, or case. The denser and richer the information about a specific moral issue or question, the better the quality of moral discernment. Common sense suggests that it is impossible to decide well about a matter about which little or nothing is known. Ignorance of circumstances endangers the quality of decision making. The converse is true: more information makes for a better decision. Knowledge of the particulars of context is essential to ethical interpretation.

Paradoxically, however, the original trustor and the successor trustees must reflect ethically in the fundamental absence of knowledge. They cannot know the future. Trustee moral discernment and decision making rests both on the concrete and knowable data of present context and on a significant degree of ignorance about what is to come. Trust

itself compensates for this lack of knowledge of the institutional future. Trusteeship and the moral obligations of fidelity to mission provide the element of assurance that makes up for the inability to know, control, or even have a hand in the institutional future beyond one's lifetime. The founder or founders, by the declaration of intentions that is embodied in their original definition of institutional mission, provide a critical piece of information for trustee ethical interpretation. Founders define mission, and they then entrust future action to successor trustees. In this sense, trustees' statements about mission shape the future, to the degree that successors rely on past interpretations as they reinterpret mission. Each generation of successor trustees finds itself in the same position, limited by the inability to account for the unknowable future other than by entrusting the college to their successors.

In the interpretation of mission, trustees are also hampered by their inability to know accurately the minds of their predecessors and, specifically, their charitable motivations. They can only infer these things from their words and actions. Here they must also be interpreters. To be sure, they have some indications of their predecessors' intentions in their past words and deeds, precisely in the statements of mission but also in the record of their actions in carrying out mission. Trustees' interpretation of mission requires an inference about their predecessors' intentions. In interpreting the words and deeds of their predecessors, they are very much in the same position as any interpreters of past text and context. Interpretation changes the way people think and act. It works its way out in their perceptions and judgements.

James Gustafson presents one process which he names moral discernment. His

method is illustrative of a process by which trustee may discern the fitting goods for mission and beneficiaries. In delineating the elements and steps in discernment, Gustafson avoids prescription and rules. In his Theology and Christian Ethics, he appeals to flexibility as a virtue in regard to both process and moral rules themselves. Those who are entrenched in dogmatic positions or proceed by inflexible processes will not practice the kind of subtly discriminating judgement that Gustafson understands discernment to be (105). He is, instead, interested in a kind of “intricate and complex” prudential judgement (119). Gustafson delineates several elements in a process of discernment including: “Intellectual clarity and the use of critical reflection” (103), “accurate accumulation of relevant information” (104), moral affect alloyed by critical reflection (105), “sensitivity and flexibility” (105), “a ‘reading’ of what actually is the case at hand” (106), “an understanding of the relations of elements of the situation to each other, and of its relations to other situations,” an intuitive and “refined moral sensitivity” (108-109), a reference to “moral rules and principles” (115), an understanding of the moral communities within which one lives (117), and finally, a sense of the place of present moral reflections in the context of past values and decisions (118). Gustafson does not proceed by rigor or propositional logic. Rather, he proposes a process of discernment that one might call contextually synthetic. Robert O. Johann, commenting on Gustafson’s idea of discernment, observes that “the method of moral discernment is not one of demonstration but invention, not one of proving conclusions but of searching for and finding new and more reasonable ways of ordering experience” (107). A person’s subjective senses, dispositions, personal history, character, intellectual capacity, and

reason bear on discernment as a kind of creative interpretive process that weighs multiple factors of context, circumstance, and principle, arriving at a new vision of institutional purpose.

### **The transformation of mission**

The process of moral interpretation is always transforming; a new context specific moral conception of a good or action that is fitting is derived. Interpretation, by its nature, leads to a conceptual transformation, and transformation is consequently the fifth element of a trustee ethic. In their responsibility to interpret mission, trustees become the agents of institutional change. Paradoxically, those who bear the duty of fidelity to founders' intentions and historic institutional commitments are also those who have the responsibility for leading change. Trustees both create and re-create moral mission. The interpretation of mission is *ipso facto* transformational. The institution is conceptually recreated. The possible institutional futures are multiplied.

By proposing that mission not only can but ought to change, one moves away from fixed or universal conceptions of mission. Instead, mission and its interpretation are related to changing times and context. Conceiving of mission as changeable and open to interpretation by trustees opens enormous possibilities for creative institutional transformation.

When trustees interpret moral mission in light of changed circumstances, the new understanding represents a transformed definition of institutional mission. To say that trustees interpret mission is the same as to say that they define it. What trustees say is the

mission is the mission. As interpreters, trustees fulfill the role of institutional change agents that is proposed for boards by the Carnegie Commission (32-33). Trustees become “overseers of change” (Ingram, “Trusteeship for the Eighties” 2).

A transformed conception of mission is made concrete in the life of a college through the subsequent and subsidiary decisions made by trustees with regard to strategic plans, academic and non-academic programs, personnel, resource allocation, etc. Trustees, working with faculty and administrative staff, to complete the transformation, making it concrete through subsequent programmatic and resource allocation decisions. In a sense, every act by a board is an act of interpretation, an exercise of judgement about what is most fitting in light of institutional purposes. A new understanding of the mission of the college emerges that becomes the cause of and touchstone for institutional change.

Transformed ideas are transforming.

A new interpretation changes the conception of the past as it “recalls, accepts, understands, and reorganizes the past instead of abandoning it” (Niebuhr, Responsible Self 102). Reinterpretation simultaneously reorganizes one’s conception of the future as a transformed conception in the present is read forward into the future in anticipation. With this prospect for change in relation to both the past and future, trustees have an interpretive responsibility in relation to moral agents both deceased and yet unborn. Interestingly, Niebuhr’s idea of moral responsibility as resting on a moral pattern of action and response places trustees in a relationship to agents who are unable to act in the present. Niebuhr’s conception of moral time and transformation places trustee responsibility squarely in the context of intergenerational continuity of charitable intention,

linking the past and future through trustees' interpretations in the present.

Ethical discernment is ultimately transformative. The character of moral mission can and will change as institutional circumstances change over time. One's ethical perspective is transformed in the process (Gustafson, Ethics 1 193). Transformation not only occurs in an institution's context and circumstances. Even ethical principles can change (Gustafson, Ethics 1 339). This prospect for the transformation of mission through trustee interpretation opens tremendous institutional capacity to adapt to new challenges and opportunities as times change.

This chapter has presented a conceptual model for trusteeship as an ethical responsibility for the interpretation of institutional mission. These theoretical considerations have substantive implications for how trustees approach the task of reflecting on mission and their subsidiary and derivative responsibilities. Further, this model for trusteeship has significant implications for the trustees' relationship to presidents and faculty. These issues are explored in the next chapter.

**CHAPTER FIVE**

**SOME IMPLICATIONS OF TRUSTEE ETHICAL  
RESPONSIBILITY FOR THE INTERPRETATION OF MISSION**

Trustees have a paramount ethical responsibility for the interpretation of mission. This idea has significant practical consequences for conceptions of institutional governance, and this final chapter applies my thesis to two central governance questions: What is the impact of the thesis on the ordering of other trustee responsibilities? And what are its implications for the tradition of shared governance? These two governance considerations do not exhaust the implications of the thesis, but they are illustrative of how the conception of a primary trustee responsibility for interpreting mission contextually leads to a reconsideration of key governance issues for independent higher education. The conception has concrete implications, first, for the board's ordering of its own work and, secondly, for the manner in which trustees, faculty, and administrative staff work together to achieve institutional goals. The ethical proposal results in new ways of thinking about how colleges are organized to achieve beneficent ends.

**An organizing principle for trustee responsibilities**

The contention that trustees have a first responsibility for the interpretation of beneficiary-centered mission provides an organizing principle for trustee responsibilities that is not provided by other approaches to trustee duties. Even among apologists for trusteeship leadership, significant conceptual differences exist on exactly for what trustees

are responsible. The breadth and ambiguity of the legal concepts, the historical evolution of higher education governance, and various theories of higher education management have led to many divergent prescriptions of trustee duties. Further, empirical studies that illuminate the practice of trusteeship have added to the perspectives on trusteeship. There is no universal consensus on the role and responsibilities of trustees.

By contrast, the proposal that trustees ought to ask first about the college's mission and its beneficiaries is a comprehensive principle that can be applied within a particular moral community and its specific institutional context and circumstances. It is a general principle that is contextually applied and puts other trustee duties in proper perspective. The responsibility for mission touches every other trustee responsibility, whether selection of institutional leadership, strategic planning, academic affairs, resource management, or fund raising. These important trustee responsibilities are all pertinent to the concrete actualization of mission, but they are all secondary to a conception of mission.

As background for a further discussion of trustee contextual interpretation of mission, it is useful first to examine the two major alternative approaches to organizing trustee responsibility that are found in the trustee literature. One body of work, the most pervasive, is prescriptive, seeking to promote the effective practice of trusteeship. The other stream is empirical, seeking to understand trustee behavior. A review of these two bodies of work shows that neither the pragmatic literature that focuses prescriptively on organizational effectiveness nor the analytic literature that focuses on board behavior approaches trusteeship as essentially an ethical responsibility. Neither yields the kind of

comprehensive, ethically grounded conception of trusteeship that this thesis proposes.

The first major stream of trustee literature is pragmatic or utilitarian, presenting diverse conceptions of trustee responsibility.<sup>2</sup> Most trustee authorities write from the perspective of organizational effectiveness; the substantial majority of their work is oriented to board and institutional management. It is administrative in nature, a prescriptive how-to literature. Much of it is didactic rather than analytical. It provides a kind of organizational technology for the operations of boards. The literature has the laudable aim of improving the practice of trusteeship and thereby enhancing the quality of trustee governed institutions. These works are, in many cases, of extraordinary value for boards in their understanding of how to operate expediently and effectively, helping trustees to comprehend better their role and responsibilities. However, if these authorities approach ethical considerations at all, it is by listing a trustee responsibility for promoting ethical behavior or in regard to particular ethical quandaries. There is no comprehensive conception of trusteeship as morally grounded. The works generally fail to pursue the theoretical moral principles on which the trustee role is premised. In this sense, the

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Characteristic of this pragmatic trustee literature are Cyril Houle's classic, Governing Boards; Richard P. Chait, Thomas P. Holland, and Barbara E. Taylor's The Effective Board of Trustees; Richard Ingram's Effective Trusteeship. A Guide for Board Members of Independent Colleges and Universities; Richard T. Ingram and Associates' Governing Independent Colleges and Universities and Handbook of College and University Trusteeship; Morton A. Rauh's Trusteeship of Colleges and Universities; John Carver and Miriam Mayhew Carver's practical guides based on the principle of policy governance; James L. Fisher's The Board and the President; William G. Bowen's Inside the Boardroom; Louis H. Heilbron's The College and University Trustee: A View from the Board Room; and Peter Drucker's Managing the Non-Profit Organization: Practices and Principles; and J.L. Zwingle's Effective Trusteeship: Guidelines for Board Members.

pragmatic trustee literature lacks a moral vision of trusteeship.

Even though the literature of effective board management minimizes matters of moral inquiry, these authorities do not hesitate to prescribe how to operate a board and govern an institution. Nowhere is this clearer than in the ranked lists of trustee responsibilities that are a distinctive characteristic of this literature. The enumerated duties present alternative conceptions of trustee responsibility in a very condensed format. The lists rank the priority of each duty in the hierarchy of responsibility. An examination of these guides reveals a substantial lack of unanimity in the conception of trusteeship, even within the pragmatic literature. Importantly, although mission is regarded as a trustee responsibility by all of the list proposers, it is included as only one among many others. It does not necessarily have priority, nor is it derived by moral analysis. It is simply postulated by the various authorities as another duty of good management practice. The moral dimension of trusteeship is presented as merely one more listed duty among many others that are prescribed. Only one authority derives the responsibility for beneficent mission analytically, rooting it in a broader fiduciary duty (Axelrod 121). None of these prescriptions of trustee responsibilities conceives of responsibility for mission as the organizing principle for a conception of trusteeship.<sup>3</sup>

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See especially the lists created by leading writers in the field that are representative of the genre: Axelrod, 135; Bowen, 18-20; Carnegie Commission, 32-33; Fisher, 92; Houle, 90-

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94; Ingram, Effective Trusteeship 4; Kerr and Gade, 12-13 ; Nason, 1980 27-45; Rauh, 9; Taylor, 25.

The list of trustee responsibilities proposed by James Fisher is illustrative of the genre. It reflects a conception of mission that subjugates it to other priorities in the hierarchy of trustee responsibilities. Fisher proposes that it is the board's duty,

1. to appoint the president;
2. to evaluate the institution;
3. to assess board policies;
4. to support the president;
5. to review the performance of the president;
6. to renew the mission;
7. to approve the long-range plans;
8. to oversee the programs;
9. to ensure financial solvency;
10. to preserve organizational independence;
11. to represent both the institution and the public;
12. to serve as a court of appeal;
13. to determine board performance. (92)

It is noteworthy that three of Fisher's first five points deal with the selection of presidential leadership and the board's relationship to the chief executive. This is also consistent with his advocacy of visionary presidential leadership. Responsibility for mission rests in sixth place; it is not an overriding concern of the board. Most important, Fisher, like others who write about effective trusteeship, presents a list of trustee responsibilities that are essentially managerial and administrative, and do not rest on a fundamental moral conception of trusteeship.

The second major approach to trustee responsibility is empirical and analytical. It also is not based on a moral conception of trusteeship, and consequently, it does not lead to a normative framework for understanding the work of the board. This literature is oriented neither to the construction of an ethical model for understanding trustee responsibility nor to prescribing managerial or administrative practices. These scholars

focus analytically on the history, sociology, economics, and cultural and intellectual meaning of trusteeship. In many cases, their interest is not limited to higher education trusteeship. They address the nonprofit sector of which higher education boards are a subset. For example, Robert Herman and Richard Heimovics employ functional social analysis to challenge the conventional wisdom and ideals that characterize the pragmatic literature. They debunk what they regard as mythic truisms about trusteeship by analyzing the empirical data on the organizational behavior of boards. They present a social constructionist model (139). Their concern is the analysis of the empirical evidence on organizational behavior. Normative considerations about trustees' responsibilities are outside their interest. They would presumably argue that normative statements about board responsibilities can best be understood as socially constructed from the interactions within the organization and between it and its social environment. They would hold that the character and purpose of an organization, and the understanding of trusteeship in it, are determined by the character of the actual relationships among the members of the board; between them and the staff of the organization; and between the organization and the external social contexts in which the board is located. Behavior shapes norms rather than vice versa. Empirical analysis can adduce how actual board

behavior conforms with these norms and models, which may be locally shaped and modified by the experience of the trustees as they carry out their duties.

By contrast, this thesis rests on a premise that ethical and legal norms establish the very patterns by which trusteeship exists as a social role and is understood by practicing trustees. Empirical studies illuminate actual board behavior, but the normative conceptions of trustee responsibility, e.g., that trustees have a primary responsibility for the interpretation of institutional mission, shape the self-understanding of trustees as they approach their duties. Norms shape behavior. Ideas and ideals contribute importantly to the social construction of the trustee role and its responsibilities. Empirical studies cannot yield a normative framework for trusteeship, nor does organizational analysis lead to a prescriptive assertion about the relative priority of trustee duties.

Another thread of the empirical or analytic literature employs socio-historical inquiry to explore the character of trusteeship. This body of work is well represented by Peter Dobkin Hall's Inventing the Nonprofit Sector, and other Essays on Philanthropy, Voluntarism, and Nonprofit Organizations. For Hall, trusteeship is not an undifferentiated, universal idea. Diverse patterns of trusteeship are particular to local circumstances of time and place. Hall observes trusteeship to be locally conditioned by circumstances, time, demography, class, state legal frameworks, tradition, the social structure of a community, and other factors. He focuses on the broader historical and civic contexts within which boards exist. His observations about the local variability of trusteeship and institutions is wholly consistent with a conception of trustee ethical responsibility that interprets mission in light of contextual particularities. Yet Hall's socio-

historical analysis does not yield a normative perspective on trusteeship. The *is* cannot yield an *ought*. In sum, neither the pragmatic, prescriptive approach to board management nor the socio-analytic approach results in a general, normative conception of trusteeship that is locally applicable.

A third, contrasting perspective on other trustee duties is presented by an approach that grounds the priority responsibility for interpretation of mission ethically. When trustees give attention first to the contextual interpretation of mission and the good for the beneficiaries a particular college, a focus is provided for the pursuit of their other specific duties. This is true of their responsibilities for selecting institutional leadership, strategic planning, resource generation and allocation, and for trustees as stewards of institutional change, generally. Although the trustee responsibility for mission is presented as a general ethical principle, it merits repeating that the emphasis in this model of moral trusteeship is on the particularity of the moral community that creates and sustains the mission and on the particular contextual circumstances.

Trustees' interpretation of mission has significant implications for the important function of seeking new presidential leadership. Many trustee authorities propose that the trustees' first duty be the selection of a president who will articulate a vision of the institution. On the contrary, a board cannot know what kind of president to search for without a thorough prior understanding of institutional mission. When trustees interpret mission, they form a conception of the particular kind of institutional leadership that should be sought. Mission will necessarily vary with context. Institutions and their missions are distinctive. It is unreasonable to expect that the search for an appropriate

new president can be successfully accomplished without an understanding of the institution's distinctive mission and how the individual will advance it. The particular contextual circumstances and the leadership needs of New York University will certainly differ from those of McKendree College in Lebanon, Illinois. By emphasizing the local particularity of mission, the differences between an NYU and a McKendree are illuminated, and the character of the leadership that should be sought for each is much better understood. Conscientious search committees already give this kind of attention to identifying the particular qualities of leadership that they should seek for their college. What is proposed here that is different is the proposition that this analysis should derive from trustees' interpretation of mission when they set the search process in motion and commission the search committee, not from a discussion within the committee. The first question to be asked in a presidential search, even before the search committee gets its mandate, is the affirmation of the college's mission or a new interpretation of it.

In the same vein, the clarification of mission is an essential first step in strategic planning. Placing the interpretation of mission first sharpens trustee attention to institutional goals and beneficiaries' needs. Mission functions as the reference point for strategic planning. Without a prior understanding of mission, strategic planning is at risk of being a process in which contending programmatic preferences are simply brought to the table and asserted. The decision to undertake a new strategic direction depends, first, on a determination of its fit with the college's mission. For example, should a college thoroughly revamp its programs to incorporate an emphasis on scholarship and teaching related to the increasing globalization of society and the economy? The question may be

raised in light of changes in the society and in response to extensive current discussion in higher education periodicals and journals. However, any decision about a shift in strategic direction should be made in light of the particular, contextual circumstances of the college and those whom it serves. Are the beneficiaries better served by a change in the programs? The decision by the University of Southern California to make internationalization one of the four hallmarks of its strategic plan rested on an assessment of the changing economic and social context of California, its location, the importance of international commerce for the region, and importantly, the needs of its students and faculty to be equipped to work in an extraordinarily diverse international environment. The discussions on a new strategic emphasis also included consideration of the strong international engagement of the university, an emphasis that reached back to its first decade (Strategic Plan 4). In spite of the emphasis on globalization in current discussions in higher education, such a major strategic shift might be wholly inappropriate for a small rural college. Again, the decision on strategic direction must be fit with the mission of the college and the beneficiaries whom it serves.

In addition to illuminating the presidential search process and strategic planning, a focus on a clear conception of mission and strategic priorities guides the approach to the critical board responsibility for resource generation and allocation, including budgeting, capital planning, tuition and financial aid policies, investments, and fund raising. How should funds be generated and spent? For example, tuition is a substantial source of revenue for independent colleges. A board's decisions about tuition pricing and the discounting of tuition through financial aid are best made by considering the population of

students that are regarded as the college's primary beneficiaries. Which students is the college trying to reach? What are their financial abilities and needs? If the understood beneficiary population is differentiated at all from the general population of students, then how are tuition pricing and discounting decisions made in a way that will serve precisely those whom a college wishes to serve? Further, if a strategic decision has been made to open the doors of the college to, say, international students, financial aid should be allocated in a way that provides incentives and support for their attendance. However, these targeting decisions about tuition and financial aid cannot be well made except with reference to both mission and strategic priorities.

Similarly, a focus on mission gives coherence to a college's fund raising program. Mission is actualized through the provision of financial resources that turns academic aspirations into concrete programs. Those financial resources may be garnered through fund raising efforts. In this sense, the use of the term *advancement* to identify collegiate fund raising efforts correctly links academic goals and resource generation efforts. The first, essential step in the construction of any fund raising campaign or program is renewed attention to mission and strategic priorities. When fund raising is undertaken without consideration of mission and institutional goals, there are dual risks of funds not being optimally useful for a college, at best, or a force for an unwanted change in mission and programmatic direction, at worst. Fund raising is often a delicate balance between donor interests and institutional aspirations. Trustees' direction of a fund raising program and their decisions about the acceptance of major gifts are best made by considering the college's particular needs and the advancement of its mission.

In addition to these specific management duties, the trustee responsibility for mission makes them stewards with responsibility for discerning the processes of change. The idea that mission might be subject to a reexamination and renewal rests on an understanding that the institutional context can change. Changes might be external or internal. When trustees ask whether mission ought to be reinterpreted in light of a changing context, they are directed regularly and forcefully to turn their attention to the changes in institutional context. There are a host of constantly shifting social, demographic, political, economic, technological, competitive, and environmental forces that impact any given college. Changing conceptions of academic disciplines, curriculum, teaching methodologies, and student preferences will alter academic programs.

In light of a changing context, focusing on mission keeps trustee vision faithfully fixed on core questions of institutional meaning. When trustees focus first on mission, they focus on the institution's beneficiaries and their needs. If the goal of mission is to do good for a set of beneficiaries, to raise the question of mission directs trustees' attention to how a desirable change in mission might enable the college to do better for the beneficiaries. The set of beneficiaries might itself be redefined. Any reexamination of mission implicitly includes the possibility that the existing mission may be found to be deficient. Institutional purposes may be overly restrictive or anachronistic. A determination that a current conception of mission is lacking leads trustees to pursue a new interpretation of mission, precisely because it is their duty to ask about the institution's goals and the good to be achieved for beneficiaries.

When trustees avert their attention from mission, their deliberations will be

disordered, in the literal sense of the word. They may focus on the wrong things or in the wrong order, losing sight of the fundamental questions of institutional purpose and meaning that put other matters in proper perspective. There is a consequent danger that institutional change will take place in unintended ways and without reference to core institutional purposes. Under prevailing conceptions of trustee responsibility that put primary trustee responsibility on the selection of institutional leadership, resource management, or fund raising, it is likely that mission will evolve in unexpected and unintended ways.

Change in mission may take place through unintended and unexamined incremental steps rather than through self-aware discussion within the board (Appleton). Such mission creep may be the most prevalent form of change. Indeed, there are scholars who believe that this kind of incremental change in institutional meaning is the norm in higher education (Bensimon 21; Keller 101-102, 106). Mission may implicitly change as the internal context changes through administrative decisions. For example, a change in recruitment and admissions practices can change the nature of one set of beneficiaries. The result is a *de facto* change in the mission of the institution, since mission is about the goods to be achieved for the beneficiaries. Similarly, changes in course offerings by faculty, whether through curricular review or through the recruitment of new faculty, can lead to a change in the kind of students who are attracted to the institution or the kind of research being undertaken. All of these changes can occur without trustee oversight or attention unless trustees regularly test internal programmatic changes and external changes against the template of mission.

In sum, the idea that trustees have a primary responsibility for interpreting mission has consequences for both the normative understanding of trustee duties and practical consequences for the way in which trustees orient themselves to concrete questions of institutional change.

### **Shared governance and trustee responsibility**

The second major consequence of this thesis for institutional governance is that it leads to a reevaluation of the system of shared governance, in which trustees, faculty, and presidents participate together in institutional decision making. Although it is generally conceded that trustees retain ultimate institutional authority, their responsibility for mission has been diminished as presidential and faculty prerogatives for the interpretation of mission have been asserted. The responsibility for the interpretation of mission has been inverted, with initiative in interpreting mission passing from the trustees to presidents and faculty. A consequence of my thesis is, thus, the recovery of trustee responsibility for the interpretation of mission and a re-balancing of the shared governance triad of trustees, president, and faculty. The discussion of the relative responsibility of the different parties in the system of shared governance is typically framed in terms of internal institutional management and decision making. The idea that trustees are entrusted with institutional mission brings a perspective to the discussion that reorders the understanding of how responsibility for this critical function is distributed within shared governance. This in turn reorders the relationship among faculty, presidents, and trustees.

From the perspective of trustee responsibility for mission, the duties of presidents

and faculty derive from the prior authority and responsibility of the trustees for mission. Trustees are entrusted with mission and the good of their institution's beneficiaries. In trustees' response of fidelity, loyalty, and care to serve the interest of the college's beneficiaries, others are called by the trustees to serve the needs of beneficiaries. In this sense, presidents and faculty are agents of the trustees in actualizing mission. Faculty and presidents certainly have a vocation to their disciplines and profession, independent of any call from the trustees, but the call to serve the mission of a particular college is one that emanates from the responsibility of the trustees who have been entrusted with mission. I want to stipulate emphatically that this proposal is not to be construed as an assertion that presidents or faculty are any less morally committed than trustees or that faculty and administrative officers do not themselves respond to a moral calling to service in higher education. The president and faculty may be as morally motivated as trustees if not more so in many instances. Further, the role and professional understanding of presidents and faculty make them moral agents in supporting the accomplishment of an institution's beneficent purposes. They may have a profound sense of personal moral value, a moral or even religious calling to serve in higher education, and a profound sense of mission. However, the moral accountability of faculty and presidents for mission derives from the prior establishment of trustee responsibility for institutional stewardship. Trustees are entrusted with the institutional mission. Presidents or faculty may also support the trustees in understanding the contextual changes affecting an institution and in discerning the new opportunities presented as society changes, but the moral responsibility for interpreting mission rests foremost with those who have been entrusted with it.

When trustees respond in loyalty, fidelity, and care, their responsibilities require that they steadfastly inquire into the fitting good for an institution's beneficiaries. They cannot give up these responsibilities, but they may prudently elect to share them with faculty and administrators. A board is not legally obligated to include others in the discussion of mission, but there are solid moral and pragmatic reasons for doing so. Although the moral responsibility for discerning the fitting good of beneficiaries rests with the board, this responsibility is carried out in the context of what Gustafson calls a "community of moral discourse." Such moral communities are open to disparate perspectives ("Afterword" 253). Moral discernment of the goods for beneficiaries in a college requires an openness to the participation of the president and faculty in shared consultations on institutional purpose and the needs of beneficiaries. It was noted that humility is an attribute of trustees' duty of care. Trustees cannot know all, and they may err. In both respects, enlisting and empowering faculty and presidents in institutional governance is an appropriate corollary of trustees' comprehending that they cannot autonomously interpret mission. They are dependent on others in the moral community. They rely on others to ensure that the ends of mission and the goods of beneficiaries are properly understood and that the institutional goals are pursued in practice. Ultimately, trustees cannot abdicate their responsibilities, for they are entrusted. However, they can elect to--indeed, one can argue, they must--rely on others in the process of interpretation.

Trustee moral leadership is confirmed in the historical development of trustee responsibility and autonomy. Trustees have been the motive force in the creation of colleges, and trustee autonomy has ensured institutional independence and continuity.

Trustees' authority and autonomy have been confirmed in tradition and in significant legal decisions. The roots of trustee governance of independent institutions are found in the academies and universities of the Calvinist Reformation, but the tradition of trustee governed institutions has flourished in America. The watershed 1819 Dartmouth decision confirmed the autonomy and authority of trustees and made it clear that the independence of a college is essentially the independence of its board of trustees. They are free to determine institutional purposes and to exercise governing authority. In a

concrete sense, the independent authority of the board of trustees *is* the independence of the college.

Other centers of power and claims to legitimate and moral authority in institutional governance have emerged over time. The rise of strong presidents and the emergence of an increased faculty role in institutional governance are two key developments that have diminished the role and responsibility of the board of trustees that were so strongly affirmed in the Dartmouth case (Carnegie Foundation 8-9).

The tradition of shared governance that has evolved in American higher education has distributed authority and accountability for institutional governance among trustees, faculty, and administrators. There are innumerable accounts of the theory and practice of shared governance as the accepted and prevailing mode of decision making in American higher education. Shared governance has been championed especially by the American Association of University Professors (AAUP) which issued a strong endorsement of the concept in its 1966 Joint Statement on Government of Colleges and Universities. Proponents of strong presidents have similarly affirmed the idea as firmly embedded in the traditions of American higher education (Fisher 68).

Yet as many descriptions as there are of shared governance, there are also differences of opinion about the relative responsibilities of trustee, faculty, and presidents within the system. There is no unanimity about the meaning of the term, and it remains a matter of contention in the higher education community. The Carnegie Commission in 1982 recognized the inherent ambiguities in the role of trustees, in particular. Although trustees retain formal legal authority, and although faculty and presidents have roles in

institutional decision-making, nevertheless the role, responsibilities, and authority of board are subject to continuing question (72). These ambiguities in trustee responsibility were again acknowledged in a 1996 report of the Association of Governing Boards (AGB) (8). A considerable amount of this ambiguity is the result of contending assertions by advocates of strong presidential leadership on the one hand and advocates of faculty authority on the other. Also participating in this debate are those who advocate a trustee claim to institutional leadership.

Trustees' ethical responsibility for mission is grounded in a moral claim that they have been entrusted with the burden of responsibility for the continuity and interpretation of mission. Their claims to formal legitimacy in institutional leadership are also grounded in law and recognized in accreditation standards (Accrediting Commission 19). Further, the authority and responsibility of faculty and presidents derive from the prior responsibility of trustees. Beyond these principles of moral and legal legitimacy there are other reasons why trustees should be accorded the leadership role with regard to mission.

Trustees are in a better position within the shared governance triad to step back and critically examine the cultural assumptions that shape an institution. Precisely because they are expected constantly to ask questions about the fittingness of mission, their stance is one of questioning and critique. Further, because they are a bridge between the external community and the internal one, they bring an independent, external perspective on changing conditions in the institutional environment, i.e., the factors in response to which mission should be adapted (Ylvisaker, 227-8). Perhaps most important, trustees are the one party in the shared governance triad that does not potentially have a conflict of

interest in considering matters of institutional change. With their normative focus the interests of beneficiaries, trustees' attention is directed away from goods for themselves. To the degree that faculty or presidents can be regarded as simultaneously agents of mission and beneficiaries of it, they are potentially subject to conflicts of interests. Indeed, in any discussion about whom the beneficiaries of an institution are, faculty have a direct conflict of interest. One observer believes that the board is the only participant in institutional governance with standing to exercise independent judgement in questions of institutional change (Taylor 35).

The great danger in any assertion of trustee priority in institutional decision making, particularly with respect to the interpretation of what the fitting goods are for beneficiaries, is that of paternalism. David H. Smith specifically identifies this problem but believes it can be mitigated by application of a *common good* standard. Trustees measure their judgements against prevailing social norms as an external point of reference. He observes that, "Trustee discretion is constrained by reasonable moral perceptions about what people need within the society; this constraint is necessary to redeem trustee governance from the charge of paternalism" (Entrusted 15). Smith writes about the broader moral community, but the same might be said of the moral community that is the college itself. Following Smith's logic, when trustees share the tasks of institutional governance with faculty and presidents, including the interpretation of mission, they insure their perspective against the charge of paternalism, however beneficent that paternalism may be. By doing so, they engage in what Smith identifies as "a habit of discussion of issues at the core of the institution's life" (Entrusted 73). It is in the context of this

discussion that debate about institutional purposes takes place. Trustees may, therefore, foster the “habit of discussion” inviting others to participate in the community of interpretation of mission. In so doing, they observe ideals of democratic participation and ensure just consideration of the interests of others. By including campus constituents in the discussion of mission, they also pragmatically foster the traditions and practices of shared governance, prudently ensuring that the institutional changes that accompany the interpretation of mission are broadly understood if not accepted (Ballantine 5). The engagement of others in the discussions and reflections on mission can also be understood as falling squarely within the trustees’ responsibility to discern contextual circumstances in determining the fitting goods of beneficiaries to be achieved by mission. It would be impossible to understand thoroughly the institutional context without engaging others who, with the trustees, comprise the moral community that is the college. Finally, in the eyes of one student of trusteeship, participation by faculty and staff with trustees in the interpretation of mission “can do more to restore a sense of academic community than any other endeavor” (Heilbron 39).

The assertion of faculty and presidential prerogatives in shared governance in the twentieth century has led, unfortunately, to a presumption that trustees play a secondary or superficial role in interpreting mission. Trustees have been pushed to the margin in discussions of institutional purpose. On the one hand, the emergence of an ideal of strong executive leadership has given presidents the priority in articulating new mission directions. On the other hand, faculty have asserted a key role in the interpretation of mission to the degree that it is a matter of educational policy solely within the professional

competence of faculty.

Strong presidential leadership has become the ideal for higher education. It is even the prevailing wisdom in the literature of trusteeship (much of which has been written by presidents). Strong presidents and their ideas have become the embodiment of their colleges and universities (Carnegie Foundation 15). As Warren Bennis notes, “We have drifted toward a hegemony of the president and his curia” (Bennis). Heroic presidents who promulgate new visions of institutional mission have become the ideal. At least one scholar understands explicitly that the role of the president has moral dimensions, asserting that, “Leadership is ultimately a moral act, because it involves interpretations of what an institution *should* do” (Birnbaum 19). The adoption of a strong corporate chief executive officer model by universities and colleges represents the ascendance of a “great man” theory of presidential leadership. All executive power centers in the CEO who is responsible for setting the strategic direction for the corporation. This move in higher education is bolstered by those who argue for transformational leadership. In the higher education debate on transactional versus transformational styles of presidential leadership, transformational presidents are particularly viewed as articulators of new institutional vision (Bensimon 25).

Estela Bensimon observes that, “This faith in the power and wisdom of leadership and its potential to make a difference in colleges and universities underlies much of the literature of higher education and is particularly ubiquitous in contemporary and highly popular works on leadership” (iii). For Frank Rhodes, the former president of Cornell University and a strong advocate of the visionary role of the university president,

The most important task, and also the most difficult one, is to define the institution’s mission and develop its goals. That is the first task of the president. Everything else follows from that; everything else will depend

upon it. . . . The aspirations and achievements of trustees, faculty, students, and alumni, as well as the expectations of the public, will reflect those initial statements of mission and goals. (14)

The pivotal role in shaping mission also shifts to the president in James Fisher's conception of the process of mission review, consistent with his admiration of strong executive leadership in higher education. The initiative rests with the board, but the process of renewing mission is turned wholly over to the president "to commission a review of the objective of the institution that will be presented to the board for discussion" (98). The president enlists the participation of others in the process and prepares the revised mission that is then presented to the board to review and approve (98). Though the approval of mission still rests with the board, there is a subtle difference that puts the board in a relatively distant and passive position. The board is disengaged from the process of considering mission except at the point of initiation and the point of final approval. Otherwise, the process rests in the hands of the president. Some authorities on trusteeship argue that, "The most important responsibility of a college governing board is the selection of a vigorous, energetic, visionary, transformational president" (Fisher and Koch 293). Even more strongly stated, the responsibility of the board is to complete this task and then get out of the way. In an often cited colloquialism, the normative guide for the board is, "Eyes on; hands off." With regard to interpreting new mission directions, the president leads the board rather than vice versa.

Remarkably, even advocates of faculty or trustee authority yield this visionary leadership role to the president. The American Association of University Professors' Joint Statement on the Government of Colleges and Universities states that, "The degree to

which a president can envision new horizons for the institution, and can persuade others to see them and to work toward them, will often constitute the chief measure of the president's administration" (123). Similarly, a commission of the Association of Governing Boards, an organization that exists to foster the practice of trusteeship in higher education, also affirmed the leadership of the president in forging a new understanding of institutional mission, observing that,

The role of the president, under the authority of the board, is to provide strong and comprehensive leadership for the institution by developing a shared vision of its role and mission, forging a consensus on goals derived from the mission, developing and allocating resources in accordance with a plan for reaching those goals, and ensuring the highest standards of performance, efficiency, service, and accountability. (19)

In one of their key recommendations, the commission advocates that the president, "Formulate a vision of the institution's future, build consensus around it, and take the risks required to achieve that vision, on campus and beyond" (xi). The board's concomitant role is to, "Require the president to develop a vision and clarify how shared governance should operate on that campus" (xi). The AGB reflects the shift in conceptions of both boards of trustees and the academic presidency. An increasing emphasis on presidents who are visionary chief executive officers in the corporate mode has brought with it a de-emphasis on the role of the board as the custodian and interpreter of institutional mission.

The idea of trustee responsibility for the interpretation of mission challenges the ascendancy of a presidential prerogative for articulating a transforming institutional vision. When one holds that trustees are morally responsible for the stewardship of mission, the

argument for presidential leadership in discerning new mission directions is an inversion of the basic moral model of trustee governance. David H. Smith counters the idea that the board follows the president's lead, declaring that "if the board is simply an agent of the organization's management, it has been disfranchised as a community of interpretation" (Entrusted 22). The president's call to institutional leadership derives from the prior trustee responsibility for mission.

There is also a practical problem in yielding to presidents the responsibility for interpreting mission. The average tenure in office of college and university presidents is just over seven years. In doctoral degree granting institutions it is even shorter at five years (Mercer A49). By contrast, trustees and tenured faculty may have longer average terms of involvement with the institution. When the responsibility for interpreting mission is yielded to presidents, it is given to the participant in shared governance with the shortest institutional history and possibly the least durable commitment to the its mission.

Presidents come and go; the long-term, institutionally committed president is an exception.

With the frequency of presidential change, any institution that expects that each new president to articulate a fresh vision for the institution risks periodic zigzagging in its mission. When a president succeeds to office, there is a natural inclination to differentiate him or herself from predecessors by articulating a distinctive and transforming new vision for the institution, for it is believed that, "Unless the president articulates a special vision, mission or cause for the institution, he or she will not be viewed as a true leader" (Fisher and Koch 68). Under a theory of visionary presidential leadership, the temporal horizon for the reinterpretation of mission shortens with consequent dangers to the continuity of

historical mission commitments.

In the twentieth century, others have made a strong case for the priority of faculty in institutional leadership, including the interpretation of mission. The dominant advocate of faculty authority and responsibility has been the American Association of University Professors which has advocated a pivotal faculty role in shared institutional decision making. The AAUP does not propose a usurpation of trustee prerogatives. Rather the organization advocates a simultaneous constriction of trustee powers and an expansion of faculty authority. The AAUP acknowledges that a board of trustees has an oversight responsibility, but otherwise, trustees “should undertake appropriate self-limitation” yielding responsibility for the institution to administrative officers and the faculty (AAUP 122). The AAUP’s Joint Statement on Government of Colleges and Universities that was formulated by the AAUP in cooperation with the American Council on Education and the Association of Governing Boards of Colleges and Universities--though merely commended by those organizations and not endorsed or adopted by them (119)--presents a tripartite conception of responsibility for the institution and its mission, stating that,

The general educational policy, i.e., the objectives of an institution and the nature, range, and pace of its efforts, is shaped by the institutional charter or by law, by tradition and historical development, by the present needs of the community of the institution, and by the professional aspirations and standards of those directly involved in its work. Every board will wish to go beyond its formal trustee obligation to conserve the accomplishment of the past and to engage seriously with the future; every faculty will seek to conduct an operation worthy of scholarly standards of learning; every administrative officer will strive to meet his or her charge and to attain the goals of the institution. (120)

The statement defines the terms of faculty participation in matters of institutional goals as

equivalent to that of the trustees and administrative officers. In this conception, the faculty role expands, and faculty become also stewards and administrators. Note that “the professional aspirations and standards of those directly involved” in the work of an institution are as determinative of mission as are the “institutional charter,” “tradition and historical development,” or “present needs of the community of the institution” (120). Whatever else it does, the transactional character of the Joint Statement puts the AAUP at loggerheads with advocates of transformative presidential leadership.

Beyond the AAUP statements on shared governance, there are strong, explicit assertions of a faculty primacy in the interpretation of mission. In Grady Bogue’s exposition of the concept, “The first ‘trustees’ of mission and quality in any college are faculty. Sharing in that trust are administrators. And holding legal trust are board members” (28). In Bogue’s formulation, faculty become trustees. The responsibility for mission is yielded to both faculty and administrators. The trustee role is conceived as only legal and formal, not moral. The differentiation of responsibilities, competencies, and roles that is at the heart of shared governance is overcome. Faculty are explicitly the trustees of mission. Curiously, Bogue’s calling faculty *trustees* can also be read as an affirmation of the connection between mission and trusteeship, for he immediately ties the assertion of faculty trusteeship to the stewardship of mission. He implicitly recognizes that trusteeship and mission are linked.

The proposition that faculty have priority in establishing the educational mission has been met by strong opposition from proponents of trustee responsibility who believe that the responsibility for mission cannot be separated from the programmatic and

budgetary steps that are necessary to carry out mission. John Nason decries as “nonsense” the idea that trustees are relegated to dealing with issues of finances and property while faculty have responsibility for institutional purposes and the educational program. He asks pointedly, “How can trustees be responsible for their institutions if they abdicate responsibility for the goals of those institutions” (“Responsibilities” 1980 36)? Questions of resource allocation cannot be comprehended without reference to the goals and academic programs of an institution (J. L. Zwingle, “Lay Governing Boards” 23-24).

From the perspective that trustees have ethical responsibility for the interpretation of mission, the idea of faculty priority for it, like the idea of presidential priority, represents an inversion of roles and responsibilities. The basic dialectic of trust and response in institutional creation gives responsibility for mission to trustees. That responsibility passes through the lineage of trust to successive generations of trustees who are morally accountable for the continuity and renewal of mission. Faculty are entrusted with responsibilities in carrying out the institutional mission, but that trust is extended by trustees. From the perspective of trustee responsibilities, faculty participation in institutional decision making, including the interpretation of mission, can be best comprehended as a corollary of trustees’ responsibility to discern and care for the good for beneficiaries. Trustees appropriately engage faculty and rely on their participation in the discernment of beneficiaries’ needs and the appropriate goods that meet them.

The basic nature of mission as a statement of moral goods to be achieved on behalf of a set of beneficiaries, and the imperative that any nonprofit charitable institution focus first on the needs of beneficiaries also has consequences for the manner in which faculty

participate in the determination of institutional goals. Faculty are themselves beneficiaries of certain aspects of institutional mission, as far as colleges support faculty in their research and other scholarly endeavors. The faculty are a party at interest. When there are discussions about changes in institutional mission, faculty's interests may be at stake. The charitable imperative for loyalty and care for the good of beneficiaries would essentially put faculty in the position of being loyal to and caring for their own interests as institutional beneficiaries. Because of the potential for conflict of interest, there is a delicate balance between appropriate faculty participation in the process of ethical interpretation of mission, on the one hand, and their having the decisive voice in institutional mission, on the other. Trustees are not in the same potentially conflicted position. They are not direct institutional beneficiaries. They represent a pole of independence in the shared governance triad. Their role and responsibilities are always defined in terms of the interests of beneficiaries and the institutional mission that serves them.

The ideal and practice of shared governance are affirmed when it is viewed through the lens of the trustee responsibility for mission and its beneficiaries. A focus on mission can create a powerful mutuality of interest between faculty and trustees. When the discussion between faculty and trustees is framed in terms of institutional mission and the good for beneficiaries, trustees and faculty are potentially on shared ground, both focused on the good of the other. This observation suggests that faculty might fruitfully focus the shared governance discussion first in terms of mission and beneficiaries' interests and not on matters of faculty self-interest such as faculty rights, privileges, compensation,

or decision making power.

The conversation about who appropriately has standing to participate in institutional decision making occasionally leads to questions about the role of other institutional stakeholders, e.g., students, alumni, parents, donors, or the public. The conception of shared governance as a triad of trustees, faculty, and administrative staff is expanded to include others. The process of ethical interpretation and discernment that is part of a trustee ethic requires that trustees comprehensively seek information and ideas that will help them better to discern the changes in the institutional context and the needs of beneficiaries. A consequence of this perspective is an opening of the discussion of institutional mission to others, even while trustees retain the fundamental responsibility for interpreting it. This idea is also confirmed by David H. Smith who concludes that trustees have a responsibility as a community of interpretation to inform themselves by listening to others who have a perspective on the institution. By doing so, they foster the “moral imagination” requisite to their role as interpreters of mission (Entrusted 23). The inclusion of others can be regarded as part of an “important wisdom-gathering function” of trustees as they consider institutional mission (Carver 3). The participation of other interested parties enriches the discussion about the goals of the academic community. Trustee responsibility for interpreting mission expands the horizon of discussion of mission beyond the traditional parameters of shared governance to include others.

This thesis asserts--or reasserts--a trustee prerogative to normative authority in the determination of institutional mission. This perspective on trustee responsibility for mission provides a new way to think about the ordering of relationships within the

tradition of shared governance. It strengthens the role of trustees and recovers an essential responsibility that has been yielded largely to presidents and to faculty. If trustees are entrusted with institutional mission and its continuity, then the involvement of others, whether faculty, presidents, or other institutional stakeholders, depends on and is related to the prior and primary trustee responsibility. This is not to say that others are not engaged in and committed to the accomplishment of institutional mission. Nor does it argue that they do not have valuable ideas. They do. In accordance with the proposed trustee ethic, the inclusion of others is not only appropriate but prudent and necessary as trustees carry out their responsibility to discern a contextually fitting mission.

The analysis presented in this chapter does not exhaust the myriad implications of my thesis for trustees and the colleges that they hold in trust. There are other areas that might be fruitfully explored. For instance, thinking about mission as a moral goal to be pursued for a set of beneficiaries raises the question about who precisely the beneficiaries of any particular institution are. This is a question to which a facile answer may be given, but it is a profound question that opens a window on the voluminous debate about whom higher education serves and how beneficiaries are best served. Further, the thesis has implications for the key responsibility of fostering institutional change. If institutional mission can and should change, then the way in which trustees create processes that foster innovation in teaching and scholarship are affected. If the interpretation of mission is inherently transforming, then the question follows of how a new interpretation of institutional purposes and the goods for beneficiaries is to be translated into changed strategic plans, concrete organizational behavior, and innovative programs. These are not

new questions to higher education. What is new is thinking about these matters in light of an overriding trustee responsibility for mission.

## CONCLUSION

Just as to interpret the mission of an college changes the institution, to give a new ethical meaning to the trustee role transforms the understanding of trustee responsibility. With this dissertation I have sought to give a new and transforming interpretation of the idea of trustee responsibility by viewing it as foremost an ethical responsibility. I have proposed that the first responsibility of trustees is the discernment of the changing meaning of institutional mission. This interpretation of trusteeship requires a focus on the beneficent ends of mission and the good for institutional beneficiaries. Trustees discern the contextually fitting good of those whom a particular academic community serves. An appropriate ethic for trustees themselves includes: their being entrusted; the manner in which they respond to that trust; the grounding of mission in moral community; an understanding of the good for beneficiaries as that which fittingly meets their needs; and finally, the transformative character of ethical interpretation. From this perspective on trusteeship and mission flows an understanding of other, subsidiary trustee duties. There are also a host of consequences for academic governance and institutional tasks, two of which were explored illustratively in the last chapter.

Although I have focused on a particular segment of the charitable nonprofit community, my proposal has broad application across the entire sector of charitable nonprofit organizations. All are independent, voluntary associations. All are organized to serve a moral, charitable mission, whether educational, cultural, scientific, religious, health related, or oriented to the direct relief of human suffering. Almost all share the same form

of corporate structure in which authority is vested in a lay governing board who are the stewards of institutional mission and resources. The contention that trustees have a moral responsibility as the guardians, stewards, and interpreters of the mission of their organizations is applicable to all of these organizations and has implications for the internal governance and operations of each.

While the number of independent colleges has remained relatively static in recent years, the nonprofit sector is burgeoning, bringing enormous creative, beneficent energy to social problems and the cultural enrichment of communities. The growth of the nonprofit sector is not limited to American society. Although nonprofit organizations play a far greater role in this society than in any other, the idea of voluntary associations (often identified as non-governmental organizations) is taking root throughout the world unleashing tremendous creative energy for human good. With the rapid multiplication of independent institutions governed by lay boards of trustees throughout the world, my perspective on the tradition and practice of trusteeship has potentially global importance in shaping the understanding of those who come new to the role and responsibilities of trustees.

I also believe that there is great utility in conceiving trusteeship as foremost an ethical responsibility. This idea helps trustees themselves better understand their specific, concrete duties. It gives trustees a high sense of calling which may in turn garner more attention from trustees to the institutions that they serve and elicit more conscientious service from them. It clarifies their relationships with others, both those whom an institution serves, and those who work with trustees in achieving the moral ends of

mission. It creates a new caution against the all-to-easy abdication of trustee responsibility to others. It enables trustees to order the priority for their attention, helping them to know what to think about and how to think about it.

This definition of trustee responsibility focuses on foundational principles, creating a general conceptual framework for trusteeship rather than moving directly to the practices and management of effective trusteeship, the focus of so much of the literature on trustees. It focuses trustees on the ends that they serve before turning to the means by which beneficent mission is accomplished.

Further, this conception of trusteeship makes it clear that trusteeship is a role characterized by a set of virtues and a quality of moral character. It suggests that quality of character and a deep commitment to institutional mission are essential characteristics in the selection of new trustees to whom the continuing mission of the institution will be passed as the lineage of trust is extended.

For those inside the institution, whether faculty or administrative staff, a renewed emphasis on the core, beneficent purposes of the college can renew the sense of calling that animates their professional commitment to service.

For those outside the institution, a trustee focus on the interpretation of mission and institutional beneficiaries reminds others of the fundamental character of this class of

organizations and the enormously creative role that they play in enriching community life and our society at large.

For those in accreditation agencies, this perspective on trusteeship might productively lead to a rethinking of the accreditation process. In my experience, accreditation visiting teams consist of faculty and administrative staff. If trustees are included on visitation teams, it is an exception. This is a significant omission. A team's assessment of the character of shared governance in a college is assessed from the perspective of faculty and administrative staff and not trustees. Trustees may be interviewed, but their distinctive perspective is missing in the visiting team's discussions. The accreditation process might benefit from additional attention to trustees and their understanding of that mission with which they have been entrusted.

For scholars of trusteeship, the renewed focus of the moral roots of trustee responsibility proposed here should open substantial further opportunities for theoretical and empirical study. As with any theory, my thesis might fruitfully lead to empirical studies on numerous questions about the role and responsibilities of trustees. How do trustees think about their ethical responsibilities? What do they believe they have been entrusted with? How does this affect the way in which they think about the business of the board? How are institutional relationships affected? What modes of moral interpretation or discernment do trustees use? How do trustees think about their responsibility for and relationship to the intentions of institutional founders, and the institution's historical commitments and traditions? Whom do they understand to be the institutional beneficiaries? There may be no more radical question to put before a board than this last

one.

There are practical steps that can be taken by trustees that will secure their attention to responsibility for mission. Although I am persuaded that giving trustees this perspective on their duties will, itself, transform their understanding of their role and responsibilities, I also believe that there are concrete means by which these ideas can be presented to them. The proposition that trustees have an ethical responsibility for the interpretation of mission should be built into board bylaws as the first responsibility of trustees. This responsibility should be inculcated in trustees from the point of their election and orientation. Individual trustee mentors, the board executive committee, or the board trustee nominating committee should be given the task of ensuring that new and continuing trustees are regularly reminded of their responsibility for mission.

Trustees should engage in a process of mission review whenever there are substantial changes in the internal or external context of an institution and, in particular, before they initiate a process of strategic planning or embark on the search for a new president or chancellor. A board might also mandate for itself a regular periodic review, say, every ten years. Finally, the process of re-accreditation might fruitfully be regarded as an opportunity for creative reflection on mission rather than as an onerous task to be surmounted.

I know from first hand experience with three boards that trustees do think about their responsibilities and are eager to understand them. The perspective on trustee responsibility and mission presented here resonates with trustees. It changes the way they think about their duties and serves as a reference point as they deal with concrete issues. I

have had the extraordinary experience of hearing an early sketch of my thesis about trustee responsibility for beneficiary centered mission quoted in a board meeting, becoming the essential reference point at a moment of institutional crisis.

Millions of individuals' lives are deeply enriched by their involvement with or service to independent colleges. Students, alumni, donors, faculty, administrative staff, and trustees are deeply committed to this set of institutions and the moral ends that they serve. Some are beneficiaries; some serve; and some are benefactors. I trust that this dissertation has advanced the understanding of independent higher education and the role of those who have responsibility for it.

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