

## **WPI Faculty Governance Statement on Pending Revisions to the Bylaws of the Corporation**

### Lack of Clarity Regarding the Purpose of the Bylaws

The current Bylaws of the Corporation concern the purpose, mission, membership, officers, and committees of the Corporation. Article IV, "Membership of the Corporation," states that "the Corporation shall consist of members individually referred to as Trustees and collectively as the Board of Trustees." By contrast, the pending Bylaws of the Corporation, amended and approved by the WPI Board of Trustees on November 2, 2018, expand the purview of this document in ways that carry significant risk for the Institute. The primary risks are threefold:

- the introduction of restrictive and vague language about academic freedom
- the effective nullification of the Faculty Handbook
- the confusion—rather than clarification—of roles and responsibilities for administrators and faculty members alike

It is telling that a document officially titled in current and pending form as "Bylaws of the Corporation" has been cited in formal and informal documents as the "WPI Bylaws," revealing a lack of clarity over the document's purpose. An instrument designed to govern the Board of Trustees themselves has been reframed in order to govern the Institute as a whole.

The Board's approach raises significant questions about its willingness to delegate authority in ways appropriate to an institution of WPI's standing. From the Faculty Governance perspective, which affirms the crucial importance of Shared Governance, these regrettable impositions of Board oversight disempower the President and the Faculty alike, subjecting both to undue Board supervision. Such measures, if enacted, will hinder the recruitment and retention of prospective and current Administrators, Faculty, and Students, at a moment when the Institute should be doing everything it can to solidify its place in a highly mutable landscape for higher education.

### On Academic Freedom

The overextension of Board supervision is especially concerning in the case of academic freedom. The pending Bylaws of the Corporation imprudently codify and restrict academic freedom "within the framework of WPI's policies and society's laws and norms." This substantial diminishment of academic freedom would subject the fulfillment of academic duty to qualifying conditions imposed by the Board: conditions that remain distressingly undefined. Institutions codify policies, and governments codify laws, but "society's laws and norms" proves an ambiguous formulation indeed. Which norms, and which society? Norms tend to be elusive, and are frequently contested—indeed, they are often contested, resisted, overturned, and transformed through the very processes of academic inquiry. Moreover, at a global polytechnic operating in over forty different countries around the world, the subjection of academic freedom to unspecified societal norms weakens the Faculty's position and renders the Institute far more vulnerable to potential legal claims in dozens of distinct national contexts. Without the further explicit codification of specific norms, a fraught exercise in and of itself that would subject the institution to significant reputational risk, the pending language on "society's laws and norms" does not affirm and clarify the principle of academic freedom, but rather confuses and finally dismantles it.

Only three peer and peer aspirant institutions address academic freedom in bylaws or statutes. Language involving society's norms appears only in the Bylaws of Carnegie Mellon University, where the document governs the University, not the Corporation. This is not an example of best practices—this is an example of a lone practice by an extreme outlier. By contrast, Columbia University and the University of Pennsylvania explicitly link the principle of academic freedom with the right of tenure. The Columbia University Statutes include a "Code of Academic Freedom and Tenure," where tenure is a right extended to those officers of instruction that serve "without stated term," in appointments designed "to protect their academic freedom."<sup>1</sup> Penn's Statutes of the Trustees offers an even more affirmative statement in a section on "Academic Freedom and Responsibility," stating that "The University recognizes the importance of a system of tenure for Faculty members as the preeminent means of fostering and protecting academic freedom in teaching and in scholarly inquiry."<sup>2</sup> At WPI, the Faculty Handbook links tenure and academic freedom and in several places, most prominently in policies for the standing and elected Committee on Tenure and Academic Freedom. Meanwhile, the pending Bylaws of the Corporation are silent on the crucial link between academic freedom and tenure.

### On the Faculty Handbook

The conflicts on language regarding academic freedom between the Faculty Handbook and the pending Bylaws of the Corporation are all the more troubling in light of the newly inserted Article XI in the pending Bylaws of the Corporation, which states that "in the case of any conflict between these Bylaws and other University policies, manuals or handbooks (e.g. Employee Benefits and Policies Manual; WPI Faculty Handbook) these Bylaws shall prevail" and that "in the event of any ambiguities in these Bylaws, the interpretations of the Board shall be controlling."

As such, the Faculty Handbook would be reduced to a document that could be interpreted and indeed overridden at any point and in any way by unilateral Board action, rendering it an inconsequential and ineffectual instrument for Faculty Governance. The Faculty is not prepared to endorse language that would negate its own work and void its own Faculty Constitution and Bylaws. The Faculty acknowledge the Board's authority to delegate responsibility and to act as a final arbiter in certain matters. Indeed, the Faculty Handbook itself is quite decisive on this point: as Section Two of the Faculty Constitution states, the Faculty "derives its authority in accordance with the Bylaws of WPI under the direction of the Board of Trustees" and "The Board of Trustees, in turn, delegates the areas of responsibility and authority to the Faculty through the President of WPI."<sup>3</sup> A strong shared governance model should not be confused with a reluctant delegation of authority tempered by an elastic right of repeal that allows the Board unlimited latitude to reshape the Faculty Handbook at will, in their own image, without consultation.

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<sup>1</sup> Charters and Statutes, Columbia University in the City of New York, Sections 70-82; pp. 51-69, esp. at Sections 70 and 71, p. 52. For more, see [https://secretary.columbia.edu/files/secretary/university\\_charters\\_and\\_statutes/University%20Charters%20and%20Statutes\\_June%202013.pdf](https://secretary.columbia.edu/files/secretary/university_charters_and_statutes/University%20Charters%20and%20Statutes_June%202013.pdf)

<sup>2</sup> Statutes of the Trustees, University of Pennsylvania, Article 11.1. For more, see <https://secretary.upenn.edu/trustees-governance/statutes-trustees>

<sup>3</sup> Here again, among Faculty as among the Board, we have confusion regarding the "Bylaws of WPI," a non-existent document that should not be confused with the "Bylaws of the Corporation."

## On Administrative and Faculty Roles and Responsibilities

### *The President*

The reluctant delegation of authority in the pending Bylaws of the Corporation pertains not only to the Faculty, but also to the Administration, specifically to the President. As a member of the Board of Trustees, it is just and proper that the President's roles and responsibilities should be codified in the Bylaws of the Corporation. The current Bylaws of the Corporation afford the President the "general oversight of all courses of study and research and of the general academic work of the Corporation," without specifying or codifying any additional administrative roles or responsibilities among those who stand outside the membership of the Corporation. The pending Bylaws of the Corporation prove far more contradictory on administrative matters. On the one hand, they delegate substantial authority to the President, stating, in Article XI, that "nothing herein shall limit the President's authority to manage the University or to establish policies related thereto, subject to Board approval," and, in Article IV.1.B, that the President "has full authority" in a range of responsibilities, including, at Article IV.1.B.6, to "establish an organizational structure that will best enable the President to discharge the duties of the office effectively." On the other hand, Article IV.1.C and IV.1.D proceed to specify and codify upper and mid-level administrative roles and responsibilities in ways that ultimately diminish and limit the President's authority.

A university president should be subject neither to undue board supervision nor to an unwieldy bureaucracy of administrative subordinates.

### *The Provost and Deans*

While most peer and peer aspirant institutions mention provosts and deans in governing documents, very few specify and codify them in their "Bylaws of the Corporation," precisely because provosts and deans are rarely afforded membership as Corporators. Some institutions, such as Brown and M.I.T., make no mention of these Administrators whatsoever in such documents; most of those that specify these roles by name do so quite briefly, with minimal elaboration. Thus RPI indicates that the Provost "shall have such powers and shall perform such duties as may be assigned by the President," and Johns Hopkins indicates that "the Board shall, as recommended by the President, appoint Deans."<sup>4</sup>

If the intent of the Board was to clarify roles and responsibilities and thereby to empower the Provost and the Deans, the unintended effect is to confuse the role and responsibilities of the President, which ultimately weakens not only the office of the President but also the Institute as a whole. WPI Faculty members should empower WPI Students. WPI Administrators should empower WPI Faculty members. And the WPI Board of Trustees should empower WPI as an institution. It would be no more just for Administrators to rigidly constrain a Faculty member in her leadership of Students than it would be for the Board to rigidly constrain the President in her leadership of the institution.

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<sup>4</sup> Bylaws of Rensselaer Polytechnic Institute, Article IX. For more, see <https://president.rpi.edu/sites/default/files/RPI%20Bylaws%20as%20Amended%20through%203-4-2017.pdf>; Johns Hopkins University, By-Laws of the Board of Trustees, Article III.3.4. For more, see <http://trustees.jhu.edu/by-laws/>

## *The Faculty*

As for efforts in the pending Bylaws of the Corporation to codify and specify roles and responsibilities of the Faculty in the pending Article IV.1.E, here too we find an example of Board overreach that effectively overrides the Faculty Constitution and Bylaws, and here too we find contradictory language that confuses matters of authority in academic matters. In this instance the Board implicitly collapses the distinction between tenured and contingent Faculty members in ways that would hamper Faculty Governance and Shared Governance alike. The principle of inclusion should not be prevailed upon to diminish the integrity of Faculty Governance by creating momentum for the enfranchisement of contingent ranks. Instead, the principle of inclusion should inform efforts toward strengthening the Faculty by expanding tenure eligibility to contingent ranks, thereby reducing such ranks from an instructional majority to a far smaller fraction of colleagues who might prefer to remain contingent.

Does the Board in fact intend to delegate authority to the Faculty, per the language of the pending Bylaws of the Corporation, in the matter of "establishing academic standards, curricula, courses of study, and regulations pertaining thereto"? On the one hand, the language in the pending Bylaws of the Corporation at Article IV.1.E says so; on the other hand, the language in the pending Bylaws of the Corporation at Article IV.1.D establishes the Global School by fiat in connection with the passing mention of a Dean for said unit. Yet, by the logic of the pending Bylaws of the Corporation, and per the existing system of Faculty Governance, such establishments must be undertaken through the Faculty. This very work has progressed significantly over the last several months, and it is thanks to the Board's prudence and wisdom in deferring the implementation of the pending Bylaws of the Corporation that such work has been given due time to mature. The trust, now, is that the Board will exercise further prudence and wisdom in attending to the reports of the Bylaws and Governance Working Group, proceeding with further refinements to the pending Bylaws of the Corporation as endorsed through the usual channels of Faculty Governance.