

Difficult Labor: The Perils of Birthing a New College

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Higher education in the United States began a slide down a very slippery slope in the 1960s when student demonstrators challenged the education establishment. Restrictions on free speech, required courses, and the insensitive way that large state university systems treated their students were common grievances at the University of California at Berkeley, to cite one example. Students complained that it was possible to earn a degree at most state universities and never have personal contact with administrators or even faculty. Students were treated like ciphers—mere Social Security numbers—and were happy to depart with a diploma.

These student protests elided into protests against the draft and the Vietnam War and a vehicle was found that could challenge the education establishment by force. College administrators cowered in fear and caved in to student demands. Revolutionary changes occurred: power was shared with students who could evaluate their professors, sit on boards of trustees, participate in hiring decisions, and otherwise express uninformed views on virtually any subject related to their education. Student evaluations of faculty led to serious grade inflation and traditional required curricula were dropped and cafeteria-style education introduced. Higher education in America began slowly to break loose from its moorings, and trends leftward that began in the demonstrations against the Vietnam War were strengthened with new claims by feminists and proponents of multiculturalism, diversity, and calls for affirmative discrimination that in later years were called “politically correct.”

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I am of the view that little can be done from within educational institutions to recover what was lost during the 1960s and 1970s—too many faculty factions have a stake in the current conditions, and too few university administrators have the courage to take unpopular stands and risk losing their jobs. But, if education entrepreneurs can enter the education marketplace and actually compete directly for students with established institutions, that competition will reshape how higher education is conducted in the United States.

Most of us do not set out to achieve great reforms in issues of great importance. We are more often minor players in larger events beyond our control and only later do we see our actions in the larger context. That was my experience on my way to reform higher education.

In 1987 I was working for Count Nikolaus Lobkowitz, president of Katholische Universität Eichstatt, Germany's only Catholic state university. Count Lobkowitz is a distinguished philosopher, former president of the University of Munich, and president of a then new Catholic university in a little town in the Bavarian Alps near Ingolstadt. In 1987 Count Nikolaus sensed that something was afoot in East and Central Europe and wanted to assist intellectuals struggling in difficult political circumstances in Poland, Czechoslovakia, Hungary, and other countries in the region. Unfortunately, his budget was restricted by line items legislated by the Bavarian State Legislature and he didn't have the resources to engage in an outreach beyond Eichstatt.

After a preliminary review of what was occurring, I was sent to Prague and Warsaw to meet with some contacts and was in Warsaw the weekend the Berlin Wall fell. These were exciting times, of course, but most in the West feared a return of Soviet troops to beat back a counterrevolution. Deciding to try my hand at working the region, I began an eight-year effort that led me to Poland, where I worked with close associates of Solidarity leader and Poland's president, Lech Walesa. By 1995, however, even investment banks on Wall Street were convinced that a new era had begun, so I realized that I couldn't compete with institutional investors.

As a result of this experience, I came to a firm appreciation of the policy of privatization of public sector resources and looked about for a way to utilize my hard-won knowledge of how to privatize state companies in former communist countries. I have hope, for example, that the Obama administration's "bad bank" proposal will succeed, since I saw how state

companies with little to no chance of survival in Poland were lumped into “bad company” funds and sold to the highest bidders. I decided to attempt to establish an Institute for Privatization.

New Internet technologies were my companion as early as 1987 when I used America Online and MCI Mail to communicate with contacts in East and Central Europe. In 1999, with the support of Massachusetts entrepreneur Ray Shamie, I created a website for the “American Academy of Privatization.” The academy offered lectures on water and sewer privatization (Atlanta), airport privatization (London), and U.S. air traffic control privatization featuring a lecture by the president of Continental Airlines. It was clear once these topics were online that what I created was a boutique university department. By chance I encountered Dr. Henry Manne, former head of the law and economics program at the University of Miami, who directed my attention to the for-profit University of Phoenix.

With that scrap of information I set about founding Yorktown University as a for-profit education company incorporated in Virginia and approved by the State Council of Higher Education for Virginia. My academic interests were broader than my expertise in privatization of public sector companies, and I conceived of Yorktown as a place where serious scholars could continue teaching when they reached retirement age and younger scholars could remain active in their chosen professional fields even if they were unable to obtain a university appointment. In my own case, I attained academic tenure at a Catholic college that lost its religious bearings in the 1970s and gave up its required curriculum in response to declining enrollments. This was not the institution at which I intended to spend my teaching career, so when opportunity knocked to work in the Reagan administration, I left my tenured teaching position and never returned to my department where, coincidentally, my replacement was National Association of Scholars treasurer, B. Nelson Ong.

Starting a new Internet university, therefore, was my way to recover academic standards that were jettisoned in the late 1960s and 1970s, to affirm the search for truth by opposing a relativism now dominant in American culture, and by creating a community of like-minded scholars. My discussions with prospective faculty then and now revealed that maintaining high standards in academic courses was not easy, grade inflation was rampant, and most lived in isolation from scholars who shared their concerns and values—even though many were teaching in large public research

universities. I admire their fortitude, their commitment to scholarship, and their ability to function when everything around them seems diminished by modern currents.

But my timing for bringing us all together to found a new university was terrible!

The dot-com bubble was about to burst just a few months after Yorktownuniversity.com filed a public offer of common stock. Our securities registration was made effective by the U.S. Securities and Exchange Commission and twenty-five states in November 2000. By February 2001, the bottom fell out from the high tech dot-com market and I withdrew the public offer.

In 2000 I had recruited fifty faculty members willing to develop courses for Yorktownuniversity.com in exchange for a contract to teach those courses and common stock. We had to obtain Virginia approval to use the name “University” in our stock registration, so I sought and obtained that approval in April 2000. We went to market without a curriculum installed in a course delivery platform and without students.

That wasn’t necessarily a bad thing, since one may dream about doing something that requires millions of dollars—but without financing the venture remains a mere dream. My attempt to obtain between \$1.25 and \$2.5 million in a registered direct public offer of common stock in a company with little to show prospective investors wasn’t entirely wrongheaded. A direct public offer is the sale of registered securities directly to the public without the mediation of a securities broker. In the right economic climate with the right public relations and a pre-screened list of prospective investors, direct public offers can be registered and successfully carried out on less than \$250,000. Legal and accounting fees and state registration costs can total \$175,000 and the balance goes to company agents who telephone prospective investors. In contrast, the cost of a public offer marketed by a securities broker can easily cost \$2 million.

We had a great idea, a willing faculty, the technology to carry out a delivery system for courses in low-cost, off-the-shelf software, and we had seed money from a handful of investors who believed in the venture. But we didn’t anticipate that the dot-com boom would be over before we began our public offer. Nor did I appreciate that in higher education new technologies that brought about changes in other industries would not have the same impact as they did in less regulated industries. Unfortunately, higher

education is highly regulated at the state and local level and bureaucracies and bureaucratic mentalities dominate.

When I went to the Economic Development Office in York County, Virginia, to announce the exciting news that a new university—Yorktown University—was about to come to his small county, the assistant director of the office asked, “Is that legal?”

The Commonwealth of Virginia has a rigid regulatory system embodied in the State Council of Higher Education for Virginia (SCHEV). SCHEV controls all higher education in the Commonwealth. It was originally created by segregationist Virginia politicians who sought to thwart federal desegregation of public education. Jim Crow laws are gone, but SCHEV remains as an echo: Virginia’s most powerful non-elected regulatory agency.

I refer to SCHEV’s legacy as the “legacy of suppression.” Even though in 2000 SCHEV was dominated by appointees of Republican governors—George Allen and Jim Gilmore—and had shed its desegregationist ways, SCHEV was controlled, as is so much of Virginia state government, by a powerful professional bureaucracy. Among SCHEV’s political appointees was a partner in a Richmond law firm that represented Virginia state public universities. This was a clear conflict of interest that continues to this day.

The appetite of any permanent bureaucracy to regulate is especially great when an agency has life or death control of those it regulates, and in 2003 SCHEV’s bureaucrats had the support of a Republican political appointee who was an advocate for more regulations. Dr. Cheri Yecke had been appointed by Gov. Jim Gilmore to serve on SCHEV. Dr. Yecke believed that federal regulations as they were applied by the federal government to regulate Title IV-eligible universities should be the “standard” for regulation of colleges and universities in Virginia—even those not yet accredited and thus not Title IV-eligible.

While serving on SCHEV, Dr. Yecke also served as the Director of Teacher Quality and Public School Choice at the U.S. Department of Education for the Bush administration (2002–2003), during which time she was detailed to the White House as a senior advisor for USA Freedom Corps. At the time I maintained that this constituted a conflict of interest, since the charter of the U.S. Department of Education forbids the department from interfering in state education programs.

Dr. Yecke was my first look at the big government face of the “new” GOP represented by the administration of George W. Bush. Unfortunately, instead

of staying in Washington, where the U.S. Department of Education under Secretary of Education Margaret Spellings destroyed the Republican brand as that pertained to school choice, Dr. Yecke stuck her aggressive hand into Virginia and used the levers of power established by Senator Harry Byrd to “protect” Virginia colleges and universities from competition and Virginia education consumers from unaccredited institutions.

The Byrd machine established total control of Virginia until about 1964. This southern conservative mafia participated in the South’s massive resistance to desegregation of public schools and established SCHEV to control separation of the races in Virginia state colleges.

While Dr. Yecke has a good reputation among conservatives because of her advocacy of school choice, she is an educationist who is driven toward assessments and is infatuated with government regulations. But for her Yorktown University might have remained in Virginia, though the Southern Association of Colleges and Schools issue remains indomitable (more on that below).

Dr. Yecke worked with the professional staff of SCHEV to increase regulations on unaccredited institutions authorized by SCHEV. Yorktown was authorized to operate in Virginia in April 2000, but Dr. Yecke worked to change those rules, and the new rules that went into effect in September 2003 made it impossible for Yorktown to continue. We then voluntarily gave up our state authorization, obtained authorization elsewhere, and moved in December 2003.

Here’s what happened. We had been authorized by SCHEV to operate in Virginia in 2000 and by May 2001 we enrolled our first students and began building an enrollment in government and economics degree programs. But SCHEV made demands that tuition be placed in escrow until a student completed courses, imposed an annual fee and other financial requirements, and allowed for surprise visits by SCHEV functionaries who had authority to close an institution overnight. This was a state commission dominated by Republican appointees! The answer was to move—to Colorado!

We did experience a sense of loss, however. The inspiration for Yorktown University flows from the blood of patriots shed in the Battle of Yorktown in 1781. Our “brand” reflects the character and virtue of those who sacrificed their “sacred honor” so that we might live in a self-governed, independent, and free nation. And it expresses our belief in the necessity for civic education. At a time when virtually all proprietary Internet institutions are

focused on training for vocations, the focus of Yorktown is training for citizenship.

Nevertheless, we decided to move to the great state of Colorado—which imbibes of the spirit of those who founded the West and welcomed newcomers—and voluntarily gave up our Virginia state license. Few states actually allow startup institutions to operate without accreditation and some block entry into their education markets by institutions that are not regionally accredited. Nevada, Alabama, Virginia, and many other states are very hostile to education entrepreneurs. Of course, if higher education is protected from competition by companies that use low-cost technologies, then higher education becomes a protected industry and few will try or be able to break through barriers to entry.

That was a reality that I did not comprehend when I founded Yorktown University. The “smart money,” well-heeled investors with an interest in education, didn’t start universities from scratch—they bought regionally accredited institutions that were on the ropes.

We didn’t have that luxury. By May 2001 Yorktown University had “burned” about \$200,000 and might have achieved profitability in two or three years were it not for barriers to accreditation. In June 2008, seven years after we had enrolled our first students, we had burned \$1.75 million. That is the cost of state and federal government regulations and the unique system by which America “accredits” academic institutions. There were other unknowns we faced that, taken individually, were surmounted with hard work, persistence, and the support of generous and devoted shareholders. But had they been encountered in one fell swoop, there wouldn’t be a Yorktown University today.

The threat of competition from Internet education providers challenges the way that universities conduct business—how they price products, control costs, and educate students. Yes, most universities have Internet websites. Most faculty members, though not all, use computers; and some courses are posted online to supplement student course assignments. But traditional bricks and mortar institutions have not reorganized how they operate and conduct their business as a result of these new technologies. Because of regulatory barriers there is no incentive for traditional institutions to change their mode of operation and nobody—at least no sane person—engages in the startup of new institutions because of new, efficient, low-cost technologies.

To give some insight into the political obstacles that startup institutions using new technologies face when attempting to break into the education marketplace, I'll recount a story about a meeting I had in December 2002.

The late Joann Davis, the congresswoman from York County, was responsive to my complaint that since we were located in the region of the Southern Association of Colleges and Schools (SACS) we could not aspire to regional accreditation. Her experienced chief of staff took me to visit the education staff person of Buck McKeon, then chairman of the House Education and Workforce Committee. I explained our predicament: that Yorktown University was an Internet institution based in Virginia, but SACS didn't accredit Internet institutions.

He laughed.

I later received an email message from him informing me he had joined a K Street lobbying firm.

Our guide from Joann Davis's office then took me and a staff member to meet with a member of the professional staff of the House Education and Workforce Committee. I had learned from John Barth, the U.S. Department of Education staff member in charge of the charters of chartered accrediting associations, that the renewal letters of the charters of five regional accrediting associations was in draft form. I argued that a delay would cause these associations to inquire about the holdup, and he could then respond that there is some concern that they are not accrediting Internet institutions. I asked what would happen if he didn't send the renewal letters. Mr. Barth told me he would be fired.

So up to Capitol Hill I went to ask "George," a senior staff member of the House Education Committee, whether we could do this. He said, "That would jeopardize the process." Well none of us—back then—wanted to jeopardize the process. We just wanted to expedite the accreditation of Yorktown University, so we didn't press the matter.

But shortly after Christmas I began to think about jeopardizing the process. After the New Year I called the House Education Committee and asked to speak to George. I was told that he was no longer on staff. George was now employed by the California State University system in its Washington office. Members of Congressional staff use their positions as way stations to lucrative private sector employment as lobbyists. This is a fact of life and deters necessary reform.

Misdirected reforms are another fact of life.

In December 2005 the American Academy for Liberal Education (AALE) informed Yorktown University that it would accept an application for pre-accreditation of our undergraduate liberal arts degree programs. We set about to transform our standards to meet those of the AALE and in December 2006 prepared for a site visit. Early that month AALE's charter as an accrediting association was not renewed. AALE was found not to have instituted assessments to measure students' learned behaviors and that led to a brawl between everyone not given to "educationist" methodologies and the U.S. Department of Education.

I did everything I could to save AALE, but it took too long for AALE's charter to be conditionally renewed. In the summer of 2007, with AALE's position hopeless, we moved on and finally attained institutional accreditation in June 2008 by the Distance Education and Training Council. Accreditation came seven years after we enrolled our first students in May 2001 and eight years after we were authorized to operate as a "university" by Virginia's authorities. This is not unusual for bootstrap university startups. It took The Institute for World Politics, a boutique graduate school of national security studies in Washington, DC, fifteen years to attain regional accreditation from the Middle States Association of Colleges and Schools.

New technologies employed to enter the education marketplace run smack into an accreditation process that is cumbersome, unreasonable, costly, and intentionally designed to protect members of the club of accredited colleges and universities. I should also add that the accreditation process is frustrating.

Although everything Yorktown University does is on the Internet, the application process for institutional accreditation by our current accrediting association required that we make photocopies of all course content and physically ship those materials to Washington, DC. Outside reviewers of course content then read photocopies of our coursework. This is also a requirement each time we seek accreditation of additional degree programs.

The financial consequences of these requirements are very real.

Only a few solely Internet-based startups have made it to regional accreditation: Jones International University, Northcentral University, and American Public University. They are all domiciled in the region of the Higher Learning Commission, but there is some concern that executive director Steven Crow's successor will shut the door to the accreditation of solely Internet-based institutions or needlessly complicate an already burdensome regional accreditation process.

Institutional investors and billionaires interested in the education marketplace live in another world. All have *bought* their way into the marketplace at enormous cost by purchasing nationally and regionally accredited institutions.

Michael Milken and Larry Ellison burned millions of dollars to buy a nationally accredited institution, purchase a regionally accredited university, and build an accredited Internet institution on those accreditations. The investors behind Grand Canyon University purchased a failing Baptist college and have taken that asset public in a successful registered security offer. Before doing that they offered to purchase a community college in Arizona with 60,000 students for \$400 million. Randy Best founded Whitney International University and purchased Chicago's Barat College. The Becker brothers, founders of Sylvan Learning, are growing Laureate University by purchasing accredited institutions.

These and some other investors are in the education business because they have access to hundreds of millions of dollars—not because they know what education is all about and want to work to reform higher education. That does not mean that these entities will not have unintended consequences for higher education reform.

Some claim can be made that traditional institutions, looking at new competition, are putting courses online and beginning to expand their delivery of courses from the classroom to the Internet. They are not, however, restructuring how they manage traditional colleges and universities.

For example, in 2008 executives at the University of Illinois proposed the creation of a parallel for-profit Internet institution that did not report to the traditional departments at the main campus. A faculty meeting was held and the university voted it down. In traditional institutions, which are hierarchically administered by powerful interests, decisions are taken in a collaborative process with management hindered by tenured “employees” who are legally a part of management. Nothing, I believe, can be done to effect reform from within under such conditions.

And while we have the technologies to challenge these institutions, we do not as yet have governmental policies that foster a climate of innovation. The recent Spellings Commission didn't propose the breakup of the education cartel and the Higher Education Opportunity Act of 2008 (H.R. 4137) established a monitoring mechanism that could morph into a policy of national tuition price controls. Washington ignored strides made by Capella

University, American Public University, Walden University, and the University of Phoenix—innovative, fast-growing companies with “flat” organization structures.

How do institutions with flat organizational structures operate compared to traditional hierarchical businesses? To answer, we must first become aware that their use of new technologies changes how they conduct their business.

In *The Twilight of Sovereignty* Walter B. Wriston wrote,

Hierarchical organizations provide tight control of a large group of workers by placing relatively small groups of workers, or submanagers, under the direct supervision of a higher manager. Thus, the steepness of the management pyramid. Flatten that structure and the people within it get a lot less direct supervision. It becomes more important for organizations to have well-understood common goals by which workers can direct themselves. The job of instilling such goals has more to do with persuasion and teaching and leadership than with old-style management. Successful business leaders are finding that the skills of a good political leader are more relevant than those of the general.¹

Administrators are team members who “operate more like professional workers, who offer their own particular skills to an operation, than like managers, who are defined by their place in the structure.”²

The use of new technologies by Internet-based education companies promises to take student enrollments from traditional institutions, and as they grow in influence they can be expected to have greater political influence. Again, I quote Wriston: “[T]hey themselves will fight to reduce government power over the corporations for which they work, organizations far more democratic, collegial, and tolerant than distant state bureaucracies inhabited by men and women who never seem to have enough knowledge to temper or justify their power.”³

So, change will come when those using new technologies have greater political power. The United States is a country of 300 million-plus people and that’s all we can say about the creative destruction wrought by new technologies? Fortunately, there are other factors to consider.

¹Walter B. Wriston, *The Twilight of Sovereignty* (Bridgegewater, NJ: Replica Books, 1997), 116–17.

²Ibid., 115–16.

³Ibid., 121.

If the current financial crisis continues, if student loans dry up, if alumni donations decline, if traditional institutions that are overextended cannot make timely loan payments, and if students transfer to less costly institutions, several hundred regionally accredited colleges may not be able to make payroll possibly as early as fall 2009.

I expect that when that occurs even stodgy organizations on the right and the left like the Service Employees International Union or the United Autoworkers, or think tanks like the Heritage Foundation, Intercollegiate Studies Institute, and Young America's Foundation may buy their own institutions and enter the education marketplace. It is my firm conviction that a market mix of aggressive accredited for-profit colleges and universities like Yorktown University and tax-exempt think tanks offering accredited university programs is necessary for the reform of higher education.

So my story of what happened on my way to reform higher education by founding Yorktown University is a tale of the political ability of traditional institutions to block startup companies from entering the education marketplace and how an economy careening towards depression may unleash the creative destruction needed to transform the way educational institutions are managed.

Academe has developed and enjoyed inefficient, impractical, and ultimately harmful self-serving traditions because this is a wealthy country and we can and do afford mismanagement, obstruction, incompetence, vice, and barriers to competition maintained by members of the education cartel.

Now, however, it appears that the education consumer is no longer willing to pay today's high tuition costs. That can be expected to unleash the creative destruction that this system desperately needs. Random events may be expected to occur during the current financial crisis that may overtake the education cartel, but there have been missed opportunities for reform.

The former Bush administration—indeed the Bush family—including former Florida governor and presidential aspirant Jeb Bush, have bought into the educationist creed of learning outcome assessments and seemed not to recognize the truth that not everything can be measured quantitatively.

Character education, instilling virtue, love for one's fellow man, and the nuanced truths of classical philosophy are not measurable in terms of behavior, but they are important aspects of what the Greeks called *paideia*. Aristotle asks in the *Nicomachean Ethics*, "What is the measure of what is right?" He replies, "The good man."

In life we are guided by good men and women whose judgment we trust and whose qualities of character compel us to use them as a standard and measure of what is right and wrong, true and untrue, honorable and dishonorable, just and unjust.

The U.S. Department of Education under Margaret Spellings, however, wasn't interested in this and thus from 2006 to 2008 a royal battle ensued among educationists who want every academic institution in America to report annually the measurements of the learning outcomes of their degree programs and courses in those programs.

At Yorktown University, at a cost of about \$3,000 per course, we re-tooled every degree program and course in our curriculum to fit into a mold that defines the learning outcomes of every course. Multiply that \$3,000 times every course offered for academic credit at every degree granting institution in the U.S. and you gain a sense of the enormous cost of the Bush administration's social engineering.

Philosophically, this task is also repellent.

In order to state what a learning outcome *is* we fashion that into the language of behaviorism by using value-neutral verbs to describe each learned behavior. Students don't learn, understand, or appreciate, they define, compare, contrast, and analyze. These emasculated learning outcomes devalue what education is all about and revive what Eric Voegelin described as the "derailment" of philosophy by propositional metaphysics.⁴

In my own courses in the history of political theory and modern ideologies I have described the learning outcomes of every session. Listed are the conclusions described in behavioral terms of some of the greatest intellectual events that have occurred in the West—the break from mythic consciousness, the turning around of the soul depicted in Plato's Myth of the Cave, the discovery of the mind, the comprehension of the human person in relation to transcendent divine reality, the measure of what is right and just, and the formulation of the Western concept of a limited state.

In stating these conclusions as learning outcomes I have "reified"—made into things—experiences of reality that have no "thingness," that cannot be defined in terms of learned behaviors, but nevertheless are the source of all that we admire in Western civilization. I have been directed by the U.S.

⁴See Eric Voegelin, *Anamnesis*, trans. Gerhart Niemeyer (Columbia, MO: University of Missouri Press, 1990), 193.

Department of Education to engage in a process of hypostatization by which truth, justice, God, Heaven, and Hell become things about which we can debate.

How many learning outcomes can stand on the head of a pin?

In other words, the germ of the derailment of philosophy in Scholasticism, the reification and hypostatization that closes the soul to experience of reality, is official policy of the U.S. government.

This periodically occurs in great civilizations—the trial and death of Socrates, legalism in China, Scholasticism in medieval Europe, behaviorism in post-World War II America, and the recent rise of political correctness are all examples of intellectual currents that close inquiry, transform educational content into process, and reify that which are not things—but this is the first time in memory an apparatus of the administrative state responsible for education has mandated the closure of the mind.

Despite all these difficulties, Yorktown University continues to grow enrollments and now offers ten accredited degree and certificate programs. Even during the current economic crisis, existing shareholders support us and new investors are attracted to the promise that a high-quality, low-cost university offers to financially-strapped parents and students.