

Table 8-D
Legal Means Used for Conferring Authority

Legal Provisions	For		For Corporate Status
	For Creation	Managing Authority	
Statutory	12	16	17
Constitutional	6	5	5
Constitutional-Statutory	4	1	0

The nine states with some constitutional provision are represented here by ten boards, or 45 per cent of those examined. Of these, four have constitutional provisions that relate only to the creation of the board, with the heart of the authorization found in the statute. Thus the majority of these boards are creatures of their state legislature, which makes it necessary for them, in the opinion of one commentator, to "make their case for the freedom of higher education in the legislature or in the forum of public debate, unprotected by any shield of legal autonomy. The independence of these schools thus stands in constant need of being nourished and replenished by the support of the community."³⁷

The desirability of a constitutional grant of authority is apparent, assuming the minimization of political interference in institutions of higher learning is one's goal. The authorities reviewed were unanimous on this point.³⁸

CONCLUSION

If the combined recommendations of the foregoing sections were followed,

³⁷ MOOS & ROURKE, *supra* note 8, at 19.

³⁸ See COMMITTEE ON GOVERNMENT AND HIGHER EDUCATION, *THE EFFICIENCY OF FREEDOM* (1959); *DEMOCRACY IN THE ADMINISTRATION OF HIGHER EDUCATION: TENTH YEARBOOK OF THE JOHN DEWEY SOCIETY*. (H. Benjamin ed. 1950).

institutional governing boards would be constitutional corporations, appointed by the governor with the advice and consent of the state senate, and consisting of from nine to fifteen members appointed for long, overlapping terms. Such a board, however, even if it consisted of the ablest people the state had to offer, would not and could not function properly unless it had a measure of autonomy that removed it from political fetters.

This problem of freedom from political restraint was a recurring theme which ran throughout the examination of the mechanical aspects of trustee boards. A persistent, fundamental dilemma of the democratic society is how to reconcile the independence of a state institution with the need for responsibility to and review by the people. This problem is particularly difficult when either the voters or their popularly-elected state officials are not as qualified by experience and knowledge to make certain decisions as is another institution. The other institution in this case is the board of trustees, and in turn the university, and the decisions of concern here are those involving the direction and development of higher education. Characteristically, university governing boards have been set apart and endowed with a degree of autonomy not afforded other state agencies.³⁹

Perhaps it appears out of place to raise, in what is essentially an examination of mechanical and organizational aspects of institutional governing boards, the problem of institutional board freedom. This is true only if it is not relevant to the whole matter of size, term, tenure, and selection of boards of trustees. Quite the contrary has been

³⁹ COUNCIL OF STATE GOVERNMENTS, *supra* note 25, at 132.