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Between Faculty, Administration, Board, State, and Students: On the Relevance of a Faculty Senate in the Modern U.S. University

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Abstract: This essay considers shared governance within the increasingly contested governance space of the U.S. public research university. My contextual focus will be on its most fragile element, a faculty senate. I will start with a very brief review of the foundations. The conceptual structures of shared governance are fairly well known but it is always useful to nod in the direction of sources. I then consider the realities of shared governance. I will suggest the context and the difficulties of shared governance within the a-symmetric power arrangements that are the hallmark of public universities. What I hope to flesh out is an outline of the context in which shared governance might be measured by its form with little attention paid to the effectiveness of its function. I will then consider where a faculty senate can fit into this governance enterprise. I will consider whether shared governance has come to mean more a sharing of the burdens of administration than a sharing of governance. I will end with a consideration of how I see the Penn State Faculty Senate playing a more engaged role within the constraints of shared governance.

1 W. Richard and Mary Eshelman Faculty Scholar & Professor of Law, Professor of International Affairs, Pennsylvania State University, and is the incoming chair of the Pennsylvania State University Faculty Senate. The author may be contacted at lcb911@gmail.com. The essay was first delivered as an address before the participants in a symposium sponsored by the American Association of University Professors through its Pennsylvania Chapter, held at Pennsylvania State University, April 2, 2012. It has been lightly edited and footnoted. My thanks to my research assistant Robert Marriott (PSU Law ’13 expected) for his usual excellent contributions.
Between Faculty, Administration, Board, State, and Students: On the Relevance of a Faculty Senate in the Modern U.S. University

Let me start with thanks to the American Association of University Professors (AAUP) and to the faculty, staff and administrators who helped make this conference possible. I also want to thank you for your willingness to hear us out, to permit us, each in our own small way, to offer perspectives and ideas that, taken together, might suggest the norms, structures, and cultures of governance that are central to the legitimate operation of the modern university. This occasion comes at a particularly timely point, providing me with an opportunity, as the incoming chair of the Pennsylvania State University Faculty Senate to present my views about the state of shared governance and to suggest the policy issues that will be important in the coming years. I also offer an apology: in events like these, people like me are usually called upon to describe a problem, posit a theoretical basis or model for approaching analysis, and then apply that model to produce a sometimes elegant solution to the problem.

Lamentably, I come to you today with no answers. Age and experience have given me enough sense to realize that answers are always a reflection of the way in which a question is framed. To produce the right question is more important than to extract an answer from the wrong question. And so, rather than try to produce answers to questions fashioned for that purpose, I hope, instead, to suggest the problem and to consider whether there is even a way to consider approaches to analysis. For that purpose, what I will offer are observations of the articulation of power and power relationships within an institution that is at once neither organ of the state, economic corporation, civil society organization or charitable apparatus. I will suggest the fragility of power within complex organizational structures and lament the push, increasingly institutionalized, in the construction of a-symmetrical power relationships in which the appearance of participation is heightened while its actual effects are diminished, in which servility increasingly comes to represent the most rewarded form of service.

And so, at last, to the problem, and the topic of my remarks—shared governance. I will consider shared governance within the increasingly contested governance space of the

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2 The AAUP is a member driven organization, the purpose of which “is to advance academic freedom and shared governance, to define fundamental professional values and standards for higher education, and to ensure higher education's contribution to the common good.” AAUP, About the AAUP, available http://www(aaup.org/AAUP/about/.

3 From its web site: “The University Faculty Senate is the representative body of Penn State's faculty with legislative authority on all matters pertaining to the educational interests of the University and all educational matters that concern the faculties of more than one college. In addition, the Senate is recognized by the University as an advisory and consultative body to the President on all matters that may affect the attainment of the University's educational objectives.” Pennsylvania State University, University Faculty Senate, available http://www.senate.psu.edu/.

4 The idea of shared governance has become both complicated and subject to substantial treatment by scholars and others. For my purpose, I like to start with Gary Olson’s approach:
U.S. public research university. My contextual focus will be on its most fragile element, a faculty senate. This organ of governance is sometimes trotted out for photo opportunity moments as proof of democratic engagement within non-profit organizations with a teaching and research mission. On some occasions it plays a formal role as a source of advice and consultation on matters of direct concern to faculty, the substance of which might or might not be embraced in whole or in part to by those with authority to act. More rarely, some of its members could be invited to play a critical role, though one usually behind the scenes and limited to the expression of faculty sentiment with a chance of influencing decisions or influencing thinking about potential action by those with power. On the rarest occasions, some members of the Senate may find themselves permitted a very small space in which to hear and speak to the most pressing matters of administration in the wake of crisis.

Most of the time, however, the reality is quite distinct. I recall more than one occasion where members of faculty and administration (usually unit administrators) will ask pose questions going to the relevance of the faculty governance organization—for example, is a university faculty senate relevant to the modern public research university? What can a university faculty senate do that can’t be more effectively undertaken by efficient and well-meaning unit administrators and their entourages or by local unit faculty? This position is made stronger where administrative entourages are growing at faster rate than faculty hires. I have also heard of unit administrators and their subordinates who mock the Senate and sometimes seek to impede its work. The best expression of their sentiment went something like this: “There is no bigger waste of my time than having to deal with the Senate.”

Faculty members are increasingly understood as units of production—factors in an human production line that is meant to apply processes to students that stamp out graduates of uniform quality who are fit for specific purposes, and also to produce knowledge of some utility to the currently favored crop of knowledge consumers—commercial enterprises and the state. In this factory setting, faculty governance participation appears to be a distraction valued mostly as gesture. Reduced to the service

The phrase shared governance is so hackneyed that it is becoming what some linguists call an "empty" or "floating" signifier, a term so devoid of determinate meaning that it takes on whatever significance a particular speaker gives it at the moment. Once a term arrives at that point, it is essentially useless. . . . "Shared" governance has come to connote two complementary and sometimes overlapping concepts: giving various groups of people a share in key decision-making processes, often through elected representation; and allowing certain groups to exercise primary responsibility for specific areas of decision making.


Consider a recent student critique of assessment metrics at the University of Texas, Matt Daley, The University Assembly Line, THE DAILY TEXAN, Aug. 30, 2011, available http://www.dailytexanonline.com/opinion/2011/08/30/university-assembly-line (“This predictable, mechanical style of operation would certainly please a factory’s shareholders. But students are not widgets, and universities of the first class are not factories.”).
component of mandatory faculty responsibility,⁶ it remains a marginal element of everything from annual reviews to the review of the sufficiency of tenure files, reflecting and simultaneously deepening the production line mentality that is usually clothed in more elegant language. Its exercise can result in retaliation, sometimes of the most sophisticated and subtlest kind, sometimes quite crude, especially far from the eyes or cares of even governance-sympathetic central administrators. Faculty governance is sometimes thought to serve best when its ambitions are quite humble—for example when governance is understood as service to low level administrators, or when it serves to more efficiently respond to issues of administrative organization and rule implementation for the management of students, staff and faculty themselves.

High-level and policy governance is beyond the usual realm of the acceptable; as a consequence, faculty sometimes cultivate a deferential attitude that can appear to slide toward a servility of a kind that reminds more of the Commons in Tudor England than of modern notions of participation and engagement. The tension between service and servility, and the influence of faculty governance cultures that favor one or the other, complicates the development of cultures of governance. But this tension also reflects a reality in which the cultural parameters of corporate governance and state administration practices—grounded in power hierarchy, division of function, chain of command, and obedience—have come to dominate thinking about the way a university, like a governmental administrative agency or a large multi-unit corporation, ought to be governed. Within these structures, the idea of faculty governance is a rare and sometimes unappreciated thing indeed. It suggests a culture of governance that posits more horizontal relationships among stakeholders in the enterprise, and a more sensitive degree of commitment to consultation, inclusion, engagement, and accountability, that is absent increasingly from emerging foundations of institutional cultures, especially outside the university.

All of this I have come to understand better, and with increasing alarm, since I began my service on the Penn State University Faculty Senate, as I studied our behavior and that of faculties in our brother and sister institutions against those ideal types proffered for our consumption. I have begun to understand this more formally as a set of tensions inherent in the position of a university faculty senate within a governance structure that places it between the hierarchical structures of university administration, the political structures of state and federal governments, the fiduciary structures of the Board of Trustees, and contested among them all, the academic structures of knowledge production and sharing from which administrators, politicians, regulators, board members and consumers (employers and alumni) derive benefits from which the profitability of the enterprise is (un)conventionally but increasingly measured. That is, as the title of my talk suggests, I will speak today about the Faculty Senate between faculty, administration, board, state and students.

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⁶ See FRANKLIN SILVERMAN, COLLEGIALITY AND SERVICE FOR TENURE AND BEYOND (WESTPORT, CT: PRAEGER BOOKS, 2004).
I will start with a very brief review of the foundations. The conceptual structures of shared governance are fairly well known but it is always useful to nod in the direction of sources. I then consider the realities of shared governance. I will suggest the context and the difficulties of shared governance within the a-symmetric power arrangements that are the hallmark of public universities. What I hope to flesh out is an outline of the context in which shared governance might be measured by its form with little attention paid to the effectiveness of its function. I will then consider where a faculty senate can fit into this governance enterprise. I will consider whether shared governance has come to mean more a sharing of the burdens of administration than a sharing of governance. I will end with a consideration of how I see the Penn State Faculty Senate playing a more engaged role within the constraints of shared governance.


The general principles that reflect the common culture of shared governance in the context of universities are well known. The AAUP, of course, has been instrumental in developing and maintaining a good part of this culture. I refer, of course, to the 1915 Declaration of Principles on Academic Freedom and Academic Tenure, the 1940 Statement of Principles on Academic Freedom and Tenure, the 1966 Statement on Government of Colleges and Universities, and the 1994 Statement on the Relationship of Faculty Governance to Academic Freedom.

From the 1915 Statement emerged the modern understanding of the special role of faculty within a modern research university, one that resists easy conversion to the routinized hierarchical relationship of employee and superior. The 1915 Statement characterized the relationship between faculty and the university as one in which the faculty “are the appointees, but not in any proper sense the employees, of the university trustees. For, once appointed, the scholar has professional functions to perform in which...

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the appointing authorities have neither competency nor moral right to intervene. . . .\textsuperscript{11} As a consequence, the relationship between faculty, administration and trustee are necessarily not strictly hierarchical, but instead invoke a sharing of responsibility for the work of the university:

A university is a great and indispensable organ of the higher life of a civilized community, in the work of which the trustees hold an essential and highly honorable place, but in which the faculties hold an independent place, with quite equal responsibilities—and in relation to purely scientific and educational questions, the primary responsibility.\textsuperscript{12}

That responsibility extended to the production of knowledge based on independent inquiry, to the training of students, and to the development of expertise for the advancement of the general welfare of the state.\textsuperscript{13} The 1915 Statement, then, is grounded in another great principle of the academic establishment—academic freedom,\textsuperscript{14} an explanation of which was the primary objective of that statement. While the normative conception and operationalization of academic freedom was ultimately elaborated in the 1940 Statement, the fundamental conception of the nature of the relationship between faculty and university—the idea of the academic as appointee but not employee, of the autonomy of the scholar’s undertaking within the university—remains as strong today as it was in 1915, as a matter of internal practice to which a university may but need not subscribe as a matter of binding internal organization.

That idea of the faculty member as appointee and autonomous actor within the government of the university had another significant consequence. Inherent in that principle was another, that of shared governance—for if the academic was not to be understood as being in a conventional employment relationship with the university, and if the scholar was expected to contribute to the training of students and the public good, then those interests would require participation in the operation of the institution in which they conducted their work.

The idea of the fundamental importance of governance participation as central to the integrity of academic freedom was at the heart of the 1966 Statement on Government of Colleges and Universities. Its basic premise was what it called “joint effort”: the necessity for joint action among governing board, administration faculty and students to increase capacity to solve educational problems.\textsuperscript{15} It followed from this premise that governance principles are necessary to avoid the confusion or conflict that would result from institutional usurpations by one of the coordinate governance bodies.\textsuperscript{16} For my

\textsuperscript{11} 1915 Statement, page 294.
\textsuperscript{12} 1915 Statement pg. 294.
\textsuperscript{13} Ibid, pages 295-96.
\textsuperscript{14} See, e.g., MATTHEW W. FINKIN & ROBERT C. POST, FOR THE COMMON GOOD: PRINCIPLES OF AMERICAN ACADEMIC FREEDOM (Yale University Press 2009).
\textsuperscript{15} 1966 Statement ¶1.
\textsuperscript{16} 1966 Statement ¶ 2.b.
purposes here, I focus on the role of the 1966 Statement in clarifying two distinct aspects of the faculty role in governance. The first is the normative standard—the fundamental premises of the faculty role. The second is the operational standard—the fundamental premises of the organization required to permit the exercise of the faculty role in governance.

The fundamental normative standard is grounded in stakeholder engagement, understood as both an institutional commitment to transparency and an equally strong commitment to engagement in decision-making. Transparency is understood in its dual role—the provision of meaningful information at a meaningful time and in a meaningful form—and transparency as a mechanism for effective participation in governance. The 1966 Standard, for example, speaks to “Effective planning demands that the broadest possible exchange of information and opinion should be the rule for communication among the components of a college or university.” For faculty, the principal substantive governance role centers on “such fundamental areas as curriculum, subject matter and methods of instruction, research, faculty status, and those aspects of student life which relate to the educational process.”

The operational standard consists of two requirements: first, an institutionalized participation in decision making, either in an initiator or consultative role, and second, a principle of deference where the decision falls closest to the heart of the core governance role of the stakeholder. In the case of faculty, primary responsibility for decision-making, and the greatest deference by governing boards and administration, center on the core normative governance role of faculty relating to curriculum, instruction, research, faculty status and educationally related student life. In these areas, the faculty’s role in decision-making should be at its strongest and both governing board and administration should defer to the greatest extent. With respect to other aspects of university governance, where the responsibilities of governing board and administration are paramount—strategic planning, legal compliance and risk management, budgeting, selection of administrative personnel, physical resources management and the like—faculty engagement remains significant but deference to faculty views might be sometimes significantly reduced. The degree of deference, or put another way, the degree of responsibility for governance, is a function of the subject for decision and the context in which decision-making occurs—or as the 1966 Statement suggests, “differences in the weight of each voice, from one point to the next, should be determined by reference to the responsibility of each component for the particular matter at hand.”

The 1966 Statement also speaks to the organization of the faculty voice in governance—after all there is little value in vesting authority without institutionalizing its exercise in some sort of efficient and representative manner. That institutionalization calls for the
creation of a government internal to faculty so that the views of the body of the faculty could be articulated, presented and advanced effectively. In the words of the 1966 Statement: “Agencies for faculty participation in the government of the college or university should be established at each level where faculty responsibility is present. An agency should exist for the presentation of the views of the whole faculty.” 22 These agencies, then, can be constituted as faculty senates at the university level and as local faculty organizations within departments, colleges and units in a multi-campus, multidivisional research university—like Penn State. These institutions, like the faculty they represent, are meant to be constructed as autonomous entities, governed by their own terms and without interference by the coordinate governing groups—principally administration, governing board, or the organs of state government when acting as an internal stakeholder—though created in consultation with and jointly approved by all stakeholders. 23

With the 1994 Statement, the AAUP added the last layer to governance within the university. In the context of institutionalizing shared governance and deepening its normative framework, the 1994 Statement sought to expand on the meaning of deference in shared governance. It was meant to remind all stakeholders, in part at least, that deference was not an invitation to ignore a coordinate partner in governance. It also reminded that the object of the shared governance model of the 1966 Statement was not to cabin, and by cabining, reduce the role of the faculty to a very narrow slice of university life—such as the construction and offering of courses. Instead, tying together the 1915, 1940 and 1966 Statements, it made a case for the broad construction of the faculty role in governance and the importance of faculty engagement in most aspects of university governance, even as that role varied from consultation to a principal role in the fashioning of rules and policy. It also included a warning, taken in part from the 1966 AAUP Statement on Professional Ethics, a warning that has been increasingly overlooked to the detriment of shared governance in this century—“‘Professors accept their share of faculty responsibilities for the governance of their institution.’ If they do not, authority will drift away from them, since someone must exercise it, and if the members of the faculty do not, others will.” 24

The Reality of Shared Governance: Is Authority Drifting Away?

A very pretty picture of governance emerges from this review of a century of AAUP Statements. Governance at the university is not grounded in the principles of the organization of economic enterprises or even of charitable and religious institutions—grounded in hierarchy, obedience, and power based differentiation of function and control. Instead, the university is conceived as a collaborative enterprise to a greater

22 1966 Statement, ¶ 5.
23 Id.
extent, one in which its coordinate branches—the governing board, the administration, the faculty and students, work together, exercising their authority in harmony and for the greater glory of the institution for whose interests they all work.

But reality sometimes paints a less gloriously bright picture.\textsuperscript{25} And it may be time to consider more carefully the warning in the 1994 Statement. Let me suggest some clouds on the shared governance horizon that apply generally to all university institutions and that in some form might also represent the experiences of some here at Penn State. My focus is on six (6) challenges to faculty governance, though some of these also touch on the integrity of governance by the board and leadership by the administration.

1. \textit{The role of the state is changing and the courts provide little protection through the application of law.} For almost a generation, political leaders have increasingly viewed the administration of the university, and the management of its product—research and teaching—as an increasingly important focus of state policy. This interest is not unique to this era—in periods of crisis or instability, the political branches have always focused on managing the levers of social, cultural and economic controls, including the university. But the character of the current wave of state interventionism also has substantial effects on the organization of university management. These include a number of issues that remain unresolved. One is the potential conflicts of interest in the role of political officials in the internal management of the enterprise—these more directly affect the governance role of boards of trustees. For example, when an elected official or an appointed official who serves at the will of an elected official acts as a member of a board of trustees, is that person bound to act solely in the best interests of the institution or may that official breach that duty because of the overriding duty to the electorate? If the latter is the case, then it is no longer clear that the board of trustees can be understood as acting in the interests of the university it is meant to serve but instead that the university has dissolved and become an appendage of another organization. Another is the role of the representative bodies of the state and federal governments to more precisely manage the form and content of education. It was not all that long ago that state legislators oversaw the content of materials used in the classroom and insisted that certain courses be taught or taught in a certain way.\textsuperscript{26} While the power of the state is largely beyond question in these respects, principles of transparency might dictate more clear and full disclosure of the role of the state in the operation of the academic enterprise, and perhaps even a more transparent justification for its exercise.

\textsuperscript{25} The recent role of the Cornell faculty Senate and its efforts to engage in shared governance in the creation of eCornell provides a nice example. See, Risa L. Lieberwitz, \textit{Faculty in the Corporate University: Professional Identity, Law and Collective Action}, 16 CORNELL J. L. & PUB. POL’Y 263, 306-310 (2007).

\textsuperscript{26} \textit{Course on Anti-Communism Upheld for Florida Schools}, NEW YORK TIMES, June 1, 1983 (“Amid cheers, jeers and scattered choruses of the national anthem, the Florida House killed an attempt today to do away with an "Americanism versus Communism" course that had been a required part of the state's high school curriculum for more than two decades.”).
Equally important, governance remains almost entirely a matter of internal organization developed through and enforced under the rules and other contractual relations that were created in furtherance of the establishment of the organization of the university. Though there is some law, especially constitutional law, that at times protects the speech of faculty, the application of that law provides little comfort. It is grounded in an assessment of the value of the speech outside the academic community and involves a post facto balancing of interests that are of little help in determining before the fact whether actions taken in a governance capacity will be protected against retaliation. Indeed, from the court’s perspectives, the AAUP’s 1915 vision of the role of the academic is rejected as a matter of law. The judiciary has resisted calls to read into law any form of special relationship between academic and university, instead starting from the presumption that there is substantially no difference in the main between faculty and any other employee of any other enterprise. Though the Supreme Court has left open the question of the applicability of the recent Garcetti case, the courts have in the usual course treated internal governance matters and the protection of conduct related thereto as an employment issue. As a result, and giving substantial weight to managerial and administrative concerns centered on the smooth running of an organization, this approach has encouraged some in the business of education to treat the role of the university academic as little more than another cog in an education-industrial complex and subject to the same rules of chain of command and production line efficiency as people who are employed in a production line assembling goods for sale. Yet, the courts have also shown a willingness to respect the adoption of the vision of the 1915 Statement as a matter of internal university corporate governance and enforce those understandings in contract. For faculties, those mean the need to more aggressively and precisely ensure

31 Garcetti v. Ceballos, 547 U.S. 410 8(2006) (“Justice Souter suggests today’s decision may have important ramifications for academic freedom, at least as a constitutional value. See post, at 12–13. There is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence. We need not, and for that reason do not, decide whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching.” Id., at )
32 See, Michael A. Olivas, Opinion Piece: Garcetti: More Chilling Than the Unabomber, AAUP, Protect the Faculty Voice Program, available http://www.aaup.org/AAUP/programs/protectvoice/opinions/Olivasop.htm. The majority opinion suggested: “Government employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public services.” Garcetti, supra, at Section II.
that the vision of university governance espoused in theory becomes written into the law
of university organization and enforceable as such, for example, as in binding job
descriptions or terms of employment.\(^3^4\) For that purposes, whistleblower statutes are
rarely enough both because they tend to be narrowly applicable and are easily contested
on the facts.\(^3^5\) Failure to institutionalize protections for faculty exercising their
governance roles makes cultures of impunity and bullying, treated next, easier to sustain
and harder to eradicate.

2. **Cultures of impunity are sometimes tolerated.** The role of the state may be a
destabilizing force but not an unprecedented one in the operation of the academy and the
distribution of governance power within it. More troubling are deviations from the
idealized model of governance. Among the most serious are the cultivation and tolerance
of cultures of impunity, supported by administrative governance models that do little to
provide avenues for remediation. Impunity takes three major forms at the university: first
administrative overreaching, and second retaliation and bullying.

A. **Administrative overreaching** is a significant threat to shared governance. These
can include deliberate avoidance of consultation, or accidental failures to consult
on matters of shared governance, or even attempted and sometimes successful intrusions
of administrators into the heart of the administrative organs of faculty governance. Since
consultation is at the heart of shared governance, the management of that process, and the
control of the use of consultation, both without accountability for abuse by administrators
of that management and control, can significantly skew the contributions of faculty to
discussion. If administrators can determine the time, place and manner of consultation by
faculty, consultation itself becomes little more than theatre, and in this case theatre for the
amusement of the governing board. If the governing board encourages this stage-
managing, it suggests commitment only to consultation in form, not in fact. Indeed, it is
not clear why consultation should be managed and thus controlled at all in the context of
shared governance, It is true that sometimes administration officials know what is best—
but many times consultation provides additional perspectives that might challenge even
the most absolutely certain knowledge. Even the easy case, the low lying fruit, of
administrative decision making might profit from the sort of consultation that could lead
to better or better accepted decision-making that preserves the integrity of the process of
shared governance. Moreover, failures of consultation can have a significantly
demoralizing effect, eventually corroding shared governance so that it remains a formal
husk covering a rotted and shriveled body.

\(^3^4\) This is a point emphasized in *Garcetti, supra*, Section III.
\(^3^5\) For example, the Pennsylvania Whistleblower Law (43 P.S. Sec. 1421 to 28)
protects employees against retaliation for good faith (understood as reasonable cause) reporting of waste or wrongdoing, but defines
wrongdoing narrowly to include only violation of law designed to protect the public interest and not merely
technical or minimal in nature. They offer less than perfect protection. See, Scott James Preston,
Whistleblowing in INtercollegiate Athletics, University Business, March 28, 2012, available
http://www.universitybusiness.com/article/whistleblowing-intercollegiate-athletics (discussing Glenn
Yet equally damaging to the body of shared governance is what appear to be overt and covert efforts to *usurp and corrupt the internal processes of faculty governance*. Overt usurpation usually involves administrative efforts to expand control in matters where faculty authority is traditionally at its greatest. There is a noticeable tendency among university officials at the middle levels of administration—deans, chancellors, and their subordinates—to move to usurp the faculty role in governance. This can be effectuated formally—we have heard of cases in which such officials have insisted on the need for them to become leaders of the faculty governance organization, or where officials have insisted that they should have full authority over the development of courses and curricula. Covert overreaching is more insidious. It can appear through a strategy of *primus inter pares* projection of administrative voices into policy and governance debates within faculty organizations. I have understood the way in which administrative voices—and administrators cannot serve two masters, they will serve the master who can terminate their administrative position—purporting to speak as colleagues have sought to privilege the administrative perspective (their own) in faculty debates about an issue. Debate is chilled where administrators become too eager to share their views within the debates of non-administration colleagues. Where participation might dictate self-control, an over-eagerness to project voice and manage outcomes becomes clear and clearly troubling. Both formal and informal intrusion by administrative officials in the internal governance of faculty organizations corrupts the integrity of any shared governance system as surely as any assertion, for example, by the U.S. President of power to appoint members of Congress ex officio to participate in their activities.

B. *Retaliation and Bullying are closely tied to cultures of impunity*. Drawing on the 1915 Statement, the 1994 AAUP Statement reminded of the intimate connection between faculty governance and academic freedom. “Protecting academic freedom on campus requires ensuring that a particular instance of faculty speech will be subject to discipline only when that speech violates some central principle of academic morality, as, for example, where it is found to be fraudulent.” More importantly, the 1994 Statement takes what for some is a radical position—that it is for faculty in the first instance to assess whether faculty speech constitutes such a violation of a central principle of academic morality.

Yet, most of us live within academic cultures in which the subject of administrative, or much more rarely governance board or political branch retaliation, is a constant topic of conversation. Faculty in any institution will know which dean has what sort of reputation for punishing dissent. Faculties tend to know which administration official is a bully, and more importantly, which administration official appears to be more successful at bullying not merely their own faculty but also central administrative officials themselves. Quid

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36 This is of course both well known in the corporate fiduciary duty rules of economic corporations and suggests the importance of power relationships in organizational speech. See, e.g., *In re Oracle Corp. Derivative Litigation*, 824 A.2d 917 (Del.Ch. 2003)

37 1994 Statement at 143.

38 Id.
pro quo retaliation is the most pernicious, but consequential retaliation is not uncommon, the “if you fail to approve ‘X’ then you can be sure I will do nothing to prevent bad thing ‘Y’ from happening” is also not uncommon. A sustained hostility to the governance work of the faculty can also have important repercussions, from the subversion of efforts to provide faculty leadership support by way of teaching relief to the promotion of dismissive attitudes toward the work of faculty governance organizations. Retaliation chills discussion not merely between administration and faculty but also among faculty themselves. It has a strongly toxic effect upon the operation of the university, yet university officials prefer to turn a blind eye to the cultures of retaliation, relying instead on the assertion by individuals of Faculty Rights and Responsibilities proceedings when administrators were careless enough to leave sufficient evidence that in individual cases they might have crossed the line.

Cultures of retaliation, especially at universities run on a diffuse administrative governance model like Penn State, are sustained principally by a lack of substantial attention from central administration officials. One wonders whether retaliation, something easy to assert and difficult to prove, is usually undervalued especially where an administrator is able to meet some other and more administratively valuable goal. But the toleration of retaliation has a powerfully corrosive effect on governance. And it has an even more corrosive effect on the integrity of the university and the protection of the research and teaching missions of its faculty.

But faculty organizations sometimes share blame in equal measure for retaliatory practices. It is not unknown among faculties, and every faculty member is aware of instances of faculty bullying and mob behavior. These include instances of covertly enforced isolation, a disinclination to respect the views of colleagues, usually marginalized as offbeat, the social marginalization of the “cranky” or “unusual” colleague, and the cultivation of academic judgments based on notions of political advantage within a faculty. My personal favorite are those faculties where an isolated faculty member becomes invisible—forgotten, not spoken to, and even lower level administrators feel no shame in walking by them without even the courtesy of an acknowledgement or “hello”. Where these efforts are undertaken to curry favor with administration officials the corrupting effects are horribly pernicious. We all know of instances where faculty groups will seek to curry favor, sometimes with the encouragement of administrative officials, by marginalizing the dissident voice. Interestingly, these instances of bad behavior are usually understood in hierarchical terms, something for a superior to control (even when she is the problem) and not a matter for faculty governance. Important as well might be the criticism that Nancy

Rappaport gently made—because there are few consequences for irresponsible actions by faculty organizations, there is a tension in shared governance that is hard to avoid.\(^{41}\)

Not all of these problems lend themselves to institutional correction through rules. Some depend on the maintenance of cultural standards that require people to live up to their social and governance obligations. Yet, as the judiciary has mentioned in more than one case, it is within the power of the university to extend a substantial measures of protection to those of its stakeholders exercising governance power. This, most universities have not done this well, if they have done it at all. Penn State is no exception.

3. Cultures of impunity and the threat of retaliation are not the only factors undermining the effectiveness of the ideal of shared governance. Over the last several decades, \textit{structural changes in the constitution of faculty} have themselves provided significant new challenges. I will touch on two of them: first the rise to prominence of fixed term faculty within faculty ranks; and second, the construction of faculty status hierarchies in multi-campus universities.

The idealized model of shared governance is grounded on the assumption of a system in which virtually all faculty are tenured and virtually all administrative personnel are drawn from the ranks of tenured faculty. That combination is meant to assure common and shared values that make the management of shared governance feasible. The increasing use of non-faculty administrators has put substantial pressure on this model, injecting into administrative ranks people with substantial authority in governance and no evidence of shared cultural values. But the predominance of faculty with no hope or expectation of tenure, or of the full protections of academic freedom that are grounded traditionally in tenure—faculty that now make up almost 50\% of the instructional and research faculty at Penn State, for example—has significantly affected both the organization and operation of the internal governance of faculty organizations.\(^{42}\) More importantly, it has substantially affected the issues of policy that are given priority. Issues of retaliation become more prominent and assume a different character. Likewise interference with activity and the scope of work duties also become more common. The possibility of conflict in the interests among faculty grow—tenured and fixed term faculty have sometimes distinct interests and distinct priorities with respect to issues of policy, instruction and expectations of service. Yet virtually every university or college has managed to avoid a sustained and critical discussion of these issues and their ramifications for governance.

\(^{41}\)“If a faculty votes to cut the size of the entering class or eliminate a program beloved by the alumni, the faculty suffers no consequences (at least not directly), but the department chair or dean certainly does.” Nancy B. Rapoport, Academic Freedom and Academic Responsibility, 13 Green Bag 2d 189 (2010) (reviewing \textsc{Matthew W. Finkin & Robert C. Post, For the Common Good: Principles of American Academic Freedom} (Yale University Press 2009)). Of course, as I suggest above, disciplining administrative personnel may be as noteworthy as disciplining irresponsible faculty organizations.

\(^{42}\)The AAUP has developed a variety of resources in this area. See AAUP Contingent Faculty available at \url{http://www.aaup.org/AAUP/issues/contingent/}. 
Equally important are the role of faculty and the evolution of faculty status hierarchies within multi-campus universities. At multi-campus universities like Penn State, the ease with which faculties can be divided along locational lines presents an ever present danger. It is altogether too easy to divide a faculty along status lines dictated by the campus location where one teaches. Even the usual language describing a multi-campus university can be telling—where a university labels the main campus the “flagship,” where it begins to charge differential tuition or permitting different standards for tenure and the like for “market” or other reasons, all of these can begin to suggest a difference in quality and thus of status within the university. I understand that there may be situations that arise where faculties turn on themselves in this way to the advantage of one or another group, or where they are encouraged to do this by administrators, usually quietly. In the process, of course, effective governance power flows out of faculty hands and into those of unit administrators. A unified faculty requires a culture that embraces a culture of equality among faculties in the various campuses of the university. To the extent that Faculty Senates fail to encourage this culture and to the extent that others seek, by word or action, to undermine this sense of collective equality corrupts shared governance as surely as those who would distinguish between tenured and fixed term faculty in the constitution of a faculty voice in governance.

4. Ironically enough, emerging cultures of assessment and benchmarking may also serve to diminish governance, and especially the governance role of faculty. Assessment cultures use metrics to end-run discussion on policy by hiding policy determinations behind the bland façade of information collection and monitoring. Yet assessment is itself a values and policy-laden exercise. Its conceptualization and execution incorporates sometimes-important policy choices; referring back to my opening remarks—skillfully constructing questions can provide you the answers you want and avoid those you do not. What makes assessment cultures more dangerous is the unthinking willingness of administrations to assign these as purely administrative tasks, and to employ academics, staff and other administrators as the technicians who are meant to operationalize assessment along the lines conceived by administration. The blandness itself is meant to provide strong argument against interference with purely technical matters of data harvesting and neutral assessment. To avoid faculty consultation and engagement in those matters because of the technical nature of the exercise can have a substantial chilling effect on governance. The fact that assessment might be required by outside accrediting agencies or others is hardly an excuse to subvert governance by converting it into a technocratic exercise.

Likewise, cultures of benchmarking tend to hide as much as they purport to help decision-making. Its greatest effect, however, is to remove policy discussion from the

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table in favor of a mindless obsession with imitation and the comfort of protection in numbers. We are all aware of the power of benchmarking, and of the increasing use of benchmarking as a substitute for discussion. But governance by pack behavior is hardly what anyone had in mind when constituting the academy as a site for shared governance and it would be useful to avoid using benchmarking as either a shield to protect against consultation or as a sword to evade governance. All too often, benchmarking serves as an excuse for timidity and a justification for inertia, paralysis and an avoidance of policy discussion.

5. Narrowing the Scope of Faculty Governance, from engagement to sharing the burdens of low level administration and the remoteness of the Senate organization reduce the quality of faculty governance. The move to disengaged technocracy evident in the effort toward regimes of assessment and benchmarking has an overt character as well. That character is marked by the move to substantially narrowing the role of the faculty senate to a technical one centered on the administration of courses. The effect, of course, is to remove faculty more and more from the center of discussion of policy and more toward the role of helpmate to department heads and other front line administrators concerned with the smooth operation of the course delivery system and the mechanics of degree production. Where a faculty senate confines the bulk of its work to this goal, as worthy as it is, to the exclusion of others, it substantially reduces it governance role. More importantly, the character of that role changes substantially—from an autonomous voice representing those producing and conveying knowledge, to a mere appendage of the administration of the university.

This narrowing of the role of the Senate has a more perverse effect—it tends to change the sense among the Senate of the stakeholders whose interests the Senate represents. More like an institutional department head, the Senate can begin to take on administration culture and outlook. But worse, the Senate and its leadership can grow remote from both its members and the faculty unit organizations that are its lifeblood. I have more than once heard whispered, and not unreasonably, the sentiment that the Senate leadership tends to treat its members as objects to be managed, and that they have lost a vibrant connection with either the members or more importantly the units.

6. The role of students on governance and the classroom has been changing appreciably. The 1966 Statement spoke to the emerging trends of listening to students so that they might speak without institutional reprisal, increasing the space for student participation in governance, ensuring academic due process to students and to participate in the knowledge production life of the university. Most of these aspirational ideas have become a reality. Students have assumed a greater ownership role in their education; increases in tuition, among other things, have ensured this result. Greater investments through tuition and the larger stakes for students in the quality of education and the reputation of the university into which they enroll have also heightened a willingness to increase the scope of participation. That has required a greater willingness on the part of faculty to be more responsive to student needs, or to engage more aggressively in better-shaping the understanding of those needs by students and others. Sometimes faculty have
been less than gracious in sharing this core responsibility, even as they clamor for a greater role in those areas of responsibility nearer the heart of the administrative and policy roles. In this context, faculties have become somewhat protective, in everything from general education to the development of curriculum and programs. This must change.

How does a Faculty Senate Fit in Between State, Board, Administration and Students.

In the face of these challenges how should one approach the role of the faculty senate as idealized in the AAUP Statements? Is there a real and substantive role for a faculty Senate that is not obviated by local governance or the good intentions of our friends in the administration, government, student dorms and board of trustees? Should we be content to shape ourselves through assessments constructed by administrators, benchmarking that aggregates administrative and governing board priorities, and student evaluations that seek to maximize student interests in self-advancement at the smallest possible cost? Should we accept the realities of managerial abuse through retaliation and interventions in governance? Should we embrace the corporatist employee model requiring academic quietism and obedience to those who know better in the service of the uniform production of factors in the machinery of economic, social and political life?

By now you can imagine that this is hardly the path I will urge. At the same time I understand the constraints of shared governance: institutions change slowly, faculty institutional leaders change with great frequency, faculty governance leaders receive some but not sufficient institutional support, support that is sometimes undermined by unit administrators, administration and board sometimes presume that faculty interests are inherently interest-conflicted so that they cannot perform governance tasks neutrally, a representative body like the Senate cannot speak as clearly with one voice as can an individual administrator clothed with substantial authority to speak, and outside actors have an increasingly large voice in the operations and outcomes of university governance. But I am also encouraged by the positive—the good faith of many in the central administration and among some unit administrators; the energy and commitment of a new generation of governing board members committed to preserving the ideal of shared governance in a dynamic environment that is in some aspects hostile both to the university and to shared governance.

At Penn State, there are good governance “bones” and a deep culture of respect for shared governance principles within the highest levels of our administrative apparatus. Under the leadership of Rodney Erickson, first as provost and now as President, the central administration has affirmed its fidelity to general principles of shared governance both privately and publicly. The University has undertaken to include faculty in many of its administrative committees. The administration has worked hard to become more transparent and inclusive. The University President has a long tradition of reporting and standing for questions at formal meetings of the University Faculty Senate and has
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reaffirmed a commitment to more open governance. The introduction of the Faculty Advisory Committee to the President permits more intimate conversation on a regular basis between President, Provost and selected Senate leaders. The board of trustees under the leadership of Karen Peetz has reached out to the Senate and has been undertaking a broad review of its operations. I anticipate a closer working relationship with the board in the coming years. The Senate itself has slowly begun to shed some of its remoteness, encouraging broader and deeper participation among its rank and file, and promoting closer ties to unit faculty governance organizations. This deserves high praise.

Yet, as I suggested, there is still room for improvement. The institutional role of the Senate as faculty representative is sometimes ignored in administrative efforts in which faculty is selected without consultation or connection with the Senate. Administrators will sometimes intervene where retaliation is overt but they can do more to instill in their administrative personnel a commitment to shared governance and cultures that do not tolerate retaliation. This includes a clearer and more enforceable set of protections of faculty in their exercise of shared governance. Transparency can be more robust, moving from mere reporting of events and programs to providing information to enhance engagement. Let me suggest some small steps that the Penn State faculty Senate might undertake in the service of shared governance during the very brief year I will serve as Chair of the University Faculty Senate. These programs can be organized into four broad categories.

The first are programs to enhance engagement. The University Faculty Senate must shed its increasingly single-minded concentration on issues of the facilitation of administrative mandates. For that purpose the Senate must begin to more consciously participate in dialogue at all levels of university decision-making. Additional avenues of consultation and engagement need to be pursued. The mechanics used for the closure of the Science, Technology and Society program, where consultation was after the fact at the central levels and virtually minimal elsewhere serves as a reminder of the perils of adhering to the forms of engagement while avoiding its real effects. Engagement is not useful when limited to being the first to hear about decisions that have already been taken.

The second are programs to militate against retaliation. Retaliation affects all faculty in a governance role, but most especially it is the principle focus of the problems of engagement by fixed term faculty. But it also goes to the extent to which the university is willing to provide real protection, enforceable against its officers, for faculty exercising

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their shared governance duties—for example by the adoption of a code of governance rights. It has a cultural element as well—there ought to be as great a focus on cultures of retaliation as there is about the culture of drinking at public universities. The changing cultures of impunity, especially in the form of retaliation and overreaching is a critically important task. That requires some additional sensitivity on the part of the administration and less tolerance for the overreaching exuberance even by administrators that are otherwise meeting other goals and objectives dear to central administrator’s priorities. Programs implementing 360-degree review of administrative personnel would be useful.

The third are programs enhancing transparency. I have suggested that there is no effective governance without thorough and effective transparency. But transparency, both understood as data and assessment, can sometimes be employed as a weapon to sharpen the disadvantages among parties to decision making. Where there are asymmetrical power relationships—where administration controls the levers of access to information, it does little good to provide a certain enhanced level of information and data to administrative personnel and another, and less enhanced level of access to faculty engaged in governance. In that context, the excuse of privacy or sensitivity is hardly worthy—such data was not private enough to prohibit its use in making a determination, by some, if you use it you should be prepared to share it.

But transparency means more than merely sharing selected information with groups of people. Transparency means opening proceedings to all stakeholders and engaging stakeholders through consultation; it means accountability to those in whose service one acts. It also means that Senate meetings might cease being well-managed staged affairs that make good theatre, and which follows corporate models, but which also discourages participation. Greater opportunities for comment on proposed action by Senate, board and administration would serve transparency well. But so would an HR 40 style requirement that front line administrators list their annual goals and account for their attainment.

The fourth involves flexing atrophied muscles. A very conservative and conventional colleague of mine here on the Senate was fond of reminding me, as he tried to teach me the ropes of governance at Penn State, that the greatest power of the Senate lay in exposing problems in a clear and systematic way. The Senate is at its strongest in its governance role when it carefully considers an issue. For that purpose the Senate can

49 Penn State Human Resources Policy 40, available http://guru.psu.edu/policies/OHR/hr40.html, “provides the process for an evaluation of the performance of each member of the faculty at least once each year. Each tenured faculty member will be evaluated with an extended review every fifth year after the most recent promotion decision.” Id. Its central element is the self-production of an annual report.
make greater use of its forensic powers. Some examples of ways in which the forensic power can be more usefully deployed include seeking to assess administrators informally through the application of its own metrics; producing programs discussing cultures of retaliation at the University, and discussing institutional approaches to equity for fixed term faculty and protection against overreaching by administrators.

**Conclusion: It is Time to Return to Core Values in Governance.**

Almost a hundred years ago the AAUP began to describe the role of the faculty in the administration of the modern university. It adhered to the idea, more ancient still, of the academic as an institutional appointee with a substantial amount of autonomy in her work and a necessary role in the governance of the institution. It championed the integrity of educational institutions grounded in the production of knowledge and its dissemination free from the control of other actors. Faculty do not own or run the university but neither are they owned or run by it. Sadly, over the last century, radical ideologies, disguised as new notions have sought to abandon this basic relationship between the university and its faculty in favor of some flavor of paternalism. It remains to us, faculty, in concert with our like minded brothers and sisters in administration and our governing boards, among students and state officials, that we can reject these radical incursions into the governance life of the university and preserve its role as an authoritative site for the production and sharing of knowledge.