

A tropical island with a large stone building and palm trees in the middle of turquoise water under a blue sky.

No University Is an Island

SAVING ACADEMIC FREEDOM

CARY NELSON

NO UNIVERSITY
IS AN ISLAND

Saving Academic Freedom

Cary Nelson



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“[Nelson] offers informed and acute analyses of our present situation and its discontents, and this is especially true of his chapters on unionization, tenure, and the emergence in recent decades of a ‘contingent’ faculty, untenured, underpaid, undervalued, overburdened, and vulnerable to every form of pressure one can imagine. (There is also a chapter arguing that academic freedom requires the institutionalization of ‘shared governance,’ a position with which I strongly disagree: academic freedom and forms of governance are independent variables.) Nelson reports (accurately) that when he and I discussed the role of politics in the classroom at a public forum and he reported proudly on his practice of inserting the names Bush and Cheney into a poem about a past military disaster, I declared that ‘If I were Cary’s dean I’d fire him immediately.’ But upon reflection, and after having read this impassioned and worthwhile book, I am moved to reconsider.”

—**Stanley Fish**, *The New York Times*, December 1, 2009

“*No University Is an Island* is an extraordinary book. A passionate defense of academic freedom that corrects the many abuses of the principle by faculty who do not understand it, the book offers a rousing account of recent political controversies that never fails to surprise—even if you thought you’d heard the last word on Ward Churchill. Nelson even explains why shared governance—the least sexy topic ever—matters so much when administrators are closing programs, gutting required courses, and putting faculty on unpaid furloughs. You might think your campus—or your kid’s campus—is exempt from this widespread devastation. But you might think wrong. For the book vividly reminds us that no campus is an island, just as it reminds us why higher education’s fate matters to the world.”

--**Michael Bérubé**, Pennsylvania State University

“In the midst of a torrent of threats to academic freedom in higher education, *No University Is an Island* arrives to tell us why to propose solutions. As Nelson makes clear, all of our freedoms depend on our ability to educate our students to be critical citizens. Everyone concerned about the future of freedom should read this book.”

—**Anthony D. Romero**, Executive Director, American Civil Liberties

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The Three-Legged Stool

Academic Freedom, Shared Governance, and Tenure

[C]ontrary to common understanding, academic freedom is about much more than faculty speech. . . . Rather, academic freedom is central to the functioning and governance of colleges and universities. . . . It is not only about faculty research and teaching; it is also about the freedom of faculties to govern their institutions in a way that accords with academic values whether they are approving the curriculum, hiring faculty, or establishing graduation requirements for students.

—Judith Areen, “Government as Educator” (947)

The American Association of University Professors has long maintained that academic freedom is really only one leg of a three-legged stool. Academic freedom, shared governance, and tenure together support the higher education system we have had in place for over half a century. As Robert Birnbaum puts it in an unpublished 1993 paper, “‘Governance’ is the term we give to the structures and processes that academic institutions invent to achieve an effective balance between the claims of two different, but equally valid, systems for organizational control and influence. One system, based on legal authority, is the basis for the role of trustees and administration; the other system, based on professional authority, justifies the role of the faculty.” Shared governance establishes the mechanisms through which faculty professional expertise becomes functional; it moves that expertise from a concept to an operative reality.

Effective governance and job security are interdependent. You cannot really have either professional authority or academic freedom if you can

easily be fired or nonrenewed, the latter being the fate so many part-time faculty face. But you do not have functioning academic freedom unless the faculty is in charge of the curriculum and the hiring process and can thus control who does the teaching and what they can teach. Shared governance agreements also shape and guarantee peer review, from grievance procedures to the tenure process. Academic freedom is an empty concept, or at least an effectively diminished one, if the faculty does not control its enforcement through shared governance.

It is not just a question of who exercises the final decision-making authority. It is a question of who manages the process and assures appropriate input along the way. Thus, for example, administrators responsible for overseeing numerous departments lack the disciplinary expertise to distinguish between genuinely innovative dissertations that suggest a job candidate will be an inspiring teacher and an influential scholar and unimaginative dissertations that suggest exactly the opposite. But administrative oversight is necessary to make certain that those are indeed the values in play. At the same time, left to their own devices to make hiring decisions, administrators dealing with multiple disciplines may settle for uninspired graduates of prestige institutions. Similarly, an upper-level administrator who confronts a parent or a legislator offended by course content should be able to offer a basic academic freedom defense but cannot be expected to offer a response based on disciplinary knowledge. This mix and balance of responsibilities is part of what has to be negotiated for shared governance to succeed.

The relationship between the three components that sustain the role faculty play in higher education is clearly under increasing threat from numerous forces: (1) the managerial model that now dominates the corporate university; (2) the massive reliance on contingent faculty, doubled over the last thirty years, which (as discussed in chapter 3) leaves most faculty nationwide with no structural role in shared governance; (3) the loss of faculty vigilance over and understanding of the relationship between shared governance and academic freedom, exacerbated by the presence of two generations of tenured faculty focused on their careers and disciplinary commitments to the exclusion of their community responsibilities; (4) the renewed culture wars waged by the Right to deprive faculty of both academic freedom and the key elements of shared governance,

most noticeable in the effort to restrict and surveil faculty speech in the classroom but also in attacks on academic disciplines and in occasional argumentative efforts to divest shared governance of its basic meaning; (5) the rampant laissez-faire commercialism that is increasingly denying faculty senates any say in how campus commercial relationships are to be structured (Washburn); (6) real or fabricated financial crises that are leading administrators to impose furloughs, salary cuts, or program eliminations without proper consultation with the faculty.

In the introduction, I wrote in detail about the fourth item in this list, the very selective conservative assault on academic disciplines, most notably women's studies, but the Right's attacks on postmodernism and on critiques of American empire are designed to put a whole series of humanities and social science disciplines under erasure. This whole effort mounts a fundamental assault on academic departments and on their authority to hire, fire, design a curriculum, and conduct peer review of teaching and scholarship. The Right's arguments imply that the authority ceded to departments and the disciplines they represent should be withdrawn and relocated elsewhere. They eliminate confidence in the discipline-based peer-review process conducted by academic journals and publishers. The Right is thus engaged in an assault on both academic freedom and shared governance.

The public demand by politicians to dismiss Ward Churchill from his tenured position at the University of Colorado was also simultaneously an assault on academic freedom and a transgression against shared governance. It both triggered and compromised his subsequent evaluation by faculty committees. That remains the case whether or not one considers the later faculty reports to include serious violations of professional conduct. David Horowitz's efforts to legislate restrictions on classroom speech and to produce ideologically "balanced" faculties are similarly two-pronged projects: they threaten both individual faculty freedoms and the shared governance processes by which faculty are appointed and curricula approved. Protests against actions such as these may not be effective if they cite only the principle of academic freedom, while ignoring the shared governance structures that sustain it.

Just what it means for faculty to have no academic freedom, or to grasp how deficiencies in shared governance and academic freedom can dove-

tail, can be difficult to imagine for tenured faculty in relative comfort at major institutions. Consider this: at Antioch University McGregor in Yellow Springs, Ohio, where no one has tenure, faculty were asked to vote on a major construction project in 2006. The president gathered them in an auditorium, asked those who supported her proposal to stand, then wrote down the names of those still seated. Proper shared governance would require a secret ballot for such a vote. The following year she informed the faculty that talking to the press about the university was grounds for dismissal. Academic freedom would hold faculty harmless for such extramural speech. At Bacone College in Oklahoma, the president has no problem unilaterally eliminating from the curriculum all the courses taught by faculty members he wants to fire, thereby circumventing both peer review and senate approval; the faculty member has no work to do and no place to exercise his or her academic freedom. At DePaul University, the president had no problem unilaterally denying Norman Finkelstein his appeal rights for his tenure case, a violation of governance agreements that certified the end of Finkelstein's job.

Fully functioning shared governance is also a protection against outside interference in university affairs. Those individuals outside DePaul who attempted to intervene in Finkelstein's tenure case, or in the cases of Middle East scholars at Barnard and Columbia, were essentially exercising their First Amendment rights. Whether or not we endorse what they did, including scandalously misrepresenting people's scholarship, is a separate issue. Good shared governance procedures make it considerably easier for both faculty committees and senior administrators to exclude all unsolicited communications from a tenure file and make certain that tenure cases are decided on the basis of the file alone, not by rumor, character assassination, undocumented allegation, and unsolicited opinion.

A shared governance crisis often has a single triggering event, but a review of AAUP reports about shared governance suggests there is typically also a history of problems at issue. A representative series of investigative reports published in *Academe* (the AAUP's official journal of record)—about Elmira College in New York (1993), Lindenwood College in Missouri (1994), Francis Marion University in South Carolina (1997), Miami-Dade Community College in Florida (2000), and Antioch College and Antioch University (2009)—give a convincing and trou-

bling portrait of the pattern, meanwhile demonstrating that no part of the country is immune. Reading accounts of pure violations of academic freedom can provoke a sense of near incredulity, as you realize how idiosyncratic some administrative behavior can be, or how diverse our colleges and universities are. Shared governance abuses, on the other hand, offer unsettling moments of recognition, as we remember similar incidents at our own institutions. The five AAUP reports are each fairly long and quite detailed, but a few representative excerpts from two of them will illustrate what I mean.

At Elmira, the AAUP's investigating team noted, "aggrieved faculty members report having filed appeals with the Faculty Grievance Committee (FGC) which were sustained by that body only to have the FGC's positive findings and recommendations overridden by the dean and the president" (48). Faculty authority over appointments was compromised: "the administration refused to invite for an interview one of the candidates proposed by the search committee, allowed administrators who were not members of the search committee to review applicant files and rank the candidates, and ended up appointing someone whom the members of the search committee had expressly declined to recommend" (48). Meanwhile the board chair suggested faculty members could face disciplinary sanctions if they made public "statements disparaging the college as a place for students to attend or for alumni or donors to support" (50).

At Lindenwood, 1989 began with a declaration of financial exigency. A new president, however, soon brought the school financial stability. Nonetheless, he announced a "freeze on tenure" the following year. He then notified faculty that their governance documents, the *Faculty Constitution* and *Faculty Bylaws*, were voided. He unilaterally revised the *Faculty Handbook* to state that Lindenwood operated by annual contracts and did not grant tenure (61). Graduation requirements, plans for creating new majors and degree programs, and decisions to eliminate courses or add new ones were made without faculty input (64). Reappointments and promotions were approved or denied against faculty advice. Then he began granting faculty status and professorial rank to full-time administrators. "Among the full-time administrators granted such status and rank are the president's daughter and son-in-law" (66). A comparable decision

to ignore faculty authority took place at West Virginia University in 2007, when administrators awarded the state governor's daughter an unearned degree (Redden, "Failures").

The risks universities face when shared governance is undermined are often unanticipated: they become fundamentally weakened institutions. Would administrators at Elmira or Lindenwood be able to use shared governance to resist external political pressures? The norms established by the AAUP are designed to put in place systems that will help prevent or resist such abuses if the norms are maintained. The AAUP issued a statement about shared governance in 1920 and revised it in 1938, but the organization's thinking on the subject continued to evolve and deepen until it published its "Statement on Government of Colleges and Universities" in 1966 and its "On the Relationship of Faculty Governance to Academic Freedom" in 1994. Developed in conjunction with the American Council on Education and the Association of Governing Boards, the 1966 statement was later supplemented by other policy documents, among them "The Role of the Faculty in Budgetary and Salary Matters" (1972) and "Faculty Participation in the Selection, Evaluation, and Retention of Administrators" (1974).

Although governance practices inevitably vary from campus to campus and with different types of institutions, there is a clear need for generally accepted norms. Too often shared governance now amounts to an opportunity for faculty to express their views, and then, as Greg Scholtz puts it, "once people have talked things over, those in charge make the final decision." But the AAUP's 1966 statement "does not conceive of the college or university in starkly hierarchical terms—as a power pyramid." Rather, Scholtz goes on to say, "it portrays the well-run institution as one in which board and president delegate decision-making power to the faculty." Indeed the AAUP's 1994 "On the Relationship of Faculty Governance to Academic Freedom," building on the AAUP's original 1915 Declaration on academic freedom, makes it clear that faculty have fundamental autonomy in their areas of expertise.

In *Save the World on Your Own Time*, Stanley Fish inaccurately suggests that some arguments on behalf of shared governance, including that of AAUP activist Larry Gerber, are grounded in a mistaken belief that democracy is a supreme value in all institutions within a democratic

country. Since “democratic imperatives are not central to academic purposes,” Fish writes, “the rationale for shared governance pretty much collapses” (111). It is true that faculty members occasionally reference the value of democracy in conversations endorsing shared governance, but the AAUP has never done so. Indeed, neither I nor the AAUP staff and leaders I have consulted can remember any scholarly essays on the subject that do.

Shared governance cannot install full democracy in a university. It is a negotiated strategy for sharing and adjudicating power and its application and effects. Shared governance exists when boards of trustees agree to cede authority over areas—such as curriculum development and faculty hiring—where the faculty have greater expertise. It has nothing to do with democracy. Rather, it recognizes that governing boards do not have the requisite competence to make these decisions. Shared governance can also differentiate among responsibilities and assign them to specific groups. As Gerber points out in a rejoinder to Fish, the faculty is “not one undifferentiated mass”:

A college or university is composed of many overlapping communities of expertise. Shared governance represents a means of effectively tapping into that expertise by giving primary responsibility for different academic issues to the appropriate community of expertise. Shared governance does not mean establishing “democracy” on campus so that all members of the campus community—from custodians to football coaches—participate equally in decisions affecting academic matters. Nor does shared governance mean giving all Physics faculty an equal vote with English faculty in judging the qualifications of professors of literature; nor does it mean allowing the History faculty to participate as a group in determining what classes should be required of a Chemistry major. There are, however, academic issues, such as general education requirements or establishing a campus-wide grade forgiveness policy, that do cut across disciplinary boundaries, and on these issues all faculty should have an equal voice.

Many issues also arise in a college or university that are nonacademic, for which faculty have no particular expertise. Such issues as building construction, financial investments, or parking are largely matters of administration, but insofar as they might impinge on carrying out the educational

mission of the institution, administrators who hold primary decision-making responsibility should at least seek faculty input. Thus faculty might not be equipped to decide on what contractor ought to be hired to construct a new Biology building, but it would be foolish not to consult faculty about what facilities needed to be included in that building. (“Defending” 6)

The negotiated campus standards for shared governance may lay out (and differentiate between) areas for fully collaborative decision making, for full autonomy, and for consultation followed by final decisions. All this, unfortunately, has become increasingly unclear to faculty over the past generation. Many faculty members no longer have any idea what the norms for shared governance should be. As shown by a 2003 survey report titled *Challenges for Governance*, faculty disagree about how campuses are or should be governed. Few could readily offer a satisfactory definition of shared governance. Others are themselves skeptical about many shared governance procedures.

As the new millennium began, it was clear that the growing resistance to shared governance had become a point of pride for some university administrators. Corporatization had repeatedly provided the local flash-point. A chancellor or university president wanted to move quickly on a contract to provide services for a business partner. The prospect of significant income loomed. Then the damned faculty intervened. A bunch of pansies in the history department saw a “problem” with putting the university’s logo on land mines manufactured by slave labor. Worse still: why would faculty object to having an arms manufacturer as a co-owner of all online courses on international relations? Could they come up with a more dogged distributor?

At a 2001 conference at UCLA, I heard former University of Michigan president James Duderstadt forcefully declare that faculty had to be taken out of the loop of university decision making. Higher education had to be restructured so administrators could make decisions and get the job done without interference by faculty. Derek Bok sought to counter that view two years later:

The entrepreneurial university, it is said, must be able to move quickly. It cannot wait for windy faculty debates to run their course lest valuable

opportunities be lost in the fast-moving corporate world in which we live. In fact, there is remarkably little evidence to support this view. Looking over the checkered history of commercial activity on campuses, one can much more easily point to examples of costly unilateral decisions by impatient administrators, such as ill-advised Internet ventures or grandiose athletic projects, than to valuable opportunities lost through inordinate faculty delays. (B9)

Until Duderstadt talked, it had seemed that broad-brush open contempt for faculty was limited to activists such as University of California regent Ward Connerly, who responded to a reporter's 1995 question about shared governance with the faculty by blustering with a mix of humor and ideology: "We share too damn much with them now" (quoted in Scott, "Critical State" 42). Now it seemed lip service need no longer be given to the notions of dialogue, consultation, negotiation, and community. Even those with prestige university connections could freely express more than impatience with the time-consuming character of collaborative process. If we wanted to move forward, we had to get the faculty out of the way.

It is worth noting, as Bob Kreiser of the national AAUP office pointed out to me, that the national AAUP does not get substantially more complaints about violations of governance expectations than it did a decade ago, though there is an area of significant increase. What the office now gets, as the investigative reports cited earlier may suggest, is larger numbers of academic freedom cases embedded in or overlaid with governance problems. In other words, academic freedom is now regularly curtailed or denied, or its erosion enhanced, by the failure to follow good governance practices or because the practices are absent. Shared governance, many of us now estimate, will be a focal point of higher education struggles over the next decade and more. Meanwhile, economic expediency makes many administrators resent the time and energy expended on governance processes.

An administrator who thinks he or she ought to be able to pursue or endorse commercial opportunities without subjecting such relationships and contracts to established channels for oversight may well come to feel he or she also ought to be able to discipline faculty members with a free hand. Due process then becomes the next inconvenience to be set

aside or circumvented. Appointing ad hoc, rather than elected, committees to handle these matters is one common strategy. On other campuses, administrators simply ignore decisions by faculty committees. That is one of the complaints I have received from University of Washington faculty.

It is a generally reliable rule that successful administrators avoid using all the power they have, that they consult more frequently than they are required to by the charters that grant them their power. At my own campus, the University of Illinois at Urbana-Champaign, power is vested in line administrators in a fashion that imitates military chains of command. Beginning with department heads—who, unlike chairs, are not actually required to consult their colleagues about hiring, retention, curriculum, salaries, or tenure decisions—administrators typically have the authority either to overrule or not even to consult the bodies that advise them. But an administrator who routinely dismisses such advice usually does not last long.

Used judiciously, that power can be a good thing. An inexperienced or poorly informed committee can make bad decisions that damage careers unfairly. Administrators should thus focus primarily on reversing ill-considered *negative* decisions. If a faculty committee acts to compromise academic freedom or deny recognition to a deserving faculty member, it should be asked to reconsider and, if necessary, be overruled. Years ago, as a student at Antioch College, I learned to respect a dean who altered student or faculty disciplinary decisions that were too harsh. Wisdom does not reside exclusively in one group. That is one of the benefits of shared governance.

The further one gets from department life, however, the greater the risk of misjudgment when power is exercised outside systems for peer review. When arbitrary upper-level administrative power is exercised widely against the grain of shared governance and many faculty are affected, resistance and protest often follow, and the administrator may be forced to reverse course or resign. Of course, a rogue administrator who is supported by a rogue board of trustees or regents may be able to prevail despite organized faculty resistance. That is partly what happened in the notorious case of Bennington College, when it abolished *de facto* tenure in 1994.

It is also true, however, that few administrators can prevail against a faculty as a whole that acts in concert. Sufficient faculty solidarity is a nearly

irresistible force and can be used to guarantee proper forms of shared governance. A president who, say, dissolves a faculty senate or refuses to form one in the first place can be compelled to change his or her mind. In the end, a strong vote of no confidence, followed by a strike if necessary, makes it clear how much power resides in a faculty that reaches consensus. Dissolving a faculty senate is a clear example of a governance violation that will produce academic freedom consequences, since most senates review proposals for program creation, revision, and termination.

Such broad assaults on shared governance typically abolish major elements of academic freedom. As Larry Gerber put it in a 2001 *Academe* essay, faculty “need affirmative authority to shape the environment in which they carry out their responsibilities” (“Inextricably Linked” 23). Under AAUP principles, shared governance gives faculty the authority to shape the curriculum, select who will be their colleagues, arrange teaching schedules, and so forth. When such authority is ceded to administrators who lack disciplinary expertise, academic freedom becomes meaningless.

Since there are institutions where faculty have ceded these powers—or have had them taken away—it follows that not all faculty have academic freedom. The academy can be a satisfying and mutually supportive, if contentious, community; it can also become a hostile and counterproductive environment in which to work. The collapse of shared governance readily leads to the latter, often with reprisals for the exercise of free speech. These are not petty concerns, which is why Gerber argues that

the practice of shared governance deserves to be supported not as a means of serving the particular interests of faculty, but rather because shared governance ultimately serves the needs of society. Without shared governance, our colleges and universities would be less likely to foster the unimpeded pursuit and dissemination of knowledge that are necessary for the healthy development of society; they would also be less likely to provide students with the broad liberal education they need to become informed citizens who can participate fully in our democracy. (“Inextricably Linked” 22)

Of course, the aim of preparing students to be critical participants in a democracy—a somewhat edgier construction than Gerber offers—is

exactly what both the Right and the corporate university typically seek to undermine. Faculty members' academic freedom gives them the right to shape instruction so as to enhance students' ability to be critical citizens, an increasingly central value in the post-9/11 world, but one already under assault before then. Neoliberal, corporatized universities oriented toward income generation and job training had already begun opting instead for strictly instrumental vocational instructional aims. In the end, therefore, unless shared governance includes a faculty role in defining institutional mission, everything else about the educational environment is at risk. Yet as boards of trustees become increasingly aggressive and assertive, they often become less and less tolerant of faculty input.

The flow of interchange—and the institution's shared governance traditions—needs to move in both directions, from departmental decisions upward and from trustee deliberations downward, if faculty are actually to have a hand in shaping the educational environment and its goals. When any major area of academic life is severed from shared governance, it infects and endangers everything else.

Shared governance can also be slowly undermined both by weak governance structures that are not regularly revived and tested and by an accumulation of decisions by administrative fiat that sidestep multiple forms of due process. Many recent AAUP Committee A reports deal with institutions where academic freedom and shared governance have been pervasively undermined. Its 2007 reports on the aftermath of Hurricane Katrina in the universities of New Orleans, of course, recounted the rapid and wholesale abandonment of these principles. The 2009 report on Antioch recounts a series of major faculty disenfranchisements over a period of years. But a gradual accumulation of small betrayals of due process can be equally damaging, in part because it is less likely to draw faculty attention and response.

Several of the incidents detailed in the next chapter include evidence of weak or nonexistent shared governance checks and balances. When the Institutional Review Board (IRB) at the University of Illinois (UI) decided a few years ago to penalize a faculty member without even telling him that he had a case before it, ingrained awareness of due process should have made board members aware that that was improper. When they threatened him with prior restraint on publication of an essay he had

written, ingrained awareness of principles of academic freedom should have alerted them to the fact that they were in violation of long-established standards. Good governance would have provided checks and balances to build more reflection into the process.

When my provost's office decided to threaten a faculty member with reprisals unless he removed his careful research on diploma mills from a university website, they should have thought twice before doing so. They should have been willing to defend him, not chastise him, for contributing to the public good. Shared governance and due process should both have produced a different result.

When the UI president's office in September 2004 decided to announce in the local newspaper that henceforth all discussion of public policy issues was prohibited on university email, it ought to have realized that this violated constitutional rights to free speech and flew squarely in the face of the most fundamental notion of academic freedom. Shared governance should have prevented the announcement being issued before being vetted by faculty committees. The initial story appeared in a banner headline above the fold on page 1 of the *News Gazette* (Clements). The university spokesperson later retracted her statement in a rather less visible letter to the editor. Shared governance would instead probably have generated a well-publicized and widely visible repudiation.

In two of these cases, notably, faculty members were bullied and terrorized. They certainly feel that shared governance and academic freedom are endangered species in Champaign-Urbana. Most faculty members, however, took no notice of these events, despite their being publicized in either news reports or scholarly journals. Focused on their own affairs, faculty stepped nimbly around their colleagues' bodies—as on a battlefield—and got on with their own business. Shared governance should have produced a public discussion of these cases, so that the structural failures that helped produce them might have been corrected. The local and national AAUP played a role, but UI's faculty senate, long controlled by administration allies, said nothing. We recently watched a highly ranked graduate program on campus nearly be destroyed without input from the faculty affected and without oversight from the faculty senate. Shared governance is nowhere in evidence. My own preference is to work collaboratively with upper-level administrators whenever possible. Yet

“my provost right or wrong” does not seem a sufficient model of professional independence.

The pattern of faculty generally not being aware of individual cases in which academic freedom is violated exists at many large institutions. On a 2008 visit to the University of California at Irvine, I found not one faculty member in the audience aware of their own administration’s legal stance in a potentially critical case involving one of their colleagues, Juan Hong. At stake was whether faculty speech about governance issues in public institutions is protected. The Irvine administration was on the wrong side, advocating a major abrogation of academic freedom. The national AAUP had submitted an amicus brief in the case. Selected members of the faculty senate at Irvine had discussed the matter, but they had done so in a closed session without subsequently informing the faculty as a whole.

Where shared governance and academic freedom are most frequently imperiled—and sometimes largely absent—of course is at religiously affiliated institutions, including a number of religiously affiliated historically black colleges and universities (HBCUs), and at institutions relying heavily on contingent faculty. Practices at religiously affiliated schools vary widely by denomination, and they change over time. Faculty at those institutions may often not only willingly but joyfully cede some of the freedoms that secular faculty expect. But even at religious institutions the limits on speech should be arrived at consensually, through shared governance, not simply imposed.

That need is never more painfully evident than when religiously committed faculty are silenced or punished against their will. It is a difficult terrain for the AAUP. The organization has chosen to keep these schools within the fold and to work with them, when appropriate, to correct practices that cross over the line. So when Brigham Young University summarily fired (for heresy) a devout young faculty member who publicly announced that she prayed to both god the father and god the mother, the AAUP eventually censured it. I have been deeply touched every time faculty members from BYU tell me how much the AAUP’s intervention mattered to them. But I would be even more touched if they had the courage to join the AAUP.

It should be clear to everyone that shared governance is both a structure and an ongoing process. It only works if it is renewed continually, if good people involve themselves in it. As my UI colleague Ken Anderson

is fond of saying, “Don’t expect shared governance to work if you don’t do the work of shared governance.” Neglected, shared governance atrocities. Yet the contemporary use of the term is inevitably tinged with a certain institutional sorrow. Shared governance may work best when it is so ingrained in our practices and values that the concept almost never needs to be mentioned. Looking back to a past we have left behind, we foreground the concept because it is often not honored. The term identifies what many institutions have lost and must try to restore. But the lesson now is that we can still lose more.

So how do we preserve all the legs of the stool, once we realize that the stool will topple without them? The UC Irvine story suggests one problem with relying on a faculty senate as the sole agent charged with guarding shared governance. Senates too often develop a cozy relationship with administrators, one that leaves the majority of the faculty out of the loop. My own senate recently charged a small ad hoc committee with renegotiating a major structural violation of shared governance and academic freedom—a campus institute dedicated to funding faculty appointments and research to be controlled by outside donors—while keeping the original, unacceptable Memorandum of Agreement secret. The deal was cut to provide cover for the chancellor, who negotiated the original plan.

Senates too often make their peace with power, when part of what is needed is an independent voice that will speak truth to power. As Greg Scholtz, now head of the AAUP’s Department of Academic Freedom, Tenure, and Governance, points out in workshops he conducts, “the senate won’t be in front of the administration building handing out fliers, but the AAUP can be.” An AAUP chapter can play that role and more: it can communicate with the board of trustees as an independent organization; it can be an informational and activist resource for work in academic freedom and shared governance; it can, in effect, serve as the senate’s political whip. It can do these things in order to make good policy options public and press for their adoption, which is one of the reasons why all campuses need to strengthen their chapters or create one. Faculty senates and AAUP chapters are ideally allies, not opposing forces, but the AAUP chapter possesses more flexibility and freedom of action. In the absence of strong, unionized grievance procedures, an AAUP chapter can also investigate violations of academic freedom and partner with the national office to gain

relief for affected faculty. An AAUP chapter with majority or near majority membership—Fairfield University in Connecticut is a good example—can wield considerable power, but even a chapter with 10 percent faculty membership can be very effective in addressing academic freedom cases.

But university presidents have been known to close down faculty senates. And the presidents at Bacone and Antioch McGregor fired all their AAUP activists, eliminating the chapters entirely, actions that met with deplorable silence from the national AAUP office. A faculty handbook that sets out shared governance procedures and academic freedom guarantees may often be unenforceable, though the legal status of handbooks varies from state to state. In right-to-work states and on private university campuses, genuine faculty solidarity is the only meaningful alternative. Elsewhere, at least for public higher education, the answer is unequivocal: mirror all your handbook shared governance structures, tenure regulations, and academic freedom guarantees in a legally enforceable union contract. Perhaps it is not too surprising that the one realistic way to do battle with a corporation is to organize. It is not too late for many campuses to preserve the critical features of higher education as we have known it by building shared governance into binding agreements.

To do so, however, we will have to open new conversations about shared governance nationwide. That necessity has long been clear because of a generation of neglect, but its urgency increased in 2006 when the U.S. Supreme Court decided *Garcetti v. Ceballos* and asserted that a public employee's statements about official responsibilities are not shielded from disciplinary action by employers. Judith Areen, a law professor at Georgetown University, has written an up-to-date analysis of court decisions about academic freedom and shared governance:

Faculty at public institutions may not have a constitutional right to participate in academic governance, but their speech on such matters such as student academic standards has been granted constitutional protection by the Supreme Court. Lower federal courts have extended constitutional protection to an even broader range of academic governance speech including criticism of a department's unsound teaching and administrative practices, discussion of admissions policy and size of the student body, and criticism of the administration at a meeting of the faculty senate.

The protection granted to faculty governance speech has been limited, however, by the increasing application by courts of public-employee speech doctrine to faculty claims. Both the *Pickering* balancing test and the *Connick* public concern test in particular have been used to deny constitutional protection to faculty governance speech. The *Garcetti* official-duty test now threatens to terminate all constitutional protection for it, and for academic freedom generally. (987–88)

Faculty at public universities, of course, have a fundamental right and responsibility to participate in policy debates and comment on administrative proposals and decisions at every level of the university. That is part of the broad warrant of shared governance. Justice Souter authored a dissent in *Garcetti*, warning that the Court's decision could imperil academic freedom, and Justices Ginsburg and Stevens joined him. Unfortunately, district court cases have since put faculty in *Garcetti*'s line of fire.

The most widely publicized relevant case is one decided by a federal district court in California, *Hong v. Grant* (2007), in which UC Irvine faculty member Juan Hong sued administrators for denying him a salary increase, alleging that the act was in retaliation for his criticism of hiring and promotion practices. In what at first reads like a solid defense of shared governance, the court asserted that "as an active participant in departmental governance, Mr. Hong has a professional responsibility to offer feedback, advice, and criticism about his department's administration and operation from his perspective as a tenured, experienced professor." But then the court ruled that all this is part of Hong's "official duties" and thus, following *Garcetti*, not protected. The *Hong* case has been appealed and awaits formal argument before the federal court of appeals for the Ninth Circuit. As the AAUP has warned in an as-yet-untitled report drafted and scheduled for revision before late 2009 publication, we face "a significant threat that only professorial statements of minimal benefit to society will now be able to claim protection, because only those statements fall far enough beyond the speaker's expertise to avoid the 'official duties' stigma." In June 2009, the Academic Senate's Committee on Academic Freedom and Responsibility at the University of California at Davis distributed a memo warning colleagues that "faculty participating in shared governance are in a position in which they may voice strong views and concerns that could

lead to lawful but punitive reaction by the administration, including denial of merits and even dismissal.” They went on to self-censorship.

Two other Supreme Court cases, both cited in Areen’s comments, were meanwhile waiting in the wings to drop their shoes: *Pickering v. Board of Education* (1968) and *Connick v. Myers* (1983). As William Van Alstyne points out, *Pickering*, a case growing out of a high school teacher’s criticism of the board of education in a letter published in a local newspaper, reinforced the notion that a public school employee could not be construed as accepting a job on condition that he forbear from criticizing the schools: “a rule forbidding any teacher or school employee to comment publicly on any matter affecting the local schools without administrative permission would be an unconstitutional prior restraint under the first amendment” (104). But *Pickering* also established a new balancing test for public employee speech. A public employee’s free speech rights were now to be balanced against the government’s interests as an employer in “promoting the efficiency of the public services it performs.” *Connick* added another complication: public employee speech was to have constitutional protection only when the subject matter was of public concern. Faculty members like to think that their values benefit the country as a whole, but courts are just as likely to see many faculty interests as self-interests. *Hong* is a case in point. The district court ruled that *Hong*’s speech did not rise to the level of public concern and thus failed the *Connick* test.

The mounting ironies embedded in recent court decisions are now clear. The AAUP’s draft report, again, spells them out:

What has emerged from these rulings is a negative or inverse correlation between the scope of a professor’s (or a faculty’s) role in shared governance and the breadth of potential protection for expressive activity. Those institutions (like the University of California) that accord their professors the deepest stake in shaping the mission and guiding the course of the university are now most clearly empowered to sanction unwelcome faculty speech—quite simply because its professors enjoy the widest range of participatory roles. Indeed the district judge in the *Hong* case seized upon that perverse correlation in citing the scope of shared governance across the UC system as a prelude for proclaiming the administration’s “unfettered discretion [in restricting] statements an employee makes on the job and accord-

ing to his professional responsibilities.” In brief, as the cases stand now, one could argue that the less of a stake you have in your institution’s shared governance, the freer you are (as a First Amendment matter) to criticize how it is governed, and vice versa.

Areen proposes an effort to establish a body of government-as-educator jurisprudence in response to these challenges. It could recognize that the government’s role in higher education at public universities differs from its role as an employer in other agencies. Speech that might count as insubordination in the traffic department could fall within necessary shared governance responsibilities at a university. Relief from such an effort, however, will not come soon enough to counter the mounting legal threat.

The AAUP’s special committee reported on the implications of these cases in 2009 and will continue to intervene in future cases with amicus briefs, but faculties should also organize to protect their interests locally. The faculty senate at the University of Minnesota proposed that the board of regents revise university policy to protect the free and open debate about governance that is central to university life. The board adopted new language in June 2009:

Academic freedom is the freedom to discuss all relevant matters in the classroom; to explore all avenues of scholarship, research, and creative expression; and to speak or write without institutional discipline or restraint *on matters of public concern as well as on matters related to professional duties and the functioning of the University*. Academic responsibility implies the faithful performance of professional duties and obligations, the recognition of the demands of the scholarly enterprise, and the candor to make it clear that, when one is speaking on matters of public interest, one is not speaking for the institution.

Comparable efforts are under way at the University of Michigan. The aim is to establish the policy that academic freedom insulates the speaker from retribution for speech addressing institutional policies or actions uttered as a member of a unit of institutional government or simply as an intramural critic. All campuses should adopt similar language and use the occasion as an educational opportunity. In the process, an effort might

well be made to define the right of administrators to comment openly on policy proposals as well. Administrators are responsible for implementing policy once it is put in place, but they should be able to debate its strengths and weaknesses beforehand and then advise on the impact of its application. Our campuses need more, not less, open debate.

For shared governance to work, faculty and administrators need to communicate. Faculty members need to understand the pressures administrators now face, and administrators need to understand faculty culture and priorities. Yet the impulse to renegotiate or circumvent the procedures that put shared governance into practice is very strong among administrators. Open communication is thus essentially meaningless unless faculty operate from a position of strength.

As campus administrators began to respond to the worldwide economic recession in 2008 and 2009, we saw an instructive and sometimes inspiring mix of imperious administrative action and organized faculty resistance. Unilateral administrative announcements of pay furloughs or salary cuts were followed immediately by principled statements protesting the imposition of decisions without consultation with the faculty and full consideration of the alternatives they could propose. AAUP chapters and state conferences took the lead in organizing these interventions across the country. On March 16, 2009, the Louisiana State University AAUP chapter issued a detailed letter demanding full consultation and recommending consideration of pay deferrals redeemable upon retirement, rather than furloughs. It also urged that any such actions be progressive, with higher percentage reductions on higher incomes. On April 15, the North Carolina AAUP state conference issued a full statement of principle and concern, protesting the lack of transparency in emergency budgetary decisions and the adoption of extreme measures prematurely. It then laid out a set of recommended guidelines. It is clear that AAUP activists understand shared governance and remain committed to its full realization. To that end, AAUP members were not only insisting on shared governance but also educating their colleagues about how to apply the concept in a crisis.