

HOW UNIONS STRENGTHEN SHARED GOVERNANCE:

A RESPONSE TO A CHRONICLE OPINION PIECE
ON UNIONS AND SHARED GOVERNANCE

Original article on left. | Response on right.

How Unions Weaken Shared Governance

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Debates are raging on many campuses over faculty unionization.

I'm not a supporter, but as a longtime member and former chair of our campus senate, I'm especially troubled by unionization's implications for shared governance.

The typical line from union organizers is that collective bargaining can "strengthen" shared governance. But in fact, collective bargaining weakens shared governance

Commentary by Ernst Benjamin
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Where are these raging debates?—There are in fact few current campaigns and rage is even more rare—what is more common is justifiable faculty outrage at administrative or board disregard of shared-governance, of the sort directed by UIUC senate and other faculty members at former President Hogan's administration and by University of Virginia faculty at their board.

This experience at a non-unionized campus, though important, does not in itself provide an adequate empirical basis for assessing the impact of faculty unions. I am a supporter of faculty bargaining based on extensive direct experience of both senates and bargaining and extensive observation and research. (See the summary of my pertinent experience above/below.)

The pejorative phrase "typical line" prejudices the issue and the "in fact" begs for evidence which is not forthcoming. Compare my observation in a talk, attended by Professor Burbules, at UIUC this fall: "As early as 1977 researchers had concluded that collective bargaining did more to enhance than to detract from shared governance: As James Garbarino (Berkeley) wrote in an essay for the Carnegie Council at that time: 'In theory faculty unionism would be expected to take over the representation function, ousting the senates from the decision-making process. In fact, up to this time, there

appears to be a consensus that the senate system has been strengthened by the advent of faculty unionism in more instances than it has been weakened.” (Faculty Bargaining in Public Higher Education, 61) This observation was echoed in the same volume by David Feller (Berkeley) and Matthew W. Finkin (UIUC) who (citing Kemerer and Baldrige, Unions on Campus, 1975) observed that: “The limited experience of the last few years suggests strongly that, given the appropriate statutory environment, and sometimes even in the absence of that environment, collective bargaining and the traditional form of academic governance can coexist.” p.78) For more recent evidence see reference to 2013 Porter article below.

—when shared governance is working as it should. I add that qualifier because it doesn’t work on all campuses:

Most campuses, even those with strong shared governance, have ups and downs—consider at UIUC “the argument over the global campus” and “the controversies that resulted in two presidential resignations.” (“Report From the Senate Executive Committee Task Force,” September 9, 2013, p. 15.) Moreover even where shared governance works well on academic matters it rarely provides a substantial faculty role on salaries, benefits and other terms and conditions of employment—E.g., who decided which UIUC departments would get special salary adjustments this year, which departments got them, and how much did each department get?

Dysfunctional or fractious senates, and administrators who don’t care what faculty members think, create fertile conditions for the argument that shared-governance processes are broken and need buttressing via union contracts.

Yes, that’s one reason that, following the crises mentioned above, the Campus Faculty Association (CFA) asked AAUP/AFT/IFT to explore bargaining at UIUC.

We need to make a distinction between constitutional and contractual systems of faculty-administrative relations, which represent two fundamentally different—and incompatible—visions of the university.

Whatever speculative logical construct provides the grounds for this assertion, if bargaining has strengthened shared governance on many campuses, as Professor Garbarino and these scholars he cites attest, then shared governance and collective bargaining are empirically not incompatible.

In the constitutional model, governance begins with founding documents that define the governing principles of the institution, serving as the basis for all other policies and practices.

The founding document at UIUC is, of course, unilaterally established by the Trustees in the “Statutes” and provides that the University and campus senates may only recommend legislation subject to approval by the Board or in a manner approved by the Board. (Article II, Section 1, b.)

As such, they must be consensually supported by both faculty members and administrators. Those who violate them cannot maintain legitimacy.

Nor is even Board approved senate legislation binding: “The Board expressly reserves to itself the power to act on its own initiative in all matters affecting the University, notwithstanding that such actions may be in conflict or may not be in conformance with the provisions of these Statutes.”—In senate matters it must consult first but it may then over-ride the senate and its own policies. (Article XIII, Section 7).

In the contractual model, the relationship of the faculty and the administration is defined by a negotiated contract. It is binding on them only insofar as it is agreed to by the parties concerned.

Yes, but then it is mutually binding—so, to use a familiar illustration, unless the agreement permits the Board cannot unilaterally declare furlough days or impose salary givebacks.

It has no basis in enduring principle or value; it remains in effect only for the duration of the contract, after which any part of it can be subject to renegotiation.

Yes, the contract may be modified by mutual agreement. which means it can also be improved as well as weakened; the Board Statutes can also be amended for good or ill but unilaterally by the Board with or without faculty assent.

Union advocates say that collective bargaining can strengthen shared governance by making statutory principles and governance processes part of a binding contract. But once they are written into the contract, modifying them becomes an activity for collective bargaining, and no longer an autonomous process within the institutions of shared governance.

No, this assertion is incorrect. Those contracts that protect the existing senate constitution or by-laws also incorporate with them the established constitutional procedure for amendments. So the contract requires that amendments are adopted according to the established constitution but the union has no role in formulating or approving changes.

This weakens those institutions, it doesn't strengthen them.

No, the constitution is not only protected against unilateral change but protected from union as well as administration interference with established senate procedures—that's why smart administrations agree.

The contractual model also jeopardizes other key elements of shared governance.

First, it begins with a presumption of conflicting interests that need to be negotiated through concessions on both sides.

Yes, because contracts deal with terms and conditions of employment which do entail a conflict of interest and not academic policy, which more often, but not always, focuses on shared concerns and values. At UIUC, terms and conditions do not, with the specific exception of intellectual property, require senate consultation and are dealt with unilaterally by the Board on advice of the President. (General Rules, Article I, Section 5.)

Faculty members and administrators are defined as "workers" and "management," even though the faculty is made up of professionals, not workers, and administrators have very limited abilities to "manage" tenured professors.

Faculty are employees as a matter of law. Faculty unions negotiate on the premise that faculty are, however, professional employees which is why they successfully seek contractual protection of academic freedom, shared governance and independent exercise of academic judgment.

These negotiations are often deeply adversarial, including open hostility, suspicion, and accusations of bad faith.

More often they are quiet and routine exercises in problem solving. There are hundreds of faculty bargaining units; how often do you hear of faculty union/administration conflicts? Few organized campuses have as much contention as UIUC had in the two previous administrations. For an example of how unions may actually improve faculty-administration working relationships see: Campus Clout, Statewide Strength:

The union mantra that only a written contract is binding is based fundamentally on a presumption of mistrust.

By contrast, shared governance begins with a presumption of shared commitment to the constitutional principles and to the best interests of the institution. Faculty and administrators view themselves as partners in a common project; this is what the “shared” in shared governance means.

This certainly doesn't mean that the parties always agree—but even where there are disagreements, they are usually respectful and collegial.

Under shared governance, administrators assume that the feedback and advice of the faculty will help them make better decisions, and that those decisions will be better understood and supported by professors when they grow out of consultation and openness. They respect the faculty's fundamental rights and control over academic matters, and involve them in a broad range of other decisions as well—even when they may not be strictly required to do so.

Improving Shared Governance through Unionization, Bill Lyne, Western Washington University, JAF Vol 2, 2011 on-line.]

Experienced negotiators on both sides know that successful negotiations frequently depend upon and engender trust. Many faculty have found that contractual agreements provide a better foundation for mutual trust and respect than dependence on the good will of politically selected trustees and ever changing administrators. That is why the AAUP encourages faculty to write AAUP principles into their contractual agreements.

This argument conflates what should be with what is. As a political scientist (PhD, Chicago) I have trouble with this repeated failure to recognize the deep differences in priorities, not to mention interests, between boards, administrators, faculty and students.

Would it were so. Was it so during the two previous UIUC administrations? What is the basis for assuming things will get better as political assaults on public sector institutions continue?

Even under the comparatively benign present administration, what role did the faculty have regarding the salary and budget decisions of the last three years? What has happened to the money unnecessarily deducted from faculty pay due to the forced furlough days? What was the faculty role in the President's decision to endorse the IGPA pension plan? Or the Chancellor's plan and decision to hire 500 faculty, barely more than is necessary to replace normal attrition, rather than hiring, say, a thousand faculty? Or the disproportionate growth of administrators or cutbacks in graduate assistants or increase in undergraduate enrolment without commensu-

Faculty members, for their part, respect that administrators have an accountable responsibility for making certain decisions and sometimes have information and considerations that cannot be widely shared. They recognize that senior administrators are faculty members, share the values of the faculty, and understand the concerns of the faculty. The governance roles of administration and professors are viewed as complementary, having legitimate spheres of authority that need to respect each other.

Shared governance assumes that agreements willingly made through this collegial process are actually more durable and meaningful than “binding” agreements enforced by a negotiated contract. Not much is gained when administrators are forced to follow governance processes only because a contract requires them to do so. Under such an arrangement, they can be expected to do only the minimum they are required to do, share only the information they have to share, and accord faculty input only the token consideration they must. There may be some universities where even this would be an improvement, but it is a relatively thin model of governance. It is not shared governance.

Second, union proponents claim that senates deal only with academic policy matters and are ill-equipped to deal with budget, salary, and working conditions. That is a tendentious characterization: On many campuses senates do engage with administrators in substantive deliberations about these matters. Under the terms of collective bargaining those conversations could not continue: they would have to be taken over by the union.

rate net increase in full-time faculty? (See Howard Bunsis’s talk about the university finances on the CFA web-site: <http://wp.me/p23oRK-uL>) Where was the faculty voice in these decisions?

Yes, this is how shared governance should work. My previous comments provide strong evidence, however, that faculty interests and concerns have not been effectively represented at UIUC.

In fact, as recent internal surveys have shown, the UIUC administration has not consistently followed personnel procedures and departmental by-laws. Nor, as mentioned above, did they share information on the recent salary adjustments. These are the sort of administrative responsibilities that collective bargaining agreements do enforce.

As a matter of law, it is necessary to distinguish budget matters from terms and conditions of employment. With respect to budget the Statutes provide the UIUC senate no authority in budget matters. Nor would a union have such authority or be permitted to insist on it. But, unions do have the ability to insist on receiving budget information and, more important, to negotiate provisions that require that the senate not only receive accurate budget information but have a legally enforceable opportunity to make recommendations regarding matters such as program terminations or financial exigency. That is why the combination of shared governance

and collective bargaining actually strengthens both the senate and the union. See, for example, the regression analysis-based study “Causal Effects of Faculty Unions on Institutional decision-making”, by Stephen R. Porter, published 10/25/2013 in the leading labor relations journal (<http://digitalcommons.ilr.cornell.edu/ilrreview/vol66/iss5/8>) which concludes that: “The results presented here suggest that faculty unions have a positive effect on the level of faculty influence at public institutions. Not surprisingly, faculty at unionized institutions have more say in decisions regarding overall salary scales as well as decisions about individual faculty salaries. However, they also have more influence in many other areas, such as appointments of faculty and department chairs, tenure and promotion, teaching loads and the curriculum, and governance. Faculty influence does not appear to suffer from any negative effects of unionization.

Union advocates like to talk about unions and senates working together in cooperation, but here the powers of the senate are constrained by the union to dealing only with narrowly defined academic matters. In practice, the union’s authority over working conditions is often interpreted to cover a good deal of academic policy as well, shrinking the authority of senates even further. In all this, the union contract can define and limit the role of the senate but not vice versa. These are in no way equivalent or symmetrical roles.

Unions cannot and do not negotiate curricula or admissions, grading and graduation policies, program changes, long range planning, etc. They may negotiate academic personnel procedures but do not negotiate or participate in substantive academic decisions, and they do not (in research universities) get involved with departmental and college standards and guidelines for promotion and tenure, professional duties, or staffing levels. As stated above, the senate is better positioned to discuss UIUC issues such as the disproportionate growth of administrators or cut backs in graduate assistants or increase in undergraduate enrollment without commensurate net increase in full-time faculty.

You cannot claim to be “strengthening” shared governance if you take rights and responsibilities away from it.

In fact, faculty unions encourage senates to deal with issues such as those just listed; both to strengthen the faculty voice and to avoid dividing the union by having it take sides on issues such as program and curriculum on which faculty frequently disagree.

Third, the contractual model, under labor law, weakens shared governance in another way: When disputes arise, parties external to the campus often decide their merits and outcomes. Unfair-labor-practice charges and grievances are subject to adjudication by outsiders who are part of neither the faculty nor the administration.

Research university contracts, which I have negotiated, studied and regularly review in connection with both conference presentations and preparation for teaching contract development workshops, are typically careful to deny to the arbitrator any right to rule on matters of academic judgment, to substitute their academic judgment for that of the faculty and administration, or to award tenure. Faculty have been no more willing than administrators to delegate academic decision-making to external adjudicators.

Finally, shared governance is a matter of relationships based on mutual respect and trust. The fundamental problem with the contractual model is the presumption that every contract is a fight with the “bosses” to force them to recognize and address the interests of the faculty. There is a self-fulfilling dynamic here: treating people as untrustworthy adversaries makes them regard you that way in return—and so the general climate between faculty and administrators gets worse.

Both governance and bargaining are human institutions. They work better when folks cooperate and worse when they don't. The constitutional model is not working so well in Washington, DC, just now. Collective bargaining, as its practitioners know well, is actually a dispute resolution procedure and works more often than not.

The kind of coerced “shared governance” that union advocates have in mind is foreign to building and maintaining the kinds of relationships that professors and administrators should be striving to strengthen. Such relationships are slow to build—and easy to damage.

AAUP has built its confidence in collective bargaining slowly. Since 1973 the AAUP has affirmed its support of collective bargaining not to substitute coercion for governance but in view of its basic purposes: “to protect academic freedom, to establish and strengthen institutions of faculty governance, to provide fair procedures for resolving grievances, to promote the economic well-being of faculty and other academic professionals, and to advance the interests of higher education.” After forty years of experience, and for many reasons including those I have presented above, the Association and I continue to believe that that: “Collective bargaining is an effective instrument for achieving these objectives.” (1973 “Statement on Collective Bargaining” (Redbook, 259)

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