

# Fair-Weather Friends Are No Friends to Good Governance

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## ABSTRACT

*Most American institutions of higher learning practice some form of shared governance, in which individual faculty and the faculty body retain substantive decision rights and meaningful spheres of authority. But today’s higher education landscape presents novel challenges that are undermining the integrity of university governance. Building upon the work of Elinor and Vincent Ostrom and the Bloomington School of political economy, this paper interprets university governance through the lens of the polycentric order, identifies the conditions in which faculty are more likely to uphold the principles of good governance, and the conditions under which they are more likely to become “fair-weather friends” and violate those norms, rendering governance norms increasingly thin and decreasingly able to withstand internal and external pressures. I then discuss institutional reforms that may assist in the restoration of norms that foster resilience.*

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## I. INTRODUCTION

In American higher education, shared governance, sometimes called “co-governance” or “faculty governance,” is a well-recognized fact on the ground. Institutional bylaws guarantee it. Through their standards and best practices, accrediting agencies insist upon it. When the rules of shared governance are violated, faculty express indignation in the pages of higher ed trade publications.

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In a moment when American higher education is facing unprecedented challenges, when an effective governing structure is most urgently needed, shared governance seems to be in a tailspin. It's not just that we are seeing conflicts between university leaders and faculty over questions of shared governance. Such conflicts are nothing new, nor are they necessarily signs of crisis. On the contrary, such conflicts often signal that the rules of shared governance are doing important work, keeping key decisions that require certain expertise and local knowledge where they belong, in the hands of faculty.

Rather, signs of a tailspin come from the fact that in the face of new sources of challenge—from students, state legislatures, and faculty themselves—the system is often failing to demonstrate resilience in protecting appropriate spheres of faculty authority.

In Section II, I build upon the work of Elinor and Vincent Ostrom and their colleagues in the Bloomington School of political economy to interpret university governance through the lens of the “polycentric order” and discuss the important role that “thick” norms of good governance play in supporting such orders. In Section III, I present a simple model that captures the logic behind traditional and contemporary circumstances that either support or erode resilience of shared governance. In Section IV, I discuss rules-based reforms that may strengthen local cultures of good governance, thereby regaining legitimacy and resilience.

## II. SHARED GOVERNANCE AS A POLYCENTRIC ORDER

While familiar to most university faculty, if viewed from a distance, the ubiquity of shared governance arrangements within universities might seem curious.<sup>1</sup> Elsewhere, Paul Aligica and I argue that the principles and practices of shared governance are indeed curious and deserve analytical attention by scholars interested in comparative governance.<sup>2</sup>

Bloomington School analysis of polycentric orders—in governance of common pool resources<sup>3</sup> and in constitutional arrangements of political life<sup>4</sup>—provide a useful framework for understanding university governance. Unlike top-down chain-of-command models of governance, Aligica and I argue that university governance is a polycentric order, in which decision rights and the associated authority that comes with those rights, are dispersed across individuals and groups within the system.

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1. In a typical firm, for example, employees do not expect to govern the organizations for which they work. University faculty, on the other hand, not only expect to play a central role, they tend to resist the notion that they are “mere employees.”

2. Emily Chamlee-Wright & Paul Dragos Aligica, *Polycentricity and the Principles of Effective Co-Governance: What the Bloomington School Can Teach Us*, in *LIBERAL LEARNING & ART SELF-GOVERNANCE* 155–79 (Emily Chamlee-Wright ed., Routledge 2015).

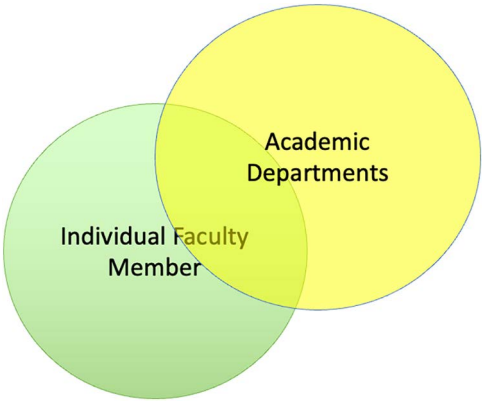
3. See, e.g., Elinor Ostrom, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990).

4. See, e.g., Vincent Ostrom, *THE MEANING OF AMERICAN FEDERALISM: CONSTITUTING A SELF-GOVERNING SOCIETY* (1999).

The basic rationale for shared governance is that scholars are trained in the standards and practices of their disciplines. Therefore, decisions related to teaching, research, and curriculum ought to reside with faculty. This practice aligns with a principal feature of well-functioning polycentric orders—that decision-making authority resides with the people who possess the relevant expertise and local knowledge and who have a seemingly strong incentive to make good decisions on behalf of the community or organization.<sup>5</sup>

An individual faculty member represents the first building block of shared governance. Individual faculty members typically enjoy a sphere of autonomy and authority in, for example, course design, pedagogical practice, and their agenda for scholarly research. In [Figure 1](#), that sphere of independence is represented by the section of the Individual Faculty Member circle that does not intersect with other spheres, in this case, the faculty member’s academic department.

FIGURE 1. Overlapping Spheres Of Autonomy And Authority: Individual Faculty And Academic Departments



Yet, even in a context of robust academic freedom and faculty decision rights, there are limits to the autonomy faculty enjoy. Academic departments may, for example, decide to adopt a common text or pedagogical practice across all sections of a given course. The area of overlap between the Faculty circle and the Department circle illustrates this dynamic.

Similarly, as depicted in [Figure 2](#), the decision rights exercised by academic departments are attenuated by the authority exercised by the university’s administration, such as additions of faculty lines and other major resource commitments.

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5. On this point, see Peter J. Boettke et al., *Re-Evaluating Community Policing in a Polycentric System*, 12 J. INT’L ECON., no. 2, 2016, at 305–25.

Boards too have spheres of autonomy. Only a board of trustees, for example, can take on institutional debt or draw down the corpus of the university's endowment. And it is here that a central feature of polycentric orders begins to take shape, namely, that power and authority are distributed across individuals and groups within the governance process.<sup>6</sup>

FIGURE 2. Overlapping Spheres of Autonomy and Authority: Faculty, Departments, Administration, Governing Board

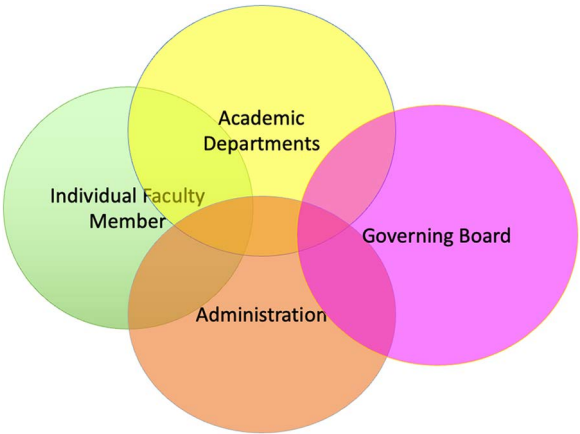
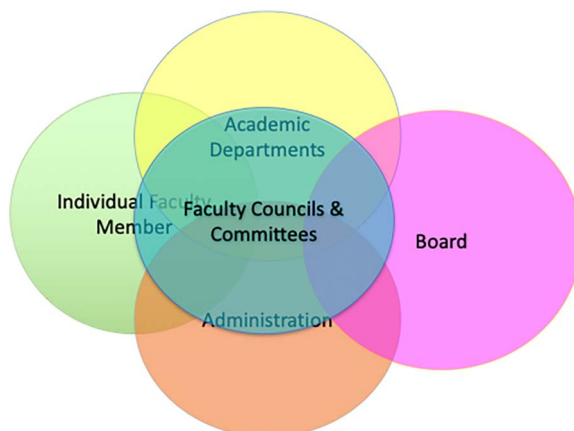


Figure 3, which includes faculty councils and committees, illustrates this point and the polycentric nature of university governance more fully. Here we see the ways in which the faculty body (as a whole) does and does not intersect with other spheres of autonomy and authority. A curriculum committee, for example, may constrain departments and individual faculty members when it approves new general education requirements that call for more sections of a particular course. Faculty committees are constrained by the administration and board if their recommendations require budget reallocation.

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6. See Vincent Ostrom, THE MEANING OF AMERICAN FEDERALISM: CONSTITUTING A SELF-GOVERNING SOCIETY 237–40 (1999).

FIGURE 3. University Governance: A polycentric Order



Admittedly, higher education is different from many of the contexts investigated by Bloomington School scholars, which include governance of natural resources like fisheries, forests, and aquifers,<sup>7</sup> and municipal services like local law enforcement.<sup>8</sup> That said, the features of good governance can nonetheless be generalized. Good governance means that:

- a. Decision rights are appropriately assigned: The people with the relevant expertise, local knowledge, and incentive to get it right have the authority they need to make informed recommendations and/or decisions.
- b. The deliberative space is contestable: Formal rules and informal norms foster an environment in which ideas openly compete and discovery and learning emerge from the bottom-up.
- c. Power is dispersed and constrained: Authority in one sphere checks the power exercised in other spheres. Formal rules and informal norms inhibit opportunistic behavior.

Good governance in the context of higher education means, for example, that curricular and research decisions are largely in the hands of faculty, whereas decisions related to debt restructuring are in the hands of top administrators and the board. Further, faculty have the elbow room they need, in the lab and in the classroom, to test new ideas and pedagogical practices. And all participants in the governance process have mechanisms by which they can propose, discuss, and

7. Elinor Ostrom, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* (1990); *See also* Elinor Ostrom et al., *RULES, GAMES, AND COMMON-POOL RESOURCES* (2006).

8. Elinor Ostrom & Gordon Whitaker, *Does Local Community Policing Make a Difference? Some Preliminary Findings*, 17 AM. J. POL. SCI. 48–76 (1973).

debate institutional changes, including proposals for improving the governance process itself. Further, good governance means that formal rules and informal norms foster respect for the decision-making authority legitimately exercised within each sphere of the governance process.

Bloomington School scholars provide myriad case studies illustrating the benefits of polycentric orders. That said, the Ostroms were the first to admit that polycentricity is no panacea. Polycentric systems, for example, are vulnerable to coalitions seeking dominance and avoiding accountability.<sup>9</sup> Further, formal rules—those that can be proposed, tested, written down, approved, and revised—can only do so much. Well-functioning polycentric orders tend to rely upon cultural norms that help to ensure that participants live up to the spirit, as well as the letter of the formal rules. And such norms are difficult to create *de novo*.

Thick governance cultures are those that elicit compliance with the formal rules as a matter of default, without deliberate weighing of pros and cons. And thick cultures are those in which participants see compliance as part of what it means to be an upstanding member of the community. In positive-loop scenarios, adherence to informal norms reinforces and thickens the culture of shared governance, which in turn leads to more consistent adherence, further thickening the shared culture of good governance. It is in such scenarios that the system of shared governance is frequently rekindled and new entrants are successfully inducted into the culture. This shared culture acts as a bulwark against those who might otherwise seek to subvert shared governance protocols and procedures.

Disregard for the norms, on the other hand, puts the system under greater stress, leads to inconsistent performance, and makes the order more vulnerable to various forms of pressure, leading to further decline in performance. If not counteracted, such dynamics can render a thick culture of good governance increasingly thin, accelerating a downward spiral.

These dynamics are not new. Administrators, boards, and to a lesser extent, students have tugged and pulled against shared governance since the American Association of University Professors issued its first statement on the matter in 1920. That said, contemporary pressures within the higher ed landscape have created novel pressures that have a particularly corrosive effect on the norms of good governance.

The logic of these novel challenges is presented and discussed in Section III.

### III. LOGIC OF RESILIENCE, DYNAMICS OF DECLINE

To anyone who has been in higher education for a considerable length of time, scenes like the following will sound familiar. I call these “old school” violations of good governance.

A board member, scandalized by the sexual nature of an assigned reading in a course on feminist literature, insists that the faculty member be instructed

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9. Vincent Ostrom, *THE MEANING OF AMERICAN FEDERALISM: CONSTITUTING A SELF-GOVERNING SOCIETY* 239–40 (1999).

to remove the text and disciplined for assigning it in the first place.

The new president—a retired businessman unfamiliar with the university’s governance process—attempts to change the core curriculum requirements without consulting with the relevant faculty committees.

Students petition the Chair of the Faculty Senate, demanding that they have voting representation on the Tenure and Promotion Committee.

In the face of such challenges, a well-functioning system of shared governance will yield responses like the following:

No action taken against the literature professor. On the contrary, the Faculty Council may recommend that the board member in question be directed to the university’s policies pertaining to academic freedom. The message: We will circle the wagons to protect the academic freedom of our colleague.

The president will be counseled that any such change must be discussed and approved by the Academic Policy Committee before it goes to the Faculty Senate, where again, it will be discussed before a faculty vote is taken. The message: It does not matter that you are the president. We will not allow you to sidestep the shared governance process.

The chair of the Faculty Senate will write a polite letter declining consideration of the students’ request, citing the professional expertise that is required to sit on the Tenure and Promotion Committee. The message: Students have no place in determining who earns tenure at this institution.

In short, in the face of ‘old school’ violations like these, we expect shared governance to play its part in protecting the academic freedom of professors, keeping decisions about the academic program primarily in the hands of faculty, and upholding the gatekeeping function that faculty play in maintaining the quality of the academic program and professoriate. And when faculty stand up for these principles—in committee deliberations, casual conversation with colleagues, vocal defenses on the floor of the Faculty Senate, and in landslide votes—challenges like these may even strengthen an institution’s culture of good governance.<sup>10</sup>

But not all governance challenges are of the old school variety. Increasingly, for example, student activists will present an impossible-to-meet set of demands and then deploy methods of intimidation (e.g., social media mobbing) of faculty and administrators who do not take a public stand in favor of their demands. Complicating these new challenges, student activists frequently enjoy support from faculty and staff allies. In support of student activists or on their own accord,

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10. *Id.* at 255 (“[T]he adjudication of conflicting interests, can be mobilized to use conflict in constructive ways; they can elucidate information, clarify alternatives, and stimulate innovations in order to find constructive resolutions and achieve a complementarity of interests . . .”).



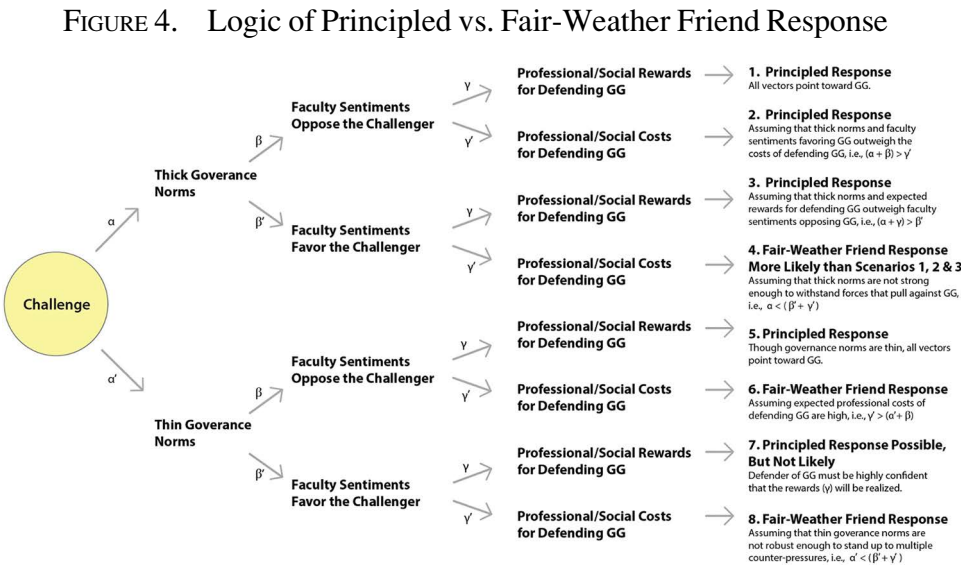
faculty themselves may seek to use the governance process in a manner that limits the academic freedom of colleagues who pursue research, invite speakers, or receive funding from sources that do not conform to the dominant culture.

Adding to the list of novel pressures from within, conservative state legislatures—quick to call out illiberal tactics employed by the progressive left—are themselves a source of illiberal reaction, increasingly putting pressure on public institutions to constrain the academic freedom of faculty and departments in discussing ideas they deem to be the source of student and faculty radicalism.

In the face of such pressures, a robust system of shared governance would have faculty defending the principles that underlie it. But as the campus wars rage on, rarely do we hear that university governance is playing a positive role in pushing back against illiberal forces, on the progressive left or the far right. The question is, why? Why, when the principles of good governance are needed most urgently, are governance systems failing to demonstrate resilience?

The crux of the answer is that contemporary challenges on campus are creating circumstances that turn principled defenders of good governance into fair-weather friends. As their numbers increase, fair-weather friend responses, in turn, create a Fair-Weather Friend Effect in which the norms of good governance erode, leading to an increasingly thin governance culture that is less capable of demonstrating credibility and resilience in the face of external pressures, like those imposed by activist state legislatures.

Figure 4 presents the logic behind both traditional and contemporary challenges facing governance systems. The logic sequence begins with a challenge of some kind, one that violates the rules or norms of good governance (GG). That





challenge is introduced into a local culture in which the norms of good governance are either strong and thick ( $\alpha$ ) or weak and thin ( $\alpha'$ ). Formally, the conditions for thickness and thinness are  $\alpha > \alpha' > 0$ , in which a thin governance culture is still a positive force, but not as strong as a thick governance culture.

The branches of the logic tree then split with respect to whether faculty sentiments tend to oppose the challenger ( $\beta$ ) or favor the challenger ( $\beta'$ ). In challenges involving overreaching administrators or trustees, the default faculty stance will be  $\beta$ . In cases where faculty sentiments align with the challenger, such as with students, non-academic staff, and faculty advancing an agenda that conforms to the dominant campus culture, the default posture will be  $\beta'$ .

The branches then split again with respect to whether faculty expect to receive professional or social rewards ( $\gamma$ ) for defending the principles of good governance or incur professional or social costs ( $\gamma'$ ) for defending those principles. Rewards might take the form of praise and respect from colleagues, i.e., an earned reputation for “speaking truth to power.” Costs might include fear of retaliation from an administrator scorned or fear of public shaming at the hands of students or colleagues whose sentiments favor the challenger.

The various branches of the logic model suggest eight possible scenarios, yielding (with varying degrees of likelihood) a principled response from faculty or a fair-weather friend response, i.e., one that departs from principle when it becomes inconvenient or costly to do so. The model presented here is descriptive. To be predictive, we would need to know the relative magnitudes of the various forces pulling in favor or against good governance. That said, the logic model helps to identify distinct and realistic circumstances in our contemporary environment in which adherence to shared governance principles will be more or less likely.

Scenario 1 is the most clear-cut of the old school variety. A heavy-handed administrator or trustee who violates governance norms will attract little sympathy among the faculty. Lauded is the colleague who stands up on behalf of the principles of good governance. Thick norms, faculty sentiments, and social rewards all pull toward good governance. As such, incentives align in a way that faculty are likely to offer a principled response to the challenge.

Scenario 2 unfolds in much the same way, but with some concern that in speaking out in favor of good governance, a faculty member might face professional repercussions ( $\gamma'$ ) from, say, the administrator or trustee issuing the challenge. That said, the thick governance culture ( $\alpha$ ) and faculty sentiment opposing the challenger ( $\beta$ ) work in concert to override these fears to generate a principled response favoring good governance, so long as  $(\alpha + \beta) > \gamma'$ , a reasonable condition in that a thick governance culture ( $\alpha$ ) will tend to keep expectations of professional costs ( $\gamma'$ ) relatively low.

Scenario 3 introduces a sympathetic challenger, such as student activists whose cause aligns with dominant faculty sentiment. But the challenge is introduced into a context of a thick governance culture ( $\alpha$ ) in which faculty expect to receive rewards ( $\gamma$ ) for defending the principles of good governance. This scenario

describes, for example, an environment in which faculty hold fast to the view that they, not students, are the appropriate gatekeepers of decisions related to the academic program. These conditions favor a principled response, so long as the thick governance culture and rewards for defending good governance outweigh the pull of faculty sentiments, i.e., so long as  $(\alpha + \gamma) > \beta'$ .

Scenario 4, on the other hand, is one in which two forces—faculty sentiment ( $\beta'$ ) and expectations of professional or social costs ( $\gamma'$ )—pull against the positive force exerted by a thick governance culture ( $\alpha$ ). Such a scenario describes contemporary challenges, when for instance, students or non-academic staff demand changes to the curriculum based on socially progressive commitments, faculty sentiments align with those commitments, and faculty fear that if they defend traditional avenues for weighing competing proposals for curricular change, they will be accused of siding with bigoted or misogynistic points of view. If faculty sentiments and expectations of social and professional costs are stronger than the force exerted by a thick governance culture—i.e., if  $\alpha < (\beta' + \gamma')$ —faculty will become fair-weather friends of good governance. Scenarios of this kind are especially interesting in that, if they are repeated, the Fair-Weather Friend Effect becomes its own force, eroding a thick governance culture ( $\alpha$ ) toward a thin governance culture ( $\alpha'$ ).

This is not to suggest that a principled response is impossible in a thin governance culture. On the contrary, Scenario 5, in which faculty sentiments do not align with the challenger, faculty can still be relied upon to offer a principled response, as all vectors point in the same direction, albeit in the context of a thin governance culture.

Scenario 6, on the other hand, is one in which a fair-weather friend response becomes more likely, particularly if the expectation of professional costs is strong. Imagine, for example, a challenger who possesses administrative authority and a reputation of using that authority in a heavy-handed way. Though faculty sentiments will not favor such a challenger, the thinness of norms may not be enough to counteract the expected professional costs a good governance champion might incur. In other words, if  $\gamma' > (\alpha' + \beta)$ , faculty will become fair-weather friends.

Scenario 6 also represents a situation in which academic administrators are more likely to buckle under pressure exerted from above. A dean or provost who might otherwise defend governance norms against, say, an overreaching president will be more likely to join the ranks of fair-weather friends, as they can't rely on a thick governance culture as a source of faculty support. Similarly, presidents facing pressure from state legislatures to, say, abridge norms of academic freedom are more likely to cave in circumstances where the norms of good governance are thin and not consistently applied.

Because they are both contexts of thin governance norms and alignment between challenger and faculty sentiments, Scenarios 7 and 8 represent those in which prospective challengers may be faculty themselves. For example, an individual or faculty group may attempt to use the governance process to abridge the

academic freedom of a particular colleague who, say, advances a controversial point of view or has invited a controversial speaker to campus.

Under such circumstances, Scenario 7 is one in which the defender of good governance expects to be rewarded for speaking out. We might imagine, for example, a respected member of the faculty who receives multiple confidential appeals to speak up on behalf of academic freedom. Such a person might conclude that most of her colleagues really do want to defend academic freedom and abhor the idea that the governance process would be used to undermine it, but are simply afraid to take a public stand. Such a person might imagine that in speaking out, she will pierce the bubble of falsified preferences and be rewarded as the person who says what everyone else is thinking and turns the tide back toward a renewed commitment to good governance.

The problem is that these conditions are highly restrictive, rendering a principled response unlikely. Relatively few faculty will see such a scenario as *their* opportunity. Many will doubt, for example, that theirs will be the respected voice that turns the tide, and as such, they will judge the rewards ( $\gamma$ ) to be relatively low. And if prior heroic efforts along these lines had failed, imposing costs rather than rewards upon the good governance champion, the logic of Scenario 8 will take hold. Would-be champions will assume that a vocal defense of good governance will bring only social and professional costs ( $\gamma'$ ). Under such circumstances the thin governance norms won't be robust enough to counteract multiple countervailing effects, i.e.,  $\alpha' < (\beta' + \gamma')$ , leading to the fair-weather friend response.

The dynamics of this logic suggest that 1) principled defenses of good governance are more likely in thick cultures of good governance, 2) good governance is difficult to maintain when multiple pressures pull against it, and 3) fair-weather friend responses from faculty erode thick cultures of good governance, leaving them less resilient in the face of increasingly egregious violations.

As discussed in Section IV, once the norms of good governance have eroded, efforts to rebuild the legitimacy and resilience of shared governance will benefit from rules-based reform.

#### IV. RULES-BASED REMEDIES TO NORMATIVE CHALLENGES

The ethos of shared governance emerged in a context of adversarial tensions between administrative leadership and faculty. In that environment, tacit presuppositions emerged in which faculty believed they had something akin to a duty to defend academic values and the principles of shared governance themselves. Under these conditions, individual and group incentives aligned, and it was generally safe to assume that faculty councils, committees on tenure and promotion, and other bodies viewed as the “minders” of academic integrity and faculty culture could be counted on to resist egregious violations of shared governance principles. As such, informal norms were enough to sustain a culture of good governance.

In the contemporary context, however, individual incentives pull in a direction that test those tacit presuppositions and make it less credible to take for granted a commitment to good governance. The contemporary environment leaves the faculty as a whole worse off, as they can no longer rely upon the generalized benefits good governance affords. Fostering greater resilience will require a shift in conditions that promote more consistent adherence to good governance principles. How to orchestrate such a shift is the central question.

Insisting that faculty adopt sentiments different from those that they have is a nonstarter. Abstract moral appeals favoring good governance are not likely to have the weight necessary to counteract the pull of faculty sentiments favoring challengers with whom they are strongly sympathetic. In other words, targeting  $\beta'$  doesn't hold much promise. Nor can we simply insist that faculty ignore significant professional and social costs ( $\gamma'$ ) once the fair-weather friend effect has significantly degraded governance norms.

What's needed is a hardened governance infrastructure that 1) imposes appropriate constraints on the power exercised at all levels of authority and, 2) pre-commits key players to adhere to good governance principles before the particular circumstances of a given challenge are known. What's needed, in other words, is a rules-based constitutional order that creates the institutional context in which a healthy culture of good governance has an opportunity to emerge.

A "rules-based constitutional order"—language that conjures lofty notions of American democratic institutions—may sound over-the-top. But I use this language intentionally to draw attention to the constitutional nature of the problem and the category of reforms best able to address it.

Governance, whether of a country or a university, is a collective activity, and all participants have an interest in it functioning well. That said, and as the logic model illustrates, individuals often have a private incentive to defect. To paraphrase James Madison in *Federalist* 51, if angels were to govern men, neither external nor internal controls on governance would be necessary. Madison understood that the principal challenge is ensuring that governing authorities do not exercise their power in a manner that undermines the rights of the governed. Democratic impulses alone are not adequate—in fact, if left unchecked by constitutional constraints and separated powers, such impulses can be a significant source of abuse.

The polycentric nature of university governance distributes power. And the 1967 Supreme Court ruling in *Keyishian v. Board of Regents* guarantees the most basic constitutional constraint—academic freedom—for faculty holding appointments at public institutions. But in the current climate, these checks on power are in need of fortification.

Three relatively simple reforms, which draw from Bloomington School insights on the relationship between formal rules and informal norms, hold particular promise: 1) Include an explicit guarantee of academic freedom in every faculty contract.<sup>11</sup> 2) Establish a duty to protect academic freedom and a "support

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11. A guarantee of academic freedom is not equivalent to permanent tenure upon hiring. Contingent and pre-tenure members of the faculty can still be terminated for failure to meet performance expectations.

and defend” commitment to shared governance (as defined in bylaws and other relevant documents), as the primary charge of key faculty governance bodies.<sup>12</sup>

3) Establish both responsibilities—a duty to protect academic freedom and a duty to support and defend the principles of good governance—as primary responsibilities in the contracts of chief academic officers (CAOs), with the appropriate authority to block efforts to the contrary.

I begin with an explicit commitment to academic freedom in faculty contracts because individual faculty are the basic building block of university governance and their academic freedom is the central principle that defines university life.

The case in favor of this reform is most straightforward in private institutions, which employ approximately a third of college and university professors and, because they are not government entities, are not bound by the First Amendment, which limits only government action. Making academic freedom an explicit contractual obligation ties the hands of private university boards, administrators, and faculty bodies that may otherwise be tempted to override it for any variety of reasons. Further, it limits the damage that might be done in weak governance cultures at the hands of those who seek to use the governance process to limit the academic freedom of their colleagues.

That said, a case can be made for public institutions to adopt this practice as well. Explicit guarantees signal the administration’s universal commitment to the principle, not just for faculty who have earned tenure. Further, as an instrument of governance, individual contracts sit closer to the parties involved in a conflict, allowing for mutually agreeable resolutions and learning to emerge from the bottom-up. Moreover, explicit guarantees to individual faculty pre-commit public university administrations and boards to protect academic freedom in advance of any actions by state legislatures seeking to abridge those protections.

Similarly, establishing “support and defend” commitments to academic freedom and good governance as the primary charge of key faculty councils and committees hardens the governance infrastructure and helps to reverse the Fair-Weather Friend Effect that degrades the norms of good governance.

Here again, I intentionally invoke the lofty language of democratic institutions, in this case, the constitutional oath taken by Supreme Court justices. The oath is effective, in part because it is contractual—an explicit promise is made—to “support and defend the Constitution of the United States against all enemies, foreign and domestic.” As members of the Court, justices will attend to myriad cases, wide-ranging in their detail, but their *first* job is to protect the Constitution, no matter whether the threat is an internal or external one.

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12. In his contribution to this special edition, John Hasnas suggests a similar remedy in establishing a separate authority with the explicit incentive to ensure the institution abides by the principles of academic freedom. See John Hasnas, *The Terrible Irony of Teaching Business Ethics in the Modern University*, 22 GEO. J.L. & PUB. POL’Y – (2024). I recommend assigning such responsibilities to existing roles, such as the CAO and prominent faculty councils or committees, as these authorities already possesses the gravitas needed to succeed in carrying out their charge.

This leads to the other reason why oaths and other forms of explicit commitment matter. They have ceremonial and therefore transformational power. Though members of the Supreme Court are flesh and blood human beings, with all the imperfections and private interests that come with the territory, when they step into their role, they explicitly commit to rising above these interests. Their duty is more than contractual. It's sacred.

Establishing a "support and defend" commitment as the principal charge of key faculty councils and committees makes clear that all other responsibilities and concerns are subordinate to that charge. Individual faculty members may have partisan views favoring or disfavoring certain outcomes, but in exercising their formal responsibilities as members of a governing committee, they must set those interests aside. Further, having such a commitment as its primary charge means that such bodies have the responsibility to engage in something akin to judicial review, with the authority to overrule decisions made by academic departments and other faculty bodies that violate the articulated rules of university governance.

One further benefit of this framework is that a "pre-forgiveness" norm may emerge, in which colleagues do not impose social costs on council members who make decisions that maintain the integrity of the governance system but go against the grain of the local faculty culture. In other words, with the right rules of the game, a culture may emerge that supports colleagues who serve as the "keepers" of good governance. It may be objected that such a weighty responsibility, and the possibility that a faculty member may incur social costs from having to make an unpopular decision, may deter the faint of heart. Yet that selection effect may prove beneficial in that such positions will attract those most firmly committed to good governance and deter fair-weather friends and those merely seeking power positions because they like exercising authority over others.

The third reform recommended here is to build into the contracts of CAOs a duty to protect and defend academic freedom and the university's governance rules and procedures. To be effective, such responsibilities must be accompanied by the requisite authority to block or overturn efforts by departments, faculty councils, and committees that intentionally or unintentionally limit the academic freedom of individual faculty members or violate the university governance rules and procedures.<sup>13</sup>

No doubt, this last recommendation will strike faculty as the most controversial. Why, they will say, would we ever champion an expanded scope of authority for an academic dean or provost? One answer is that such authority is highly restricted, triggered only when academic departments and faculty committees have gone awry and a "buck stops here" level of authority is required. Further, making these expectations an explicit term of contract ties the hands of CAOs who might seek to override these principles and stiffens the spine of those who are inclined

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13. In any given institution, changes to governance rules may be necessary to accommodate these expectations.



favorably toward academic freedom and good governance, but face significant pressure from above to do otherwise. (As discussed in Scenario 6, despite their positions in administrative leadership, CAOs are comparatively vulnerable to such top-down pressures.) More generally, such a reform would strengthen what is one of the primary benefits of the polycentric order – distributed power in which each sphere acts as a check on each of the others.

But perhaps the most persuasive reason why faculty should welcome this reform is that it creates a productive sorting mechanism. In their next search for a provost or dean, faculty should want to attract only those candidates who are not deterred by such conditions. In fact, CAOs committed to academic freedom and good governance will welcome such arrangements.

## V. CONCLUSION

Understanding university governance as a polycentric order reveals the overlapping and distributed nature of authority, across individual faculty, faculty councils and committees, and administrative and board leadership. Further, it reveals the important role that thick cultural norms play in maintaining the principles of good governance. The logic model presented above identifies contemporary pressures that pull against those norms, generating more fair-weather friend responses in the face of governance challenges, which in turn generate a downward spiral of increasingly thin governance norms.

The reforms presented above represent an effort to fortify the formal rules that underlie good governance, with a particular emphasis on hardening pre-commitments to the basic “constitutional principle” of academic freedom, creating more effective checks on those who would bypass or abuse the principles of good governance.

Such reforms are no panacea. Rather, they are a necessary step in creating the enabling conditions in which thicker commitments to good governance might emerge. Thicker commitments may, in turn, foster principled responses to fresh challenges with greater frequency and consistency. Building that thicker set of norms will require deliberate effort that goes beyond a minimal commitment to follow the rules. Those efforts may range from informal coffee conversations among colleagues to symposia on good governance practices. But with better rules in place, those efforts are more likely to take root and flower.