

Review of George S. McClellan and Neal H. Hutchens's

SHARED GOVERNANCE, LAW AND POLICY IN HIGHER EDUCATION: A GUIDE FOR STUDENT AFFAIRS PROFESSIONALS

MICHAEL E. BAUGHMAN*

“Shared governance is one of the basic tenets of higher education, and yet there is considerable evidence that it is not generally understood by its primary participants—faculty members, presidents, and members of boards of trustees.”¹ The same can fairly be said about lawyers who practice in the area of higher education law. In *Shared Governance, Law and Policy in Higher Education*, authors George S. McClellan and Neal H. Hutchens seek to teach student affairs professionals about this challenging area, as part of the “American Series in Student Affairs Practice and Professional Identity.” But the book is also a useful exploration of the topic for college and university lawyers who must advise clients in navigating these challenging waters.

Shared governance is generally not something that we are taught in law school. If anything, the concept of running an organization by spreading power and decision-making, in a democratic and quasi-political process, runs counter to the norms we learn in corporation law and certainly differs greatly from how lawyers are used to dealing with clients in for-profit institutions. The topic is particularly challenging because, as the authors note, the concept of shared governance is “difficult to define”;² different institutions have different ways of employing shared governance; and there is considerable debate in the academy and in practice as to what shared governance should and should not be.

The authors of *Shared Governance, Law and Policy in Higher Education* provide a helpful primer into these topics, which will orient not only student affairs professionals, but also lawyers who are new or not so new to higher education.

* Partner Troutman Pepper Hamilton Sanders and leader of Troutman Pepper’s Higher Education Practice. He regularly represents colleges and universities, advising them on issues concerning their campuses and defending them in litigation matters. He received his BA from Cornell University (1993) and his JD from the University of Pennsylvania (1996).

1 S.E. Bahls, SHARED GOVERNANCE IN TIME OF CHANGE: A PRACTICAL GUIDE FOR UNIVERSITIES AND COLLEGES (2014) (quoted in GEORGE S. MCCLELLAN & NEAL H. HUTCHENS, SHARED GOVERNANCE, LAW AND POLICY IN HIGHER EDUCATION 3 (2021)).

2 MCCLELLAN & HUTCHENS, *supra* note 1, at 5 (quoting V.M. Lechuga, *Exploring Current Issues in Shared Governance*, in W.G. TIERNEY & V.M. LECHUGA, RESTRUCTURING SHARED GOVERNANCE IN HIGHER EDUCATION 95–98 (2004)).

The first several chapters of the book lay out the concepts of shared governance, how it works; its benefits and drawbacks; and, given the focus on student affairs professionals, the role of students in shared governance. The later chapters of the book take what feels like a bit of a detour into basic legal concepts and government policy making, concluding with a chapter on the author's observations about shared governance and how institutions, and student affairs professionals in particular, can implement shared governance in their work. Overall, the book is a worthwhile read to enhance understanding of this complicated topic.

Chapter 1 begins with an effort to create a working definition of shared governance, at least for purposes of the book. The authors note that shared governance can be defined by considering three basic attributes: "structure (who is involved in the sharing and in what mechanisms), what is its purpose (what is it that is to be governed), the process through which it is to be pursued (how will it transpire), or some combination of the structure, purpose and process of the thing."³ The authors then explore each of these elements, noting that in general shared governance addresses the division of power and decision-making among the board, the president, and the faculty,⁴ and that one of the purposes of shared governance is adding expertise to decision-making from different constituencies and encouraging engagement among the community.⁵ The authors also provide a fascinating history of how shared governance came to be, tracing the origins to before the establishment of colonies in America and at the first American university, Harvard.⁶ They explain the rationales and theories behind shared governance, and some of the developments in the modern world that have pushed back on the notion of shared governance, including the increase in different forms of higher education and the structure of universities (for-profits, increased community college attendance, increases in nontenure track faculty), and changing attitudes about how organizations should be run, with an emphasis on efficiency and management.⁷ If the reader is to read but one chapter in the book, this is the one. It provides an outstanding, balanced discussion of what shared governance is, why we have it, and the reader can draw conclusions as to the values and drawbacks of shared governance.

Chapter 2 works through what shared governance looks like in practice. The chapter explains the roles and responsibilities of governing boards, the administration, and the faculty, including the sometimes unique roles that state governing boards can play.⁸ The most interesting part of the chapter is the discussion of groups of less traditionally considered players in shared governance models, including student senates, staff senates, unions, advisory councils, and alumni.⁹ The discussion helps

3 *Id.* at 6.

4 *Id.* at 7.

5 *Id.* at 8.

6 *Id.* at 11–12.

7 *Id.* at 18–19.

8 *Id.* at 29–31.

9 *Id.* at 38–42.

to frame the utility of engaging large segments of the community in decision-making, while clearly defining their ultimate authority. The broad range of constituencies also helps explain the unique nature of higher education, which makes shared governance an important consideration in effective leadership.

Chapter 3 discusses ways that colleges and universities can enhance and improve shared governance, particularly from the perspective of student affairs professionals. The authors emphasize that the process of shared governance is a collaborative one that takes time, and therefore requires patience—a concept that, unfortunately, is often challenged by the real-time pressures colleges and universities face in decision-making, meaning not every decision can be made over a course of time.¹⁰ The authors suggest understanding deadlines and creating a working plan to achieve collaboration within the deadlines.¹¹ The chapter also discusses the importance of trust in the procedural systems that have been established to implement shared governance, which should reflect the community's and society's values.¹² Unfortunately, trust is often lacking, in part because of gaps in understanding by one group (such as the board vs. faculty), which leads to distrusting the "other."¹³ The authors offer ideas for ensuring trust, including respecting the role of each constituent group and not intruding on issues that are properly in the lane of someone else.¹⁴ Shared governance necessarily involves politics, and the book provides advice on how to approach shared governance problems from a political perspective.¹⁵ Finally, the chapter reminds the reader that shared governance has its limits, and that to function properly, each constituency must understand not only its own role in the process, but the role of others.¹⁶

As the book is aimed at student affairs professionals, chapter 4 is all about the role of students in shared governance. "Students impact higher education decision-making through three mechanisms: self-governing structures; reaction to policies and practices; and stands on public issues taken by student groups"¹⁷ The authors discuss the history of student involvement in university governance and note that students have been effective at influencing policy through taking stands on public issues, while they have been less successful in making impacts through formal governing structures such as student senates.¹⁸ A strong case is made for the importance of student participation in shared governance, because it helps students learn about government and teaches them to be better leaders.¹⁹ These benefits are

10 *Id.* at 55–56.

11 *Id.* at 56.

12 *Id.* at 56–57.

13 *Id.* at 59.

14 *Id.* at 59–60.

15 *Id.* at 60–66.

16 *Id.* at 66–69.

17 *Id.* at 77 (citing W.H. CROWLY, PRESIDENTS, PROFESSORS, AND TRUSTEES (1980)).

18 *Id.* at 77–78.

19 *Id.* at 82–83.

particularly profound for historically marginalized students.²⁰ That said, students will only trust the process if the university is sincere about student participation. If schools are merely engaged in window dressing, they should not bother.²¹ The authors offer practical ideas for ensuring active student involvement.²²

The reader may find the next three chapters a bit of a detour, and the book could have effectively stopped at chapter 4, or more clearly tied the concepts discussed in these next few chapters to the concept of shared governance. Chapter 5 is titled “Intersection of Law and Shared Governance” but is primarily a primer on basic legal concepts, including the basic sources of law (the Constitution, statutes, and common law) and the difference between public and private schools.²³ While the chapter provides good, basic information that student affairs professionals should know, it could be more clearly tied to the issue of shared governance. Chapter 6 discusses the role of the individual in advocating for issues on campus,²⁴ concepts of freedom of speech,²⁵ and the limitations that are put on employees when talking about issues involving their employment, as opposed to broader issues of public concern.²⁶ The information may provide useful guidance to individuals on how to exercise their role in shared governance which the authors discuss.²⁷ Finally, chapter 7 talks about policy formation, including a discussion about how individuals and groups can help influence the content of laws and regulations. The authors talk about general strategies with respect to formulation of policy and how that policy can be implemented by “street level bureaucrats.”²⁸

In the book’s final chapter, themes from earlier chapters are summarized and the authors opine that there is no one set of policies and procedures that can adequately encompass all aspects of shared governance. The authors’ views are well encapsulated in the following passage:

Institutions would be better off recognizing that shared governance is an ideal, or a set of ideals, which mirror back to us and serve as a symbol of our highest aspirations for the ways in which educated persons can and should go about building communities in the service of society. Recognizing and embracing the inherent contradictions and tensions associated with such a task, and mindful of the ways in which systemic isms play themselves out in our lives and our obligations to acknowledge and confront those social ills, the stakeholders of higher education at a given institution can, through shared discussion and deliberation, reach agreements on the ways

20 *Id.* at 83.

21 *Id.* at 85

22 *Id.* at 84–87.

23 *Id.* at 93–103.

24 *Id.* at 117–18.

25 *Id.* at 110–12.

26 *Id.* at 115–17.

27 *Id.* at 117–20.

28 *Id.* at 134–38.

in which the power associated with higher education can be shared for the betterment of all.²⁹

Shared Governance, Law and Policy provides a helpful summary of a unique aspect of higher education, and arms both student affairs professionals and lawyers with an understanding of the reasons for this model and how to make it better. Lawyers in particular will benefit from the perspectives offered in the first several chapters.

29 *Id.* at 145.