

# SEPARATION OF POWERS WITHIN THE IVORY TOWER

## An Organizing Principle for University Governance

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Within the University,  
who decides what?

Governance of the modern university is properly based upon a separation of powers among its faculty, administrators, and legislative bodies. This separation of powers is the university's central organizing idea, and its version of an unwritten constitutional principle.

The concept of separation of powers within the university is both ancient and novel. It is ancient in the sense that it reflects the way that the university has operated for hundreds of years, and reflects well-established theories and understandings about how the university works and what it is for. It is novel and evolutionary in the sense that those theories and understandings have yet to crystallize into one coherent governing principle. Much about the university's historical origins, theoretical purposes, and modern mythology is consistent with the pivotal role of a separation of powers principle in its government. Yet this principle is not widely recognized or understood, perhaps because it is so basic as to be overlooked, or because it has heretofore been expressed in terms that obscure its true nature. Separation of powers makes the university's operation consistent with its mandate as a quasi-public institution dedicated to the free inquiry of new and controversial ideas. When consistently applied, it enables the parties within the institution to play complementary rather than conflicting roles in the pursuit of that mandate. When the principle is breached or ignored, university government is liable to be arbitrary and confused, and in conflict with the institution's conceptual foundations. In extreme situations, problematic administration, contentious politics, and excessive bureaucracy result.

### The University

#### Legislatures Administrators Faculty

Board of Governors,  
Senate, Faculty Councils,  
Departmental Councils,  
and associated committees

Principal & VPs,  
Deans, Chairs,  
Registrars & Staff

Assistant,  
Associate,  
Full

#### Operational decisions

programs, finances,  
campus planning, etc.

#### Administrative decisions

budgets, schedules,  
registration, etc.

#### Academic decisions

teaching,  
research

MAKE  
GENERAL  
RULES

PUT RULES  
INTO  
EFFECT

DECIDE  
PARTICULAR  
CASES

#### Legislature

#### Executive

#### Judiciary

### The State

### Herding Cats

University governance involves unique challenges. The university is "one of the most complex of human institutions," in which relationships are characterized by "principles of tribal behaviour." The task of governing the university is often described as one of attempting to reconcile internal contradictions, or requiring a perilous balancing act between irreconcilable interests. The university is thought to be a place of inevitable conflict between faculty and administration, and between faculty and faculty, where governing is akin to herding cats.

These characteristics are accurate but not inevitable. Instead, they are symptoms that arise when the university's first principle is not clearly understood or applied. The university is indeed a complex institution, but it need not be complicated. Effective university governance is eminently possible if it is done on the basis of clear principles that reflect the university's historical evolution and purpose rather than on murky management strategies and ad-hoc muddling through. University governance is difficult not because academic personalities are idiosyncratic (although often they are), or because goals of administration and faculty conflict (although sometimes they do), but because university government is often poorly conceived by those who design it and participate in it.

The three main kinds of decisions  
plus two exceptional categories:

#### 1. Hybrid decisions

Hybrid decisions are collaborative decisions made by two or more branches together. For example, annual course assignments are determined by department heads and individual faculty together. They are hybrid decisions because they are academic in nature – what will the professor teach – but they are not decisions that the individual professor can make alone because she is not in a position to ensure that an appropriate roster of courses is offered to fulfill degree requirements established by the university's legislative bodies.

#### 2. Quasi-judicial decisions

Quasi-judicial decisions are made by panels or committees specially appointed to hear and determine cases such as alleged student misconduct. These bodies are the university equivalent of "administrative tribunals", which carry out their mandates to decide particular cases in accordance with the rules of natural justice and procedural fairness.

The concept of separating powers comes from constitutional jurisprudence. It prevents concentration of power by dividing functions between three branches of the state. It thus protects citizens from the tyranny that could result if the power to make laws was held in the same hands as the power to enforce them. In the U.S., there is a strict division between Congress (the legislative branch), the office of the President (the executive branch), and the judiciary. In Canada the separation between legislative and executive branches is weaker, since in a parliamentary system the leaders of the government head the executive branch and also control the government side of the legislature. The separation of the judicial function is perhaps the most crucial because it ensures that government must be conducted in accordance with the rule of law.

The case for a separation of powers in the university is not based upon an exact replication of the separation of powers at the level of government in either Canada or the United States, but upon the principle itself. The application of the principle at the level of national or state government provides a helpful model, but the university has unique characteristics to which the principle must be thoughtfully applied.

The  
constitutional  
parallel

The University's  
two core  
functions:  
1. teaching  
2. research

The University's  
purpose: deep  
specialization

Rationales for separating  
powers: to prevent  
concentrations of power,  
and to allow independent  
sources of authority and  
expertise to fulfill  
disparate tasks without  
interference of one from  
the other

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### Incidents of Separation of Powers in the University

#### ACADEMIC FREEDOM

Academic freedom means independence to decide academic questions. The professor is hired not just for her knowledge, but also for her judgment. She has a right and responsibility to exercise her scholarly and pedagogical discretion independently. One of the University's premises is that the source of academic expertise on particular subjects is the individual professor, not the administration or the university as a whole. Academic freedom is not a privilege, but a necessary feature of a proper separation of powers within the university.

#### ACADEMIC DIVERSITY AND COLLEGIALLY

A university is a community, but not of like-minded individuals. The only value that its members need hold in common is the belief in the necessity for mutual respect and tolerance. Academic diversity calls upon faculty to give colleagues space at the moment of strongest disagreement with matters of academic judgment. Collegiality does not mean congeniality; nor does it mean that people must reach consensus. Instead, it means that fundamental disagreement may exist amongst professors in an environment of cooperative independence.

#### TENURE

Like judges, professors require job security to carry out their role. Their ability to make independent decisions depends upon the inability of other branches to interfere with reward or punishment. In order for professors to exercise their academic judgment independently, they must not be subject to the preferences of university administrators or policy bodies. They must be in a position to reject pressure from those sources without fear of suffering personal consequences, including job reprisals or dismissal.

### When a clear separation of powers is not observed:

A system of internal governance based upon a separation of powers avoids ad-hoc administration and the frequent legalistic wrangling that accompanies it. Good governance requires each branch to stick to its knitting. In the absence of clear and simple ground rules, any particular matter can become a cause for conflict. Resentment and confusion are the likely results should one branch attempt to control matters within the bailiwick of another. When administrators interfere with research agendas, when departmental and faculty councils make rules to control professors in the classroom, when professors meddle in administrative matters without responsibility, governance issues become obstacles to the university's two main purposes.

Many modern universities have extraordinarily complicated and muddled systems of internal governance. They employ a multitude of internal bodies – boards, committees, panels, and so on – with unclear and overlapping mandates, on which administrators and faculty members spend inordinate amounts of time. A plethora of rules and policies exist on every conceivable subject, yet it is still deemed necessary to hold meetings. People are occupied with directing matters that are not always within their sphere of expertise, contributing to a conflicted environment in which teaching and research are not genuinely the top priorities. The burdens of administration, internal politics, institutional promotion and the struggle for resources often crowd out more worthwhile activities. The university claims to operate on academic collegiality, yet many campuses brim with conflict, sometimes open but more frequently bubbling just below the surface.