

A Report of the 2012 Committee on Faculty Governance

In March 2012, President Zimmer appointed a faculty committee of seven members to consider the general question of faculty governance at the University of Chicago, with special attention to the question of the jurisdiction of the Council of the University Senate. The committee began meeting weekly in late March, reviewing documents related to the issue (such as those from the 1944 dispute that led to the formation of the Council in its present form, the Statutes, and Council rules), the record of all past Council votes, and recent Council minutes. We have met with university administrators, university attorneys, and individuals on the committee have attempted to canvas the views of colleagues as much as possible.

We understood the basic questions at issue to be these: What are the kinds of actions that require Council approval for their enactment? What are the actions about which the Council should play an advisory role? In playing that latter role, is voting the appropriate expression of advice, or are the recorded and published remarks of Councilors sufficient? The important language in University Statute §12.5.3.1 specifically assigns to the Council jurisdiction over “matters affecting more than one Ruling Body” and “any action of any Ruling Body which substantially affects the general interest of the University.” Any interpretation of these passages opens onto many other issues about the Council’s advisory, informational and legislative roles. Our deliberations about this passage and these issues have resulted in unanimous agreement about the following points.

1. On our reading, the Statutes set out the delegated authorities of the various Ruling Bodies.¹ These are delegated by and so derived from the Board of Trustees, who are entrusted with legal responsibility for the University. The Statutes establish a *de facto* division of labor between the faculty as stewards of the academic mission of the University, charged with preserving and applying the educational ideals and the general academic values of the University, and the Board of Trustees as responsible for administrative and financial matters. But the academic responsibility is delegated to the faculty by the Trustees with a minimum of clarification (no document can anticipate all future cases). This means that interpretations of the Statutes cannot be made in isolation, by fixing attention on individual passages. Any interpretation must be consistent with the status of the Trustees, with University traditions, with the values of the University, with past practices, and especially with explicit assignment of jurisdictions to other Ruling Bodies. It also means that the bearing of the Statutes on any particular issue requires an interpretation informed by those traditions and past practices and what would be a reasonable application in a given situation.

The fact of ultimate Trustee authority is clearly a legal issue and does not as such settle the broader question of University governance and Council jurisdiction. It is clearly prudent to revisit that issue from time to time, as has occurred in the past, the last time in 1992, most critically in 1944. There is also the issue of whether there have been sufficient changes and novelty in recent University initiatives of a sort that would warrant some change in past practice. We address that below in §8.

¹ “Ruling Bodies” are defined in 12.2 as the Council of the Senate, the Faculties of the College and Divisions and Schools, and the University Boards.

2. The Council's power, as stewards of the University's academic mission, is residual. Statute §12.5.3.1 assigns legislative powers to the Council only subsequent to and excepting the powers assigned to the Trustees, the Office of the President, and the Ruling Bodies. This means that interpretations of the Statutes concerning the Council must be understood to be consistent with powers assigned other Ruling Bodies elsewhere in the Statutes. No interpretation of the "general interest" clause should be inconsistent with the clear assignments of jurisdiction elsewhere in the Statutes, either to the Office of the President or to other Ruling Bodies. For example, in §12.3.2.1, Faculties, as Ruling Bodies, are assigned jurisdiction over admission requirements, curricula, instruction, examination, grading and degrees. It would not be consistent with such an assignment if the Council could unilaterally declare any decision about any of these matters as of "general interest" and presume authority over them.

3. By past practice, the Council has voted on any action by another Ruling Body that involves the granting of new degrees or the creation of units that have faculty appointment power. This jurisdiction is not clearly assigned in those terms by Statute, but the evolved tradition is a reasonable one in the light of the Council's general purpose and a reading of the Statutes as a whole. For example, degrees are granted by the University, not by Schools or Divisions, and the Council, as the "supreme academic body of the University," is the appropriate academic body to decide about new degrees.

Statutory authority for this long accepted, current practice and its limits can be reasonably derived from an intended distinction in the Statutes between

“education” and “research.” Justification for the practice is evident from Statute 12.1. The assignment of jurisdiction to Ruling Bodies, including Faculties and the Council, is made exclusively with regard to their respective “educational work.” The Statute reads:

“General. All advisory, legislative, and administrative powers in the University concerning its educational work, except those vested in the President by the Board of Trustees, shall be exercised by, or be under the authority of the Ruling Bodies specified in §12, according to their respective jurisdictions as herein defined.”

Statute §12.3.2 then states those powers of Faculties over “educational work” as: “admission requirements, curricula, instruction, examinations, grading, and degrees in its own School or Division, or in the Institute for Molecular Engineering.” The limits of this authority, however, are evident at other points in the Statutes (such as in §12.5.3.1), where “educational” and “research” are clearly distinguished. Statute §12.3.2 then states that “these powers of each Faculty shall be exclusive and final, except as otherwise specifically provided in §12.5.3.” So this Statute anticipates the two cases mentioned in that important passage, and it clearly anticipates that the exceptions mentioned there will concern the proper actions of these Ruling Bodies; that is, the educational work just specified. (The Statutes likewise do not give dispositive authority to the Faculties as Ruling Bodies over the research projects of their colleagues. This too is an appropriate and wise policy, for reasons noted below.)

There is no indication in the Statutes that the Ruling Bodies have been given any jurisdiction over, or any right of approval over, the research of their colleagues; and the same is true for the Council as a Ruling Body. "Actions by Ruling Bodies" must refer to actions within the jurisdiction of Ruling Bodies as specified by §12.1. So any new units that grant degrees or appoint professors (teachers) are appropriate areas of jurisdiction for the Council, given such an understanding and distinction.

The distinction between "education" and "research" at a research university (especially one modeled after Humboldt's vision of a university as a place where the two are linked) can be difficult to distinguish with precision. The way research is conducted will inevitably affect what is taught and how it is taught. However, as noted, the Statutes do not give the Council authority to judge the acceptability of the research organized in other Ruling Bodies. Such judgment has also never been past practice. The question of the moment is both whether there is statutory authority for such an extension - we do not believe there is any such statutory authority - and whether our past practice should now be changed in order to allow such review.

On the latter question, we all agree that any substantive proposal to re-interpret the Statutes in a way that would allow an extension of this involvement by the Council (beyond the supervision and approval of degree-granting and faculty-appointing units proposed by Ruling Bodies) into new areas, such as the supervision and approval of the research of colleagues, is a serious, major departure both from past practice and from what the Statutes envisage. The prospect itself raises several obvious questions.

4. The academic culture of the University of Chicago is unique, when compared to the structure of governance at other universities. Chicago faculty operate with much less mutual supervision than is the norm at almost all other universities. New courses can be proposed and listed without the elaborate faculty review required elsewhere. There is no university-wide Tenure and Appointments Committee as there is almost everywhere else. There are none of the ad hoc committees that are the norm elsewhere for tenure and tenured appointments. There is, to be sure, a Humanities Division Policy Committee (which plays an advisory role), and an Appointments Committee in the Biological Sciences Division (also only advisory). These involve humanists judging appointments and promotions for humanists, and life science professors also judging their own, and their strictly advisory role is significant. Our Divisional structure and the absence of such university-wide supervisory committees gives us a tremendous advantage in recruitment and makes for a much more fluid and responsive organization of research.

Moreover, substantial Divisional autonomy over the academic affairs of that Division is also an important feature of our tradition. When the Department of Geography was converted into a Committee in 1986, for example, the matter was handled by a Divisional vote and was not considered by the Council. Likewise the decisions to close the Library School and the Department of Education were made at the Decanal and Divisional level; the Council did not play a role. This is appropriate, in keeping with the Statutes and with good governance: local decisions by those most directly affected should not be trumped by any expansive interpretation of the “general interest” clause.

This faculty and Divisional independence is essential in making Chicago an adventurous and intellectually exciting university. Any interpretation of the Statutes that would involve a serious change in the present tradition and lead to faculty monitoring other faculty, especially monitoring of the non-appointive Institutes that are formed frequently at Chicago on an ad hoc basis within and across Divisions, would be a serious and regrettable blow to this distinctive faculty culture. Chicago faculty are justifiably proud of our ability to “follow our ideas wherever they may lead us,” even if that is across departments and across Divisions, and to do so without monitoring and approval by other faculty, especially faculty in wholly different disciplines without expertise in the relevant areas of research. In our view, we should do nothing that would qualify or degrade this independence.

A consequence of such autonomy is that there will always be research units and collaborative projects that individual Councilors may find objectionable on philosophical or perhaps even political grounds. In the latter case the constraints expressed in the Kalven report are relevant and quite important. We should not be in the business of judging the political acceptability of our colleagues’ research, except in the most extreme cases (as noted in §6 below). And if the consequence of this tradition of faculty autonomy means that there will be such controversial Institutes and so occasional disagreements and discomforts, this seems to us a small price to pay for the great benefits of our flexible, minimally regulated research structure. Moreover the prospect of Councilors passing on the acceptability of colleagues’ research is worrisome for an even more serious reason.

5. Were the Council, as a body of experts in several different fields, to assign to itself authority to assess the proposed research of colleagues beyond what has historically been the case, we would be quite concerned about the effects of this on our most important academic value – academic freedom. Acceptance into the community of scholars comes with the quite reasonable expectation that one will be able to chart the course of his or her own research and collaborative research, according to the canons of competence relevant in different disciplines, canons which are quite different for different fields. This freedom is an academic right, an entitlement essential to the existence of the Academy. It is even more important in an era when sub-disciplines and trans-disciplinary research opportunities have exploded in number and kind. Again, faculty must be free to follow their ideas wherever they lead, and the intellectual environment must be such as to encourage this sort of exploration and experiment, not subject it to monitoring or supervision by colleagues.

In addition, in any university committed to academic freedom, the inevitable diversity of research requires a common commitment to the civility necessary for any complicated community to function well. This does not at all mean that faculty should not feel free to criticize each other or each other's research programs. Rather it means that we should not add to that open, public and civil criticism the power to permit or not permit such research. If we did so, something essential to a thriving academic community, at least to our particular kind of community, would be lost.

Moreover, the Council could not claim a right of review over newly proposed Institutes and Centers, without also claiming thereby the *de facto* right to review

and assess all current Institutes and programs. Although the prospect of such reviews might seem slight, given some imagined change in Council membership, once the principle that new units require Council permission is established, there is no reason to think that it could not at some future time be exercised over existing programs and Institutes. This would fundamentally alter one of the most important features of the distinctive research culture at the University, and it would be inconsistent with the statutory powers assigned to the Council.

6. To be sure, in some extreme case faculty might propose some research unit that would lie well beyond the bounds of what academic freedom has traditionally allowed. It is hard to imagine such an initiative getting far enough along to be subject to Council consideration. Indeed imagining such a possibility would also have to assume an extreme degrading of standards by an entire department or Division or field. It remains of course a possibility, however remote, but it is not a serious enough possibility to justify any increased, regular faculty monitoring of each others' work.

Moreover, special circumstances can be imagined when the President will want to request a Council vote on issues of great importance not specified as under the Council's jurisdiction over "educational work". Past examples can serve as good guides to the types of situations where this would be appropriate: the Council vote on matters involving academic freedom (1949), the vote to endorse the spirit of a report on racial issues in rental policies (1962), and the vote to endorse a Center of Afro-American Studies (1969).

7. There are approximately 165 Institutes and Centers at the University, and since 1945 only one non-degree granting Institute with no faculty appointing power has come before the Council for an approval vote. This was in 1969, for the Afro-American Center just mentioned, and, as we understand the context at the time, the faculty wished to make a strong public statement of support in the midst of a politically charged debate. The general practice of faculty-led initiatives for collaborative research, enabled and encouraged by our system, not supervised and monitored by ad hoc or university-wide committees, remains quite a valuable practice, and something that ought to be preserved.

Past practices also allow sufficient opportunity for faculty debate. For example, one controversial faculty initiative, the original Milton Friedman Institute (now merged with the former Becker Center to form the Becker Friedman Institute), was in fact extensively discussed in the Council in 2008, Councilors had their say and their concerns recorded. But the economics faculty was not subject to Council review of their competence to organize their research in ways they deemed most beneficial. The Institute for Molecular Engineering, which has appointment and degree granting powers, was, for that very reason, appropriately brought before the Council for approval and was approved (unanimously) in 2010. The same is true of the Institute for Biophysical Dynamics in 1997.

Besides procedures for discussion in the Council and appropriate voting, there is also a procedure in place for individual Senate members to propose items for Council discussion by writing to the Committee of the Council (Council Rule 5),

and the wording of that procedure speaks to the issues that have been raised. Rule 5 states that faculty may propose “agenda items on topics of general concern that are within the legislative jurisdiction of the Council.” This is clearly meant as a restriction, and the Committee is clearly charged with insuring that this condition is met by the proposed agenda item.

Moreover, by similar reasoning, it is to be expected that the President, as the presiding officer of the Council meetings, will occasionally be called on to rule whether a proposed agenda item qualifies for a vote by the Council, according to the Council’s statutory jurisdiction and the rules of the Council. On the contrary assumption that the Council should always be able to vote on any matter it considers to be within its own jurisdiction, the question of what is in order according to the Statutes and the rules of the Council would make no sense. The delegation of jurisdiction found in the Statutes, the definition of Ruling Bodies, and the specification of “educational work,” all make clear that there is no statutory basis for the Council voting on its own jurisdiction. This is quite sensible, for otherwise the door would be open to votes on all sorts of faculty initiatives that some group of Councilors might object to. (Any proposal that the Council should nevertheless vote, and then have the vote ruled in or out of order, seems to us an unnecessary gesture.) Also, such a vote would be inconsistent with the fact that the Statutes confer jurisdiction on the Council over educational matters not reserved to the Board of Trustees, the Office of the President and other Ruling Bodies (except in the two cases specified). A claim of jurisdiction inconsistent with this assignment should be ruled out of order, a consideration that is otiose if the Council can declare,

on the basis of the “general interest” clause, jurisdiction over whatever it decides it has jurisdiction over. Of course, when a question about what is or is not an action by a Ruling Body that affects more than one Ruling Body or substantially affects the “general interest” of the University arises, someone must decide whether an action should be characterized in this way. According to the Statutes and past practices, that person should be and is the presiding officer of the Council, the President.

Nothing in the President’s role as presiding officer would preclude disagreements about the research projects undertaken by various faculty. Such discussions could certainly be aired at Council meetings and the concerns of faculty should be recorded and published in the Council minutes. But on the crucial issue of “jurisdiction,” there is nothing in the Statutes or in past practice, and nothing that would be consistent with University culture, that would suggest the Council is empowered to rule on, or vote as a body about, the research initiative of a group of colleagues. Any such alteration in our current procedure is unwise in itself and not consistent with a plausible and consistent reading of the Statutes and the Council rules. Once again, the central issue to be addressed is whether current practices are adequate and reasonable, in the light of the research mission of a university and our particular traditions and culture. There is no compelling argument that they are not, and any more expansive interpretation of the general interest clause would put at risk what is most valuable in those traditions and that culture.

With respect to all cases of Council discussion, we believe that a wider and more public circulation of the minutes of the Council would be helpful. They should not only be published on a web site accessible to all Senate members, but an email

reminder that they have been published should be sent at each posting to Senate members.

8. Remarkably few substantive discussions or disagreements about University governance have arisen since the current organization was formed in 1944. This is further evidence that the governance structure and our past practices are functioning well and are not in need of revision, that the system of widely dispersed authority with minimal monitoring and supervision of each others' research, has been effective and widely accepted. Even during times of an activist administration, one that facilitates the formation of units considerably larger than before, commits more university resources than before, and helps create significantly more research Institutes and Centers than before, the process of faculty vetting has remained, and should remain, the same.

For example, many major University initiatives, such as the Graduate Aid Initiative, the Mansueto Library, the Institute for Molecular Engineering, the Logan Arts Center, and the William Eckhart Research Center for work across a broad spectrum of sciences— all initiatives that arose in close succession - were duly based on faculty recommendations, scrutinized by faculty committees, supported by the relevant Deans, and opinions about them were freely aired at Council meetings. The establishment of these and other Institutes has been consistent with past practices, and enjoyed the support of the faculty with expertise in the relevant areas. The same is true of the recent China and India initiatives. Both were thoroughly vetted by the

relevant faculty, and these relevant faculty were deeply involved in the planning of the Centers.

In the case of the creation of Institutes or Centers without their own appointment power, but with new faculty positions offered to existing departments - and thereby with the potential of changing the overall profile of departments - it is still true that the final decision about such appointments rest with departments. If the majority in a department believes that a proposed appointment too substantially alters the shape of the department they want, they can refuse the appointment, and in past cases have refused. No serious new problem is created by the proposing of such Institutes or Centers, and so there is no good argument for expanded review by the Council.

Faculty who disagree with what any or all these initiatives will mean for the University's future academic profile are simply in intellectual disagreement with their colleagues. The appropriate forum for such disagreement is an academic or public forum not an expansion of Council supervision of such research.

Conclusion

We return to the three questions noted at the outset. On the issue of what kinds of actions by Ruling Bodies require Council approval by majority vote for their enactment, no good reason has been offered to change current practice and there is no authority in the Statutes to do so. The Council should continue to approve or disapprove the formation of academic units with either the power to grant degrees or appoint faculty or both. On the issue of the Council's advisory role, Statute §12.6.4

charges the President to keep the Committee of the Council informed “as far as practicable on all matters of general University interest.” Upon a decision by the Committee to bring such matters to the attention of the Council, Councilors may certainly voice opinions and have their opinions recorded and published. This has traditionally been the form in which such Council advice is expressed, and we see no reason to change this practice. Votes by the full Council on advisory matters have been extremely rare, and we expect that they will continue to be. In any unusual circumstance where the President deems such a vote to be in order, the votes must be consistent with the jurisdiction assigned to the Ruling Bodies and the Council, as interpreted above.

More generally, we note the following. The University of Chicago has been one of the best and most influential private research universities in the country for well over a hundred years. Even now, with a smaller endowment than our peers, we continue to preserve the features that have so long distinguished us: innovative, collaborative, often interdisciplinary research, a higher concentration of graduate students and a greater emphasis on graduate education than our peers, and a much more intellectually serious undergraduate educational program. The faculty have inherited these traditions as well as the responsibility for preserving the distinct academic culture of the University. We do not find in the Statutes, or in past practices, or in the University’s traditions a basis for any significant change. Moreover, we have tried to indicate that there are so many inherent advantages in our practices, advantages central to the distinctive academic culture of the University of Chicago, that there is no compelling reason to alter them.

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