

# SHARED GOVERNANCE, LAW, AND POLICY IN HIGHER EDUCATION

A GUIDE FOR STUDENT AFFAIRS PRACTITIONERS



GEORGE S. McCLELLAN AND NEAL H. HUTCHENS

**SHARED GOVERNANCE, LAW, AND  
POLICY IN HIGHER EDUCATION**

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# SHARED GOVERNANCE, LAW, AND POLICY IN HIGHER EDUCATION

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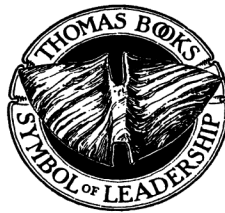
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*(With Contributions from Valeria Ross)*



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Dr. Margaret J. Barr (June 20, 1940 ~ June 7, 2018)

*Dr. Margaret J. Barr, or Peggy as she was called by her many friends and colleagues, was a truly remarkable person. She was a woman executive officer at a major university at a time when that was rare. She held substantial leadership roles in both ACPA and NASPA. She was a scholar/practitioner well before the term came to common use. She was a mentor and role model to thousands of student affairs professionals, including some of the most influential people in our field. She made a positive difference in the lives of hundreds of thousands of college students through her service as a student affairs professional, her leadership in our professional associations, and her presentations and publications. People appropriately use words like icon and legend when describing her and the contributions she made to student affairs.*

*On a personal note, Peggy was a supervisor, mentor and role model, co-author and co-presenter, co-conspirator, consigliere, counselor, confidante, and friend to George. This book was to have been another of their shared projects. George and Peggy had some early discussions about how it might be helpful to student affairs professionals and what its contents might be, but Peggy's health issues took their toll before the two could fully develop the work together.*

*This book is dedicated to Peggy in appreciation for all that she shared with students, student affairs professionals, and the field of student affairs and with George's tremendous gratitude and love. The authors suspect she is already busily helping to organize the angels and supporting them in their holistic angelic development.*



## AUTHORS' NOTES

**B**elieving for a number of years that many in higher education, including a number of colleagues in student affairs, do not have a full appreciation or understanding of shared governance and its value in American higher education, George invited Dr. John Levin, a colleague from his days at the University of Arizona, to author a chapter for the 3rd edition of the *Handbook of Student Affairs Administration* on the importance of shared governance to student affairs. Entitled “Institutional Governance and the Interests of Students.” That chapter, which appeared in 2009, and an edited volume by Miller and Nadler (2006) stand nearly alone when it comes to professional literature focused specifically on the importance of shared governance to the work of those in student affairs.

This book seeks to fill this void. It provides information on the historical, philosophical, and legal foundations for shared governance, including both the more commonly understood albeit more narrowly focused construct of shared governance and the role of faculty and a more expansive understanding of shared governance to include boards of trustees/regents, various governance groups (students, staff, and faculty), alumni groups, community advisory boards, and others. It makes the link between fundamentals of law, policy, and shared governance as related to professional practice in student affairs. Finally, the book offers practical insights and suggestions for student affairs practitioners at all levels (entry-, mid-, and senior-) regarding how to work with shared governance groups and how to foster their success to help assure student and institutional success.

## OVERVIEW

Chapter One offers definitions and common understandings of shared governance, its history in American higher education, and relevant theories and models. The chapter takes note of some contemporary developments and challenges related to shared governance and also briefly addresses some of the calls for revamping shared governance.



Chapter Two presents the common structures of shared governance from those with the broadest span of interest and authority to those with the narrowest. As each of the various structures is described and discussed, the stakeholders whose interests are represented by the structures are identified.

Chapter Three focuses on the ways in which we in higher education (and particularly in student affairs professional positions) can help foster and strengthen shared governance. It offers advice and suggestions for action in just that endeavor.

Chapter Four shares a brief history of student participation in shared governance as well as information on the degree to which students are (or are not) involved in shared governance in contemporary practice. Strategies are proffered for making the case for greater student involvement, and information is shared on the potential benefits to students from participating in shared governance. Additionally, strategies are identified for working directly with students to encourage and support them in taking part. The chapter concludes by presenting several important open questions about students and shared governance in American higher education.

Chapter Five explicates sources of law related to student affairs work. Rather than spending a great deal of time on case law, the chapter ties awareness of sources of the law, areas of law, and law-making processes to the conduct of shared governance.

Chapter Six discusses the individual role in shared governance. It specifically addresses the tension between the roles of institutional employee and private citizen.

Chapter Seven describes the policy arena and policy-making processes. Like Chapter Five, the focus here is centered on the ways in which the formation of policy and policy itself play out with regard to the intersection of student affairs and shared governance.

Chapter Eight draws together themes from throughout the preceding chapters. It also offers some closing thoughts on the importance of shared governance in American higher education and suggests a number of action items for student affairs professionals and others interested in strengthening governance at their institutions.

## PURPOSE AND GOALS

Our goal in presenting this work is for readers to come away from the book with a better understanding of and appreciation for shared governance, law, and policy as well as an enhanced set of skills and strategies for engaging in shared governance as a matter of professional performance. Through fostering knowledge and abilities related to shared governance, the book

assists readers in developing and forming their professional identity as well as in achieving learning outcomes aligned with specific professional practice standards in our field, including both the *CAS Professional Standards for Higher Education* (Council for the Advancement of Standards, 2015) and the *ACPA/NASPA Professional Competency Areas for Student Affairs Educators* (2015, available for review at [https://www.naspa.org/images/uploads/main/ACPA\\_NASPA\\_Professional\\_Competency\\_Rubrics\\_Full.pdf](https://www.naspa.org/images/uploads/main/ACPA_NASPA_Professional_Competency_Rubrics_Full.pdf)).

Toward this end, case studies and reflective questions are featured throughout the book. An effort has been made to include examples from a variety of institutional settings in the discussion. However, the reader is encouraged to keep in mind the observation of Tip O'Neill, former Speaker of the United States House of Representatives, that all politics is local (O'Neill, 1995). The same is certainly true of shared governance.

### **INVITATION TO SHARE**

Hopefully you will find this book informative and helpful as you work to support your students and your institution. Please feel free to share your experiences and feedback with us. Both are welcomed.



## FOREWORD

*Good governance is the art of putting wise thought into prudent action in a way that advances the well-being of those governed.*

—Diane Kalen-Sukra

Finding the best authors for each volume of the *American Series in Student Affairs Practice and Professional Identity* has been a challenge. While collaborating with Dr. Mary F. Howard-Hamilton on a book project I mentioned the need to identify authors for the book on governance, law, and policy. Dr. Hamilton immediately recommended Dr. George McClellan would be a perfect fit to write this book. I was impressed by Dr. McClellan's background, his remarkable scholarship and rich experience in student affairs and higher education. I was hoping he would accept the invitation to write this book though he had his priorities and other commitments. I was excited when I heard he accepted my invitation and was willing to work on it. He further indicated that Dr. Margaret Barr would join him as the coauthor. I became more excited because I got to know Dr. Margaret Barr while I was a graduate student at Bowling Green State University during the early 1990s. However, unexpected news came that Dr. Barr became very ill and passed away in June 2018. I felt very sad that the profession of student affairs in higher education had a huge loss. Dr. Barr's sickness slowed the progress of this book, but I feel motivated to see the continuation of Dr. Barr's legacy with Dr. Neal Hutchens joining the project.

Dr. McClellan is a prominent scientist and practitioner who has published numerous books and articles and held vital administrative positions at both private and public institutions. His books, *Budgets and Financial Management in Higher Education* (2011 & 2018) with Margaret Barr, and *The Handbook for Student Affairs Administration* with J. Stringer (2009 & 2016), have been published in multiple editions, which reflect the popularity and value of these works. Besides publishing high quality articles and books, Dr. McClellan has served on the editorial board of the *Journal of College Student Development* and the *Journal of College and Character*. Moreover, Dr. McClellan

has held high level administrative positions as vice chancellor for student affairs at Indiana University-Purdue University Fort Wayne and vice president for student development at Dickinson State University in Dickinson. He also held multiple leadership positions in the National Association of Student Personnel Administration (NASPA) and was recognized by the NASPA Foundation as a Pillar of the Profession in 2010 and in 2020 with the George D. Kuh Outstanding Contribution to Literature and Research Award. If we agree with Diane Kalen-Sukra that good governance is the art of putting wise thought into prudent action in a way that advances the well-being of those governed, Dr. McClellan is the artist who has created the art of good governance.

Dr. Neal Hutchens is a well-established scholar in law and policy of higher education. He has made significant contributions in law and shared governance to American higher education. He has published numerous research articles in professional journals and coauthored the sixth edition of *The Law of Higher Education and the Contested Campus: Aligning Professional Values, Social Justice, and Free Speech*. In addition, he has served on a significant number of editorial boards of professional journals in law and policy. All his knowledge and expertise in law and shared governance has greatly enhanced the value of *Shared Governance, Law, and Policy in Higher Education: A Guide for Student Affairs Practitioners*.

I appreciate both authors' knowledge, wisdom, and commitment to this book. Their footsteps in the field of higher education and student affairs have spoken well about them as true scientist-practitioners who have made significant contributions to the development of the American higher education and the American society in general. Therefore, I strongly recommend to you their book *Shared Governance, Law, And Policy in Higher Education: A Guide for Student Affairs Practitioners*.

*Shared Governance, Law, and Policy in Higher Education: A Guide for Student Affairs Practitioners* by Dr. George S. McClellan and Dr. Neal Hutchens is a book that will introduce you the key components of shared governance, law, and policy relevant to higher education and invite you to become a competent practitioner with a professional identity. A unique value of *Shared Governance, Law, and Policy in Higher Education: A Guide for Student Affairs Practitioners* is its unusual focus and integration. Its thematic and comprehensive chapters have presented not only a variety of important theories and models of shared governance but also action items such as advice, strategies, skills, and solutions on how to strengthen and create good governance at different institutions.

Throughout the entire book you will come to understand that shared governance, law, and policy are a fundamental part of student affairs practice in higher education and an ethical part of becoming competent student

affairs educators. The worthy takeaways for readers include the history of shared governance in American higher education, the common structures of shared governance, relevant theories and models, history of student participation in shared governance, and strategies on how to encourage and support students for participation in shared governance in contemporary practice of student affairs in higher education. One essential aspect of the book is the advice and suggestions for readers' action in fostering and strengthening shared governance in their everyday practice as student affairs educators. Another unique aspect of the book is that it elucidates sources of law related to student affairs work and law-making processes to the conduct of shared governance. In addition, policy-making and policy implementations involving student affairs and shared governance are prescribed. Most importantly, the book ascribes what role you as a student affairs educator would play in shared governance.

Finally, *Shared Governance, Law, and Policy in Higher Education: A Guide for Student Affairs Practitioners* reveals the three common themes of the series with all other volumes in the *American Series in Student Affairs Practice and Professional Identity*: (1) integration of ACPA/NASPA Competency Areas for Student Affairs Educators; (2) development of professional identity; and (3) application of knowledge and theories to practice. Particularly, to reflect the theme of applying knowledge and theories to practice, this book has included numerous case studies and thought-provoking questions on governance, law, and policy to help student affairs educators to analyze complex governance issues that they may face in their daily practice. This book is a valuable tool which not only assists graduate students in student affairs preparation programs and new student affairs educators to expand their knowledge on governance issues in student affairs but also provides them with insights to develop their collaboration skills in working toward common ground – shared governance.

The *American Series in Student Affairs Practice and Professional Identity* is a unique book series that creates an integration of all ten professional competency areas for student affairs educators outlined by the College Student Educators International (ACPA) and the Student Affairs Administrators in Higher Education (NASPA) in 2015. The series reflects three major themes: professional competencies development, professional identity construction, and case illustrations for theory translation into practice. All volumes in the series are targeting graduate students in student affairs preparation programs and new student affairs educators. The series blends contemporary theories with current research and empirical support and uses case illustrations to facilitate the readers' ability to translate what they have learned into practice and decision making. Each volume focuses on one area of professional competency except the volume *College Students and Their Environments*:

*Understanding the Role Student Affairs Educators Play in Shaping Campus Environments* which addresses some major aspects of the Interaction of Competencies. As being said the series helps graduate students in student affairs preparation programs and new student affairs educators develop their professional competencies (ACPA/NASPA) by (1) constructing their personal and ethical foundations; (2) understanding the values, philosophy, and history of student affairs; (3) strengthening their ability in assessment, evaluation, and research; (4) gaining knowledge, skills, and dispositions relating to law, policy, and governance; (5) familiarizing with and learning how to effectively utilize organizational and human resources; (6) learning leadership knowledge and developing leadership skills; (7) understanding oppression, privilege, power, and then learning how to understand social justice and apply it in practice; (8) acquiring student development theories and learning how to use them to inform their practice; (9) familiarizing themselves with technologies and implementing digital means and resources into practice; and (10) gaining advising and supporting knowledge, skills and dispositions. As a result, the series helps graduate students in student affairs preparation programs and new student affairs educators foster their professional identity and ultimately achieve their goal of the whole-person education.

Naijian Zhang, Ph.D.  
West Chester University of Pennsylvania

## ACKNOWLEDGMENTS

George McClellan is appreciative to Dr. Najjian Zhang for the invitation to present this book for publication and for his patience and support throughout its development. Similarly, thanks are due to the team at Charles C Thomas, Publisher for bringing this book to its readers.

Tremendous thanks to Neal Hutchens for agreeing to join in this project. He has generously shared of his expertise in matters of law, policy, and shared governance to make this a better book. I am also grateful for his support as the chair of my department at the University of Mississippi and for his friendship.

I am also thankful to my colleagues in Higher Education and in the School of Education at the University of Mississippi. Their willingness to bring me into their number and their good cheer and strong support throughout the transition into full-time faculty life have been invaluable.

The students are always the best part of our work in higher education, and my experience is no exception to that rule. Thanks to all the students who have allowed me to be a part of their journey, either directly or indirectly, in higher education. I am particularly grateful to the Higher Education students at Ole Miss who challenge and inspire me with their commitment, compassion, and curiosity.

Early in the life of this project Peggy Barr and I agreed that we would invite a doctoral student from the University of Mississippi's Higher Education program to help us bring the manuscript forward. Peggy and I believed that our work would benefit from the inclusion of an emerging scholar practitioner and that the individual selected might benefit from the experience of helping bring a book to press. We were delighted when Valeria Ross expressed an interest in joining us. Unfortunately for both Peggy and Valeria, they never got the chance to work with one another. They both would have enjoyed sharing that very much. Valeria has provided tremendous assistance with this manuscript. She helped identify and review relevant literature, shared in conversations about various ideas included in the content, and provided useful feedback on early drafts of manuscript. I am grateful to her for the collegial assistance and support she has provided. I hope every faculty colleague is lucky enough to have students like Valeria in their programs.



Beyond the experience of writing this book, there are so many people who have helped me in innumerable ways throughout my lifetime. Among them, though certainly not all of them, are Yvonne Broske (my mother) and Howard McClellan (my father), Ken Christmon, Krissy Creager, Steve Grud, Jason Laker, Jeff Maher, Jason Meriwether, Jeff Sun, Joe Minonne, Chad Richmond, the Riffmaster and the Rockme Foundation nation, and Koko Taylor.

I also want to acknowledge the McIlhenny family for the gift of Tobasco sauce, the Brennan family in New Orleans for Commander's Palace, whoever is responsible for partnering grits with shrimp and with cheese for the joy of it all, and the folks at Walt's Chevron in Oxford for incredible plate lunches and pimento cheese sandwiches. Y'all make me smile.

Finally, thanks to all those who give of their time and talents to help make shared governance work on their campuses. Your efforts truly make a difference!

### ***Neal Hutchens***

I appreciate the generous offer from George McClellan to join him on this project. I also cannot say enough kind words about my other colleagues in the University of Mississippi Department of Higher Education and their friendship, support, and goodwill. Having the opportunity to work with them in launching the UM Department of Higher Education has proven a professionally fulfilling journey and provided the opportunity to reflect on fundamental aspects of higher education, including in the shared governance realm.

One of the most rewarding parts of my job is the privilege of working with outstanding students. Even when I am (often) disappointed by colleges and universities in failing to live up to their advertised institutional values and mission statements, including in matters of shared governance, I continually draw inspiration and hope from these talented and dedicated students.

I have been fortunate to have a number of gifted and supportive colleagues in my academic journey. I want to give a special acknowledgement to John Thelin of the University of Kentucky, a leading historian of higher education. During my career, John has been a constant source of support and encouragement. Thank you, John!

Finally, deep thanks are due to my partner in crime, Kelli Hutchens, for her support on this and many other projects. Clay and Elaina are our most important collaboration, and these two always keep me on my toes and remind me what is really special in life.

## CONTENTS

	<i>Page</i>
<i>Authors' Notes</i> .....	vii
<i>Foreword by Naijian Zhang</i> .....	xi
 <i>Chapter</i>	
1. Overview of Shared Governance .....	3
2. Shared Governance Shareholders and Structures .....	27
3. How to Help Foster and Strengthen Shared Governance .....	51
4. Student Participation in Shared Governance .....	73
5. Intersections of Law and Shared Governance .....	91
6. The Individual Voice in Shared Governance: Institutional Actor Versus Private Citizen .....	109
7. Policy, Policy Process, and Shared Governance .....	123
8. Themes, Thoughts, and Things to Do .....	141
 <i>Appendix: AAUP Statement on Government of Colleges and Universities</i> .....	151
<i>References</i> .....	163
<i>Index</i> .....	173



## ILLUSTRATIONS

	<i>Page</i>
Figure 3.1: Example of Political Map .....	65
Figure 4.1: Conceptual Model of Student Involvement in University Decision Making .....	82
Figure 8.1: Ladder of Progressive Involvement .....	145



**SHARED GOVERNANCE, LAW, AND  
POLICY IN HIGHER EDUCATION**



## Chapter 1

### OVERVIEW OF SHARED GOVERNANCE

*The variety and complexity of the tasks performed by institutions of higher education produce an inescapable interdependence among governing board, administration, faculty, students, and others. The relationship calls for adequate communication among these components, and full opportunity for appropriate joint planning and effort.*

American Association of University Professors (1967, ¶7)

Any conversation worth having about the strengths and challenges of American higher education will include discussion of one of its defining features—shared governance. However, as Levin (2009, p. 55) observes, “To state the governance of higher education institutions—either the understanding of the concept of governance or the practice of governing—is straightforward and without considerable complexity is to ignore the multiple strands of discourse and the experience of practitioners during the past several decades.” Lizzio and Wilson (2009) add, “The ways in which institutions should be governed, and the roles of various parties in the process, are an enduring and often contested area of both practice and inquiry” (p. 69). Bahls (2014) succinctly stated, “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” (p. 1). The following case study illustrates the ways in which some of the complexities and challenges related to shared governance can play themselves out on a college campus.



### **Tough Times and Troubled Waters at Some State Regional University (SSR)**

Some State Regional University (SSR), a public regional comprehensive institution in the Rust Belt, has enjoyed a number of years of enrollment growth, constructive relationships with the communities it serves, reasonable raises for employees, and generally positive campus morale and community regard. Much of this has come about during the service of a strong campus president who has been highly involved in almost every aspect of campus decision-making throughout her tenure until her retirement last year. Now, just as the new president is gaining her understanding of the SSR campus and community, a number of troubling circumstances are presenting themselves. Enrollments, which had stagnated toward the end of the previous president's service, have begun to shrink. This has put considerable pressure on the operating budget of the institution, and a hiring freeze and travel limitations have been instituted by the senior administrative leadership. No raises are going to be available for the coming year. Discussion of the enrollment challenges have also led to conversations with community leaders, including regional business people, indicating a dissatisfaction with the availability and quality of graduates from SSR as well as a lack of consultation regarding possible innovations in the curriculum to meet the emerging needs of the area's economy.

In response to the budgetary challenges and the critique from the community, the new president establishes an ad hoc committee to develop a plan for revitalizing the curriculum of SSR with the goal of meeting regional needs, assuring institutional fiscal viability, and positioning the institution to fulfill the future needs of the community while raising its institutional profile and reputation. Given the focus on the future and on curricular realignment, the president wants to be sure to get new voices involved in this ad hoc group and so she solicits nominations from faculty and community groups for her consideration, a process which had been utilized on previous occasions by her predecessor when forming groups to consider issues or opportunities at SSR. Fol-

lowing review of the nominations by she and her cabinet, the president announces the new members of this blue ribbon ad hoc committee which will submit its report to the cabinet for review.

How do you think the president's plan will be received at SSR? What concerns regarding shared governance do you see being raised, if any, by the various stakeholders in this issue?

Likely the tenor and tone of the reactions at SSR would be shaped by the roles of those involved in the interaction and by their individual understanding of what exactly it is they have in mind when they speak about shared governance. So it is with this book, which I hope will unfold as a discussion amongst colleagues who care deeply about American higher education and in particular about student learning and student success in that context. Our conversation will draw on the literature of higher education and, where offered, our observations, opinions, and recommendations which are informed by our experiences as students, student leaders, student affairs professionals, institutional executive officer, and most recently as faculty members whose scholarship and teaching focuses on higher education, student affairs, and student learning and success. It is appropriate at this point to acknowledge our belief in the value of shared governance in American higher education, a belief which will become evident as we move forward through the chapters of this book if it has not already become apparent.

This chapter will address definitions and common understandings of shared governance, its history in American higher education, and relevant theories and models. The chapter will take note of some contemporary developments and challenges related to shared governance and also briefly address some of the calls for revamping shared governance.

### WHAT IS SHARED GOVERNANCE?

According to Lechuga (2004), "Shared governance is a unique characteristic of the U.S. higher education system; it is often misunderstood and difficult to define" (p. 95). Olson (2009) similarly observes *shared governance* is a term that "is often invoked but much mis-

understood by both faculty members and many administrators” (§1). He goes on to say the phrase “is so hackneyed that it is becoming what some linguists call an “empty” or “floating” signifier, a term so devoid of meaning it takes on whatever significance a particular speaker gives it at the moment. Once a term arrives at this point, it is essentially useless” (§5).

While in agreement with Olson with regard to how commonly misunderstood the term is, we are more sanguine with regard to our collective ability to restore vigor to both the term and the practice to which it refers. An important first step in a shared effort toward that end is to develop a definition of shared governance for the purposes of our work. Definitions of shared governance vary across the literature of higher education. The definitions proffered commonly refer to the structure (who is involved in the sharing and in what mechanisms), what is its purpose (what it is that is to be governed), the process through which it is to be pursued (how it will transpire), or some combination of the structure, purpose, and process of the thing. Each of these ways of defining shared governance will be addressed in this section of the chapter.

### ***Structure***

According to Cowley (1980) “The word *government* has evolved from the Latin verb *gubernare*, “to steer.” It denotes any social structure possessing de jure or de facto power to steer or direct, that is, to control the actions of the individuals and groups within its province” (p. 4). *De jure* power derives from a legal right (De jure, n.d.); de facto power is the product of practice (De facto, n.d.). Chapter Two will present an extended conversation on the stakeholders in shared governance, but here it is important to point out that all de jure power of shared governance derives from powers vested in the board of trustees responsible for the legal entity represented in the university as authorized by the state legislature (in the case of a public university) or as provided for in the articles of incorporation (in the case of a private institution) and as construed or constrained by relevant administrative or judicial rulings (Kaplin & Lee, 2006; Olson, 2009). The board may in turn delegate some of those powers to various officers or entities, for example to the president of the university or to a governance group such as the faculty senate, as a matter of explicit policy or through its practices.

A common, and one might suggest classical, structural definition of shared governance is that it primarily involves the board, the president, and the faculty (Bahls, 2014). Additional groups who might be included in a more expansive definition, a view which informs the discussion in Chapter Two, include students, staff, alumni groups, advisory boards, associations, and others.

### ***Purpose***

For what reason does higher education chose to engage all these participants in decision-making? It certainly is not for reasons of simplicity or expedience as neither is an espoused strength of shared governance. Simply put, one purpose is decision-making. Indeed, in what some argue is the origin of the term's application to American higher education, Corson (1960) used the term *governance* to discuss shared decision making between administration and faculty. One might be tempted to extend the purpose to better decision making, but that answer begs the question what understanding of *better* do we have in mind? Do we mean that it leads us to the right or best answer? Is such a thing even possible given the diversity of purposes for which we as a society pursue higher education (Labaree, 1997)?

An argument can be made that we in higher education believe shared governance leads to better decision making for two reasons: accessing expertise and engaging shareholders (Schotz, 2007). Consistent with values articulated in the AAUP *Statement on Governing Colleges and Universities* (AAUP, 1967; see Appendix) and reflecting several of the theories which inform it contemporary construction and practice, shared governance brings together administrators, faculty, and students to draw on their expertise relative to various aspects of university life and operations. The shareholder construct situates presidents and administration at the top of a hierarchy and the various stakeholders as constituents providing feedback and input (Schotz, 2007). However, as Fish (2007) points out, the challenge of identifying and including stakeholders in shared governance is problematic in a number of ways.

The understanding of what constitutes expertise and of who holds it can and does evolve over time as can the understanding of who the stakeholders are that ought to be involved in shared governance. Olson (2009) notes, "Shared governance has come to connote two