

## ***Yeshiva, Thirty Years Later***

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Thirty years ago, the United States Supreme Court decided, by a vote of 5 to 4, that the full-time faculty of Yeshiva University should be categorized as “managerial employees” and, as such, excluded from the benefits of collective bargaining under the National Labor Relations Act. The majority opinion in what has come to be known as the *Yeshiva* decision noted that “the faculty at each school [at Yeshiva University] effectively determine its curriculum, grading system, admission and matriculation standards, academic calendars, and course schedules.”<sup>1</sup> Moreover, “The faculty at each school make recommendations to the Dean or Director in every case of faculty hiring, tenure, sabbaticals, termination, and promotion,” and “the overwhelming majority of faculty recommendations are implemented.”<sup>2</sup> These facts led the majority to reflect that, whereas “[t]he [National Labor Relations] Act was intended to accommodate the type of management-employee relations that prevail in the pyramidal hierarchies of private industry,” contemporary universities are in the main organized quite differently, with a “system of ‘shared authority’ evolved from the medieval model of collegial decision-making, in which guilds of scholars were responsible only to themselves.”<sup>3</sup> Given the persistence of the collegial model, the majority reasoned, Yeshiva’s full-time faculty “exercise authority which, in any other context, unquestionably would be managerial.”<sup>4</sup> Since managerial employees are charged with representing management interests and so excluded from the benefits of collective bargaining under the Act, the Court’s conclusion followed that full-time faculty are excluded as well.

In this iteration of “Overheard in the Academy,” we have asked four faculty – one scholar-activist, one adjunct with experience in faculty governance bodies, and two former administrators now returned to teaching and research – to reflect on the relationship, thirty years after *Yeshiva*, between faculty and administrators in the American colleges and universities that our contributors have come to know. In other words, we have asked our contributors to think about the current conditions of collegiality, an oft-invoked word on academic campuses, though one whose meaning all too often reduces to “niceness.” (If words are like pockets into which we stuff meanings, as Friedrich Nietzsche once claimed, then the word “collegiality” has had its pocket picked.)

The majority opinion in *Yeshiva* has been contested from the day of its delivery, perhaps nowhere more forcefully than in Justice William Brennan’s minority opinion. According to this opinion, “the Court’s perception of the Yeshiva faculty’s status is distorted by the rose-colored lens through which it views the governance structure of the modern-day university.... [T]he university of today bears little resemblance to the ‘community of scholars’ of yesteryear,”<sup>5</sup>

instead having become “big business,” subject to the same corporate imperatives as “any large industrial organization.”<sup>6</sup> Arguably due in part to the *Yeshiva* decision – after which the faculty union movement of the 1970s came quickly to a standstill, and many collective bargaining arrangements between faculty and administration broke down<sup>7</sup> – the status of faculty at “the university of today” has also changed markedly since 1980. According to recent research, whereas in the late 1960s “fewer than 5 percent of full-time faculty hires nationally were for non-tenure-track positions,” in 2008 “over half of full-time hires [were] for non-tenure-track positions.”<sup>8</sup> So-called contingent faculty – full-time non-tenure-track, post-docs, adjuncts, and graduate students – have become the majority faculty nationwide, constituting nearly sixty-nine percent of faculty at all degree-granting institutions in 2007, as opposed to forty-three percent in 1975.<sup>9</sup> Finally, it is worth noting that, with the prioritization of research at many institutions, tenure-track and tenured professors have become “more likely to identify with their disciplines than with their campuses.”<sup>10</sup> So it is not surprising that, “[i]n 1989, forty percent of professors reported that they felt loyalty to their institutions; seventy percent said they felt loyalty to their discipline.”<sup>11</sup> What would be surprising is if the first number were not now lower and the second yet higher.

What do these trends mean for the future of American higher education? Whose view of the role of the faculty in the present-day university is closer to the reality, that of the majority in *Yeshiva*, or that of the minority? And what special considerations and issues are there for institutions, like Catholic colleges and universities, with distinctive missions and commitments, for example to the principles of Catholic social teaching?

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## Notes

1. *National Labor Relations Board v. Yeshiva University*, 444 U.S. 672, 676 (1980).
2. 444 U.S. 672, 677 (1980).
3. 444 U.S. 672, 680 (1980).
4. 444 U.S. 672, 686 (1980).
5. 444 U.S. 672, 702 (1980).
6. 444 U.S. 672, 703 (1980).
7. See on these developments Marc Bousquet, *How the University Works: Higher Education and the Low-Wage Nation* (New York: New York University Press, 2008), 111–114.

8. Michael J. Dooris, David H. Monk, and Rodney A. Erickson, “Building, Sustaining and Developing Research University Faculty” (unpublished), 4, delivered at the 35<sup>th</sup> Annual Conference of the Northeast Association for Institutional Research, Providence, RI, November 2008. Dooris is Director of Planning Research at Penn State; Monk is the Dean of the College of Education there; Erickson is the Executive Vice President and Provost. They cite as evidence for this claim work by M. J. Finkelstein and J. H. Schuster.
9. See the document “Trends in Faculty Status, 1975–2007,” compiled by the American Association of University Professors (AAUP) from information culled from the federal government’s Integrated Postsecondary Education Data System (IPEDS): <http://www.aaup.org/NR/rdonlyres/7D01E0C7-C255-41F1-9F11E27D0028CB2A/0/TrendsinFacultyStatus2007.pdf>.
10. Louis Menand, *The Marketplace of Ideas: Reform and Resistance in the American University* (New York: W.W. Norton, 2010), 144.
11. Menand, *Marketplace of Ideas*, 122.