Faculty Organizing in the Aftermath of Yeshiva and Pacific Lutheran:

The Paradox of Higher Education Embracing a Business Model

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Abstract

The nature of the work relationship between the faculty of private colleges and universities takes place within the context of the Yeshiva ruling of 1980. Yeshiva determined that university professors at private institutions are managers and, therefore, not protected by the National Labor Relations Act. In the past decade, unionization has increased in higher education despite union membership declining overall. This study reviews the circumstances in which Yeshiva was decided in addition to examining more recent efforts to organize on the campuses of private colleges.

Introduction

From 2013 to 2021, 126 faculty collective bargaining units formed with more than 40,000 members. Seventy (55 percent) of the new units formed at private universities, and Seventy-four (59 percent) of the new units include non-tenure-track faculty (Herbert et al., 2023). Unions represent more than one-quarter of college faculty members (Cassell & Halaseh, 2014). These data appear inconsistent with the broader trend in union participation. According to the Bureau of Labor Statistics, the proportion of wage and salary workers in unions in 2022 declined by half since 1980 to 10.1 percent (Shierholz et al., 2022; Milkman &

van der Naald, 2023). Given these statistics, one wonders what motivates academic unionization while union membership declines overall.

This study revisits familiar explanations for the increase in faculty unions and argues that the legal environment, demographics, and socio-economic conditions established the necessary conditions for an increase in faculty union organizing in response to the encroachment of the business model in higher education. Whereas earlier studies attempt to identify a narrative with a linear timeline and an identifiable singular cause, this study contends that the interplay of evolving social and economic conditions informed actions and reactions that continually redefine higher education as a sector of the economy. It is notable that since the late nineteenth century, higher education is among the most durable and successful industries in the U. S. economy. While firms and entire industries come and go, higher education persists despite wars, pandemics and disruptive technologies (Benedict et al., 2023).

This analysis will review a series of historical developments that inform the context in which higher education and faculty unions exist today. The analysis intentionally evokes an evolutionary orientation consistent with the analytical approach of Thorstein Veblen, whose scathing commentary regarding higher education firmly establishes that the observed interplay underscoring the observed phenomenon of today was discernible more than a century ago.

Rethinking Government in the Economy

Numerous factors contributed to the cycle of booms and busts that dominated the late eighteenth century. With the expiration of the charter of the Second Bank of the United States in the mid-1830s, it would be seventy-five years before the Congress voted to establish a central bank again. In the intervening years, the economy navigated a civil war and extensive structural change without a stabilizing monetary authority. Economic policy deferred to the prevailing Classical school of economics introduced in the late seventeenth century when economies were dominated by agriculture and the business cycle was nearly entirely explained by weather conditions. A stabilizing monetary authority was unnecessary under laissez-faire.

Industrialization in the late eighteenth century transformed the labor force from farmers to industrial laborers. Farmers migrated to cities in search of employment to earn a wage. Underlying laissez-faire was the expectation that, given sufficient time, prices would adjust to reallocate resources to eliminate gluts and shortages. In hindsight, the absence of a stabilizing monetary authority in the aftermath of the Civil War resulted in a succession of extended recessions, which inspired challenges to the commitment to laissez-faire. Failed utopian experiments throughout the period, Henry George's Progress and Poverty (1879), and Coxey's Army march from Ohio to Washington, DC, in 1894, revealed frustration with laissez-faire and advocated a role for government in the economy to promote the well-being of citizens. Financial crises and economic recessions continued into the twentieth century, culminating with the Great Depression. Despite unprecedented intervention by the Hoover administration, deteriorating economic conditions all but ensured voter rejection of the party in power. Indeed, the 1932 election installed Democrats throughout all levels of government.

Franklin Roosevelt was elected in 1932 with a full appreciation of the severity of the economic crisis and challenges facing wage earners in an industrial economy. The persistence of high unemployment ushered in rejection of laissez-faire central to Classical economics. Although America was not primed for Marxist-inspired revolution, the national Zeitgeist morphed to accept greater government involvement.

The National Labor Relations Board

With his election in 1932, Franklin Roosevelt embraced corporatism as a solution to repeated economic failures. In the midst of the depression, advocates of greater government involvement asserted that intervention was needed to stimulate economic activity to promote growth and employment. Despite greater interest in government intervention, resistance to centralizing coordination of industry remained politically untenable. In 1933, Roosevelt proposed a series of reforms targeting banking, financial markets, individual social needs, farming and the labor market. While all the proposed reforms were challenged, reforms targeting failure in banking, the financial sector, and farming were instituted with early positive results. Labor and business sector reforms were rejected when the Supreme Court ruled that the National Industrial Recovery Act of 1933 was unconstitutional. Undeterred, Roosevelt enlisted Senator Robert Wagner of New York to write and sponsor the National Labor Relations Act (NLRA), which would legalize collective bargaining and protect workers' right to freedom of association. Nearly a century later, the NLRA remains foundational labor law.

The passage of the NLRA established detailed procedures to resolve labor disputes pertaining to employment conditions, including wages and hours (Benson, 1980). Recalling contested labor disputes in the steel industry, railroad and manufacturing industries from the 1890s to the 1930s, the NLRA established the National Labor Relations Board (NLRB) to facilitate settlements and to decide cases. Central to this study, the NLRB oversees elections to form unions. In 1944, the NLRB approved a petition from the faculty at Henry Ford Trade School to form a union (Pollitt & Thompson, 1976). Later, the Labor Management Relations Act of 1947, also known as the Taft-Hartley Act, refined the NLRB's jurisdiction relating to union organizing on college campuses (NLRB, 1974).

With formation of the NRLA, union formation surged with membership peaking in the early 1950s (Calloway & Collins, 2017). Industrial unions have since experienced declines in membership and influence (Julius & DiGiovanni, 2019). Facing intense foreign competition, employers transferred production to locations with lower labor cost and substituted capital for labor to remain competitive. As foreign competition forced transformation in the manufacturing sector, industrial union membership and influence waned. By contrast, membership expanded among private and public sector service industry employees including employees in health care, entertainment and education. Illustrative of the extent of the new union landscape, the National Education Association (NEA) is the largest union in the country with over 3 million members (Megerian, 2020). In addition to the NEA, the American Federation of Teachers (AFT), American Association of University Professors

(AAUP), Service Employees International Union (SEIU) and statewide entities represent grade school, junior high, high school teachers, and college professors.

Faculty Unions and Higher Education

In the 1960s, a number of states passed legislation permitting public employees to form unions (Bradbury, 2015). In 1970, the NLRB asserted jurisdiction over private universities by permitting faculty at Cornell University to unionize (Pollitt & Thompson, 1976). Following the 1970 NLRB ruling, faculty at private colleges and universities petitioned the NLRB to unionize, largely in response to deteriorating economic conditions (Cain, 2015). In the wake of the Cornell decision, approximately 90 private college and university faculty unions gained recognition as exclusive bargaining agent over the ensuing decade (National Center, 1980).

In October, 1974, the Yeshiva University Faculty Association filed a representation petition with the NLRB seeking certification as the bargaining agent. The NLRB granted the petition in December, 1975 (NLRB v. Yeshiva Univ.). The university refused to negotiate with the union, which lodged an unfair labor practices complaint with the NLRB, which requested, in 1978, that the Second Circuit Court of Appeals enforce the ruling. The appellate court rejected all arguments by the NLRB, including the contention that faculty are eligible by virtue of satisfying the definition of professional employees. The court ruled that faculty could be both professional and managerial (Clarke, 1981).

The case ascended to the U. S. Supreme Court. In 1980, the justices upheld the appellate court ruling with a 5-4 decision. The majority opinion reversed the NLRB decision after applying amendments from the Labor Management Relations Act of 1947 (LMRA) added to the National Labor Relations Act of 1935 (NLRB v Yeshiva, 1980). LMRA expressly prohibits managerial employees from joining unions. The Supreme Court ruling determined that Yeshiva University faculty members were managers; therefore, not permitted to form a union (Denslow, 1981, Hunter et al. 2021). Following the NLRB v. Yeshiva University decision through 2014, the NLRB ruled against more than 20 union organizing attempts in the private sector (Welch, 2015). The ruling thwarted faculty union formation at private colleges and universities and sparked decertification petitions by private institutions where unions existed.

Faculty Unions Today

As of 2019, over 410,000 college and university faculty are represented by unions (Herbert et al., 2020). The central benefit of unionization is the ability to bargain collectively. For more than five decades, faculty unions formed to address concerns specific to economic well-being, shared governance, protecting academic freedom, and dissatisfaction with the business model dominating higher education administration (Aronowitz, 2000; Bacharach et al., 1987; Benedict, 2007; Bérubé, 2012, Cain, 2015; Dyal, 1989; Freeman & Medoff, 1984; Johnson et al., 2003; Johnson, Kavanagh & Mattson, 2003; Magney, 1999; Marcus, 2022; Miller & Katz, 2004; Nelson, 2011; Smith, 2009).

Reagan and Conservatism in the 1980s

Within one year of the Yeshiva decision, Ronald Reagan defeated the incumbent, James "Jimmy" Carter in an electoral vote landslide. Voters wanted change. The incumbent lost by ten million votes and won just four states and the District of Columbia. Carter's re-election was doomed by the struggling economy experiencing inflation and elevated unemployment. Despite success brokering the Camp David Accords, Carter's inability to secure release of American hostages in Iran riled voters and deepened the wounded self-esteem of the nation so soon after the withdrawal from Vietnam. The Yeshiva decision foreshadowed arrival of a new era for unions and labor policy forthcoming from the new President. Overwhelmingly, voters opted for the optimism of Reagan and his promise of peace through strength and a return to traditional American values of self-reliance.

Ironically, Reagan's ascendency as an exemplar of conservative political ideology included stints leading the Screen Actor Guild from 1947 to 1952 and from 1959 to 1960 (Hirsh, 2004). In the early 1960s, Reagan's political orientation shifted as William F. Buckley's National Review and Senator Barry Goldwater sowed the seeds of a conservative reawakening. In 1966, Reagan was elected Governor of California as a Republican. His prior union involvement served him when he survived a recall election during his first term, in part, due to the support of unions. Early in his presidency, Reagan confronted striking air traffic controllers. When the workers did not report to work, the newly elected President fired 12,000 members of the Professional Air Traffic Controllers Organization (PATCO). The mass firing prominently signaled tougher times ahead for unions as public opinion came to view unions as impediments to the competitiveness of US companies facing intense foreign competition. Notably, PATCO's decertification ushered in an era of regular use of replacement workers (Hirsch, 2004).

In response to economic challenges globally, the resurgence of conservatism and Neoliberal ideals embodied in Reagan informed the return of Conservatives led by Margaret Thatcher in the United Kingdom, Brian Mulroney in Canada, and Bob Hawke in Australia. During the 1980s, ascending conservative views of individualism overcame the collective behavior encouraged and practiced by unions (Craver, 1993). The resurgence of conservatism embodied in the Reagan Presidency elevated laissez-faire policies. Unlike previous administrations, the Reagan administration advocated voluntary and privately negotiated solutions to labor disputes, and thus did not impose a labor policy (Zifchak, 1983). Throughout this period, collective bargaining and organizing of private college and university faculties remained uneventful until the fall 2014 when the Service Employees International Union, Local 925, submitted a representation petition to the NLRB to serve as the bargaining agent for non-tenure-track faculty at Pacific Lutheran University (PLU).

Pacific Lutheran University

The Service Employees International Union (SEIU) Local 925 filed a petition to represent the nontenure-eligible contingent faculty members at PLU. The university challenged to petition by arguing that full-time, non-tenured track faculty are ineligible to organize under the religious education exemption of the NLRA. Furthermore, citing the Yeshiva decision, the university claimed that the petitioning faculty are managerial employees, thereby ineligible to form a collective bargaining unit (NLRB, 2014).

In rejecting the argument that the faculty was ineligible to form a collective bargaining unit under the religious education exemption, The NLRB applied a new analytical framework requiring that faculty provide religious education for exemption. On the matter of managerial status, the NLRB introduced a new analytical framework to assess the managerial responsibility of the faculty. The new framework identified five areas of shared governance to assess the extent of managerial responsibility of the faculty: curriculum, enrollment management, finance, academic policy, and faculty hiring, promotion, and tenure. The NLRB ruling stated that greater weight was assigned to the first three criteria. Moreover, the NLRB imposed the burden on the institution to demonstrate that the faculty possesses real decision-making authority. The board no longer accepted mention in a document such as the faculty handbook as evidence of shared governance. Institutions would now have to demonstrate that faculty recommendations were nearly always adopted and not merely paper authority (NLRB, 2014; Hunter et al., 2021). Despite the dramatic reinterpretation of existing law, the SEIU withdrew its petition one month after the NLRB ruling (Flaherty, 2015).

The PLU decision eased the path for non-tenure-track faculty at religiously-affiliated institutions to form collective bargaining units (Jaschik, 2015). The articulation of a new analytical framework to assess the religious exemption and the extent of managerial responsibility shifted the legal landscape for organizing private college and university faculty.

What Changed?

The NLRB's dramatic reinterpretation of the Yeshiva decision warrants examination, especially given the integral role of precedent in the U. S. legal system (Shannon & Hunter, 2015). Two possibilities are investigated. First, is it the case that the reinterpretation reflects differing political orientations by the appointees entrusted with interpreting and creating law? Is there evidence that political party affiliation of NLRB and U. S. Supreme Court Justices corresponds to the differing decisions? Second, given the passage of thirty-five years, can we identify socio-political or economic trends that dictate evolution of norms and behaviors that may influence perceptions of the role of private college and university faculty?

Composition of NLRB and the U. S. Supreme Court

The Yeshiva University Faculty Association petitioned the NLRB in October, 1974, and the NLRB issued its ruling in December 1974. Six years later, the U. S. Supreme Court issued its decision in February, 1980. The makeup of the NLRB is more fluid than the Supreme Court. The process of adding members to the NLRB is similar to adding Justices to the Supreme Court. In both instances the President nominates individuals for Senate confirmation. All else differs. NLRB members serve five-year terms with one member term expiring each year. When the Yeshiva University Faculty Association submitted its petition, the NLRB consisted of four members and only three were assigned to hear the case. Two Republicans and one

Democrat ruled on the Yeshiva petition. The pro-union finding of the NLRB, despite the Republican majority seems to reflect that the petition was judged on its merits.

The Yeshiva case was argued October 10, 1979 before the United States Supreme Court. The 5-4 decision was announced February 20, 1980, nearly a full year prior to Reagan's first inauguration. In contrast to the NLRB, appointments to the US Supreme Court do not expire. Carter did not nominate a Justice hearing arguments to the nine-member Supreme Court. The Supreme Court included single nominees of Lyndon Johnson and John Kennedy, three Richard Nixon nominees, two Dwight Eisenhower nominees, and John Paul Stevens nominated by Gerald Ford. In total, seven of the nine justices were nominated by Presidents of the Republican Party (Supreme Court of US, n.d.). The 5-4 decision, in part, turned on the vote of the most junior Justice, John Paul Stevens. Appointed by Gerald Ford, Stevens would emerge as a leading liberal of the Court in the 1980s. Similar to the NLRB ruling, the decision seems to reflect the merits of the case rather than the political affiliation of the members of the Supreme Court.

When the Pacific Lutheran University decision was rendered on December 16, 2014, the NLRB was controlled by three recess appointments by President Barak Obama. Obama identified Mark Pearce to serve as Chairman. Under the leadership of Pearce, the NLRB implemented union-friendly initiatives intended to accommodate union organizing. Despite the activist Chairman, by custom, the NLRB overruled precedent only when the NLRB had at least four members and a majority vote to overrule the precedent (Zuver, 2018). In contrast to the NLRB and U. S. Supreme Court decisions on Yeshiva petition, it seems reasonable to infer that the NLRB ruling pertaining to the PLU petition was influenced by political ideology. Given the mixed results when examining the composition of the NLRB and U. S. Supreme Court, analysis turns to assessment of a second hypothesis.

Origins of the Business Model in Higher Education

The arrival of the Second Industrial Revolution in the late decades of the nineteenth century produced vast fortunes for the owners of capital. Little, if any, of the new wealth accrued to workers. The profits from heavy industry funded the extravagances of the Gilded Age, sometimes at great cost to industrial workers. Modern labor unions arose out of the asymmetries of power that created disparities of wealth and working conditions.

Transformation of higher education accompanied the industrial transformation of the economy. As the scale of industry increased, the scale and scope of colleges and universities increased (Paetow, 1910). Accumulated wealth derived from the expansion of industry funded private research universities established in the second half of the nineteenth century. These universities deviated from the historical model of a collection of scholars and teachers with a shared vision and shared governance. The new model was hierarchical and served a decided purpose to support industrialists. The authority of the university president resembled the authority of a chief executive of an industrial corporation (Levy, 2022; Veblen, 1918). The disruptive new model did not elude detection by higher education faculty.

Thorstein Veblen was not an enthusiast of the new course of higher education. In 1918, Veblen published The Higher Learning in America. Veblen (1918) coined the term "captains of erudition" to describe the emergence and social status of chief executives in the newly-formed universities. The term modified "captains of industry" that he introduced into the vernacular with publication of The Theory of Business Enterprise in 1904. His intent is unambiguous; the university president reigned supreme with complete authority over operational, financial, and educational spheres of the institution. It is informative to recall the significance of the captains of industry eventually stepping down from their operational responsibilities and relinquishing oversight of their creations to a newly created class of salaried managers. Veblen (1904) used the term "business man" derisively to describe the managers uninvolved with the origination of the enterprise and disengaged from the production of the product or interaction with customers. The singular responsibility of the "business man" was to maximize the value of the enterprise. The parallel with modern higher education is self-evident and requires no elaboration.

Calvin Coolidge reportedly declared, "The business of America is business." (Terrell, 2019). Higher education in America is a business success story. While companies and industries emerge, expand, fade, and vanish, higher education endures despite wars, economic fluctuations, technological innovations, pandemics, and constantly evolving demand conditions that bring about the demise of firms and entire industries. Consider that with the removal of GE from the Dow Jones Industrial Average (DJIA) in 2018, not one original Blue Chip company remains in the DJIA established in 1896, a period of less than 125 years. Yet, 24 existing colleges and universities predate the adoption of the U. S. Constitution. In addition, consider that 45 percent of new firms fail within the first five years, and 65 percent fail within 25 years (Bureau of Labor Statistics, n.d.). In contrast, it is extremely uncommon for a non-profit college or university to cease operations. Benedict et al. (2023) references multiple reports of closings from various sources to find that the closure rate of existing colleges and universities of less than one percent annually is in great contrast to the failure rate of for-profit colleges and universities. The remarkable record of higher education contrasts with commercial enterprises and signals the unique nature of higher education.

To summarize, the accumulation of wealth from industrialization funded an expansion of higher education and introduced a new model consistent with the hierarchy of the industrial firms generating the wealth. Throughout history, transformative events impose controversy as well as winners and losers. In higher education, much of the influx of wealth from private and public sources circumvented the traditional subjects to support vocational training, engineering, and scientific discovery to serve industry. Over time, much of influx of wealth from private and public sources bypassed humanities disciplines and the faculty declined relative to others.

Concerns regarding the new direction and quality of higher education motivated faculty from elite universities in 1915 to establish the American Association of University Professors (AAUP) to advocate for quality higher education and to monitor academic freedom. Early on, the AAUP opposed faculty unions because unions were inconsistent with the professional status of faculty (Cain, 2015). In this sense, the AAUP resembled an occupational guild, but higher education was not immune to the consequences of the division of labor. College and university faculty shortly thereafter embraced unions for the same reasons industrial workers sought refuge in collective arrangements.

Demographic Shocks

Following the Second World War through 1964, the nation experienced a sustained increase in the birth rate, which increased college enrollment in the mid-1960s. Colleges and universities expanded physical plant and hired faculty. Increased college enrollments persisted until the late 1970s (US Department of Education, 1995). The decline in enrollments corresponded to a period of declining economic vitality (Tooze, 2022). Colleges and universities over expanded; the number of high school graduates increased less than two percent nationwide despite population growth of 50 percent over the same period (Department of Education, 1995).

Diffusion and Dominance of Business Model in Higher Education

In the wake of expansion, colleges and universities faced financial challenges that accelerated adoption of business practices. Boards of Trustees, often populated by business people, advocated business solutions to organizational challenges. With enrollment declines expected and market competition constraining the revenue side of the equation for the most colleges and universities, administrators pursued cost reductions and restructuring. Cost cutting disproportionately targeted faculty by replacing tenure-track faculty with contingent faculty (Shulman, 2023).

The transition to a business model altered the relations between college administration and staff, faculty and students. Johnson et al. (2003) finds that larger classes, distance learning, boutique degrees and hierarchical management contributed to greater dissatisfaction of faculty. Others note that the business model erodes faculty participation in decision-making and results in paper authority absent of meaningful influence (Lerner, 2008; Lieberwitz, 2015; Julius & DiGiovanni, 2019).

The American Association of University Professors Research Office (2017) used data from the Integrated Postsecondary Education Data System (IPEDS) to illustrate academic labor market trends from 1975 to 2015. The data reveal that full-time tenured faculty represent a smaller proportion of the faculty in 2015 (21 percent) than in 1975 (29 percent). Tenure-track faculty overall declined from 16 percent in 2015 to 8 percent in 2015. The AAUP data reveal that the declines were offset by similar increases in full-time, non-tenure track-faculty, which increased from 10 percent to 17 percent, and part-time faculty, which increased from 24 percent to 40 percent. Overall, tenured and tenure-track faculty declined from 45 percent to 30 percent of teaching faculty between 1975 and 2015 (AAUP Research Office, 2017).

Ginsberg (2011) reports increased hiring of administrators and staff beginning in the 1970s. While faculty increased 50 percent with the increase in enrollment, administrators grew by

85 percent. The expansion of staff positions to support the increase in administrators expanded by 240 percent. Ginsberg refers to an all-administrative university and contends that the emergence of an all-administrative university necessitates the diminishment of faculty. Mirzadeh (2015) and Carson (2014) provide additional evidence of administration bloat. While serving as the interim President of Harvard University, Henry Rosovsky stated, "The quality of a university campus is likely negatively correlated with the unrestrained power of administrators (Ginsburg, 2011, p. 3). Subsequent research demonstrates that the expansion of administrative personnel corresponds with the decline of faculty influence (Wylie, 2018).

The lack of reliable data exacerbated the frustration of instructional faculty who sought to demonstrate empirically the growth of full-time administrative personnel relative to instructional positions. Data limitations prevented confirmation of faculty perceptions that the influx of administrators and administrative support personnel explained rising operating costs. In 2012, the employment categories in IPEDs were expanded from seven to fifteen categories. Hinrichs (2016) conducted a systematic study of higher education employment using re-categorized data. The findings support suspicions that fragmentation of administrative responsibilities fueled higher education hiring. The study utilizes IPEDs data for the period 1987 to 2013 with records ranging from 2,585 institutions in 1987 to 3,065 institutions in 2013 to reveal that (total) faculty increased as a proportion of all employees, although full-time faculty employment remained approximately constant at 30 percent of all full-time employees. Faculty is the only full-time category trending downward and the only category of part-time employees to trend upward during period. McKenna (2015) provides a thoughtful essay examining the unintended, although entirely predictable, consequences of replacing full-time tenure-track faculty with part-time instructors. She argues that tenure-track faculty are likely more invested in the long-term success of students and the institution, so the long-term consequences of substituting part-time for full-time may be detrimental.

The category executive/administrative/managerial (full-time) increased slightly, while experiencing the steepest decline in part-time employment. The newly created category, other professionals, increased from less than 20 percent to 30 percent of total employment in twenty-five years. For this increase to occur other categories declined, notably, clerical/secretarial and service/maintenance employees. According to data from the U. S. Department of Education, the proportion of part-time faculty increased from 22 percent in 1970 to 50 percent in 2018 (Hinrich, 2016). Smith (2009) links the introduction of communication equipment accommodating distance delivery to the transition from full-time tenure-track faculty to contingent faculty. He contends that the adoption of online delivery and the substitution of full-time tenure-track faculty to contingent faculty reveals the corporate for-profit mentality. Levantovskaya (2022) captures the transformation of the workplace when she introduces the idea that college and university instruction resembles gig work.

While the findings are informative, the studies do not reflect the extent of the transformation. Increasingly, colleges and universities contract consultants. Specific figures are difficult to locate, and figures specific to higher education consulting are only a portion of total expenditures. Nonetheless, one report states that the higher education consulting industry exceeds $3.5 billion. Another list reveals that the most renowned management consulting firms are involved in addition to boutique firms. Arguably, hiring consultants reflects abdication of administrative responsibilities and a misuse of resources that would otherwise compensate faculty.

In yet another irony, the explicit transition from fixed-cost, full-time tenured faculty to variable cost contingent faculty motivates union organizing efforts and exposes cost-cutting administrators to the possibility that contingent faculty will submit a representation petition to the NLRB, which imposes otherwise avoidable costs on the institution. In combination with expanding administrative personnel, reducing and restructuring the composition of faculties contribute to the animosity that arises between faculty and administrators as the business model permeates higher education.

Two anecdotes illustrate the scope of the transition and the alienation of administrators from faculty and the educational mission of colleges and universities inherent in corporatizing higher education. In the first instance, a professor who exhibited support for an organizing effort by adjunct faculty on campus was denied tenure despite an exemplary record of performance. As part of the legal case that followed, an email recovered from the account of Ann Marcus, Dean of the NYU School of Education read, “We need people we can abuse, exploit and then turn loose.” (Westheimer, 2003).

The second anecdote emerged during a summit of the New Faculty Majority (NFM), a group representing adjunct and contingent faculty, which convened in conjunction with the annual meeting of the Association of American Colleges and Universities (AAC&U), a group dedicated to promoting liberal education. The two organizations met at opposite ends of a corridor with a symbolic crosswalk placed between the two organizations’ respective domains. At one end of the hallway, NFM attendees discussed jobs with 4-4 teaching loads that required annual reapplication. At the other end, university administrators browsed the book exhibit. At one point, a faculty member from a community college revealed that her purchase included only one mention of adjunct faculty under the heading “budgets” in a handbook intended for deans (Bérubé, 2012). These anecdotes illustrate how the business model is institutionalized in higher education.

Conclusion

More than a century ago, Thorstein Veblen reported the deleterious effects of the arrival of businessmen in higher education (Bok, 2023). Veblen’s concerns were revisited a century later in this same journal, Kansas City Kansas Community College E-Journal, in Smith (2009), who reiterates Veblen’s concern with the commodification of education and the production of dissemination of knowledge controlled by commercially motivated bureaucrats. Veblen’s prescience was remarkable. One needn’t wonder if he would recognize the current incarnation of higher education.

This study examines the increase in faculty unions between 2013 and 2021. In particular the study seeks to explain the increase in unions at private colleges and universities. An obvious factor is the evolution of the legal environment. The Pacific Lutheran University NLRB ruling introduced new analytic frameworks to assess the religious education exemption and to assess the extent to which faculty serve as managers. It is no coincidence that representation petitions increased in the aftermath of the ruling. Moreover, it is no surprise that the majority of petitions originated from contingent faculty.

A temporary demographic shock triggered a series of decisions that proved to be financially crippling when the shock reversed. Boards of Trustees entrusted with oversight of private colleges and universities embraced business practices to address the challenges facing their institutions with unappealing consequences for faculty. As power amassed in the administration, faculty were marginalized and vulnerable. As in other industries where power asymmetries threatened the livelihood and dignity of workers, college and university faculty sought protection from the law that permits workers to organize and bargain collectively.

John H. Fanning served as a member and chairmen of the NLRB for 25 years. He did not hide his bias in favor of labor. Reportedly, he once stated, "I'm convinced that if a company has a union in its plant, the union was pretty much invited in by the actions of the company. People don't pay union dues if they are entirely happy." Fanning's remarks apply to the industrialists of the late19th century and private and university faculty today (Flint, 1990).

The contention of this study is that a confluence of events contributed to the increase in private college and university unions. It would be intellectually irresponsible to argue that the increase is entirely the outcome of the NLRB PLU decision. The NLRB decisions are a necessary condition, but are not sufficient. Faculty do not have to submit representation petitions. Faculty submit petitions to the NLRB when employment conditions warrant the action. This study asserts that the diffusion of the business model in higher education adversely affected working conditions for college and university faculty. Moreover, the NLRB introduced new analytic frameworks to assess the religious exemption and the extent of managerial participation. What motivated the NLRB to propose new frameworks? Given that the NLRB ruling reflected the position of two Republicans and one Democrat, it is reasonable to suggest that conditions changed sufficiently since passage of the NLRA to justifying new frameworks. Notably, the NLRB ruling has not been challenged in court (Flaherty, 2015).

The business model can be traced to its origins in the late 19th century when industrialists funded colleges and universities to serve their commercial purposes. Business people entered higher education Boards of Trustees and applied business practices to challenges in higher education. Many of the decisions in the twentieth century have harmed faculty and, likely, damaged the long-term prospect of the institutions they are entrusted to safeguard. As previously noted, businesses come and go, but colleges and universities have been remarkably resilient. Perhaps the final irony is that only now when business practice dominates the administration of colleges and universities that financial concerns are most severe.

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