

THE NON-MANAGEMENT SIDE OF ACADEMIC ADMINISTRATION

*Michael A. Fitts**

THOSE of us at the center of non-profit or for-profit organizations in the United States seldom expound on the challenges of our work. Why? For one, many administrators view their responsibility as doing their job, not analyzing it. From this perspective, the level of contemplation necessary for reflective insight is better achieved in the post administrative phase, better known as retirement. There is an added benefit to such delay; in retirement, those who are the subject of any less-than-positive comments will not be able to respond. Indeed, posthumous publication adds to this strategic advantage, though it has an obvious downside if it comes too early.

The University of Toledo Symposium is a welcome exception. It affords acting deans—by which I mean deans who are now doing the job—the ability to step back and reflect on what it is they do, why they do it, and why it may or may not be successful. Over the years, this symposium has published the work of a wide variety of administrators offering examples of the issues they have addressed, the knotty problems they have resolved, and the joys—and challenges—of their line of work. There has been some theory implicit in this discussion, but for the most part, the articles have explored the trials and tribulations of running an institution from the vantage point of someone faced with balancing a myriad of constituencies pressing their particular vision—and advantage.

In this piece, which will be far less useful and far more muddled than the others in this symposium, I wish to step back and muse about the role of being an academic administrator, including but not limited to a law school dean, and how it compares with running other types of institutions, especially for-profit organizations. I will not draw from my own experience (I will thus eliminate the possibility of retaliation!). Rather, I would like to take this opportunity to explore the nature of the jobs academic administrators face, and why and how they are often qualitatively different from the jobs other managers in society face. Along the way, I would like to explain a conundrum that many others have observed and commented on: why full time academics, as well as lawyers, keep being selected for these positions, even though they often lack any of the traditional managerial experience. I will also comment on the difficulty non-profit administrators face in performing their jobs well, but, at the same time, and not unrelatedly, the problem of establishing any clear standard of accountability and evaluating success or failure.

* Dean and Bernard G. Segal Professor of Law, University of Pennsylvania Law School.

First, let me begin with some background. Outside the academy, the classic model of management is drawn from the for-profit private sector. There are volumes of books written about the skills required for managing a team of people, how to focus the goals of the organization, how to execute, and, in the end, how to maximize the proverbial profit. In this genre, I am not talking about the widely read books written by the larger than life business leaders, whether it be a Donald Trump or Jack Welch. Rather, I am thinking of the standard business school and management books that talk about the skills and techniques necessary for running an organization according to a strategic plan and goal.

What makes this literature useful, and the organizations to which it applies extensive, is the relative consistency in goals of this type of entity. At least as an abstract model, for-profits have one overarching purpose: maximizing profit. They also have a group who receives the benefit of reaching that goal successfully (stockholders), a market for assessing the current and future success of that activity (the stock price), and a group of people who profess to be able to evaluate the performance (market analysts). They also have a board of directors who are legally responsible for pursuing these goals for the company as a whole, who have at least some financial interest in a positive result, and have some background in the field. Their failure to reach that goal can also be the subject of stringent market forces—namely, bankruptcy, hostile takeover, or rapid financial decline.

Of course, in offering these obviously simplistic principles, one immediately concedes they constitute merely a model—in the Weberian sense, an ideal type. Everyone recognizes how this system can fail on its own terms—sometimes miserably. The corporate governance scandals several years ago, which led to the passage of Sarbanes-Oxley, the demise of several Wall Street firms in the recent financial services meltdown, and the slow decline of the Detroit auto industry, are all examples of the system not working well. Managers may pursue their own short-term goals of income (through stock options or short-term profits), the Board may not have a good idea of the business or the financial incentive to figure it out, the company may pursue short-term rather than long-term profits, and the success or lack of success of the company may have more to do with general market conditions or luck, rather than any good long-term business strategy. Finally, for-profit enterprises have constituencies, such as employees, or the local community, etc., which have independent power and are not necessarily seeking to further the aforementioned principles.

My point, however, is not that corporations are uniformly successful in pursuing these goals or are even necessarily structured well to pursue them. It is certainly not that corporations should necessarily follow these goals exclusively. Rather, my point is only that there is some modicum of agreement as to what type of goals should generally be pursued and some underlying agreement about what success might look like. For the most part, the standard model of a for-profit corporation vests the board with substantive decisionmaking power and establishes a mode of distinguishing between goals; the long-term purpose of the chief executive is profitability. This offers a way of discussing why one set of goals should or should not take precedence over others and managing the disagreement between groups over those goals.

The same cannot generally be said of academic institutions, including law schools. Academic institutions can, and often do, directly pursue a wider set of objectives with a host of different constituencies that may wish to identify with and take ownership of those purposes. The list of potential goals and principles are as wide as the imagination, and a large number of independent groups—students, faculty, alumni, central university administrators, the bar, the community—can all make legitimate claims to speak for these underlying goals.

The case of law schools is illustrative. Students, for example, may press the institution to provide the best skills education for them and placement in remunerative professional positions; faculty may want to teach more theoretical topics and receive the strongest support for their scholarship and the recruitment of colleagues who will be engaged in parallel efforts; the university may want a law school to be part of a wider intellectual and professional community (all the way from English departments to education schools) which we should connect with and maybe help support, financially and intellectually; the legal profession may press schools to help further the profession, which can include improving the courts as well as the activities of those in practice; and the community may wish that we directly further the public interest of our society, whether by helping those less financially well off or less powerful. Last, and certainly not least, the alumni may want the institution to be more “prominent,” which can include maintaining its historical legacy, advancing its public visibility, or furthering a number of other objectives.

This less focused pursuit of the economic bottom line reflects, in part, the different nature of non-profit and academic enterprises. Over the years, non-profit and academic “markets,” as it were, have tended to be less subject to strict market accountability and exacting “consumer” sovereignty. As Professor Henry Hansmann and others have pointed out, non-profit institutions arise in part because of the relative inability of consumers or donors to evaluate the precise quality of what the institution does, that is, its “product.” Their non-profit status is one way of ensuring the profit motive does not create a perverse incentive and, hopefully, focuses them in other directions.

Health care and education are classic examples. In such situations, where consumers or donors may be less able to evaluate the quality of what they are getting, other factors may have more salience. General historical reputation, culture, visibility, and related alumni networks may matter more than, and offer a degree of independence from, direct and immediate market accountability. External support also impacts the nature of the decisionmaking. These institutions receive funds through government subsidies, tax exemptions, and donations that are explicitly predicated on their pursuit of other goals separate from generating a surplus. In this sense, the bottom line—the generation of additional resources—may be improved (paradoxically) by not obsessing directly with the bottom line but by pursuing these other goals.

Of course, this is not to say that law schools and academic institutions are insensitive to the bottom line, that is, the generation of income and resources. Far from it. We need to be able to make our payroll, pay our rent, and support the wide variety of initiatives described above. We also recognize that being successful at all the separate goals described above—recruiting and supporting

faculty, teaching and placing students, helping the community and university—can directly and indirectly increase the size of the bottom line, including philanthropic support. However, “the bottom line” has a different meaning and significance in this context; it is a means to an end, not an end in itself. Showing a large surplus at the end of the year does not define success, nor does taking initiatives that would add to that income. If that were the standard, a host of academic institutions would triple their tuition and double the size of their student bodies. Rather, the ultimate purpose is to further a separate set of eleemosynary goals which form the vision for the institution.

To the extent this difference in incentives and accountability exists, what does it mean for the skills required for management of the entity? What is the significance of having a diversity of potential goals, all of which are (on some level) legitimate and valuable but which are not comparable according to some clear commensurable metric and which cannot all be pursued exclusively? That is the fundamental organizational question. Let me underscore three differences that relate directly to the fact that an administrator is less likely to oversee an enterprise with a shared set of goals as well as the ability to marshal the independent centers of influence within the institution toward those goals.

First, and most important, the leader of an academic non-profit must be skilled in managing differences in views between the various constituencies that can rightfully claim to speak for the institution. Given the existence of many separate and independent sources of influence—because there is no single group of “stockholders” with a shared goal—the leader cannot overwhelm the different constituencies, fire them, or dismiss their arguments because they are inconsistent with the long-term goals of the institution. There are a number of groups—faculty, alumni, students, trustees, community representatives—who can claim to speak for the goals of the institution and who cannot be ignored. This may be because they have tenure (such as faculty), or they have a certain degree of independence (such as students or alumni), or they are a source of potential support (such as alumni and the community).

Apart from their independence, there is also a deliberative difference. While for-profit managers do need to manage conflict, the differences in goals of the various constituencies have a relatively common metric: the long-term profitability of the enterprise. In contrast, there is no necessary common metric to balance the goals of public service, student skills education, faculty scholarship, and community involvement. Mediating differences of vision becomes a critical factor in deanly or presidential success.

These observations might appear to suggest the leader of an academic institution is a mere politician. But that is not the description that best captures the role. In the classic political context, elected politicians have one ultimate group which evaluates their success—the voters. There may be a host of other individuals who indirectly impact the reaction of the voters, including the press, campaign contributors, and interest groups. But in the end, there is *one* group which might be viewed as determining success or failure. The head of an educational non-profit, in contrast, has no single group which is the ultimate sovereign—at least not in the same sense of most politicians.

This leads to a second related difference between the leader of a for-profit and an academic leader: the importance of a vision. Nobody speaks of the vision in the case of for-profit enterprises because they do not need an intellectual means for integrating the various components of the enterprise. Leaders of academic institutions and other non-profits need to be able to mediate different goals in a way that leads the various actors to rise beyond their particular differences and agree on a more synthetic vision of the institution. Obviously, the rightness or wrongness of that vision is not something that can be determined by some clear, commensurable metric, like profitability, but rather by the ultimate agreement of or acceptance by the relevant constituencies. That is what gives it its political element. But to say that it is political is not to say that it is unimportant or vacuous. Far to the contrary. To the extent the leader cannot mediate that difference of opinion, the institution may stagnate and decline, under any standard, including a traditional managerial for-profit standard. In effect, political divisions will make the institution ineffective in achieving any goal.

The third quality (perhaps implicit in the first two) is the importance of communication. If the standards for evaluating the success of the enterprise are less clear, and accumulating income is not a goal in itself, the ability to explain success and articulate what constitutes a success is a major part of the dean's or president's job. We can talk about the quality of students matriculating, the amount and importance of the faculty scholarship, the placement of the students, the public service performed by the institution, and the buildings and programs created. But the fact that there is not a common metric to compare and assess these ideals means that a dean or president needs to be able to explain why all of this is important and valuable to the various constituencies, to the society, and ultimately, to the "institution." In this sense, there is a symbolic element of the job that has substantive significance in moving the institution forward, indeed, in defining and explaining what it means to move the institution forward.

Viewed in this light, the importance of common visible metrics, like the *U.S. News and World Report* ranking, becomes more understandable, whether or not they are justifiable. In a world where the various constituencies may be less clear of the quality of what is being done or how they interrelate and lack some clear means to assess overall performance, the significance of institutional communication and of seemingly precise metrics like a *U.S. News* ranking has greater force. It is impossible to believe that a *U.S. News* ranking of automobile companies would have the same salience or influence.

These political and communication skills can mean different things in different contexts. It may mean that the dean or president can give eloquent speeches, connect with members of the community, including students, alumni, faculty, and members of the profession, or articulate a vision for the society to garner support. From the traditional managerial perspective, these skills may seem less important, but to an institution that has a less clear bottom line, this cultural role can be essential. Presidents may be successful because they can connect with people and are friendly, while other presidents, who are generally regarded as having turned an institution around from a managerial perspective, are not viewed as successful. The point is fundamental: a dean or president may

be making all of the substantive financial and academic decisions “correctly,” at least in terms of traditional managerial efficiency, but the communications functions may ultimately be as important to her perceived success.

This situation has a number of interesting consequences. First, the ability to undertake significant change in an academic institution, and achieve real success, can be more difficult. With many independent actors with veto authority and lack of agreement on goals, deans and presidents are less likely to be able to initiate major change. There are too many independent people and entities to bring together to cause transformative change. Indeed, even if the leader was able to bring about such change, it is not clear they would always have the incentive to try, since the various constituencies in the institution often lack agreement on what a successful end result would look like. It is, therefore, not surprising that, in the academic arena, in contrast to the for-profit world, there have been very few institutions that have risen or fallen significantly in terms of either general reputation or quality. While General Motors, Kodak, Xerox, and IBM are not the dominant institutions they once were, and Google, Microsoft, and Wal-Mart have risen from nowhere, the ranking of the Top Ten Universities has not changed significantly over the last 200 years.

For similar reasons, we do not see many significant structural changes being undertaken at universities. For example, while for-profit companies remake their profile with the closing and spinning-off of a substantial number of units, universities very seldom initiate the same level of structural change. It is almost unheard of for a university to actually close a school.

At the same time, while the benefits of significant action are less clear, the costs of inaction may be less obvious. In a for-profit world, profitability, takeover, and bankruptcy hold managers accountable—for good or naught. In the non-profit world, such bottom line success or failure is less relevant. Outsiders do not have the ability or incentive to intervene.

All of these issues can be particularly applicable to law school deans. While law schools, like these other institutions, house multiple political and intellectual constituencies, the dean is often more directly involved with those groups than is the norm in academia. There are two reasons. First, law schools are generally small, without departments, department chairs, physical research, non-teaching operation, or a large number of PhD-type graduate students. As a result, they do not have the large bureaucracies of academic and administrative intermediaries that usually exist between a president and their university and many deans and their university. The law school dean must deal directly with academics that come from vastly different intellectual backgrounds and mediate their different visions. Second, the culture of the school generally envisions each group having access to the head; there is not a professional or academic hierarchy, as you would find in a school of arts and sciences or a medical school, for example. The students, deans, faculty, and administrative staff naturally look to the dean directly. This may be a function of the structure described above, but it is also a function, I suspect, of culture. A law school class involves a faculty member directly engaged with individual students. Students expect to have individual access. So do faculty, who have a taste for governance and the ability to exercise

it. As a result, there is no large structure of intermediate institutions that make decisions and resolve conflict.

In the end, this story of academic administration has both a positive and a negative aspect. On the one hand, academic administration is extremely challenging and requires a wide variety of different skills: management, personal connection, vision, strategic ambition. Because of their widely disparate roles, the truly great academic leaders have to be part visionary leader, part obsessive manager, and part mother superior. Possessing only one skill usually will not lead to long-term success. On the other hand, there is also a certain degree of freedom that this constraint offers. To the extent that there is not one metric to evaluate the success of a dean, and many different constituencies, there is greater latitude for the dean. She can pick and choose what part of the intellectual portfolio she wishes to pursue, and she understands that she will not be held obsessively accountable by any one standard. The dispersion of authority and diversity of metrics thus offers both a challenge and an opportunity. Nothing she does will be completely right, but, then again, nothing can be completely wrong.

This leads to a final query, with which I conclude this, admittedly, highly-speculative piece. What happens if the academic world described here suddenly becomes subject to rapid change? Put more directly, what happens if the direct market accountability of non-profits increases dramatically? The independence of the various components of academic institutions described here is a function of their relative financial security and related legal and cultural structure. Academic institutions are now largely able to enroll a class, hire faculty, place their students, and contribute to the community without substantial challenges to the fundamental quality of their decisions. Changes are initiated at the margin, and the success of the school will be measured by the incremental improvement along individual dimensions. But to the extent that resources ever become substantially more constrained, and the consumers of our products more focused on the value-added aspect of our service, the position of university presidents and deans may need to evolve.

How would it change? Such changes would undoubtedly be different for different institutions. The historical need to coordinate the various independent sources of perspective and power will continue, but the costs of not undertaking significant change might increase. In short, the skills needed for the job will be as varied as ever, but the costs of mistake or inaction would increase as well. Only the future can say what effect this might have on the leadership and risk-taking of the leaders of these institutions.