

COLLIDING OR COALESCING: LEADING A FACULTY AND AN ADMINISTRATION IN THE ACADEMIC ENTERPRISE

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INTRODUCTION

LAW school is a business. Law school is a part of academia. Assuming that the former and the latter are diametrically opposite, which is it? Can it be both, or do we have to choose? These questions are part of an on-going debate not only in higher education, but also in the popular media and public discourse. The answers to these questions are styled as crucial to determine how to move forward. Those arguing that law schools are businesses, for example, have increasingly advocated for law school deans to come out of a business environment.¹

To some extent, the answer to whether law schools are businesses may differ from the question whether *all* of academia is a business. After all, law schools are professional schools that educate and train students to enter an often lucrative profession.² That differs from the sector of higher education whose graduates aim to join academia, traditionally on tenure-track appointments.³

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1. See Jack M. Weiss, *A Causerie on Selecting Law Deans in an Age of Entrepreneurial Deaning*, 70 LA. L. REV. 923, 925 (2010). Cf. Daryl Delabio & Louann Palmer, *A 360° View of Non-Traditional University Presidents*, ACAD. LEADERSHIP J., Winter 2009 (Feb. 18, 2009, 08:37:27), available at <http://www.academicleadership.org/article/a-360-view-of-non-traditional-university-presidents> (studying non-traditional university presidents).

2. For the argument that business school is not a professional school, see Richard Barker, *The Big Idea: No, Management Is Not a Profession*, HARV. BUS. REV., July-Aug. 2010, at 52, 54 (core characteristics of a profession are the existence of a clearly delineated body of knowledge that must be mastered and a regulatory body that provides professional oversight).

3. Only a very small number of law school graduates become full-time law faculty members. This percentage differs dramatically based on the prestige value attached to a law school. One law school—Yale—prides itself on the large percentage of its graduates who become law faculty members. See *Employment Statistics*, YALE LAW SCH., available at <http://www.law.yale.edu/studentlife/cdoprospectivestudentstats.htm> (last visited May 20, 2011); *Yale Law School*, TOP LAW SCHOOLS, <http://www.top-law-schools.com/yale-law-school.html> (last visited May 20, 2011); Brian Leiter, *Where Did Younger Faculty at the Top Law Schools Earn Their JD?*, BRIAN LEITER'S LAW SCHOOL REPORTS (July 14, 2010), <http://leiterlawschool.typepad.com/leiter/2010/07/where-did-younger-faculty-at-the-top-law-schools-earn-their-jd.html>. In recent years, graduate programs have been accused of graduating too many Ph.D. candidates who will be unable to find full-time academic placements. For an academic study of the increasing placement of humanities Ph.D. recipients in non-academic settings, see, e.g., *Ph.D. Career Paths*, UNIV. OF WASH., GRADUATE

Law schools, however, have begun to differ increasingly from other professional schools, largely due to recent hiring patterns for law faculty. Full time, tenure-track law faculty tend to have less practice experience than in past decades. Faculty are valued more for their scholarship potential, expressed in the “scholarship agenda” expected of tenure-track hiring candidates, rather than their previous practice experience.⁴ With the demand for dual J.D. and Ph.D. degree holders in the legal academy, law schools create the impression of wanting faculties that resemble more those of graduate schools than those of other professional schools. While law schools have struggled with their own identity for a long time,⁵ the increasing chasm between the profession and legal academia plays into the debate about the self-understanding of law schools and their categorization as professional schools rather than graduate programs.⁶

At the same time these changes have occurred, pressure from *U.S. News* rankings has caused law schools to professionalize their administration. Professional staff has grown exponentially, and their quality has improved.⁷ One example may be the law school magazines and admissions viewbooks that are award-worthy in look and lay-out, and are surely costly. That development should not be a surprise, however, as law school applicants and students are used to a relatively high level of service, comfort, and responsiveness from the undergraduate institutions they attended.⁸ Likewise, corporate America has trained us to assume first-rate customer service, a standard that we now expect to see replicated in higher education, where mounting competition leads to demands for ever greater responsiveness.⁹

The discussion whether law schools are a business or hyper-academic, however, detracts from hard questions that we should and need to ask about our institutions. In the end, how we define a business and whether law schools are

SCH. (May 1998), available at http://www.grad.washington.edu/stats/phd_survey/1996/phd_survey.htm. For a description of the growing employment of non-tenured teaching staff at the expense of tenured faculty, see Beryl Lief Benderly, *Does the U.S. Produce Too Many Scientists?*, SCIENTIFIC AM. (Feb. 22, 2010), available at <http://www.scientificamerican.com/article.cfm?id=does-the-us-produce-too-m>.

4. See, e.g., Brent E. Newton, *Preaching What They Don't Practice: Why Law Faculties' Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105 (2010).

5. See, e.g., Alfred Z. Reed, *Legal Education, 1925-1928*, 6 AM. L. SCH. REV. 765, 769-72 (1926-1930).

6. See generally, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992).

7. Christopher Shea, *The End of Tenure*, NYTIMES.COM, Sept. 5, 2010, <http://www.nytimes.com/2010/09/05/review/Shea-t.html> (indicating that at Williams College, 70% of the employees are non-teaching staff).

8. See, e.g., Sara Olkon, *Luxury Dorms: Purdue University, Other Schools Build Swanky Housing to Lure Undergrads*, CHI. TRIB., Sept. 17, 2009, available at http://articles.chicagotribune.com/2009-09-17/news/0909161250_1_purdue-university-dorms-luxury.

9. A discussion of the fine line between inappropriate customer service and appropriate responsiveness as part of the education and training of future professionals falls beyond the purview of this article.

businesses are academic issues that can be debated forever, even though law faculties may be ill-prepared to engage in that discourse. We do not have the luxury of leisurely discussions, especially in light of the current economic climate, as tuition continues to rise despite contraction in parts of the legal job market.¹⁰ This may be especially salient if, even with an improving economy, the value proposition of a legal education—as compared with its ultimate financial pay-off—is no longer defensible.¹¹

Deans have known for a long time that neither the “law school as a business” nor the “law school as part of a pristine academic world” position is tenable.¹² Even in their daily dealings within their respective schools, they are forced to create, and live, a unique middle ground. It is a middle ground created by their different constituencies: faculty, administrative and clerical staff, alumni, donors, members of the bench and bar, and students. To create a successful academic enterprise, the first two groups are indispensable for success. However, they demand very different skills from a dean whose ultimate goal must be to have all constituencies work together cooperatively and effectively to operate a mission-driven enterprise successfully.

I. TWO CRUCIAL INTERNAL CONSTITUENCIES

A. *The Faculty*

Deans who come from a faculty—either from within the institution where they are now “deaning” or from the outside—and who have little or no prior administrative experience outside academia might find themselves, at least initially, more comfortable with faculty than with administrators.¹³ After all, they are members of the faculty, and they understand the constraints and demands of teaching, advising, scholarship, committee duties, and related obligations.

10. Consumer Credit, Federal Reserve Statistical Release (Sept. 8, 2010) <http://www.federalreserve.gov/RELEASES/g19/20100708/g19.pdf>. See also Mary Pilon, *Student Loan Debt Surpasses Credit Cards*, WALL ST. J. BLOGS (Aug. 9, 2010, 1:13 PM), <http://blogs.wsj.com/economics/2010/08/09/student-loan-debt-surpasses-credit-cards>.

11. See Katy Hopkins, *Law School Climbs Despite Legal Recession*, U.S. NEWS & WORLD REP. (Sept. 9, 2009), <http://articles.bestlawfirms.usnews.com/law/articles/2010/09/09/rising-demand-rising-tuition.html>.

12. While money is clearly a crucial input factor in legal education, in contrast to profit-driven enterprises, it is not an output measure, as holds true for the entire social service sector. JIM COLLINS, *FROM GOOD TO GREAT AND THE SOCIAL SECTORS: WHY BUSINESS THINKING IS NOT THE ANSWER* 18-20 (2005).

13. Outside and inside deans may find themselves weathering different challenges. For true insiders, moving from colleague to dean can be a difficult transition, especially when the person has close ties to individual faculty members. See Patricia Wallington, *You're the New Boss, But It's Lonely at the Top*, CIO (Sept. 15, 2005), <http://www.cio.com/article/print/11868>.

1. *Faculty Obligations: Scholarship and Teaching*

Faculty often join the academy because they reject hierarchical decision-making, prefer to work alone rather than as members of a team, and enjoy intellectual discourse, even if it does not lead to concrete results. Often, these characteristics make a faculty member most successful as a scholar.

The development and mentoring of junior faculty members differs dramatically from law school to law school. In contrast to other countries that may have very structured mentoring programs, here this function may be fulfilled almost randomly by individual faculty members, run by tenure sub-committees, or through Institutes and Centers.¹⁴

With the selection of legal academics who look ever less like practitioners and ever more like graduate school professors—albeit usually still without a Ph.D.—scholarship increasingly has become the coin of the realm. This regularly leads to little focus on institution building or even teaching at the hiring stage or at subsequent reviews. In turn, calibrating the “success” of scholarship is difficult, and seems to focus largely on the ranking and name prestige of the law review in which the author publishes.¹⁵ Needless to say, occasional disagreements, especially about the value of specialty journals, may occur. Yet such disagreements are not conducive to creativity or the creation of different measurements in evaluating “success,” such as the impact of a scholarly publication over a longer period of time—admittedly a much more difficult concept to measure and one that would require delaying rewards.

At this point, evaluations of teaching tend to be largely restricted to student and peer assessments.¹⁶ Both, as we know, are easily manipulable.¹⁷ Therefore, faculty achievements and successes are difficult to measure and compare.¹⁸

14. See Sarah Everts, *A Coming of Age Controversy: Habilitation, Germany's Post-Ph.D. Milestone, Stays the Course*, CHEMICAL & ENGINEERING NEWS, Oct. 27, 2008, at 41, available at <http://pubs.acs.org/cen/science/86/8643sci4.html> (discussing arguments against German habilitation, including the problem of habilitation mentors taking credit for the work of their habilitands).

15. See generally Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews by Author Prominence—Ten Years Later*, 99 L. LIBR. J. 573 (2007); Fred R. Shapiro, *The Most-Cited Law Reviews*, 29 J. LEGAL STUD. 389 (2000); Tracey E. George & Chris Guthrie, *An Empirical Evaluation of Specialized Law Reviews*, 26 FLA. ST. U. L. REV. 813 (1999); Robert M. Jarvis & Phyllis G. Coleman, *Ranking Law Reviews: An Empirical Analysis Based on Author Prominence*, 39 ARIZ. L. REV. 15 (1997).

16. Daniel E. Ho & Timothy H. Shapiro, *Evaluating Course Evaluations: An Empirical Analysis of a Quasi-Experiment at the Stanford Law School, 2000-2007*, 58 J. LEGAL EDUC. 388, 389 (2008).

17. *Id.* For difficulties with the use of outcomes assessments, see, e.g., Andrew J. Rotherham, *Rating Teachers: The Trouble with Value-Added Data*, TIME.COM (Sept. 23, 2010), available at <http://www.time.com/time/nation/article/0,8599,2020867,00.html>.

18. I suspect that this problem may lead to hurt feelings in law faculties, as colleagues cannot appreciate particular achievements because they do not know how to evaluate an honor, a speaking engagement, or even a publication.

Alternative measures, however, are imaginable. An example may be The Cleveland Orchestra, which turned to alternative measurables (such as number of standing ovations and range of perfect

2. *Faculty Governance and Its Limits*

In addition to teaching and scholarship, all law schools expect some level of institutional involvement, often deemed “service,” from their faculty members. According to the law schools’ primary accrediting body, the American Bar Association, law school governance decisions must rest with the faculty.¹⁹ Admissions, faculty recruitment, and curriculum form the core of governance.²⁰ Depending on the law school and its history, faculty committees may play a more or less influential role in these decisions.²¹ Similarly, the extent to which faculty committees are involved in decision-making, especially in the admissions area, and what role the dean ultimately plays in these decisions, varies between institutions.²²

The academic calendar frequently inhibits timely decision-making on the part of faculties. If faculties scatter in the summer, often all committee work stops. Even during the academic year, some discussions seem unnecessarily prolonged, and increasingly committees need administrative support to evaluate different options or gather the requisite information. Such time lag makes business style decision-making and the ability to execute quickly upon market trends impossible, and would ultimately doom a true business to failure.

Perhaps more problematic is the growing trend in the legal academy to “trade up.” As initial appointments may be in geographically more removed areas or at lower-ranked schools, younger faculty members in particular tend to change schools more frequently than was customary in decades past. Because of this development and often because of related pre-existing career plans, such faculty members may be less inclined to invest in the institution that currently employs them. When that is the case, faculty governance, as a concept but especially as executed, may become more problematic—and perhaps less defensible. Faculty governance may also come under pressure through the proliferation and professionalization of law school administrations as administrators may be often better able to take over crucial institutional tasks, especially with respect to the admission of students.

B. *Administration*

At times, many schools have experienced tension between administrators and faculty. Such tension arises from fundamental differences between the two groups. Administrators frequently have dramatically different needs than faculty members. They thrive with clear reporting lines, a distinct job description, and a well-defined delineation of duties. They are familiar with hierarchical

performances) to assess whether it has been moving toward its goal of becoming one of the top three philharmonic orchestras in the world. See COLLINS, *supra* note 12, at 5-7.

19. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 204 (2010).

20. *Id.* Standard 205(b).

21. *Id.* Standard 207.

22. *Id.*

organizations, though those coming from the social sector may be more accustomed to a diffuse power structure.²³ They are also well aware of what they perceive are the perks faculty members receive, which include a flexible schedule and summer breaks, sabbaticals, and perhaps even a more relaxed dress “code.”

Faculty members often view themselves as “independent contractors.” Administrators, however, and especially department heads, must take a team approach to execute the strategic plan, in light of the mission and vision for the law school. In their roles, department leaders are intricately involved in planning and executing the responsibilities of their departments, given the budget allocated to them. They set goals in conjunction with the dean and constantly measure their ability to meet them. For departments, metrics are crucial, as they allow them to gauge improvement and success.²⁴ Metrics must be set realistically, taking into consideration existing resources, but also must be set ambitiously enough to create challenges that keep administrators engaged.

Not unlike faculty, administrators carefully protect their own turf. They keep a watchful—and sometimes suspicious—eye on the amount of resources and staffing provided to other departments.²⁵ They also tend to cautiously monitor the parameters of their department’s sphere, generally rejecting responsibilities that do not fit squarely within their umbrella of duties.²⁶ This often leads to the “silozation” of departments.²⁷ To function effectively on behalf of the institution, however, department heads must be willing to work with each other and find avenues to assist with cross-departmental requests and joint projects.²⁸ Such authority lines may become particularly blurred when one department has to relinquish responsibility to another,²⁹ for example, when the admissions office turns over the responsibility for the class it just recruited to other law school departments. At what point this occurs will differ among schools, but whenever it happens both groups must be prepared.

Top-level administrators mentor and develop their staff. In contrast to faculties who usually deem an administrator’s departure a sign of turmoil or failure, administrative leaders may view it to their credit if a group member lands a higher-level position at a different institution based on the training and mentoring they received. Thus, turnover may not signal failure, but rather successful mentorship and leadership. In fact, recruitment of capable personnel may often depend on the ability of administrators to position themselves as strong mentors whose goal is to support every team member’s professional development.

23. COLLINS, *supra* note 12, at 3.

24. *Uniform Law Department Metrics Classification System*, OPEN LEGAL STANDARDS INITIATIVE (2006), http://www.openlegalstandards.org/pdfs/OLSI%20Law%20Dept%20Metrics%20List%20_All%20KPIs_.pdf.

25. See generally Todd L. Pittinsky, *Softening Silos: The Nuts and Bolts of Leading Amid Difference*, 57 LEADER TO LEADER 20 (2010).

26. *Id.* at 18, 19, 22 (discussing advantages of silozation).

27. *Id.* at 18.

28. *Id.* at 21-22.

29. *Id.* at 22 (discussing the causes of silozation and the need for the creation of cross-functional teams).

C. Faculty and Administrators: Two Worlds Colliding?

Faculty may become unwitting players in intra- or inter-departmental strife by taking positions either on individual administrators or on entire departments. This appears to be the case particularly when the department is a service department with which they interact frequently, such as the library or IT. Here, faculty members tend to become very protective of—or aggrieved by—individual administrators, often without understanding the bigger picture either of how the individual executes the whole set of her duties or how the entire department functions within the law school.

On the other hand, faculty are quick to criticize departments whose area of focus they view as requiring little training or expertise. Increasingly, faculties understand that Admissions, especially at schools with a large applicant volume, requires a strong department, persuasive staff, and substantial analytical skill. Still, many times they, like students, fault the office of career services for insufficient effort when they hear complaints from students or employers. Anecdotal evidence, rather than quantitative data, often drive individual faculty members' perceptions. This is especially the case when quantitative data is difficult to acquire, or is perceived as easily manipulable.

As law schools increasingly utilize communications teams, faculties, and even other administrators are often hard pressed to understand their work. This is largely because the actual impact of communication's efforts may be diffuse and often difficult to measure, especially because this group tends to support other teams. As with development, faculties appear to believe that communications requires neither special training nor expertise, and therefore often assume they could run the departments better.

Development offices do not “just ask for money,” though that is surely part of their function. Modern “asks” reside within a much larger super-structure, which includes a research function, database management, financial accounting, and managing large groups of individuals with different needs and interests.

Misunderstandings and lack of comprehension of each other's work and attitudinal differences create tension between different administrators, and between faculty and administration. It is the dean's role to overcome natural mistrust and miscommunication to create effective teams and move the institution forward.

II. OVERCOMING THE SCHISM BETWEEN FACULTY AND ADMINISTRATION: THE DEAN'S ROLE

Deans from within the academy initially need to be educated as to what high-level execution of administrative functions means, and how important it is. After all, they need to be able to rely on their top-level administrators to provide sage advice in their areas of expertise. Without a strong head of every department, entire departments may be undermined, either by other administrators who will be able to funnel resources in their own directions, or by faculty members who quickly detect weaknesses.

A. *The Quality and Composition of the Dean's Administrative Team*

In fully developing their administration, deans should attend to two components: First, because department leaders come from different disciplines, and often arrive without legal training and experience, their approaches tend to vary dramatically from a faculty member's comfort level, which may include the dean's. That can, however, be a winning formula. Administrative team leaders should complement each other, as should their department staff members. Some administrators likely come with stronger mentoring experience on which others can draw; some come with stronger administrative talent than others; some may be better communicators.³⁰ Some of these individual differences are naturally a function of personality, others of the discipline and profession in which the individual was trained. For a law school to succeed in today's competitive environment, having a diverse administrative team in which every member is highly talented and trained in his or her area is crucial—and a winning formula.

Second, the quality of the top-level administration must be of faculty caliber—without such talent, even good faculties are doomed to be stagnant or decline in the ever more competitive law school market. While deans do not get credited for upgrading the administration, they will receive acclaim for improved outputs, in the form of either student satisfaction or alumni giving. Because of the structure of administrative appointments, deans have substantially more control over the configuration and staffing of administrative departments than they usually do over faculty positions. In addition, deans generally have sole control—subject to University approval, if applicable—over administrative appointments. While it is a great responsibility and requires a solid team that can assist with vetting candidates, it also allows a dean to turn over his or her administrative team relatively quickly.³¹ Any successful dean either will have inherited a first-rate outfit, or at some point—hopefully sooner rather than later—have to undergo such a process.³² Staffing decisions can be painful, but must be made solely with the best interests of the institution in mind and in alignment with the mission, vision, and strategic plan.³³

In the end, “who you have on the bus” will determine the success of your organization.³⁴ After all, no leader can go it alone but needs a highly accomplished team to succeed. The will to succeed is a crucial feature of a top educational administrator. The person must be “productively neurotic, ... *self-*

30. See Elizabeth Mannix & Margaret A. Neale, *What Differences Make a Difference?: The Promise and Reality of Diverse Teams in Organizations*, PSYCHOL. SCI. PUB. INT., Oct. 2005, at 31-55.

31. Deans should not be too harsh on themselves for making wrong hiring decisions at points. After all, “There is no perfect interviewing technique, no ideal hiring method; even the best executives make hiring mistakes.” COLLINS, *supra* note 12, at 15. In the end, one will not discover an employee's true commitment, ability and work ethic until the person is on board. *Id.*

32. *Id.* at 13.

33. True leadership, especially in the social sector where power depends on “a blend of personal humility and professional will,” requires deep commitment to the greater good of the organization. COLLINS, *supra* note 12, at 11-12.

34. *Id.* at 15 (alteration to original).

motivated and *self-disciplined*.”³⁵ Since higher education does not offer the financial rewards of a career in the business world, the ability to self-motivate rather than to be motivated by outside factors such as compensation is crucial for a dean’s administrative team.

B. The Dean as “Cultural Broker” or “Translator” Between Two Cultures

Only once the dean has created a strong administrative team with the characteristics described will she have a substantially easier job as “cultural broker” or “translator.” “Translation” can only be successful if the translator has a sense of the cultural values underlying both groups. To a faculty member, administrators must appear inscrutable and mysterious. Administrators want clear lines of authority and an organizational chart, they demand performance reviews—and take them most seriously, and they actually execute when the dean requests so. All of these factors distinguish them from the vast majority of faculty members who either have never worked in such environment or have left precisely to avoid such constraints. Therefore, they may not be able to understand the administrator’s choice of career, or worse, they may belittle it or consider the administrator incapable of holding the type of appointment that would create greater flexibility.

On the other hand, hard-working and smart faculty members impress thoughtful administrators, who understand that their success is intimately tied to the faculty’s creativity and commitment. Administrators expect the faculty to give them the content they need to “sell,” whether to prospective students, to potential donors, or to any other constituency. Without that, they cannot execute their own job, or might be tempted to interfere with the faculty’s prerogatives. Ultimately, the dean’s obligation is to keep both constituencies within their spheres of competence.

As legal academics no longer see their first appointment as the place where they will end their teaching careers, their stakeholder status may decrease, as compared with that of administrators. Even though administrative turnover is still likely higher than that of faculty, we all know of the registrar or dean of students who, in the minds of students, is of the same stature and importance to their well-being and satisfaction level as any faculty member, and who may have been there substantially longer. As a result, administrators have to be considered important stakeholders, especially as it is their discrete role to execute a law school’s vision every day by implementing it. It is the dean’s role to bring both groups together so that the law school is best represented by a coherent whole.

Successful collaboration by members of the faculty and administration will increase mutual respect and even promote admiration. It will also facilitate an understanding of mutual dependence within a cohesive strategic framework.³⁶ To make such cross-functional teams successful, the goal must be “genuinely shared.”³⁷ This may often mean a new project that requires collaboration and

35. *Id.*

36. See Pittinsky, *supra* note 25, at 20.

37. See generally *id.* at 21.

careful management, and that plays to the strength of both groups. A new project avoids direct confrontation of past history and resultant stereotypical beliefs about the inability to collaborate to accomplish a mutual objective.³⁸ The dean should “convey respect and even affection for” both groups.³⁹ This requires her to have deep knowledge of everyone’s contribution to the joint enterprise and the ability to discuss those contributions with all stakeholders inside and outside the team.⁴⁰ In the end, such conversations and cross-functional committees and teams should help to create the respect all departments and the faculty need to function effectively and efficiently as part of a joint enterprise, rather than as independent contractors.

At times of outside pressures on institutions, it is particularly crucial to have a well-functioning organization that rallies around the mission and vision and can execute on the strategy. Ultimately, it is the dean’s responsibility to create that climate.

III. THE NEED FOR INTERNAL LEADERSHIP IN A TIME OF OUTSIDE CHALLENGES ON LEGAL EDUCATION

As law schools come under increasing economic pressures, thoughtful academics and members of the legal profession have begun to question the future of the legal academy.⁴¹ One indicator may be the American Bar Association’s Section on Legal Education’s review of accreditation standards. Among other issues, it is assessing whether it should continue to require deans to be tenured faculty members.⁴² This may be an overdue inquiry, as the role of the dean has been changing quickly and dramatically and ever more university presidents appear to come from outside the academy.⁴³

A. *Law Firms Under Pressure*

Law schools are not the only entities that have to rethink their strategies and planning. In the past, traditional law firms may have resembled academic institutions more than corporate America.⁴⁴ Partners have behaved more like tenured faculty members—albeit with more power over their associates and surely greater economic resources—than like corporate executives.⁴⁵ It was not

38. *Id.*

39. *See id.*

40. *Id.* at 23.

41. AM. BAR ASS’N, REPORT OF SPECIAL COMMITTEE ON SECURITY OF POSITION (2008) [hereinafter SECURITY OF POSITION REPORT], available at <http://apps.americanbar.org/legaled/committees/Security%20of%20Position.doc>.

42. *Id.*

43. Frank T. Read, *The Unique Role of the Law School Dean in American Legal Education*, 51 J. LEGAL EDUC. 389, 390-91 (2001).

44. *See* W. Taylor Reveley, III, *Cultural Musings of a Non-Traditional Dean*, 31 U. TOLEDO L. REV. 725, 725-26 (2000) (drawing parallels between the structure of law firms and that of the academy).

45. *See id.*

unusual for senior partners to expect great economic benefits, largely for work done over prior decades.⁴⁶ Law firms have typically had a flat administrative structure, with partners often believing themselves to have major decision-making power in the law firm's future.⁴⁷ Rarely could one call law firms of the past examples of well-run enterprises.⁴⁸

Especially in the wake of the recent economic decline, the change in law firm economics has begun to impact management structures and styles.⁴⁹ In recent years, the lives of partners have become much more precarious. Mandatory retirement ages in many of the major firms, global firm conglomerates run by executive groups or powerful managing partners, and large recruitment and marketing departments have all changed the atmosphere and culture of law firms. What the law firm of the future will look like, we do not yet know.

B. Law Schools Under Pressure

As law firms rethink the model of their profession to adjust to a competitive business climate and demanding clients, so too does higher education. A multitude of outside pressures force such changes: They range from *U.S. News* rankings to the movement toward outcomes assessment;⁵⁰ from the high cost of tuition to the shrinking number of high paying positions;⁵¹ from the economic pressures stemming from a tenure-track faculty to the default rate of law school graduates.⁵²

If scholarship carries any systemic value, the product of legal education will necessarily have to look different from that of corporate America. The enterprise will continue to attract more individual contributors, and the true scholarly product will be produced neither quickly, nor in assembly-line fashion, nor in a

46. See generally *id.* at 727.

47. S.S. Samuelson, *The Organizational Structure of Law Firms: Lessons from Management Theory*, 51 OHIO ST. L.J. 645, 650-51 (1990).

48. See Larry E. Ribstein, *The Death of Big Law*, 2010 WIS. L. REV. 749, 760-61 (discussing how market pressures have destabilized the vulnerable profit structure of the big law firm).

49. *Id.* at 760-63.

50. *Draft Proposal on the Assessment of Student Learning Outcomes (Standards 301-305)*, AM. BAR ASS'N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR STANDARDS REVIEW COMMITTEE (2010), available at www.abanet.org/legaled/committees/comstandards.html (select "Standards 301-305, Student Learning Outcomes" hyperlink under "Meeting Date: January 8-9, 2010" subheading).

51. See Christine Hurt, *Minding Our Own Business Forum: Bubbles, Student Loans and Sub-Prime Debt*, CONGLOMERATE (Apr. 19, 2010), www.theconglomerate.org/2010/04/death-of-big-law-forum-bubbles-student-loans-and-subprime-debt.html. See also *Putting College Costs into Context*, AM. COUNCIL ON EDUC., available at www.ofr.harvard.edu/college_costs.pdf; David Brown, *The 2009 NLJ 250: The Nation's Biggest Firms Said Bon Voyage to More than 5,000 Lawyers*, NAT'L L.J. (Nov. 9, 2009), available at www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202435209872&slreturn=1&hblogin=1.

52. See, e.g., Scott Jaschik, *Law School Tenure in Danger?*, INSIDE HIGHER ED (July 26, 2010), www.insidehighered.com/news/2010/07/26/law (discussing an ABA proposal to eliminate tenure requirements for law school accreditation).

direct trajectory. As scholarship adds to knowledge and the incremental improvement of law and the legal profession, ultimately inuring to our collective well-being, it, and its multifarious impact, carries a distinct value. It is this value of scholarship that needs to be protected and nurtured. However, its producers must be held accountable, especially as long as they enjoy privileged employment protections in a world that increasingly seems dominated by insecure status in the form of contract employment and temporary positions. As the number of tenure-track positions shrinks, faculty will be asked to contribute more and will be subject to greater accountability through learning and scholarship assessments. Those increased pressures will also lead to a greater need for administrative support and the enhanced influence of the administration on the shape of law schools.

C. *Leadership Under Pressure*

Whatever her background, it is upon the dean to reward and manage her different groups effectively and to maximum output, as she is “responsible for the combined value generated by all inputs to the [organization].”⁵³ Deans from the faculty will have to undergo substantial transformation to be successful, precisely because their successes as faculty members may hinder their performances as deans, as the characteristics that make a faculty member liked as a colleague and teacher and successful as a scholar often differ dramatically from those of deans. After all, the legal academy celebrates sheer intellect and academic discourse, often without demanding actual decision-making or accountability; rewards individual contributors, frequently especially those who single-mindedly pursue a narrow focus; and enjoys those who indulge their colleagues in the name of collegiality. Deans, on the other hand, must focus on the whole, the organization’s overall effectiveness; they must be able to create cohesion and a clear mission and vision upon which the entire organization will execute. They begin to resemble “symphony conductors” who are challenged to turn individual performers into a successful group.⁵⁴

Leadership in an academic institution depends on some of the same features as in the business world, but then requires additional abilities, especially because the dean’s power is relatively limited.⁵⁵ First, the dean must—and must be perceived to—always put the interests of the institution first.⁵⁶ Second, the dean

53. Barker, *supra* note 2, at 57.

54. See Barbara Kaufman, *Land Mines Ahead*, U. BUS., July/Aug. 2010, at 83, 85 (“We assume that [brilliant faculty members] will translate their superlative skills as solo performers into becoming symphony conductors who create organizational capacity by empowering a team.” (quoting Molly Corbett Broad)).

55. For a comprehensive look at the roles of the law school dean, see generally Jeffrey O’Connell & Thomas E. O’Connell, *The Five Roles of the Law School Dean: Leader, Manager, Energizer, Envoy, Intellectual*, 29 EMORY L.J. 605 (1980).

56. Jim Collins, the author of *FROM GOOD TO GREAT*, has developed a five-level hierarchy of leaders, with level 5 being the top level as “they are ambitious first and foremost for the cause, the movement, the mission, the work—not themselves—and they have the will to do whatever it takes (*whatever it takes*) to make good on that ambition.” COLLINS, *supra* note 12, at 11.

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has to be able to distinguish between situations that require executive power and those that instead demand “legislative” leadership.⁵⁷ Sometimes, decisions have to be implemented through persuasion and convincing, and other times through direct implementation.⁵⁸ After all consensus is not always possible. It is the dean’s ability and willingness to put the organization first and the ability to distinguish when to use either leadership style that ultimately determines the dean’s success, and more importantly, the success of the institution.

CONCLUSION

Academic institutions are unique—they are not businesses but they also are not merely ephemeral bodies. Unique institutions require special leaders. It is the crucial personal qualities of such leaders, more than their background, that will make a difference in their success in legal education. “[P]ersonal humility and professional will” are crucial to achieve the right result in an organization in which one part of it—tenured faculty—can become “[a] thousand points of no.”⁵⁹ And those skills will be ever more important as legal education is under siege.

57. *Id.*

58. *Id.*

59. *Id.* at 11, 10.