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The Politics of Restructuring Higher Education in Virginia: A Case Study

David W. Leslie and Robert O. Berdahl

Two current trends among the states wrestle with ways to increase the public accountability of higher education. On the one hand, some state governments are pushing deregulation, privatization, and greater use of market forces. Yet some of them are also shifting the state's critical analysis from inputs to outputs and demanding both more assessment of outcomes and more university efforts to meet state-chosen goals. Are American public universities freer of state oversight, more controlled, or, paradoxically, both at the same time?

The policy dilemma pits procedural autonomy, the “how” (Berdahl, 1971) or process control (Neave & Van Vught, 1991), against substantive autonomy, the “what” or product control. As the state deregulates process but maintains sovereignty over substance, it constrains universities to work more aggressively to achieve state-chosen goals. The illusion of procedural freedom to operate may be contingent on oversight of institutions' performance on the substance of the state's priorities.

In 2005 the Commonwealth of Virginia (2005) passed a law allowing public colleges and universities to apply for greater operating freedoms

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in purchasing, personnel, construction, technology implementation, and authority to set tuition charges in exchange for achieving performance benchmarks on 11 (later 12) state goals. The law went into effect with the new fiscal year beginning July 1, 2006. This paper is a case study of the efforts by the three “flagship” universities—the University of Virginia, Virginia Tech, and the College of William and Mary—to achieve such operational freedoms.

PERSPECTIVES ON POLICY INNOVATION

Theoretical work on policy change or innovation, especially in the arena of higher education policy, remains fraught with conflicting perspectives and fragmentary empirical research (McLendon, Heller, & Young, 2005). Political science has interpreted policy change through different and conflicting lenses for at least the last 50 years since publication of Charles Lindblom’s (1959) “The Science of ‘Muddling Through.’” As Hayes’s (2001) review suggests, incrementalist politics emphasizes mobilized interest groups which negotiate solutions to problems in an environment of limited knowledge. Alternatively, Hayes points out, the “rationalist” point of view explains policy change as the result of mobilizing coherent solutions to problems on the basis of knowledge and authoritative consensus (p. 9).

Without entering the debate over whether rationality or incrementalism has the more generalizable explanatory power, we understand that case narratives in this arena need to make their perspective explicit. We also understand that single cases, such as the one we present here, may be so particular to the place, time, and circumstances as to be aberrant or only marginally applicable to any broader test of theoretically generated propositions. In analyzing this case, we propose neither to test theory nor to assess the impact of the policy change in Virginia. Rather, we see this case as presenting a challenge to higher education and/or policy leaders intent upon change. That challenge is to understand the impact of perspective—rationalist versus incremental—on the dynamic of decision.

Our argument is essentially that this case illustrates a “misestimation error.” The campaign to essentially free three public universities in Virginia from state administrative control seems to have assumed that rational advocacy of a free (or freer) market solution to perceived overadministration and underfunding would be persuasive. The advocates of change may have misestimated the actual strength of an incrementalist culture governing policy in Virginia. It would require a far longer disquisition on Virginia politics to show (a) why the calculation that a free market argument would carry the day with a substantially conservative Republican legislature was reasonable, and (b) why the political reality of a pragmatic governor and centrist legislative coalition was not responsive to such a radical change.

One case does not a theory make. Nor does the complex governance of higher education in the United States permit generalization. As McLendon and Ness (2003) observe: “[T]he vicissitudes of local history, culture, social–demographic conditions, economic development patterns, and political institutions and considerations have combined to create a highly varied array of state policy approaches to the governance of public higher education” (p. 67).

But this case does seem to illustrate the need for perspective in advocating change or innovation. Studies that have attempted to generalize (e.g., Hearn & Griswold, 1994; McLendon, Heller, & Young, 2005) across states seem to find that local conditions, including political dynamics, are more likely explanatory than any systematic effects. Furthermore, in a comparison of policy change across states, Leslie and Novak (2003) found that political factors outweighed instrumental goals of institutions in explaining outcomes. We would argue that such conclusions favor an incrementalist view as the strategy most likely to achieve results. That is, instead of taking a rational “case” for reform to the legislative arena, advocates might strategize with the assumption that incremental policymaking (forming coalitions, negotiating, trading, etc.) over an extended time is more likely to yield results. The well-documented failure of health care reform in the first Clinton administration is a highly visible example of how an incrementally inclined legislative culture almost systematically rejects the alien idea of (scaled up) rational change (Johnson & Broder, 1996).

In addition, political science has moved away from understanding political decision making as the product of institutional action. Ideas about a more random, inherently inexplicable, and dynamic process have generated perspectives that may be useful to policy advocates. McLendon, Heller, and Young (2005) cited Kingdon’s (1984) application of “garbage can” theory to federal policymaking as a leading perspective from this school.

Directly applicable to our study, McLendon (2003, p. 480) identified 16 states that had experimented with “flexibility” legislation for higher education in the 1980s and 1990s. He sought to explain the process by which three states’ decisions about decentralization reached legislative agendas, concluding that a “garbage can” model appeared to fit best. McLendon explains the model as follows:

The Revised Garbage Can model proffers a dynamic set of processes whereby problems, ideas, and politics combine with choice opportunities to elevate issues to prominence. It holds that three separate “streams”—a stream each of problems, policies (ideas or solutions), and politics—flow through the national government largely independent of one another. An issue attracts the attention of policymakers only when the separate streams conjoin with a choice opportunity. Separate streams may become coupled when a “window of opportunity” opens, briefly allowing “policy entrepreneurs” to push atten-

tion to their pet problems or to push pet solutions. Thus, what gets onto the agenda is a function of the contents floating in the metaphorical garbage can at the moment in time a policy entrepreneur successfully couples the separate streams of activity. (p. 487)

In our analysis of the Virginia case, we were most interested in what appeared to us to be a misestimation of the capacity of the policy system to absorb and digest a potentially revolutionary change in the relationship between the Commonwealth and its three flagship public universities. Choosing a strategy that assumed rationality would prevail (“chartering” the flagships), appeared to run aground on the shoals of a more incrementally inclined (and more risk-averse) governing coalition. We think the case is instructive mainly in helping to understand ways in which higher education policy advocates can frame their strategies.

METHOD

The “case history” of the legislation has been thoroughly documented by observers from inside (Blake, 2006; Breneman & Kneedler, 2006) and outside (Couturier, 2006; Leslie, 2005) the process. In addition to our own review of legislation and related documents, we conducted elite interviews (Berry, 2002) with 15 individuals who either now hold leadership positions in affected agencies or institutions or who were directly involved in the legislation. They included four presidents and one presidential assistant, four vice presidents, two university staff with financial responsibilities, and five state officials, three of whom were either agency heads or members of the governor’s cabinet, and two of whom served in staff positions directly involved in the legislation. One individual occupied two of these positions, accounting for the total of 16 positions and 15 individuals.

Since many aspects of restructuring remain “works in progress” and since we wished for our interviewees to be candid, we promised them anonymity. We completed the interviews by contemporaneously transcribing our manual notes and mutually confirming their accuracy. In a few cases, ambiguities were resolved by follow-up correspondence with interviewees. The paper draws principally on our constant-comparative analysis (e.g., Cresswell, 2006) of the interview transcripts, the content of the legislation, and the works cited above.

THE VIRGINIA CASE

Was Anything “Broken?” Did It Need Fixing?

Virginia’s experience seems consistent with the “garbage can” perspective in that “streams” of problems and solutions converged when an opportunity

arose. The problem streams with which Virginia institutions and the state had grappled included: (a) procedural regulation by the state bureaucracy, which institutions perceived as rigid and inflexible; (b) competition for control over tuition-setting authority among institutions, the legislature, and the governor; (c) erratic cycles of state appropriation to higher education; (d) ambiguous (or nonexistent) strategic priorities that appeared to vary with each change in political regime; (e) the unequal market positions, management strength, and political clout of Virginia's public colleges and universities, and (f) the incremental independence from state-appropriated operating funds of the University of Virginia's medical, law, and business schools, as well as Virginia Commonwealth University's hospital, which established precedents for a new relationship between universities and the state.

It is our sense that these problem streams "found" a solution in the legislation originally filed in 2004 that proposed "charter" status for Virginia Tech, the University of Virginia, and the College of William and Mary. Eventually, other public colleges and universities, advocating for their own interests, broadened the legislative agenda beyond the control of the three institutions lobbying for charter status. What had initially appeared to be an effort by the original three institutions to gain procedural autonomy (Berdahl, 1971) became—in garbage-can fashion—a solution that imposed new substantive controls over all public colleges and universities in the state. In short, what was "fixed" was a great deal more than what was originally perceived as "broken" by the charter advocates.

For 10 or 15 years, Virginia's relatively independent public universities had engaged in incremental experiments in decentralization. These case-by-case episodes occurred over about two decades, beginning with Douglas Wilder's governorship in 1990-1994, during which universities experienced state-imposed tuition caps, freezes, and rollbacks that frustrated institutions with long histories of quasi-independence. They felt that their finances and their academic autonomy were being unpredictably meddled with and politicized.

In response, leaders of the three senior institutions—all public, but relatively autonomous, institutions—began a campaign leading up to the 2004 legislative session to convince legislators, the governor, and the business community that erratic funding and bureaucratic control by the state had constrained their ability to plan and threatened the quality of higher education for Virginia.

The charter proposal, drawing in part on the University of Virginia's experience (Gumport & Pusser, 1999) reasoned that freedom from regulation along with the capacity to raise and manage funds would improve efficiency and allow reduced dependence on the state, a net benefit to both institutions and to an increasingly constrained state budget.

Virginia's General Assembly had previously been receptive to decentralizing episodically and experimentally. They rationalized doing so as a compensating adjustment to lagging "base adequacy" higher education funding. As a result, randomly incremental deregulation had been under way since the 1980s. Misunderstandings on both sides—legislative and institutional—left a chronic dissatisfaction with the way deregulation had been managed. This dissatisfaction was an additional motive to propose legislation that would promote comprehensive change.

In the beginning, the "Big Three," as they were known, appeared to have separated the interests of their institutions from those of the other public universities and community colleges. Couturier's (2006) analysis leads us to suggest that this strategy may have opened the process to consideration of unrelated issues in "garbage can" fashion. As the other institutions began to express interest in the impact of any legislation on their relations with the state, both Governor Mark Warner and legislative leaders also began to broaden the agenda beyond chartering and beyond the original three. The legislative leaders were inclined to hold off chartering in 2004, given the extent of their agenda, and they agreed to a joint study commission.

Mark Warner, who served from 2002 to 2006, came to the governor's office from an entrepreneurial career. He was a supporter of higher education and, as a business leader himself, understood what a strong system of colleges and universities could do for the state economically. He understood that the 2004 legislative session would be preoccupied with tax reform, so he concurred with the legislative leaders that chartering, a controversial idea to begin with, should be put to a legislative study commission. The commission's staff presented a bullet-pointed overview (Report, 2005) of issues and options to both houses of the General Assembly and the governor in January 2005.

Governor Warner used this interim study period to hear a range of views from experts representing think tanks like the National Center for Higher Education Management Systems and the National Center for Public Policy and Higher Education. He held hearings around the state during the fall of 2004, largely focusing on what the public agenda for higher education should be. In addition, employee groups, especially at the University of Virginia, publicly indicated reservations about proposed changes in personnel policies.

The Fix

With the emergence of these varied interests and concerns, the legislation that was ultimately filed became the focal point of extensive negotiations about both substance and process in the relationship of universities to the state. The legislation itself was the product of a lengthy and chaotic process, written largely "on the fly," its contents containing tacked-on provisions and extensive amendments added by the governor during the veto process.

Instead of chartered status for the Big Three, the newly christened restructuring legislation provided opportunities for all 15 four-year institutions and the 23 community colleges to negotiate one of three levels of independence from state regulation. An elaborate two-track process was written into the law. First, the state formally articulated 11 (later 12) state goals for higher education:

1. Provide access to higher education for all citizens . . . including under-represented populations.
2. Ensure that higher education remains affordable, regardless of individual or family income.
3. Offer a broad range of undergraduate and, where appropriate, graduate programs, and address the . . . need for sufficient graduates in particular shortage areas.
4. Ensure that . . . programs maintain high academic standards by undertaking a continuous review and improvement. . . .
5. Improve student retention.
6. Develop articulation agreements that have uniform application to all Virginia community colleges.
7. Stimulate economic development of the Commonwealth and the area in which the institution is located.
8. Consistent with its . . . mission, increase the level of externally-funded research and . . . the transfer of technology . . . to private sector companies.
9. Work cooperatively with elementary and secondary school administrators, teachers, and students to improve student achievement.
10. Prepare a six-year financial plan.
11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies. (Commonwealth of Virginia, 2005)

The 12th goal, committing institutions to promote the safety of their campuses and students, was added during the 2006 legislative session.

The legislation provided that institutions would initially need to make a six-year commitment to meet performance benchmarks relating to these goals, benchmarks established by the State Council of Higher Education. A second track required submitting a management plan via a "memorandum of understanding" that would establish an institution's fiscal capacity (based on a AA bond rating) and management expertise to operate free from rules and regulations that govern state agencies (although the universities would remain "state agencies" in a legal sense). The stronger the institution's capacity, the more likely it would achieve operating freedoms under the legislation. At this writing, the Big Three have all been granted Level 3 status, the highest available, in the FY2007 appropriations act. The other public universities (and the community college system) are automatically granted Level 1 status

under the legislation. Level 2 eligibility remains to be fully defined. All are required to demonstrate that they are meeting state goals.

It was the position of the governor and his staff that the state had to articulate the state's goals clearly before they would agree to give ground to the institutions seeking more freedom (Blake, 2006). The governor reportedly felt that the goals ultimately included in the legislation were goals that public universities should be pursuing as fundamental parts of their missions. We should add that most observers we interviewed felt that the state's goals both validated what the institutions were already doing and added clarity to the state's expectations for universities. These goals, according to our respondents, did not seem incompatible with their institutions' academic integrity, nor were they considered onerous. None called them "unacceptable."

In return for their commitment to meeting these goals (known collectively as "the state ask"), institutions were to gain flexibility to carry forward unexpended funds and would retain the interest earned on tuition revenue. Level 3 institutions would also gain measures of freedom from state control over purchasing, personnel administration, capital programs, and instructional technology. (Management standards for performance in these areas were to be determined by the governor.)

One of the core issues, however, remained the degree of control institutions would keep over setting tuition rates. Theoretically and legally, the institutions' boards had (and have) the authority to charge tuition at rates they alone establish. Practically speaking, tuition receipts have been deposited in the state treasury for reappropriation to the institutions. This practice has given the legislature effective control because it could choose to reappropriate as much or as little of these funds as it wished. If an institution raised tuition beyond a politically tolerable amount, it risked losing a test of wills over how much it would actually receive in its nongeneral appropriation. The intervention of a former governor in tuition-setting policy by announcing a 20% reduction in one year had perhaps triggered the institutions' campaign to restore what they considered their legal right to set tuition rates.

Common practice had evolved whereby institutions usually announced their tuition rates after the legislature had finished its appropriations bill. The restructuring legislation that ultimately passed required institutions to project their tuition rates for six years in advance, varying according to alternative levels of appropriation. The new policy introduced a requirement that the State Council of Higher Education for Virginia (SCHEV) review institutions' performance annually as a condition for releasing the interest accrued on nongeneral funds (tuition and fee receipts).

SCHEV's role will be to monitor all the public institutions' performance toward meeting the state's 12 goals. Their management and finances will be post-audited by the state auditor of public accounts and by the secretaries

of finance, administration, and technology in their respective spheres. The whole new regime is now focused on post-audit rather than pre-audit. The Joint Legislative Audit and Review Commission will also evaluate institutions' management and finance reports on a two-year cycle.

The management agreements of the Big Three were all approved by the governor in the fall of 2005, and by the General Assembly in its 2006 session. Their six-year academic plans were also approved by SCHEV in 2006.

Impact of Restructuring

Our interviews brought to the surface a varied set of perspectives on how restructuring will affect the corporate management of public universities in Virginia, how it will affect the overall coordination and governance of public sector institutions, and how the newly authorized relationship between institutions and the state may evolve.

Corporate Impact. The obvious effect for the Big Three, all of whom are now Level 3 institutions, is the authority to manage capital projects, human resources, purchasing, and technology independently of state controls. All public institutions, subject to performance certification by SCHEV, may also retain interest on tuition and fee revenues and may carry forward unexpended funds from one fiscal year to the next. These new freedoms may (or may not) produce savings and the ability to stretch increasingly tight state appropriations further. (One estimate suggests that as much as \$25 million to \$30 million per year in additional funds will reach the institutions.) It is also possible that institutions will find ways to generate new sources of revenue. But institutions will likely have up-front costs to build capacity to manage newly decentralized functions. They project the need to hire new staff and ramp up with policies and investments to cover operations once managed elsewhere.

The corporate nature of Level 3 boards is likely to change in significant ways. They have more responsibility for capital projects, human resources policies, purchasing, and managing cash. This situation represents both a more concrete set of responsibilities and a higher level of corporate exposure and risk. Boards will almost certainly want to be satisfied with their own in-house expertise in areas where they may have formerly relied on the safety net of professional expertise provided by the state. Because all public universities were explicitly continued as "state agencies," they presumably retain sovereign immunity protection and the services of the Attorney General. Their land, buildings, and equipment remain state property. The other public universities have yet to commit themselves to achieving management freedoms under a law that has yet to be fully clarified.

SCHEV's Role. The State Council of Higher Education for Virginia has historically been a coordinating board, not a governing board. It is generally acknowledged that SCHEV's influence was substantially reduced during the

terms of Governors Allen and Gilmore (1994–2002). Its new role represents a dramatic expansion and a new centrality for SCHEV in the policy arena. A new executive director was appointed about the same time that the joint legislative commission was studying the proposed law. Upon this director's success, much of SCHEV's credibility and ultimate influence may rise or fall. The agency staff profile may have been adequate for its former role, but its new functions led to the appointment of a higher education restructuring director in the fall of 2006.

SCHEV's current leaders affirmed in our interview that its role is to "help higher education help the state." SCHEV sees this role as less a restructuring than an effort to align the goals of the state and its universities. Nevertheless, SCHEV will now make judgments about whether institutions are responding to the state's proposed goals. The first round of six-year academic plans in which institutions resolve to meet the state's goals was approved by mid-2007. SCHEV is to apply new performance measures to assess whether institutions meet the state's goals.

Various measures—as many as 70 by one observer's count—were proposed, and the list has been revised a number of times. The most current count (fall 2007) is 19, reflecting one or more measures for each of the state's 12 goals. SCHEV reports that its standards are patterned to the differing roles and missions of each type of institution. To the extent possible, it is relying on existing data and reporting formats instead of inventing new ones. SCHEV staff reported that the process would largely affirm institutions' achievement of state goals. But there is little doubt that the outcome of its performance assessment will entail high stakes for both the agency and the state's public universities.

As yet unforeseen is SCHEV's role in carrying forward the institutional memory for how restructuring is to be managed. Inevitably, legislators, presidents, the governor, and staff who were intimately involved in negotiating the ultimate legislation will pass from the scene; a new governor, Timothy Kaine, took office in 2006. As a Democrat in the Mark Warner tradition, he seems supportive of the restructuring initiative. But SCHEV may be the one remaining constant in managing the restructured relationship between the state and higher education. That role may demand a clear focus on articulating the public mission of higher education for all of the parties at interest, the public included. This leadership role will almost certainly extend well beyond its function as certifier of performance data because turnover among policy leaders is inevitable. Governors in Virginia are limited to a single four-year term, and Senator John Chichester, a long-time leader in an influential centrist coalition, has retired.

Do the Benefits Outweigh the Costs?

It took three years and what was reported to be a massive effort to lobby the enabling legislation into law. The outcome, by all accounts, was substantially different than the original proposal to charter the Big Three. One university vice president characterized the story so far this way:

There was a huge investment in this that we might not have made (for what we actually got) if we'd known how difficult it was going to be at the beginning. We also got something very different than we thought we were asking for. . . . But we take the result as a fundamental state commitment to decentralization, and we feel all sides have entered new territory in good faith so far. Obviously, the jury is still out on a lot of things, not least the issue of the legislature's ability to do whatever it wants in the future, and whether institutional memory can be preserved for a usefully extended period.

The most immediate returns, the ability to retain interest on tuition and fee revenues and to carry forward any unexpended funds, have yet to be realized. The impact of regulatory freedom is a far more speculative matter. Will these new freedoms somehow translate into improved quality—as defined on one hand by institutions themselves, and on the other hand by the state? To whose ultimate benefit will efficiencies and management freedoms accrue? And how will the entire spectrum of decision making and reallocation be conducted? Will institutions' performance be more transparent? Or less? If institutions are now freer, as one vice president put it, "to build what we want, hire whom we want, and enhance quality in other ways without state control or oversight," will that freedom result in the kinds of investment and payback that the state expects? Breneman and Kneedler (2006) speculate on the academic quality issue:

To the extent that the Restructuring Act will allow institutions to raise additional financial resources so they can raise faculty salaries, provide additional research funds and facilities, provide additional student financial aid, and better compensate staff, and to the extent that the additional autonomy makes the institutions more efficient, the academic side of the institutions will benefit both directly and indirectly. (p. 21)

The boundaries that will be observed and roles to be played by the many actors in this drama may evolve in ways unforeseen by any of those who initiated the drive. Institutions differed substantially in their relations with the state to begin with. In fact, some saw no need to alter the relationship as long as they were able to negotiate successfully with the state—as some had clearly done in areas now covered by statute.

But the cultures of state agencies and higher education institutions differ profoundly. So these agreements may be helpful in laying down the ground

rules by which conversations between the two sides will proceed. Perhaps more importantly, higher education had not been seen as fully or consistently responsive to what the state perceived as its most important goals. SCHEV's most recent (2004) strategic plan focused only on accommodating more students with less funding, strengthening funded research, and enhancing instructional quality—in retrospect a relatively narrow and pedestrian set of goals when arrayed against a far broader set of state expectations in restructuring legislation. Now the state is far more explicit in stating what public funding should provide for; and by implication, the institutions are on notice that all else is ancillary to these central purposes. As one vice president said, “We are all getting more focused on output—what are we accomplishing—than on process.” Process has been covered in the new law and in management agreements, making both the relationship and its content more explicit and predictable.

Among the most important outcomes, the restructuring episode has served to focus people on instability in funding for higher education. It has also more clearly established the relationship between tuition and state operating appropriations; people are more sensitized to the fact that if one goes down, the other can (or must) go up. Although sharing a perspective does not guarantee consistent (or higher) levels of state support, the provisions of the law now explicitly give institutions the opportunity (and obligation) to make public their anticipated charges in relation to alternative levels of state support—up to six years in advance. But the ultimate power to regulate tuition rates and appropriate operating funds remains with the legislature; nothing binds a future legislature to understandings that have emerged in negotiating this round of restructuring. In fact, Couturier (2006) has pointed out the fragility of whatever good faith now exists, dependent as it may be on how institutions deal with future tuition levels. (And, of course, nothing guarantees the state's future fiscal stability, nor its ability to meet projected levels of funding for higher education.)

POLICY ISSUES

How will restructuring serve the interests of the state and how committed will institutions be to achieving its goals? As with any new initiative, questions about how it will affect the behavior of all parties are now becoming more visible and pressing. One overriding reality that we believe may determine both the near-term and ultimate fate of restructuring is the balance of power (and good will) that may be struck among the General Assembly, the Governor, SCHEV, and the historically very independent institutions.

Perhaps the most important caution was offered by one of our presidential interviewees. Given that the General Assembly invested heavily in a high-profile initiative to change the rules for higher education, it now expects

college and university leaders to play by those rules. If legislative leaders or the Governor perceive backsliding from those rules—for example, in tuition increases that are out of the range of consent—the reaction could imperil any good faith that may now exist.

Because the legislation came together without (as we understand it) a clear, consistent consensus among these parties, the risk is real that any of them could reinterpret what the complex and confusing law says about their roles. At least some of the public institutions may have felt sandbagged by the “state ask,” as restructuring was not on their agenda. They did not want to be left out if deregulation was in the wind, but they had not anticipated the degree to which they would be held to account for substance, either. The process may have run amok beyond the ability of the original chartering advocates to control the outcome. Other universities wanted to achieve some of the same things, but ultimately, as the legislation has played out to date, they may have felt excluded. Will they make good-faith efforts to meet the state’s expectations?

On the other hand, the legislation could serve as a vehicle for legislative mischief. Simple amendments could add new goals or reshape the performance standards so painstakingly negotiated by SCHEV. In fact, a 12th goal was legislated in 2006, a signal that the door may be open to other amendments in the future. We acknowledge that no current state legislature can, by normal statute, bind future legislatures to act in a specified manner. But some interviewees speculated that the explicit nature of the restructuring process and the very involved negotiations that preceded it might have some moral carry-over effect in coming years.

Individual institutions may have competing agendas on at least some of the state ask. How, for example, will some of the most selective public universities in the country manage access? Out-of-state admissions constitutes a very sensitive issue in Virginia, especially to the Big 3 institutions. In fact, we believe the Big 3 may have wanted to leverage their out-of-state market power as a way of increasing tuition revenue when they embarked on their chartering campaign. Although agreements are in place with the community colleges to accept transfers to these institutions, the numbers (and ultimate success of transfer students) will be watched closely as the demand for higher education presses more and more severely on a limited supply of places. Who will decide (and how) about the best way to use (or invest in) the commonwealth’s higher education resources? Is “restructuring” going to be code for “let the market rule,” or will SCHEV or others assert some kind of meaningful strategic leadership? Questions like these go well beyond the operational issues that have been the focus of SCHEV and the institutions as preparations to implement restructuring have been under way.

There seems to be general agreement that many issues have now been brought to discussion, negotiation, and public attention that might otherwise

have been ignored. But some of our interviews suggest that larger questions remain in the air. Who will assert the state's longer-term interest in overcoming the parochial and partisan interests that often shape decisions on campuses and in Richmond? Will higher education policy be firmly guided by strategic considerations or will it be more of a free-market free-for-all with only incremental (and disjointed) course corrections as immediate pressures may dictate? How can the state best leverage its higher education resources (and investments) to help the state meet its larger goals? Can existing resources be used synergistically, or do institutions revert to a pattern of making opportunistic investments regardless of how those investments may pay off to the state? How will Levels 1 and 2 be defined as the restructuring process goes forward, and who will be negotiating the status of institutions seeking further management independence? Will the General Assembly see a need to refine—and perhaps redefine—restructuring? Who is best positioned to lead the serious formation of strategic policy, beyond any mechanistic application of performance criteria that will determine relatively small returns to institutions?

In our view, the timeline for assessing the value added by restructuring seems much longer than many of those now working out its details anticipate. While the terms and conditions are being road-tested during FY 2007, the ultimate relationship between public universities and the state will play out, for better or worse, in the longer run. Observers knowledgeable about plans at Level 3 institutions acknowledge that it may take five years or more to realize net savings. And given the recent history of the state's erratic funding and tuition policies, as well as its predilection for bureaucratic regulation (at least from the point of view of comparatively independent universities), it may take a multi-year test of results to sustain good-faith performance by both the state and the universities. As one vice president puts it:

Restructuring as we've done it is not a magic bullet. The institutions and the state will still have to face financial and other realities that are not overcome with a single legislative act. There will never be enough funds, hard choices will still have to be made, and it will take time and patience to see restructuring into fully realized operation. On the other hand, we and other institutions are already doing a lot that is called for in the state "ask." We can use our achievements to demonstrate both progress and good faith.

Ultimately, one of our interviewees noted, whether the state benefits in substantive ways from the performance of its institutions may determine how they are treated. If the institutions value a measure of independence from procedural regulation, they will have to return substantive value to keep it.

LESSONS FOR OTHERS?

We began our case study of restructuring in Virginia hoping we might foresee useful lessons for other states interested in experimenting with process deregulation. At this point in time, we can simply echo most of our interviewees: "It is too soon to tell. . . ."

The Virginia policy may offer substantial benefits to both the state and its public colleges and universities. The state has made its expectations for universities much clearer, and it has established an explicit framework for evaluating institutions' performance. Management flexibility, saving costs on construction, holding and managing funds, operating a tailor-made HR system, and the promise of tuition and fee predictability all appear to hold promise for institutions in the Level 3 group. Their experience may well break the path for the other institutions, providing them with opportunities for more independent operations than they would otherwise have enjoyed.

Our interviewees were reluctant to offer advice to other states that might want to follow Virginia's model. What may or may not work in Virginia's unique context may have only limited relevance to other states, with other histories, other structures, other personalities. For one thing, the Virginia episode was a response by the Big Three presidents to long-festered frustrations, an assertion that the time had come to put their institutions' relationship with the state to a serious test. As one vice president phrased it, "We saw that the time had come to negotiate over the forest rather than the individual trees." They faced these frustrations in the context of (a) the national uniqueness of their institutions, (b) the specific context of higher education politics in Virginia, and (c) a politically weakened coordinating agency. This same individual suggested that other states may want to begin by defining the challenge facing them, as well as assessing what "needs" challenging. Certainly the national and state trends in demanding more accountability, represented in the Spellings Commission Report (U.S. Department of Education, 2006) and the SHEEO National Task Force on Accountability (National Task, 2005), should prompt advocates of change to consider the values and the limitations of the trade-offs between greater procedural freedoms and greater substantive accountability being experienced now in Virginia.

It is quite possible that the complexity of Virginia's legislated solution is destined to fall of its own considerable weight. But the virtually unanimous assessment among those we have interviewed is that it will take about five years for any kind of summary judgment to emerge. What began as a campaign by the Big Three to rationalize a relationship that they perceived as progressively more dysfunctional, became a garbage can for the expression of many competing interests and agendas. The restructuring legislation, in the end, appears to have become an opening act in the longer drama of a more incremental process that will now play out over a period of time.

Had the advocates of chartering more clearly and accurately assessed the political dynamics they would be facing, they might well have begun with the assumption that incremental renegotiation was the more workable approach. But one vexing counterfactual in this argument must be acknowledged: incremental deregulation had been underway in Virginia for a period of years, but it had essentially failed to overcome the progressive dysfunction the institutions were experiencing.

The Virginia case thus presents both a theoretical and a practical conundrum. First, is policymaking more responsive to comprehensive rational solutions? Or is policymaking more likely to succeed through incrementalism? Second, how strategically (or incrementally) should policy advocates frame their campaigns? We do not have an obvious or convenient answer; but by presenting the case in detail, we hope we have illuminated the problem for both researchers and practitioners.

The risk in either case is misestimation of the nature of the problem and the readiness of the system to accommodate prospective courses of action. It is clear that the system was unprepared to respond when the Big Three in Virginia launched their campaign; and because the system temporized, other interests and unanticipated “solutions” all became part of a less and less controllable scenario. Extensive legislation notwithstanding, the relationship between universities and the commonwealth became less settled.

AMBIGUITIES AND UNCERTAINTIES

Ambiguities and uncertainties remain. Among the issues (in no particular order) that appear to require continued attention are:

1. Will the remaining four-year universities (and the 23-institution community college system) opt to continue their traditional relationship with the state, or will some (or all) see sufficient advantage to a more autonomous status by applying for a “level” consistent with their capacities?

2. How will SCHEV’s expanded role in approving institutional performance be conducted? (SCHEV has always had statutory authority to plan, but it now both establishes performance benchmarks and reviews institutions’ plans and performance.)

3. How effectively will the “covered” institutions serve the state’s interests? (Assuring access and “affordability,” providing high-quality programs in needed fields, contributing to economic development, providing for underserved populations, supporting K–12 schools, expanding research funding, and assuring student safety are among the state’s expectations.)

4. Will the erratic funding cycles experienced by colleges and universities be smoothed out with this new agreement? (How effectively will the six-year projections of tuition and enrollment mesh with general appropriations and how will the state use its nongeneral-fund appropriating authority in

annual tuition-setting cycles? How will institutions moderate their tuition authority in response to general-fund appropriations that meet or do not meet base needs, catch-up goals for salaries, etc.?)

5. What specific operational (and policy) changes will emerge in “deregulated” functions like purchasing, personnel, and capital programs?

6. Will institutions be able to accrue savings from efficiencies, and will they retain the interest that the state treasury earns on tuition deposits?

7. Will policy changes endure turnover in key leadership positions? (As “champions” leave, where will institutional memory be stored?)

8. Is the tradeoff that sacrifices some substantive autonomy for more procedural autonomy worth it?

9. One substantive amendment (adding student safety to the list of state goals) was passed in 2006; what issues may be lined up as further amendments in the future? (And who advocates what?)

CONCLUSION

Seeking more autonomy from the state, Virginia public universities found themselves achieving increased procedural autonomy on the condition of the state’s assertion of tighter substantive control. This procedural/substantive dichotomy is taken up in a different context by John Donahue (1989) of Harvard University, writing on privatization in U.S. society. His subtitle, “Public Ends; Private Means,” captures his argument that, to be successful, privatization must include a rigorous definition of the purposes of public ends and a rigorous process for evaluating their attainment. To us, Virginia’s restructuring legislation has attempted just such a package. (For elaboration on the procedural/substantive theme, see Berdahl & Bayer Contardo, 2006.)

Procedural deregulation is supposed to lead to more day-to-day managerial flexibility, to more entrepreneurialism, and to higher institutional morale as a result of more real self-government. Whether the increased state role in defining and evaluating the purposes of its public universities and colleges will come to be seen as having demanded too high a price for the greater procedural freedoms remains to be seen. Having taken the initiative to loosen their relationship with the state as appropriations failed to keep pace, Virginia’s Big Three public universities appear to have unleashed an uncontrollable garbage-can agenda with an outcome different than anyone anticipated.

In fact, as the governor, legislature, and institutional leaders collectively engaged in reconsidering their relationship, broad strategic issues dominated in a way that years of planning and strategizing by SCHEV and others had left dormant. Consequently, we think the Virginia case demonstrates the consistency of the garbage-can idea with the democratic policy process.

An initially narrow and self-interested campaign by three elite institutions generated both opposition and broader attention, opening the legislative process to consideration of much more fundamental questions about higher education's role in the state. This strategic (if very messy and unpredictable) reexamination grappled with large problems and generated attention to issues that might otherwise have been left unaddressed. Whether the process might have been conducted in a more rational fashion is a moot point, but how restructuring plays out may provide a model for a generation of reform in higher education in other states (and nations).

Other states and other nations should not copy the Virginia process too quickly, because history has shown that even initially positive innovations can have unintended consequences. A powerful voice backing a strong role for the governor came earlier from Terry Sanford (1967), former governor of North Carolina, former president of Duke University and later U.S. Senator from North Carolina. In *Storm over the States*, he voiced worry that so-called independent boards in areas like education and health were in danger of being captured by the professionals operating in those areas and that these professionals did not always have the broader public interest in mind when making policy. He believed that the governor was usually in a better position to define and protect the public interest and noted that "more universities have suffered from political indifference than have ever been upset by political interference" (p. 200). But what Governor Sanford did not anticipate was that subsequent governors, who might not be as supportive of higher education or as sensitive to academic values as he was reputed to be, could follow the deep intrusions into higher education undertaken by a benign governor and with perhaps much less benign results. In Virginia, Governor Warner was clearly very favorable to higher education; and so far, his successor, Governor Kaine, also seems to be. But there are no guarantees in politics, and one could foresee a day when a future governor, and/or a future majority in the state legislature, might begin to propose state goals for higher education that are incompatible with academic integrity. At that time, the precedents set by the 2005 Virginia restructuring might come back to haunt the public institutions and, therefore, ultimately, the broad public interest.

The ultimate reality for publicly supported colleges and universities is that they serve their states. The ultimate reality for state government is that they have to make explicit what they expect and how much they will pay to get it. In other words, there is a relationship that has to be continuously sustained. Most critical of all, both sides need to focus on how best to achieve the quality of outcomes that serve the state's most pressing interests. If the Virginia reforms result in better quality service to the state, they will be worth emulating.

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