

Where the Rubber Meets the Road: Governance and Accountability Issues in Civil-Society-Based Organizations

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Abstract

As the role of government gets more complex and as demands for public resources increase, elected officials try to encourage civil-society-based organization to share the burden. This paper uses a case study to suggest that while in theory governance and accountability occur at the top, in reality they occur at the point that the organization interfaces with its “owners.” The paper points out that while in commercial organizations top executives deal with the “owners”, i.e., stockholders in government and not-for – profit service organizations the interface with the “owners” i.e., citizens and members, takes place closer to the point of service. The paper suggests that for that reason accountability and governance issues might be different in the case of commercial and public service organizations.

Key Words: Civil-society-based Organizations, Not-for-profit Organizations, Governance, Accountability

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George Bush, the 41st President of the United States, used the term “thousand points of light” to describe the role of civil-society-based organizations. Hillary Clinton (the wife of the 42nd President of the United States, Bill Clinton) asserted that “it takes a village to raise a child,” expressing the same notion about the importance of Etzioni’s (1993) concept of communitarianism. As we enter the 21st Century it would be hard for anyone in North America to imagine a world without organizations such as the Red Cross, the YMCA, Goodwill, the Salvation Army, The Moose, The Elks, or the Boy/Girl Scouts. These organizations perform, in their respective communities, important functions that used to be performed by government before the fiscal difficulties of the last twenty-five years. In recent years, civil-society-based organizations initiated or assumed responsibility for new efforts to meet community needs that could have—or should have—been addressed by the government, if there was a way to do so without raising taxes.

The growing role of civil-society-based organizations in providing various services and social functions is the result of two forces that started influencing public policy towards the end of the 20th Century. The first force has to do with a general re-thinking of the *proper* role of government. The resulting shift in public policy in that regard is associated with the practices of the Administrations of President Reagan in the USA and Premier Thatcher in the UK. The second force has to do with the decline in governments’ capacity to act due to a diminishing ability to tap and mobilize resources to underwrite the escalating cost of their operations; and a declining popular trust in the ability of governments to operate like a business. Contracting out, outsourcing, load shading, and re-inventing government are some of the terms used by writers during the last twenty-five years of the last millennium to address the changes in the thinking and practice of government.

The growth in the number of civil society based organizations, that replace government in offering various services and the vast amount of tax exempt resources they use, generated concerns about accountability and thus about the governance of these organizations. These concerns are not new and resemble the questions about the fiduciary responsibility of Directors and other corporate officers to there stockholders

This paper asserts that since the interface between the organization and its *owners* occurs at different levels in public organizations than in commercial ones, there is a need to approach the issues of governance and accountability differently in both sectors.

Civil Society and Governance

Civil-society-based organizations are not a new phenomenon. In Medieval Europe, for example, the childless wives and widows of the Crusaders found shelter at the *beguinage* (*Begijnhof*) in return for services they provided to the community. The *wakf* provided related services to some of the needy in Muslim countries. The orphanage, the public hospital, and the popper's graveyard are some of the institutions operated traditionally in the West by community-based organizations, outside of government, for the benefit of the public as a whole. Many of these institutions were funded by religious-based charities. Thus, it is not surprising that the governance of such organizations was geared to assure the influence of the involved "church" rather than establishing public accountability.

However, times have changed. All civil-society-based organizations must incorporate and meet governance and reporting requirements. The regulations are meant to assure the public that not-for-profit organizations (NPOs) are not taking advantage of their tax exempt status to enrich their directors, employees, and/or clients at the public's expense.

Graham, Amos, and Plumptre (2003) define governance as "the interactions among structures, processes and traditions that determine how power and responsibilities are exercised, how decisions are taken, and how citizens or other stakeholders have their say." But what does governance mean when it comes to civil-society-based organizations? At the present time there is no consensus about one preferred structure. This state of affairs can be easily illustrated by reference to the following examples from South Africa and the State of New York.

According to the Constitution of the Republic of South Africa, Act 108 of 1996, the provided legal framework serves two purposes:

- a. It enables civil society organizations to establish themselves as legal structures.
- b. It regulates the way in which such legal structures operate. (Legal Structures commonly used by Non-Profit Organizations (SA Act 108 of 1996)

The same official publication goes on to assert that not-for-profit organizations (NPOs) can be incorporated as one of the following three options: "Voluntary Associations," "Trusts," or as "Section 21" companies. It explains that,

The formal establishment and ongoing regulatory requirements are most complex for a Section 21 company, less complex for a trust, and least complex for a voluntary association (VA). So the most common structure for small, newly established NPOs is the VA, while trusts and Section 21 companies are appropriate for larger, well established NPOs with big budgets, complex programs and lots of staff. (While a VA is the simplest NPO to establish and manage in terms of ongoing regulatory requirements, it may nevertheless exercise all the powers and do the same things as a trust or Section 21 company.)

Accordingly, it is easy to see that in the case of South African NPOs the governance structure is a function of the legal base of the organization, which in turn is a function of size and complexity. However, in the state of New York the subject of NPOs' governance is approached differently. According to the Office of the Attorney General (Spitzer 2005):

Whatever their mission or size, all organizations should have policies and procedures established so that (1) boards and officers understand their fiduciary responsibilities, (2) assets are managed properly and (3) the charitable purposes of the organization are carried out. A failure to meet these obligations is a breach of fiduciary duty and can result in financial and other liability for the board of directors and the officers. Effective internal controls will help to protect an organization's assets and assist in their proper management.

The differences between the South African approach and the approach of New York State are clear. In the South African case, governance structure is a function of the desire to assure management that is commensurate with characteristics of the organization and to encourage new incorporations. In the case of NY, assuring accountability, in the broadest sense, is the purpose of the governance structure regardless of size or complexity of operations. The corresponding regulations treat all NPOs alike. The language used by the Attorney General of NY leaves no room for doubt:

A primary responsibility of directors and officers is to ensure that the organization is accountable for its programs and finances to its contributors, members, and the public and government regulators. Accountability requires that the organization comply with all applicable laws and ethical standards; adhere to the organization's mission; create and adhere to conflict of interest, ethics, personnel and accounting policies; protect the rights of members; prepare and file its annual financial report with the Internal Revenue Service and appropriate state regulatory authorities and make the report available to all members of the board and any member of the public who requests it. The development and maintenance of the organization's internal controls will help to ensure accountability. (Spitzer 2005)

Articulating the responsibilities of the actors involved in the governance of the organization, the Attorney General's Office addresses both the procedural and the substantive aspects of accountability. Accordingly, the purpose of accountability is to "preserve the charitable assets that benefit all of us" and to attain the prescribed organizational goals, while still complying with principals of good management, the law, and ethics.

It is the assertion of this paper that there is a difference between the formal and the real governance and accountability processes in NPOs and that those are function of the organization's interface with its *owners*, as illustrated in the following case study.

Governance and Accountability at F.S. Community Center

This case study is the result of a participant-observer study of a members' funded social service NPO over a period of 25 years. The organization, F.S. Community Center, has been in existence for about 150 years, and many of the current members are decedents of the founding families. The organization was established to meet specific social, educational, and welfare needs of its members. The target membership group can get similar services from at least four other similar organizations. The oldest organizations have larger memberships. The more-recent arrivals are more limited in term of service and membership than the organization under study.

In compliance with the State's legal requirements for such organizations, the entity under study has a Board of Trustees/Directors, a President, a Treasurer, and a Secretary. The Executive Committee consists of the President, President-Elect, Past President, two vice Presidents, the Treasurer, and the Secretary. Other than the President and Past President, membership on the Executive Committee represents the tentative line of succession. In other words, it is made up of the future presidents of the organization. For all practical purposes the President and President Elect control the nomination of individuals to the Board, and thus to the Executive Committee. The informal selection criteria are simple: willingness to serve and contribute time and tangible resources; socio-economic status that can attract new members and represent current ones; and, last but not least, ability to be a team member. That last qualification means coming close to providing unconditional support of the Executive Committee's recommendations. Trustees who tend to ask too many "difficult" questions when recommendations are brought before the Board for approval are not asked to serve again when their term is up. Officially the rotation of membership on the Board is done to allow the Board opportunities to hear new ideas and assure wide representation. In reality this is done, first of all, to assure the President of the organization minimum opposition from within.

The result of this practice is an empowerment of the President, who serves one term of two years. The desire to empower the President is also the real explanation for two recent changes to the constitution of the organization. One change reduced the number of Trustees, and thus the odds that the Nominating Committee would put on the slate of candidates for the Board someone who could not fully be trusted to be a team player. Though the by-laws allow nomination from the floor, the custom has been that the candidates for the Board are elected by acclamation. The other change was to eliminate the provision that made Past Presidents life members of the Board. This provision was put in place when second and third generation members felt that they were losing influence on the Board to newcomers from the North. Due to changes in demography, more and more Presidents were not direct decedents of the founding families, and they felt constrained because they could not control the votes of these "members for life" on the Board.

When it comes to the formal governance structure, an important role is played, also, by two standing committees: one for budgeting, and one for personnel. The committees are chaired by members of the Executive Committee, and the members are other members of the Board. Other committees, such as adult education, house committee, social action

committee, etc., are chaired by lay members of the organization who sit ex-officio on the Board. The professional staff sits on these committees. Formally, the professional staff deals with the Board on programmatic and financial issues through the respective chairs of these committees.

On the face of it, the professional staff is not involved in matters of governance and are accountable only to their respective committees. However, longevity—years of service of the professional staff in their respective positions—gives them leverage and influence that is recognized *informally* by the Board and the membership at large. In fact, the independent power base of each of the professionals within the organization makes these individuals almost untouchable. The following two examples will serve as an illustration of this point. First, a few years back, one President tried to remove one of the professionals in order to balance the budget and to solve some interpersonal issues among the staff. He was forced by supporters of the said professional to convene an emergency meeting of the membership to explain his intended move. When a group of wealthy members supporting the said professional threatened to resign, he had to withdraw his proposed decision. Second, two years ago, a newly-arrived, wealthy family joined the organization. Due to the professional and socioeconomic status of the husband, the wife was asked to serve as Vice President. Following the appointment, the newly-elected VP attempted to micromanage and supervise the performance of one of the professionals on a daily basis. When the said professional could not take it any more, she called the President and offered to resign. In an emergency meeting of the Executive Committee the Vice President, and the Chair of the Personnel Committee, who was also a new arrival in town, voted to accept the resignation. The President Elect and the Executive VP voted against it. The President decided not to accept the resignation. By the time the Board met for its next regular meeting, word of the proposed resignation resulted in numerous phone calls to the President and members of the Board in support of the said professional. During the meeting of the Board, the VP offered a tearful public apology for not realizing that her good intentions were perceived as attempts to undermine the professional authority of a key staff member. Under a new protocol the said VP can communicate with the staff member only in the presence of the Chair of the advisory committee of that professional.

The discrepancy between the formal chain of command and the relative informal power of the professionals has direct impact on issues of accountability and governance. The President and his Executive Committee are busy mostly in mobilizing resources, balancing the budget, and identifying possible nominations for the Board. There is no programmatic direction from this group as long as there is not a problem. With few exceptions, the Board itself is nothing more than a rubber stamp of the Executive Committee's recommendations. Programmatic ideas for carrying out the alleged mission of the organization and some efforts to mobilize outside resources for various programs are left to the professionals. The professionals' ideas and program plans reflect the direct input of members to the professionals on a daily basis. The professionals, in turn, present them to their respective committees for approval. The proposed annual work plan of each of the respective areas of the professionals' responsibilities is then sent to the Board and the Budget Committee for approval and funding. A case in point is the initiative of one of the professionals to get a group of women volunteers to cook and to freeze some

meals. The idea was to use these meals to assist individuals without extended family in town when their love ones are in the hospital, hospice, or similar circumstances. The cost of the initial operation was covered by ad-hoc donations that were solicited from wealthy members of the organization. Given the initial success of this project, a social function for raising money to fund this activity became an annual event and part of the regular programming and budgeting of the organization.

The reality in this organization is therefore very different from what one would assume from reading the organization's constitution and by-laws. The steering of the organization in programmatic terms, i.e., what selection of programs the organization offers to its members and the specific content and delivery methods of the various programs, is assumed by all to be the responsibility of the professionals. The professionals, in turn, are guided by a very simple criterion: whatever helps the organization retain its own members and attract new members. In a very competitive "market," where the alternative service providers are as eager to retain their members as they are to attract new ones, being responsive is a matter of survival.

The specifics of the professionals' desired roles in the organization is communicated to them constantly from two sources, by the members with whom they interact daily and by the lay membership of their respective advisory committees. The need to be responsive to members' needs and expectations brought the professionals many years ago to meet weekly to coordinate among themselves and address emerging problems before they escalate to require the attention of the President and the Board. The result of this practice is that only when something goes wrong in a serious way, do unhappy members approach the President, his Executive Committee, or members of the Board for redress. The Board and the Executive Committee meet only once a month unless there is a special issue to address. Many members of the organization do not know who is on the Board of Trustees, Executive Committee, or even who is the current President. Yet they all seem to be able to identify the professionals by name and to have a good idea about their respective areas of responsibility.

Analysis

With this background in mind, the emerging picture is one where the tail wags the dog. Though the organization's constitution places governance and accountability in the elected officers and the Board, actual leadership and responsibility for programs to attain the mission of the organization are provided by the professional staff.

The State requirements for incorporation as an NPO are designed to protect the public interest. They are meant to protect the interests of the dues-paying members of the organization and those of the taxpayers who pick up the tab for the tax-exemption status of the organization. The State vests the governance of the organization in the Board of Trustees, the President, and the Constitutional Officers, i.e., the Treasurer and Secretary. Those individuals, in turn, are accountable to the members, the State, and the public at

large for the use of sound management practices in the implementation of programs that would generate the benefits and services for which citizens join it.

The minutes of the Board, Executive Committee, Budget and Personnel Committees document the official governance and accountability processes; namely, policy decisions and approval of programs and their funding on the one hand and various periodic reports about the use of resources and achievements on the other.

But appearances can be misleading. On its face, governance results from decisions by those who were elected by the membership at large; and accountability is attained by regular reporting up the chain of command. However, the reality, as illustrated in our case, is different. The governance of the organization is a bottom-up process. In most cases service needs are articulated as demands for programs or procedures for carrying them out at the grass roots level, or by the professional staff. The officers and the Board have no choice but to approve them with little or no modifications due to financial constraints. The ensuing planning of new programs or changes in existing programs results from the coordinated and concrete decisions of the professionals, in concert or individually. Decisions by the professionals and demands from the membership translate into recommendations for new policies and action plans as they make their way up through the committees that are composed of lay members to the Executive Committee and Board levels. By the same token, accountability results not only from the periodic reports of the professionals to the Board but from two other sources. First, the professionals' periodic reports and daily interactions with their respective service recipients. For their annual dues and donations, members seek to have a say about programs, and they ask questions when they are not fully satisfied. However, such questions are directed first at the professionals. Only if they fail to answer them in a satisfactory manner would a member approach the Board or one of the elected officials for an answer. Second, the professionals' monitoring of the agenda of the elected officials and the Board to assure that everything is done to retain members and attract new ones. Here accountability results from the constant pressure of the professionals on the elected officials to find the means for underwriting existing and new programs and the laud questioning by them of any practice that might compromise service quality for the sake of balancing the budget. In other words, the professionals hold the elected officials accountable even before the membership at large feels the need to ask any questions about the use of resources and attainment of results.

Being aware that the organization under study is not the only game in town, the professionals are deeply aware of the connection between membership satisfaction and their own job security and status in the community. Using their respective professional organizations as a source for ideas and guidance, they try to excel in what they are doing, some with greater success than others. Their tacit involvement in the governance of the organization is a must, due to the simple reality that the Board, the President, and the constitutional officers are not in a position, due to time constraints and knowledge, to come up with new, yet feasible, programs. As noted in the case, the Officers and members of the Board are not elected because of their potential to contribute to the operation of the organization, but for their other qualifications. For these same reasons,

the Board and the Officers must rely on the professional staff in order to know what is going on, why, when, and how much it cost.

Discussion

Issues of accountability became a hot issue item in the aftermath of scandals such as Enron and WorldCom (Knubel, 2004) in the for-profit sector, and the American Red Cross (CBS, 2002; Allen 2005) or the Canadian Red Cross (WorldnetDaily, 2005) in the not-for-profit sector. New legislation, such as the American Sarbanes-Oxley Act of 2002, has been passed in an attempt to pre-empt abuse and deception of the public. As issued, the said Act is only applicable to public companies and their auditors. However, special interest groups and oversight agencies have been questioning why it shouldn't be applied, at least in some respects, to NPOs. According to information from the National Council of Nonprofit Associations (NCNA), a number of state legislators and attorney generals are considering various proposals to increase non-profit accountability at the state level (McGladrey & Pullen, LLP n.d; Knubel, 2004).

The American Sarbanes-Oxley Act of 2002 addresses not only issues of accounting, auditing, and oversight of financial affairs but also the personal responsibilities of managers and Directors. These responsibilities go directly to the heart of the accountability discussion. Without *proper* governance structures how can managers and Directors possibly be accountable? Within this context it is easy to see why some people would perceive governance and accountability as two sides of the same coin. According to this view, governance is the chain of command, while accountability is the chain of reporting. Yet, as illustrated by our case study there is a significant difference between the formal provisions for governance and accountability, and the actual practice.

Bradshaw, et al (1998), point out that there is no single, best governance structure that would meet the needs of all NPOs and recommend the use of a contingency approach to select a governance structure. However, when it comes to NPOs, we do not have the benefit of studies that resemble the works of Woodward (1965), Thompson (1967), or Perrow (1967) to provide guidance through the use of a classification or a typology of NPOs. Mega-size hospitals, a network of YMCAs, universities, zoos, museums, public galleries, theaters, think tanks, the APA, and community centers that are not sponsored by government agencies may all have only one thing in common: lack of a profit orientation. They are different in all other important respects such as the complexity of their operations, financial resources and their source, the size and characteristics of the public they aim to serve, their organizational structure, legal base/ownership, the technology they use to conduct their business, or the dynamics of their life cycle etc. NPOs represent a rich universe that has yet to be classified in a simple but inclusive way that resembles the work of Woodward (1965), Thompson (1967), or Perrow (1967). This is not for lack of trying. The literature is full of innovative and interesting ideas about possible ways to create a typology, to classify, or to categorize NPOs, as illustrated by the work of (Bradshaw et al 1998, Frey 2003, Ruys 2005). Yet, as illustrated by our case

study, we may have a problem in the way we think about governance and accountability when it comes to NPOs.

In some NPOs the top down governance and bottom up accountability is not the reality, even if formally it is supposed to be the case. At least in the case of small NPOs, like the one in our case study, an organic organizational structure places the locus of governance and accountability below the organizational apics (Mintzberg 1979). The interesting thing is that the role of the professionals at this NPO, when it comes to governance and accountability issues, is no different from the role of the senior career middle management in various agencies of the State of Tennessee. During the years I have seen these middle managers initiate various planning activities. Such planning was never a priority for the appointed top managers, whose term in office was relatively short, and their action plan was narrow and limited to few issues. Middle managers for the State seem to engage in planning for two reasons: first, to have some control over the future by committing the agency to carry out certain programs and work towards the attainment of certain goals. For the newly appointed top managers the attempt to dispose of such plans or to change course suddenly seem always to be too much of a risk from a political point of view. For that reason top managers opted usually for marginal changes or for few and minor initiatives in terms of the involved resources in areas not covered by long term plans. The second reason is simple: They did it because it was apparent to them that while such planning was needed, compiling it was not a priority for the appointed staff.

If the two above observations are correct, and if indeed they are related, it is clear that we in academia must change our view and thinking about governance and accountability. In public and NPOs where the interface between the *owners* and the organization occurs below the strategic apex (Mintzberg 1979), governance and accountability take place in different ways than in commercial entities where the interface between the organization and its owners occurs at the apex level.

About The Author

Arie Halachmi, the recipient of the 2001 Harold Lasswell Award, received his Ph.D (with distinction) in 1972 from The State University of New York in Buffalo. He is currently a visiting professor at the Netherlands Institute of Government as well as a visiting professor at the University of Twente in the faculty of public administration. He is also an associate professor of public management and policy at the Institute of Government at Tennessee State University. He has authored more than ten books and hundreds of articles in the field. He is also the Founder and Chair of the International Working Group on Public Sector Productivity of the International Institute of Administrative Sciences (IIAS) and the President of the South Eastern Conference of Public Administration. Arie has also been a consultant to government agencies in at least fifteen different countries around the world, including the United States. In addition, he served as a member of the National Council of the American Society for Public Administration on two occasions.

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